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Lawyers Question UN Immunity Over Srebrenica

Court of appeal in The Hague hears arguments on holding leading international body to account.

By Simon Jennings in The Hague (TU No 632, 29-Jan-10)

Lawyers attempting to sue the United Nations in The Netherlands brought their case to the court of appeal in The Hague this week arguing that the organisation's claim to legal immunity conflicts with European law.

Survivors of the Srebrenica massacre in eastern Bosnia in 1995 have brought a lawsuit against the UN and the Dutch state for the failure to protect over 8,000 Bosniak civilians who were killed by Bosnian Serb forces.

The enclave of Srebrenica had been declared a UN safe haven in April 1993 to protect residents as well as thousands more civilians from nearby villages who had gathered there.

The survivors group - the Mothers of Srebrenica - which represents more than 6,000 relatives of the victims, are also attempting to sue The Netherlands for the failure of Dutch troops, who were at the time acting under a UN mandate, to prevent the massacre.

Under the UN's founding charter, the 1946 Convention on the Privileges and Immunities of the UN, the organisation benefits from legal immunity "for the fulfilment of its purposes".

In July 2008, the district court in The Hague upheld this immunity, ruling that the Mothers of Srebrenica could therefore not sue the UN in The Netherlands for failings surrounding the largest mass killing in Europe since the Second World War.

However, lawyers representing the group say that access to a court and legal remedy is a fundamental right under European law as provided for by Article Six of the European Convention on Human Rights.

"Should you consider granting absolute immunity to the UN then there arises the issue of violation of the right to an effective legal remedy that is guaranteed in the European Community," the legal team of Axel Hagedorn and Marco Gerritson argued this week.

The plaintiffs' lawyers asked the court of appeal to seek the view of the European Court of Justice in Luxembourg on whether the UN's claim to immunity took precedence over the European Convention on Human Rights provision of guaranteeing individuals legal protection.

They also argued this week that immunity cannot be granted to the UN as it does not provide any alternative avenue for justice within the organisation itself. This remains the case today despite being a condition on which immunity was originally granted to the UN when it was founded in 1946, the lawyers say.

"The setting up of an effective legal remedy was inextricably bound up in 1946...with the granting of immunity to the UN," they argued.

The UN itself has yet to appear in the proceedings. However, the Dutch government argued that the court of appeal should rule the case against the UN inadmissible and confirm the organisation's immunity.

The Dutch government emphasised the unqualified and unrestricted nature of the UN's immunity.

“These immunities include immunity from every form of legal process except insofar as in any particular case the UN has expressly waived its immunity. These immunities are necessary for the independent and unimpeded exercise of its functions,” the Dutch ministry of foreign affairs said in a statement.

“Particularly when it comes to the function of the United Nations to maintain the international peace and security, this independent and unhindered fulfillment of its function is of eminent importance.”

The Dutch ministry of foreign affairs described the events in Srebrenica at the core of the case as “a big humanitarian tragedy” and said that the Bosnian Serb forces were responsible.

“The culprits of the fall of Srebrenica and the genocide is the Bosnian Serbian Army, in particular [the head of the army] General [Ratko] Mladic. The Bosnian Serb Army is to blame; the Bosnian Serb Army is responsible.”

If the court of appeal confirms the UN’s immunity in proceedings then the Mothers of Srebrenica will only be able to bring their case against the Dutch state.

The court of appeal in The Hague is expected to deliver its verdict on March 30, 2009.

Simon Jennings is an IWPR reporter in The Hague.