

PRESS RELEASE

Amsterdam, 8 November 2022: With regard to the forthcoming civil revocation proceedings¹ on 14 November 2022 at 15:00 at District Court Midden-Nederland (location Utrecht), concerning the tram shooting in Utrecht on 18 March 2019, we can announce the following out of a necessary defence (on behalf of client Mr Mustafa Ercan) and in the public interest. We have decided that the following sensitive information should not be kept under wraps, not only out of respect for our client as a victim (but also out of respect for the other victims and their relatives).

After 3 years of investigations, we have established a **miscarriage of justice**² to the detriment of our client in the criminal judgment³ of 20 March 2020, which miscarriage of justice was caused by the three prosecutors involved: Ms. H.C. van Ooijen, Ms. N.T.R.M. Franken and Ms. E.M. van der Burg. Given the severity of this finding, we will provide concrete substantiation.

The set of facts (under 5.3.1.1) of the relevant criminal judgment states that the tram shooter allegedly "***raised upwards***" his firearm in the direction of our client (referred to in the criminal proceedings as "victim 12") and this would imply that our client was "only" threatened by the tram shooter, and this was not an attempted murder. This position of the prosecution was declared proven by the criminal judge⁴.

From the beginning, our client has indicated to the police and the prosecution that the tram shooter had his firearm "***pointed at him***" and that the weapon faltered twice (and did therefore not indicate that the firearm would have been aimed "***at the ceiling***"). In the case of the other victims, the prosecutors chose to formulate it in terms of pointing the firearm **at** a victim, except in the case of our client (namely "***direction raised upwards***"). **But why?**

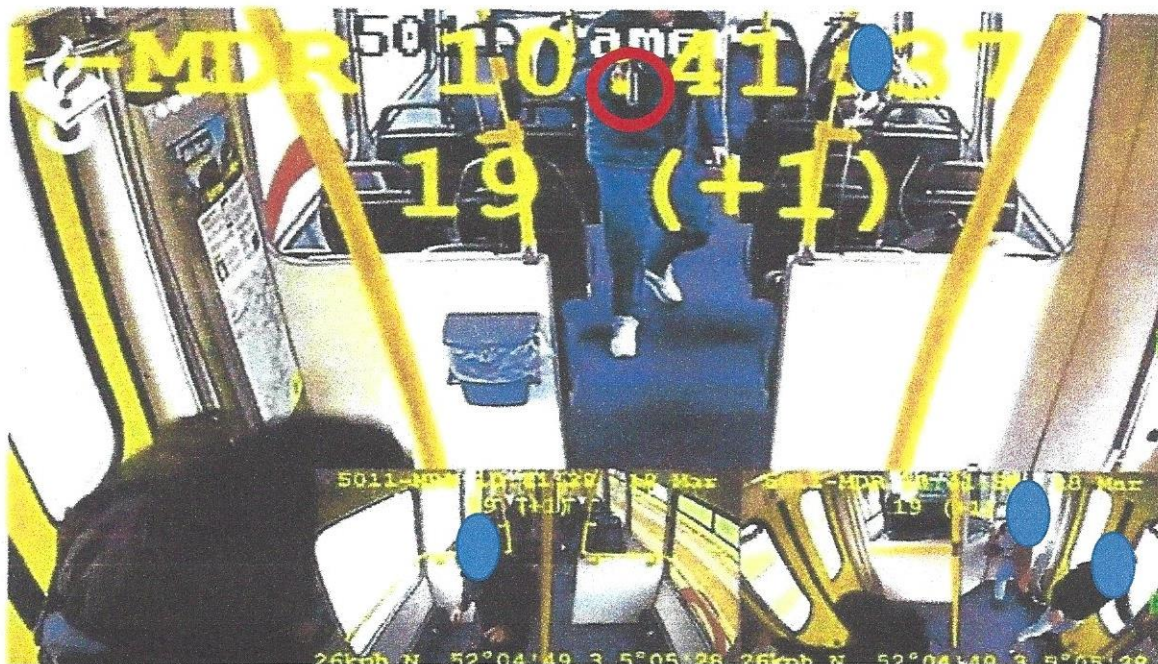
In the beginning of March 2022, we confronted the prosecutors involved with a still of the camera images of 18 March 2019 at 10:41:37 a.m., which we did not, however, receive from the prosecution before the criminal proceedings on 5 March 2020. The faces of the other victims were blurred for privacy reasons. The image shows the perpetrator pointing his firearm (see red circle) at our client.

¹ According to the register for ancillary activities, the judge in question currently still holds a paid position with the Police Central Netherlands, as a member of the complaints committee.

² This would be the first time in Dutch jurisprudence that a miscarriage of justice in a criminal case has been established in relation to a victim. Previous miscarriages of justice involved people who were wrongly convicted, such as in the Putten murder case and in the Rosmalen flat murder case.

³ Criminal judgment dated 20 March 2020: ECLI:NL:RBMNE:2020:1046.

⁴ In this regard, it is noted that the camera images were **not** viewed by the criminal judge and the criminal judge involved relied solely on the official reports prepared by the public prosecution.



We then asked the prosecutors concerned why they chose the wording "*raised upwards*" in the case of our client and what this means according to them? On 11 March 2022, we received a response to this by e-mail from Ms Iris Engels, the State Attorney (Pels Rijcken office):

*"(...) on Mr Ercan's side there still seems to be confusion regarding **the phrase 'raising upwards'** the weapon. This allegedly means (...) that the weapon was, not pointed at Mr Ercan, but towards the ceiling. However, by 'raising the weapon upwards in the direction of Mustafa', is **meant that the weapon is pointed horizontally** (i.e.: upwards) as opposed to downwards."*

The State Attorney is trying to clarify here that the wording "*raised upwards*" would mean what can be seen on the still of the camera images, namely that the firearm was pointed at our client (and therefore not at the ceiling of the tram).

When asked why the prosecution did not simply opt for the same wording (namely the firearm pointed "at" client) as in the case of the other victims, we have received no answer so far. By providing this interpretation, the prosecution is trying to conceal the fact that they misled the criminal judge.

In the forthcoming proceedings held on 14 November 2022, we have therefore submitted two images as exhibit for the benefit of the State Attorney and the three public prosecutors to visualise the wording "*raised upwards*" used by them and to read the official descriptions of it.

Among other things, De **Nederlandsche Postzegel- en Muntveiling** (Dutch Stamp and Coin Auction) describes the Statendaalder (a Dutch coin from 1578) as follows: "*with sword raised upwards*" (i.e. facing the ceiling). And the **Hoge Raad van Adel** (High Council of Nobility) describes the municipal coat of arms of old-Valkenburg as follows: "*the right hand raised upwards*" (so also facing the ceiling).

Statendaalder 1578



Gemeentewapen van oud-Valkenburg



What does this mean? The criminal judge was misled by the three prosecutors with the wording "*raised upwards*", in the sense that the criminal judge (who did not view the camera images) adopted this wording verbatim from an official report prepared by the prosecution. If the prosecution had chosen the same wording as for the other victims, namely the firearm aimed "at" our client, the criminal judge would have declared attempted murder proven. But what then was the interest of these three prosecutors involved?

On 5 March 2020, the prosecutors took the position during the criminal case that the tram shooter wanted to kill "*as many non-Muslims*" as possible⁵. Our client would **not** suit that position taken as our client has a **Muslim background**.

The prosecutors involved even went so far as to **not** provide us with the drawn-up relevant official report dated 18 February 2020 (with number PL0900-2019079354-1065), prior to the hearing on 5 March 2020, to prevent us from raising this misleading issue at the hearing. In the documents they have now filed with the court for the proceedings held on 14 November 2022, they have now taken the implausible(!) position that they would not have provided us with the relevant official report (dated 18 February 2020) **until** the court hearing on 5 March 2020.

Our client's version has even been confirmed to the newspaper Algemeen Dagblad by several sources from Justice. On 22 June 2019, the journalists Yelle Tieleman and Peter Koop published an article about a man (read: our client) who was on his way to his first working day at the company Rataplan. And at whom the perpetrator pointed a firearm, but fortunately the weapon jammed⁶. With this publication, among others, these journalists won De Tegel in 2020; De Tegel is the most important Dutch award for journalism.⁷

⁵ RTL Nieuws dated 5 March 2020: "*Prosecution: 'Gökmen T. wanted to kill as many non-Muslims as possible'*".

⁶ Algemeen Dagblad dated 22 June 2019: <https://www.ad.nl/binnenland/minstens-een-leven-gespaard-door-br-haperend-wapen-van-gokmen-tanis~a9730191/>

⁷ Algemeen Dagblad dated 8 June 2020: <https://www.ad.nl/binnenland/ad-journalisten-winnen-tegel-voor-verhalen-over-tramaanslag-utrecht~a8cab216/>

The course of action of these prosecutors is deeply shocking. Judges (as members of the bench) must be able to trust that prosecutors (as members of the Public Prosecution Service) inform them to the best of their knowledge and belief; this forms the core of our Dutch criminal justice system and this system must be guarded with respect. After all, The Hague is known internationally as the legal capital of the world. However, the conduct of the three prosecutors involved is shocking and possibly even punishable. And in addition, a violation of our rule of law. And all this just to maintain that the perpetrator would have only targeted **non-Muslims**.

In any case, as our client's counsellors, we have decided not to look away and to do everything possible to ensure that justice is still done towards our client. To be clear, the money is not our client's concern here; in fact, he still has not claimed the amount awarded to him in the criminal judgment (dated 20 March 2020). Our client's concern is seeking justice for the injustice done to him and all other victims in the terrible tram shooting on 18 March 2019.

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Affidavit

SUBJECT: press release TaXeCo

The undersigned, Bas Kranenbarg, sworn translator, hereby declares that the attached document is an accurate and complete Dutch to English translation of a press release of TaXeCo. The translation consists of three pages. A copy of the original documents is attached to the translation.

Apeldoorn, 7 November 2022

Bas Kranenbarg
Wbtv-number: 3909

