

Srebrenica Families' Anger at Removal of Judge

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Claimants say his departure just before case is heard could diminish their chances of winning. A judge due to hear a lawsuit brought by relatives of Srebrenica genocide victims against the Dutch government was this week removed from the case at the eleventh hour.

It is unclear why Judge Bart Punt has left the case, which is to be heard at the Hague District Court on June 16. However, victims' families are outraged that he is going after working on it for three years, and fear it could affect the final verdict.

Hasan Nuhanovic and the family of Rizo Mustafic filed a case against the Netherlands for failing to protect their relatives in Srebrenica in eastern Bosnia after it was declared a safe area by a United Nations Security Council resolution in July 1995.

After the enclave fell into Serb hands, an estimated 8,000 Muslim men and boys were massacred and the plaintiffs claim that Dutch troops serving under the UN should be held accountable under Netherlands law for not intervening to save the victims.

Mustafic, who was employed as an electrician by the Dutch UN force, Dutchbat, went missing and is presumed to have been killed in the massacre, while Nuhanovic, an interpreter working for the UN, lost three members of his family.

In January 2007, families welcomed an interim decision by Judge Punt which supported the view that Dutch soldiers at Srebrenica should have evacuated Mustafic along with them because he was employed by the UN. Instead, according to the claimants, a Dutch personnel officer sent him away and he was captured by Bosnian Serbs.

However, their lawyer now fears that because the judge will no longer sit on a judicial panel that is set to hear the final pleadings scheduled for next week, this could affect the outcome.

"My worry is that since the court has changed, the interim decision will be given [in] a different way. That's my worry, them saying something else now," said Liesbeth Zegveld, a lawyer representing the victims' families.

"The court may weigh the interim decision differently but if it's the same judge, of course he will continue on the same line."

"It is ridiculous because he has been on the case since January 2005, over three years," Zegveld told IWPR. "Then for the final round, which is only one day of pleadings, they are going to remove a man while three other judges have to read over 10,000 pages of documents."

Alma Mustafic, the daughter of Rizo, is also unhappy. "We were really shocked because we didn't expect something like this. We feel this is a shame for the Netherlands," she told IWPR.

In 2002, Dutch prime minister Wim Kok and his government resigned after a report found the state partly responsible for the fall of the UN-protected area.

Members of the Dutch parliament have asked Justice Minister Hirsch Ballin why Judge Punt has been taken off the case – especially as this is not the first time a judge has been removed during a high-profile trial in the country. The same thing happened during a case involving Amsterdam’s Schipol airport and also when the state was seeking to deport somebody accused of drug offences to Poland.

“The point for me in all these cases is it seemed that [the judges] were changed at the moment that the judge was maybe [about to] give his judgement...against the Dutch government,” said Jan De Wit, a member of the Socialist Party.

“Is it so that they were changed because they would give a judgement that was not in favour of the government? That is what I asked...I'm not sure that I am right, but that's my question.”

IWPR tried to contact Judge Punt, but the court said he had declined to comment to the media.

Fred Teeven, a former public prosecutor and a member of parliament for the People’s Party for Freedom and Democracy, VVD, told IWPR that Judge Punt’s departure was “very unusual”.

He said he had asked the justice minister to clarify the reasons behind it.

“It was very strange because he gave some verdicts and then he left very suddenly,” said Teeven.

The minister now has three weeks to answer written questions submitted on the decision.

Teeven said that since asking the question he had been informed by another source that Punt left due to health reasons.

Yet according to the court where the lawsuit is being heard, Judge Punt’s departure was planned from the outset.

A court representative said the judge was asked to assist in the Srebrenica case because there were not enough judges, although he usually works on commercial lawsuits rather than those relating to state liability. He agreed, but said he would not oversee the final pleadings.

“He never wanted to be involved after the mediation [phase],” Judge Diederik Thierry, spokesman for the court on judicial matters, told IWPR, adding that all parties in the case were informed of this.

However, Zegveld denied this.

“I was informed four weeks ago, because I asked to be informed about the composition of the court. Then I was stunned hearing that [Judge Punt] was not on it,” she said.

She said she received a letter from the court also explaining that Judge Punt normally worked on cases relating to company rather than state liability.

However, Zegveld said she saw him on the bench on June 5 in a different case involving state liability in which she is representing a party. She informed De Wit of this, prompting him to ask the justice minister for an explanation for Judge Punt’s removal from the Srebrenica case.

The court has denied that the judge is taking part in another such case.

Since writing to Zevgeld, the court has published a second reason for Judge Punt’s stepping down on its website - he had now passed the age of 65. The official retirement age in Holland is 70 - but a judge may be able to work less after 65. Thierry told IWPR that Punt now wants to work only three days a week.

“How can it be that two weeks later they come out with a totally different argument?” asked Zegveld.

Article 155 of the Netherlands code of civil procedure states that the judge who hears the evidence should, so far as possible, take part in delivering the final judgement.

In 2003, the court cited this article as a reason for not allowing another judge to leave a case after his appointment to the court of appeal.

However, Thierry maintained that the court’s decision regarding Judge Punt was in line with Dutch civil proceedings law.

Dr Philip Langbroek, a senior lecturer at Utrecht University who specialises in Dutch administrative law, said there could be several reasonable explanations.

“I do not believe that a personality like Mr Punt would let himself be removed from the case by the management board for reason of his opinion in this case... If he has resigned from the case, he has done so for personal reasons,” he said.

But he said it was important to try to keep the same judges on a case.

“Judicial continuity is a real professional value of a judge, that when you start a case you finish it... It’s a common value of judges all over the world,” he said.

Langbroek said that the replacement of judges in previous cases had provoked negative reactions.

“[The] management board of the court should consider very carefully if it is a wise policy [to replace judges],” he said.

He added that it was now necessary to give “a very thorough explanation...to show that his was not a biased decision, especially where such huge interests of the state are concerned.

“You can’t hide any more, it has to be transparent. Everyone is there to see and look and watch what’s going on. It’s not something you can do in a backroom and expect everyone to say ‘OK’.”

Simon Jennings is an IWPR reporter in The Hague.

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