EUROJUST

Inter-State case of Ukraine and the Netherlands v. Russia

Key Findings and Takeaways from the ECtHR Judgment, 9 July 2025

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1. Introduction

On 9 July 2025, the Grand Chamber of the European Court of Human Rights (hereinafter 'the Court') delivered a landmark judgment, in the inter-State case of *Ukraine and the Netherlands v. Russia* (hereinafter 'the Judgment').

The case arose from four inter-State applications ([1]). The first two applications were lodged by Ukraine in 2014 and concerned alleged patterns of human rights violations by the Russian Federation (hereinafter 'Russia') in the context of the conflict in eastern Ukraine involving pro-Russian separatists from the spring of 2014. The third application was lodged by the Netherlands in 2020 and concerned the shooting down of Malaysia Airlines flight MH17 (hereinafter 'flight MH17') over eastern Ukraine on 17 July 2014. The fourth application was lodged by Ukraine in 2022 and concerned alleged patterns of human rights violations by Russia in the context of Russian military operations in Ukraine since 24 February 2022.

Described by the Registrar of the Court as 'one of the most consequential judgments in [the Court's] history' ([2]), the Judgment is unique and historic in many respects. Spanning nearly 500 pages, it prompted an exceptional number of third-party interventions and found over 20 flagrant violations of the European Convention on Human Rights (hereinafter 'the European Convention'). Notably, all of these findings of violation were adopted unanimously, which is unprecedented.

Not only does the Judgment play an important role in holding Russia to account for its widespread violations of the Convention in Ukraine since 2014, but it also addresses a whole array of critical legal questions that will have a significant impact on the Court's future jurisprudence and beyond. The Judgment's findings pave the way for the examination of over 9 500 individual applications pending before the Court relating to the conflict in Ukraine since 2014, as well as four individual applications lodged against Russia by more than 500 relatives of the victims of flight MH17. They may also serve as important points of reference for other international institutions, including the International Criminal Court.

This report does not intend to provide a complete overview of all the legal issues examined by the Court. Instead, it focuses on four issues of particular interest to the mandate and activities of the European Union Agency for Criminal Justice Cooperation (hereinafter 'Eurojust'). These issues are presented below in four separate sections: i) Approach to evidence (Section 3); ii) Relationship between the European Convention and international humanitarian law (hereinafter 'IHL') (Section 4); iii) Russian investigation into the downing of flight MH17 and its cooperation with the joint investigation team (hereinafter 'JIT') (Section 5); and iv) The suffering of the relatives of flight MH17 victims caused by the conduct of the Russian authorities (Section 6).

These four sections are preceded by background information on the case (Section 2) and followed by a brief presentation on the binding force and implementation of the Judgment (Section 7). The report concludes with key takeaways relating to the four main topics covered in the report and the implications for Eurojust (Section 8).

2. Background of the case

This section provides background information on two aspects of particular relevance to this report. Firstly, it addresses the investigations and prosecutions relating to the downing of flight MH17 – the

([1]) In accordance with the European Convention of Human Rights, the Court has jurisdiction to examine both individual applications (Article 34) and applications lodged by one State party against another one (Article 33).

([2]) See the Registrar's post published on the same day as the Judgment.

subject of the application lodged by the Netherlands with the Court – as well as the related support provided by Eurojust. It will then briefly discuss the specifics of Russia's participation in the proceedings in this case.

2.1. Investigation by the joint investigation team and Dutch proceedings relating to the downing of flight MH17

The day after the downing of flight MH17, the Dutch authorities requested urgent assistance from Eurojust to coordinate investigations in the various Member States and non-EU countries concerned. On 4 August 2014, a JIT was established, with the legal, financial and logistic support of Eurojust. Composed of the Netherlands, Australia, Belgium, Ukraine and, later, Malaysia, the JIT had three objectives: to investigate the downing of flight MH17 and establish the facts; to identify those responsible; and to collect evidence that could be used in court.

On the ground, the JIT facilitated the participation of seconded members (Dutch and Australian officers), who took part in interviewing witnesses in Ukraine and analysing evidence, a significant portion of which was also located in Ukraine. The JIT also enabled a coordinated approach towards the victims, including the sharing, via Eurojust, of updates on the progress of the investigation with all countries whose nationals were among the victims.

The countries participating in the JIT agreed that any individual suspected of being responsible for the downing of flight MH17 would be prosecuted in the Netherlands under Dutch law. Throughout the investigation, the JIT published its findings ([3]): first, in 2016 and 2018 regarding the circumstances of the crash; and then, in 2019 regarding four individuals – all military commanders of the so-called Donetsk People's Republic ([4]) in July 2014 – suspected of being responsible for the downing of flight MH17.

Based on the results of the JIT investigation, the Dutch public prosecution office (PPO) prosecuted these four individuals for downing flight MH17. All of them were tried *in absentia*, with three receiving life sentences and one being acquitted. The judgments issued on 17 November 2022 by the District Court of The Hague are now final. In a report issued on 8 February 2023 ([5]), the JIT stated that the investigation had been suspended due to a lack of access to evidence in Russia. However, the JIT did not close the case, as new information or a change in circumstances could provide grounds for resuming the investigation or initiating new criminal proceedings.

2.2. Participation of Russia in the proceedings before the Court

The Judgment relates to events that took place up until 16 September 2022. Although Russia ceased to be a party to the European

Article 58 – Denunciation

1. A High Contracting Party may denounce the present Convention (...).

2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which (...) may have been performed by it before the date at which the denunciation became effective.

3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.

([3]) See the presentation of first results of the MH17 criminal investigation on 28 September 2016, the update in criminal investigation on 24 May 2018 and the announcement on 19 June 2019 regarding the prosecution of four suspects.
([4]) The Donetsk People's Republic is a self-proclaimed separatist entity located in the Donetsk province of eastern Ukraine.
([5]) See the findings of the investigation into the crew members of the Buk TELAR and those responsible in the chain of command.

Convention on that date ([6]), it remains responsible, under Article 58 thereof, for any alleged violations that occurred while it was still a signatory.

However, this situation has impacted Russia's participation in the Court's proceedings. While Russia had submitted memorials and taken part in the oral hearing at the admissibility stage of the proceedings in the first three of the four applications that make up this case, it stopped all correspondence with the Court as of March 2022. Therefore, Russia had not participated at all in the proceedings on the merits in those three applications or on the admissibility and merits of the fourth application relating to the Russian military operations in Ukraine since 24 February 2022.

The Court decided nevertheless to continue examining the case, since there was insufficient cause for Russia's lack of participation and examination of the case was consistent with the proper administration of justice.

3. Approach to evidence

In the Judgment, the Court referred to its earlier admissibility decision in this case, in which it set out the general principles concerning the assessment of evidence and explained its approach to the main categories of evidence in the case-file ([7]).

3.1. General principles

The general principles drawn from the Court's established case-law and which were relevant to the assessment of the evidence in this case included the following.

3.1.1. Burden of proof and drawing of inferences

- As a general principle of law, the initial burden of proof in relation to an allegation is borne by the party that makes the allegation in question (*affirmanti incumbit probatio*).
- However, a strict application of this principle is not always appropriate. It is clear from the well-established case-law of the Court and from Rules 44A and 44C § 1 of the Rules of Court that if a respondent government fails to comply with the Court's request for material that could corroborate or refute the allegations made before it and do not duly account for their failure or refusal, the Court can draw inferences and

Rule 44A – Duty to cooperate with the Court

The parties have a duty to cooperate fully in the conduct of the proceedings and, in particular, to take such action within their power as the Court considers necessary for the proper administration of justice. This duty shall also apply to a Contracting Party not party to the proceedings where such cooperation is necessary.

Rule 44C – Failure to participate effectively

1. Where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate.

([6]) As a consequence of its aggression against Ukraine, Russia ceased to be a member of the Council of Europe as from 16 March 2022 and a party to the European Convention as from 16 September 2022. See the related resolutions by the Committee of Ministers of the Council of Europe on 16 March 2022 (CM/Res(2022)2) and by the Plenary of the European Court on 22 March 2022.

([7]) See *Ukraine and the Netherlands v. Russia (dec.)* Nos 8019/16 and two others, §§ 435–459, 30 November 2022.

combine such inferences with contextual factors ([8]).

In that regard, the Court also clarified that the applicable standard of proof in the examination of the merits of the alleged violations was 'beyond reasonable doubt'.

3.1.2. Assessment of evidence

- The Court has complete freedom in assessing not only the admissibility and relevance but also the probative value of each item of evidence before it.
- The Court takes into account reports and statements by international observers, non-governmental organisations (NGOs) and the media to shed light on the facts or to corroborate its findings. Its assessment of the evidence, and in particular the weight to be given to it, varies in view of the different nature of the material, the source of the material and the degree of rigour applied to its collection and verification.
- It has thus often attached importance to material from reliable and objective sources, such as the United Nations, reputable NGOs and governmental sources. However, in assessing its probative value a degree of caution is needed since widespread reports of a fact may prove, on closer examination, to derive from a single source. In relation to such material, consideration should be given to: the source of the material and in particular its independence, reliability and objectivity; the presence and reporting capacities of the author in the country in question; the authority and reputation of the author; the seriousness of the investigations forming the basis for the report; and the consistency of the conclusions and their corroboration by other sources.
- Media reports are to be treated with caution. They are not themselves evidence for judicial purposes, but public knowledge of a fact may be established by means of these sources of information and the Court may attach a certain amount of weight to such public knowledge.

3.2. Approaching the evidence in this case

3.2.1. Burden of proof and the drawing of inferences

In line with the above principles, the Ukrainian and Dutch governments bear the initial burden of proof with regard to their allegations of violations.

In view of the factual complexity of the case, the Court asked the Ukrainian and Russian authorities to provide further information and evidentiary material in relation to a number of specific matters addressed in their initial submissions. The Russian authorities declined to do so in relation to several aspects, invoking national security constraints and lack of relevance of the materials in question to the questions under judicial consideration. The Court considered that the Russian authorities' response to its specific request for further information and material was superficial and evasive and, more generally, that their written submissions lacked frankness and transparency. It further noted that Russia also did not provide any material from the separatist entities in Ukraine. In the Court's view, the material in question, which would have been of particular relevance to the case, could have been obtained by Russia given the special relationship they enjoyed with the relevant separatist entities at the time.

Accordingly, Russia did not engage constructively with the case proceedings and had therefore failed to fulfil its obligation to provide the Court with all necessary facilities to establish the facts of the case. Consequently, the Court drew all relevant inferences from Russia's stance that were ultimately adverse to Russia's case.

([8]) See, among others, *Merabishvili v. Georgia [GC].* No 72508/13, § 312, 28 November 2017.

3.2.2. Assessment of the principal evidence in the case-file ([9])

Aside from the parties' submissions and the evidential material provided by them, the Court regarded also material obtained from the public domain. It also clarified its approach to the different categories of evidence in the case-file, including material from the Dutch PPO and the JIT, as well as reports coming from international bodies, NGOs, research collectives and the media.

3.2.2.1. Material from the Dutch public prosecution office and the joint investigation team

The Court took note of Russia's general criticisms with regard to the Dutch PPO and JIT evidence. In particular, it noted the Russian authorities' allegations that the Dutch authorities had relied on digital material produced by research collectives of questionable reliability and that such material could have been manufactured or manipulated. This included material provided by Bellingcat and InformNapalm, which, they contended, constituted the foundation for the JIT investigation. Moreover, the investigation would have lacked objectivity and rigour. According to the Russian authorities, rather than collecting, investigating and analysing primary physical evidence, the Dutch authorities and the JIT relied on fabricated digital media material and altered physical evidence originating from unclear sources.

The Court dismissed these allegations as unfounded. It recalled that it is for any government seeking to challenge a particular piece of evidence to show that it cannot be relied upon. This requires particularised argument as to its alleged flaws and the submission of convincing evidence in support of the criticisms made. However, no such particularised and substantiated challenge had been made in the present case.

In fact, there was no evidence that the JIT had relied upon external entities, including Bellingcat, in its analysis of the material and the preparation of the criminal case-file. According to the Court, it was absolutely clear that the JIT had conducted its own analysis in respect of all the evidence in the criminal case-file. The assertion that the material presented by the Dutch PPO and the JIT had not been independently gathered and authenticated was also unfounded. The fact that their conclusions were consistent with, inter alia, those of Bellingcat merely demonstrated that there was corroboration of the conclusions reached and served to further enhance the credibility and reliability of the investigative findings.

Furthermore, the Court found that the material submitted by the Dutch PPO and the JIT had been collected, analysed and subjected to a rigorous validation procedure. It has been prepared according to the highest applicable legal standards, including evidentiary standards, to enable its admission in the criminal courts of all States participating in the JIT. For these reasons, the Court rejected the Russian authorities' criticisms and found the evidence presented by the Dutch PPO and the JIT to be both reliable and authentic.

3.2.2.2. Reports by international bodies

The Court found Russia's submissions regarding reports published by international bodies ([10]) to be overly broad and very general in nature. Although Russia alleged the existence of 'compromising connections and funding' and 'distorted' descriptions of events, it failed to identify any specific untrue or misleading content in the reports, nor did it present any evidence in support of these

([9]) See *Ukraine and the Netherlands v. Russia (dec.)* Nos 8019/16 and two others, §§ 460–481, 30 November 2022, and the Judgment, §§ 194–200.

([10]) International bodies referred to by the Court in its judgement are: the Organisation for Security and Cooperation in Europe, the Office of the United Nations High Commissioner for Human Rights and the Independent International Commission of Inquiry on Ukraine established by the United Nations Human Rights Council on 4 March 2022.

allegations. The Court therefore considered that such general criticism alone was insufficient to challenge the reliability of these reports.

The Court also considered the mandate and background of the experts who had collected the information, as well as the methodology employed for its collection, verification and validation. It found that the objective factual reporting contained in these reports was based on identified and credible sources – mainly primary ones – and therefore carried significant weight. The Court emphasised, however that it would reach its own conclusions, applying its own standard of proof, by reference to the objective facts reported, rather than adopting the conclusions reached by the international bodies concerned.

3.2.2.3. Reports by non-governmental organisations and research collectives

The Court acknowledged that reports produced by NGOs and research collectives undoubtedly constitute material that it can take into account. If the Court is satisfied with the experience and reputation of report authors, and with the credibility of the information sources, it may choose to accord them substantial weight. In the present case, the Court had regard to the backgrounds and to the methodologies described in relevant reports by Atlantic Council, Bellingcat and InformNapalm, among others, to conclude that those reports were credible and serious. Accordingly, there were no grounds for rejecting them as evidence.

The Court attached particular importance to the fact that the videos and images analysed in those reports concerning the downing of flight MH17 had subsequently been verified and validated by the JIT. It further emphasised that the reports produced by Bellingcat and InformNapalm were largely consistent with the conclusions later reached by the JIT on the basis of its own independent methodologies and analysis. The Court reiterated that the consistency between the JIT's conclusions and the findings of the research collectives tended to reinforce the credibility of both these findings and the methodologies employed.

Further clarifying its approach towards this category of evidence, the Court stressed that the particular value of these reports lay in their objective factual reporting, rather than in the general conclusions they drew. Based on the facts before it, the Court would then draw its own conclusions.

3.2.2.4. Media reports

Several media articles were submitted as evidence in the case. The Court found that while these articles could not be considered proof in themselves, they may be taken into account as elements that support or contradict the other evidence in the case.

Particular attention may be paid to articles falling into the category of investigative journalism as these are based on first-hand research, which is documented to a sufficient extent. However, when considering this type of material, the Court will reach its own conclusions based on the first-hand research reported in the articles, rather than accepting the articles' conclusions at face value.

4. The relationship between the European Convention and international humanitarian law

The Court was invited by the Ukrainian and Dutch authorities, as well as by third-party interveners, to clarify its approach to the interpretation of the provisions of the European Convention in situations of armed conflict and the relevance in that respect of IHL provisions, particularly in circumstances such as those of the present case, where no derogation under Article 15 of the Convention had been lodged.

Article 15 – Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war (…), shall be made under this provision.

By contrast, the Court was not invited to take account of the concept of *jus ad bellum* ([11]) when determining Russia's compliance with substantive Convention rights. Therefore, the Court did not consider it appropriate to address this question.

4.1. Relevant general principles

The main general principles derived from the Court's case-law that are relevant to this matter can be summarised as follows ([12]).

- The Court has a duty to interpret the European Convention in the light of the rules set out in Article 31 § 3 of the 1969 Vienna Convention on the Law of Treaties and, insofar as possible, in harmony with other rules of international law of which it forms part, including IHL.
- The relationship between the European Convention and IHL is not one of general to special law (*lex generalis* to *lex specialis*). In the context of international armed conflict, the specific IHL provisions do not displace Convention guarantees but rather serve as an interpretative tool when determining the scope of those human rights guarantees in such situations.

Article 31 – General rule of interpretation

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

([11]) *Jus ad bellum* refers to the rules of international law governing the legality of the threat or use of force by States in their international relations. It determines whether the initiation of armed force is lawful, as distinct from *jus in bello* (international humanitarian law), which regulates the conduct of hostilities once an armed conflict exists.

([12]) See the Judgment, §§ 425–428.

4.2. Application of the general principles to the facts of the case

4.2.1. Alleged substantive violations of the right to life

In their applications to the Court, the Dutch and Ukrainian authorities complained that Russia had violated the substantive limb of Article 2 of the European Convention through, respectively, its role in the downing of flight MH17 and its administrative practices ([13]) of military attacks against civilians and extrajudicial killings in occupied territory.

Article 2 – Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 2 of the European Convention contains two substantive obligations: the general obligation to protect by law the right to life, and the prohibition of intentional deprivation of life, delimited by a list of exceptions set out in its paragraph 2. However, these exceptions do not include deaths that are compatible with IHL during armed conflict.

4.2.1.1. The downing of flight MH17 ([14])

In accordance with the general principles set out above, the Court indicated that it would take into account relevant IHL provisions and interpret them. Where necessary for the purposes of its evaluation, the Court may also assess Russia's compliance with IHL.

In its admissibility decision, the Court had acknowledged that a harmonious interpretation of the European Convention provisions with relevant IHL provisions might not be possible in the absence of a derogation under Article 15, as the two sets of provisions might conflict with one another in the context of the right to life. In the present case, such a conflict would potentially arise if the downing of flight MH17 were compatible with IHL.

In view of this, the Court first examined the facts of the case in light of IHL before examining Russia's compliance with its obligations under the European Convention.

(a) Compliance with IHL

In order to assess the compliance of the attack on the aircraft with IHL, the Court sought to ascertain the facts surrounding the launching of the missile. To that end, and in line with its general approach to evidence ([15]), the Court had regard to Russia's failure to furnish any information during the proceedings and to the material available, including the 'extensive evidence collected by the JIT'.

The Court found that the missile had been intentionally fired at flight MH17, most likely in the mistaken belief that it was a military aircraft but in the full knowledge that the deaths of all those on board would be the inevitable outcome. The Court also accepted that the military system deployed

([13]) In the Court's case-law, the concept of 'administrative practice' refers to situations involving a 'repetition of acts incompatible with the Convention', as well as 'official tolerance' of these acts by the respondent State (for the relevant general principles, see, inter alia, Georgia v. Russia (I) [GC], No 13255/07, §§ 122-127, 3 July 2014).

([14]) See the Judgment, §§ 429–430 and §§ 452–466.

([15]) See under Section 3 (Approach to evidence), page 5 et seq. of this report.

in the present case, a Buk-TELAR (transporter erector launcher and radar), was incapable of distinguishing between military and civilian aircraft and that no measures had been taken to ensure the accurate verification of the target, in breach of the IHL principles of distinction and precautions ([16]).

Pursuant to Article 52 of Protocol Additional to the Geneva Conventions ([17])(providing general protection of civilian objects), the launching of the missile towards the aircraft was an indiscriminate attack in breach of IHL, and thus did not constitute a lawful act of war. Therefore, no conflict arose in this case between Article 2 § 2 of the European Convention and the applicable IHL provisions on the use of force in the context of armed conflict.

(b) Compliance with the European Convention

Turning to Russia's negative obligations under Article 2 of the European Convention, and in light of its findings regarding non-compliance with IHL, the Court concluded that the intentional use of force resulting in the loss of life of the civilians on board the flight could not be justified under any of the grounds listed in Article 2 § 2 of the European Convention.

Furthermore, the Court found that Russia had also violated the positive obligation inherent in Article 2 of the European Convention by failing to take appropriate steps to safeguard the lives of those on board the flight.

The Buk-TELAR is a military system that has a significant destructive power and is incapable of accurately distinguishing between civilian and military aircraft. Its deployment in an area of eastern Ukraine where civilian flights were still operating gave rise to a real and immediate risk to life, which Russia had been, or ought to have been, aware of.

Accordingly, Russia had an obligation to take measures to avoid that risk. This obligation, which is consistent with the principle of precautions under IHL, required the taking of all feasible precautions to avoid loss of civilian life. Russia failed, however, to take any preventive measures, including even the very minimum steps expected of a State deploying such destructive weapons. In particular, it neither closed the surrounding airspace nor involved civilian or military air traffic controllers, nor did it issue a notice to airmen (NOTAM) to warn of threats to civil aviation safety in the relevant airspace. The Court therefore concluded that Russia's cavalier attitude towards the lives of civilians exposed to the risk arising from its hostile activities in Ukraine also violated the right to life.

4.2.1.2. Administrative practices of military attacks against civilians and extrajudicial killings in occupied territory ([18])

The Court adopted a similar approach in relation to other military attacks against civilians and extrajudicial killings committed in occupied areas, including the killing of civilians and soldiers who were *hors de combat.*

The Court first noted that there was no evidence to suggest that the military attacks in question or the use of force might have been justified under IHL. On the contrary, the evidence overwhelmingly demonstrated extensive shelling of civilian areas in the absence of any immediately identifiable military targets, as well as of the killing of civilians who were clearly not participating in hostilities and soldiers who were indisputably detained, unarmed and *hors de combat*, all in breach of IHL.

([16]) IHL principles of distinction and precautions are set out in Article 48 and Article 57 of Protocol Additional to the Geneva Conventions of 12 August 1949, respectively.

([17]) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, adopted on 8 June 1977.

([18]) See the Judgment, §§ 747–760 and §§ 1034–1045.

Therefore, the use of lethal force in this context did not give rise either to a potential conflict between Article 2 of the European Convention and IHL provisions.

In light of its findings in relation to non-compliance with IHL and based on the evidence before it, the Court found administrative practices of military attacks against civilians and extrajudicial killings in occupied territory, in violation of Article 2 of the European Convention.

4.2.2. Other alleged violations of the European Convention in the context of the conduct of hostilities and in occupied areas

In the same vein, the Court had regard to compliance with relevant IHL rules when examining allegations of administrative practices of human rights violations arising from the conduct of hostilities and in occupied areas of Ukraine.

The Court concluded that Russia was responsible for multiple violations of the European Convention in relation to, inter alia, damage to property resulting from unlawful military attacks ([19]); torture and inhuman and degrading treatment of civilians and prisoners of war, including rape and sexual violence ([20]); forced labour of detained Ukrainian soldiers and civilians ([21]); unlawful and arbitrary detention of civilians ([22]); unjustified displacement and transfer of civilians ([23]); forcible dispersal of peaceful protests ([24]); destruction, looting and expropriation without compensation of the property of civilians and private enterprises ([25]); as well as the transfer of Ukrainian children to Russia and, in many instances, their subsequent adoption there ([26]).

5. Russian investigation into the downing of flight MH17 and its cooperation with the joint investigation team

The Dutch authorities also submitted that Russia had violated the procedural limb of the right to life guaranteed by Article 2 of the European Convention ([27]).

Their complaint in that regard was twofold. The Russian authorities had failed to conduct an effective official investigation into the downing of flight MH17, and had also failed to cooperate fully with the criminal investigation led by the Dutch PPO, notably by not responding adequately to requests for legal assistance.

5.1. General principles

The Court's interpretation of Article 2, one of the European Convention's most fundamental provisions, is guided by the principle that the Convention's safeguards must be practical and effective in practice, not merely theoretical. Accordingly, the obligation to protect the right to life

([19]) See the Judgment, §§ 768–769.
([20]) See the Judgment, §§ 1067–1079.
([21]) See the Judgment, §§ 1091–1099.
([22]) See the Judgment, §§ 1122–1124.
([23]) See the Judgment, §§ 1157–1177.
([24]) See the Judgment, §§ 1376–1383.
([25]) See the Judgment, §§ 1439–1453.
([26]) See the Judgment, §§ 1567–1599.
([27]) Given its fundamental character, the right to life gives rise to both substantive obligations (protecting by law the right to life and prohibiting the intentional deprivation of life) and procedural obligations (carrying out an effective investigation into alleged breaches of its substantive limb).

under this provision also requires an effective official investigation whenever individuals are killed as a result of the use of force by, inter alios, state agents.

The nature and scope of this procedural obligation to carry out an effective investigation into alleged breaches of the right to life have been clarified through the general principles established in the Court's case-law. In particular, such an investigation should meet standards of independence, adequacy, and promptness. It should also ensure the involvement of the victim's relatives to the extent necessary to safeguard their legitimate interests. The Court has further held that this procedural obligation continues to apply even in difficult security conditions, including situations of armed conflict.

More specifically, with regard to the principles relevant to cross-border contexts, the Court highlighted the following ([28]).

- In cases where an effective investigation into an unlawful killing requires the involvement of more than one Contracting State, the European Convention entails in principle an obligation on the part of the States concerned to cooperate effectively with each other. This implies both an obligation to seek assistance and an obligation to afford assistance.
- This obligation to cooperate is one of means, not of result. What is required from the States concerned is that they take whatever reasonable steps they can to cooperate with each other, exhausting in good faith the possibilities available to them under the applicable international instruments on mutual legal assistance and cooperation in criminal matters.
- The procedural obligation to cooperate will only be breached in respect of the requested State if it has failed to respond properly or has not invoked a legitimate ground for refusing the cooperation requested.

5.2. Application of the general principles to the facts of the case

5.2.1. Obligation to conduct an effective investigation ([29])

As Russia was found in substantive violation of the right to life, it had a clear obligation to investigate the downing of flight MH17. However, at the admissibility stage, it argued that the responsibility for conducting an investigation laid with Ukraine, which had subsequently transferred that responsibility to the Netherlands. In this regard, the Court noted that Russia had previously requested, unsuccessfully, first to join the JIT and then to take over the criminal proceedings conducted by the Dutch authorities. Russia nonetheless submitted that it had endeavoured to investigate the downing of flight MH17, and had provided assistance to the Dutch authorities and JIT in their investigations.

In reply to the first argument, the Court highlighted that the obligation on the Russian authorities to conduct an effective investigation was independent of any investigation being undertaken by the JIT or the Dutch authorities. Therefore, Russia's compliance with this obligation was not conditional upon its admission to the JIT or the transfer of the Dutch proceedings to its competent authorities.

Besides, while evidence showed that Russia had taken steps to investigate the downing of flight MH17, the Court considered that there was no doubt that these inquiries were incapable of establishing the facts or identifying and punishing those responsible. In particular, the Court observed that these inquiries had been piecemeal and had focused on selected aspects of the incident, ostensibly with a view to denying Russian involvement and deflecting responsibility to

([28]) See the Judgment, §§ 483–484.
([29]) See the Judgment, §§ 485–491.

Ukraine. They had also repeatedly led to the disclosure of information that was later shown to be, at best, inaccurate and, at worst, entirely fabricated. Furthermore, the inquiries did not satisfy the requirement of independence. The available evidence indicated that the investigation was not conducted by the Russian civil authorities but involved the Ministry of Defence.

Finally, the relatives of those killed were not involved in any inquiries undertaken by the Russian authorities and had not been directly informed of the outcome.

5.2.2. Obligation to cooperate effectively with the joint investigation team ([30])

The Russian authorities were also under an obligation to cooperate effectively with the JIT in its criminal investigation and, in particular, to respond to requests for mutual legal assistance received from the Dutch prosecuting authorities leading the JIT. However, Russia did not provide any genuine or effective cooperation with the JIT investigation. Instead, it adopted an obstructive approach that hindered efforts to establish the cause of the crash and the circumstances surrounding it.

The Court found that there was overwhelming evidence that the Russian authorities had failed to respond adequately to requests for legal assistance or to carry them out effectively. Some requests submitted by the JIT were answered only after significant delays and with information that was misleading, incomplete or irrelevant. Other requests, particularly those concerning some Russian nationals suspected of involvement in the downing of flight MH17, were rejected on the grounds that the individuals concerned were 'not involved in the MH17 disaster' or that images showing them had been altered. In the Court's opinion, these justifications were plainly unsatisfactory given the extensive supporting evidence gathered and disclosed by the JIT.

This obstructive approach of the Russian authorities was also illustrated by the press conferences held by the Russian Ministry of Defence. From the first days following the downing of the flight, the Russian government disseminated misleading information about its cause and circumstances. This was followed by a series of inaccurate claims and disclosures aimed at contradicting and undermining the findings of the JIT investigation. According to the Court, these actions deliberately created false leads and diverted the JIT's time and resources. It is in this context that the JIT concluded, in its report published in February 2023, that the criminal investigation would be suspended as there was 'no prospect of receiving [from Russia] the kind of openminded cooperation necessary to continue the investigation'.

Therefore, the Court concluded that the Russian authorities' failure to cooperate had a material impact on the ability of the JIT to conclude its investigation into the involvement of Russian armed forces and senior Russian politicians in the downing of flight MH17. The failure of the Russian authorities to conduct an effective investigation into the downing of flight MH17 and to cooperate effectively with the JIT amounted to a violation of the procedural limb of the right to life.

([30]) See the Judgment, §§ 492–499.

6. The suffering of the relatives of flight MH17 victims caused by the conduct of the Russian authorities

In their application to the Court, the Dutch authorities submitted that Russia's attitude and conduct towards the relatives of the flight MH17 victims had caused and continued to cause them serious suffering, violating Article 3 of the European Convention.

Article 3 – Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

6.1. General principles

The main relevant general principles established in the Court's case-law, and its approach in similar cases, can be summarised as follows ([31]).

- Article 3 of the European Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. To fall within the scope of Article 3, ill-treatment must attain a minimum level of severity.
- The Court has consistently recognised the profound psychological impact of a serious human rights violation on the victim's family members. However, for the relatives themselves to be considered victims of a separate violation of Article 3, there should be special factors in place giving their suffering a dimension and character distinct from the emotional distress that inevitably stems from the aforementioned violation itself.
- Relevant factors include the proximity of the family tie, the particular circumstances of this relationship, whether the family member witnessed the events in question and the extent of their involvement in trying to obtain information about the fate of their relative.
- These special factors have usually been found in cases concerning enforced disappearances. They may also arise where the authorities fail to respond to relatives' efforts to obtain information or place obstacles in their way, showing a flagrant, continuous and callous disregard for their obligation to account for the whereabouts and fate of a missing person.
- In these cases, the key issue under Article 3 lies not so much in a serious violation of the missing person's human rights, but rather in the authorities' dismissive reactions and attitudes in respect of that situation when it was brought to their attention.
- Factors such as the mutilation of bodies and the inability of the family members to give their relative a proper burial may play a decisive role in assessing alleged violations of Article 3 in cases concerning relatives' suffering.
- By contrast, the Court has generally adopted a more restrictive approach and has declined to find Article 3 engaged in respect of the relatives in cases where the period of uncertainty as to the fate of the victims was relatively short.

6.2. Application of the general principles to the facts of the case ([32])

Turning to the circumstances of the case, the Court noted that the downing of flight MH17 resulted in the relatives losing partners, children, parents, siblings, aunts, uncles, grandparents and other close family members. Some relatives lost close family members of several generations.

([31]) See the Judgment, §§ 538–544.
([32]) See the Judgment, §§ 545–552.

The Court had no doubt that the relatives had experienced, and continued to experience, profound grief and distress as a result of the killing of their loved ones and its aftermath. According to the reports of the psychologists and psychiatrists, the nature of the deaths of the victims had caused the relatives profound grief of a traumatic nature which went beyond that inevitably experienced in the case of the loss of a relative.

The Court further observed that, while the relatives had not directly witnessed the downing of the aircraft or the crash site, they were nevertheless confronted through extensive media coverage with images of the crash site and the bodies of their relatives. This coverage included widespread news reports and images showing the undignified treatment of the victims' bodies.

Moreover, because the Russian authorities refused to secure the crash site, it took eight months to complete the recovery of the victims' bodies, which remained exposed at the site throughout that period. Combined with the general lawlessness prevailing in the area of the crash site, these circumstances caused the relatives considerable anxiety and a profound sense of helplessness regarding the investigators' ability to organise the return of the bodies. In fact, some relatives had to bury incomplete remains. In two cases, the victims' bodies had still not been recovered, while in others, additional body parts were returned only after the burial had already taken place.

The Court also emphasised that the relatives have been very active in seeking information about the fate of their loved ones. They not only closely followed the work of the JIT throughout the criminal investigation, but also intervened as third parties in the present proceedings. In addition, they approached the Russian authorities, including at the highest levels of government, in an attempt to obtain crucial information about the downing of the flight. The Russian authorities, however, either failed to respond to these requests or provided inadequate and untruthful answers. Rather than making a genuine effort to assist and support the families, the Russian authorities circulated misinformation and confined their responses to denials and attempts to shift responsibility to others. The Court noted that, in the victim impact statements presented during the Dutch criminal proceedings, the attitude of the Russian authorities was the factor most frequently identified by relatives as a source of secondary victimisation.

This attitude, coupled with the Russian authorities' failure to conduct an effective investigation and cooperate with the JIT, significantly aggravated the suffering of the relatives by prolonging their agonising search for answers. While the JIT succeeded in establishing the broad circumstances of the crash, the failings of the Russian authorities left the relatives in a state of uncertainty about how exactly the flight was brought down and the responsibility of senior figures in the Russian government.

The Court concluded that the continuing profound suffering of the victims' relatives had had a character and dimension which amounted to inhuman treatment prohibited by Article 3 of the European Convention.

7. Binding force and implementation of the Court's judgment

In accordance with Articles 44 § 1 and 46 § 2 of the European Convention, the Grand Chamber judgment delivered by the Court in this case has become final and has been transmitted to the Committee of Ministers of the Council of Europe – the Organisation's decision-making body, comprising representatives of the governments of its 46 member States – for supervision of its execution.

> **Article 44 – Final judgments**
>
> 1. The judgment of the Grand Chamber shall be final.
>
> **Article 46 – Binding force and execution of judgments**
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

While Russia ceased to be a member of the Council of Europe as from 16 March 2022 and a party to the European Convention as from 16 September 2022, it remains bound by obligations under the Convention. This includes the obligation to implement all judgments of the European Court under the supervision of the Committee of Ministers ([33]).

In December 2025 and June 2026, the Committee of Ministers conducted its first and second examinations of the case. It deplored the ceasing by the Russian authorities of all communication with the Committee of Ministers concerning the execution of European Court's judgments. It also urged Russia to remedy the violations found in the present judgment by taking the necessary general and individual measures.

In particular, with regard to the downing of flight MH17, the Committee of Ministers stressed the need for the Russian authorities to issue a public apology acknowledging their responsibility for the deaths of all 298 people on board, including children, which had been identified by the victims' relatives as a possible form of redress, among others. The Committee also underlined Russia's continuing obligation to cooperate effectively with the JIT investigation. It called on the Russian authorities to give a comprehensive and genuine account of their role in the downing of flight MH17, and to share all evidence in their possession that could help clarify the facts that remain unresolved.

In line with its strategy to ensure the implementation of European Court judgments concerning Russia ([34]), the Committee of Ministers further recalled the importance of international cooperation to secure the implementation of this historic judgment. To that end, it indicated that contacts with relevant international bodies and organisations – notably the United Nations, the Organisation for Security and Cooperation in Europe, and the European Union – would be pursued and intensified to increase international pressure on Russia.

([33]) See notably the judgment rendered by the European Court in the case Georgia v. Russia (II) (just satisfaction) [GC], No 38263/08, § 46, 28 April 2023, and Resolution CM/Res(2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe, adopted by the Committee of Ministers on 23 March 2022 at the 1429 bis (extraordinary) meeting of the Ministers' Deputies.

([34]) See the strategy to ensure implementation of judgments of the Court with respect to the Russian Federation as endorsed by the Committee of Ministers' decisions CM/Del/Dec(2024)1514/A3 and CM/Del/Dec(2025)1545/A3 rendered on 5 December 2024 and 4 December 2025, respectively.

8. Key takeaways and implications for Eurojust

Approach to different categories of evidence, including open-source evidence

- Reports and statements by international observers, NGOs and the media may be considered when establishing facts or corroborating other findings. However, the weight to be given by the Court to such material will depend on its nature, its source and the rigour with which the information was collected and verified.

  → The Court's approach may have significant implications for Eurojust's accountability efforts, particularly for the collection, assessment and preservation of evidence by the International Centre for the Prosecution of the Crime of Aggression (ICPA).

Relationship between the European Convention and international humanitarian law

- The Court has a duty to interpret the European Convention, as far as possible, in harmony with other rules of international law of which it formed part, including IHL. In the context of international armed conflict, specific IHL provisions do not displace the rights guaranteed by the Convention; rather they are used to define the scope of the human rights guarantees in such circumstances.

  → For Eurojust, the Judgment reinforces the need to integrate expertise in both human rights law and IHL into the coordination of cross-border investigations and prosecutions of international crimes, ensuring that evidence and legal assessments are examined through the lenses of both sets of law.

Effective investigation into unlawful killings and obligation to cooperate in cross-border contexts

- In cases where an effective investigation into an unlawful killing requires the involvement of more than one Contracting State, the European Convention entails in principle an obligation on the part of the States concerned to cooperate effectively with each other. This implies both an obligation to seek assistance and an obligation to afford assistance. This obligation to cooperate is one of means, not of result.

  → For judges and prosecutors, this principle reinforces the need for proactive international cooperation in investigations of serious cross-border crime including the timely exchange of evidence, execution of mutual legal assistance requests and coordination of investigative measures. States may be held responsible not only for failing to investigate effectively themselves, but also for failing to make reasonable efforts to cooperate with other States involved.

  → For Eurojust, the Judgment provides further support for its proactive role in assisting judicial authorities cooperating in serious cross-border cases, including the investigation and prosecution of terrorism related offences and core international crimes.

- The Court found that the Russian authorities had adopted an obstructive approach to the criminal investigation into the downing of flight MH17, deliberately setting false trails and wasting JIT time and resources. Therefore, Russia's failure to cooperate had a material impact on the ability of the JIT to conclude its investigation into the involvement of Russian armed forces and senior Russian politicians in the downing of flight MH17.

→ This confirms the JIT findings that it investigated this case as thoroughly as it reasonably could without the cooperation of the Russian authorities and that this lack of cooperation resulted in only partial light being shed on the circumstances of the downing of flight MH17.

Suffering of victims' relatives as a result of the conduct of State authorities

- In some circumstances, the suffering experienced by a victim's family members may be so severe as to amount to inhuman treatment. This may occur where the authorities fail to respond to relatives' efforts to obtain information or place obstacles in their way, thereby demonstrating a flagrant, continuous and callous disregard for their obligation to account for the whereabouts and fate of a missing person.

- According to the Court, rather than making a genuine effort to assist and support the families, the Russian authorities significantly exacerbated their suffering by circulating misinformation, providing inadequate and untruthful answers and prolonging the agonising wait for clarification of the precise circumstances surrounding the downing of flight MH17 and the responsibilities arising from it. This attitude has caused to the victims' relatives continuing profound suffering, amounting to inhuman treatment.

  → The Judgment underlines that the treatment of victims' relatives is not merely a matter of good administrative practice, but may form part of States' obligations under the European Convention. In particular, investigative and judicial authorities should, in some circumstances, engage with relatives throughout the proceedings and provide them, to the extent possible, with timely, accurate and truthful information about the progress of the investigation and prosecution.

  → This includes keeping relatives informed about the fate of deceased victims and other matters of direct concern to them. Eurojust can assist in promoting this victim-centred approach in the cases it coordinates. This is to be done, for example, by facilitating the identification of victims, encouraging national authorities to ensure accurate and timely communication with victims and their families, and assisting national authorities in ensuring protection and compensation when appropriate.

Eurojust, Johan de Wittlaan 9, 2517 JR The Hague, The Netherlands
www.eurojust.europa.eu • +31 70 412 5000
Follow Eurojust on LinkedIn, Bluesky, Facebook, YouTube, Instagram and X @Eurojust

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