EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 73776/14
Elena IOPPA against Ukraine
and 3 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 20 January 2026 as a Chamber composed of:

Ivana Jelić*, President*,
Erik Wennerström,
Frédéric Krenc,
Davor Derenčinović,
Mykola Gnatovskyy,
Alain Chablais,
Artūrs Kučs*, judges*,

and Ilse Freiwirth, *Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having regard to the decision of 5 July 2016 to join the applications,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The case stems from the downing of the Malaysian Airlines flight MH17 on 17 July 2014. All 298 passengers and crew on board were killed in this incident for which the Russian Federation was held responsible (see paragraphs 8-9 below).

2. The applicants are family members of three of the passengers killed in the crash. The first applicant, Ms Elena Ioppa, is the mother of Ms Olga Ioppa. The second applicant, Mr Tim Lauschet, is the son of Ms Gabrielle Lauschet. The third and fourth applicants, Mr Chris Kenke and Ms Denise Kenke, are the children of Mr Willhelmus Theorodorus Maria Grootscholten.

3. The applicants were represented by Mr Elmar Giemulla, a lawyer practising in Berlin, Germany.

4. The Ukrainian Government ("the Government") were represented by their then Agent, Mr Ivan Lishchyna.

5. On 5 July 2016 the Court decided to give notice of the applications to the respondent Government. It also decided, having regard to the identical subject matter of the applications, to order their joinder (Rule 42 § 1 of the Rules of Court).

A. The circumstances of the case

1. Background information

6. On 17 July 2014 the Malaysian Airlines flight MH17 was shot down by a Russia-supplied Buk-TELAR over the territory of the east of Ukraine.

7. The detailed chronology of the early phase of the conflict in the east of Ukraine that led to the downing of flight MH17 was summarised by the Court in *Ukraine and the Netherlands v. Russia* ((dec.) [GC], nos. 8019/16 and 2 others, §§ 43-68, 30 November 2022) and *Ukraine and the Netherlands v. Russia* [GC], nos. 8019/16 and 3 others, §§ 35-58, 9 July 2025. The latter described the military situation in the "Donetsk People's Republic" ("DPR") in June and July 2014 as follows:

> "53. In the course of June and July 2014, the Ukrainian armed forces regained control over a number of towns and strategic positions in Donbas. On 5 July 2014 the separatist forces retreated to Donetsk from Sloviansk and surrounding towns. There was heavy fighting in the south-eastern part of the Donetsk region as the separatists sought to hold the territory they had occupied and to gain control over a passage of land which would link the 'DPR' to the Russian border in the south. The Ukrainian forces used heavy artillery and air support to attack separatist positions."

8. The Court found in *Ukraine and the Netherlands v. Russia* ((dec.), cited above, §§ 701 and 705) that the downing of flight MH17 had been the consequence of the firing from separatist-controlled territory of a Buk missile supplied and transported to eastern Ukraine, along with a Buk-TELAR, by the Russian Federation. The Court further found that the evidence demonstrated beyond reasonable doubt that the Buk-TELAR used to shoot down flight MH17 had been provided by the Russian Federation in direct response to the separatists' call for anti-aircraft weaponry (ibid., § 632). The Court also established that the Russian Federation had had effective control over the launch site at the time of the launch (ibid., §§ 702 and 706).

9. The Court further concluded in its judgment in the same case that the Russian Federation had failed to take any preventive measures to reduce or eliminate the risk posed by the Buk-TELAR to civilians travelling in civilian aircraft over eastern Ukraine, thus violating its positive obligation inherent in Article 2 § 1 of the Convention (see *Ukraine and the Netherlands v. Russia* [GC], cited above, § 465).

2. Facts as submitted by the parties

10. The facts that concern the regulation of Ukrainian airspace in the months and days preceding the downing of flight MH17, as presented by the parties, can be summarised as follows.

11. On 6 June 2014 the General Staff of the Armed Forces of Ukraine and the State Aviation Administration of Ukraine approved a temporary restriction on the use of airspace over the conflict zone from ground level to flight level 260 (26,000 feet or approximately 7,900 metres) to ensure the safety of civilian aircraft. A respective NOTAM (Notice to Airmen filed with aviation authorities to alert aircraft pilots of potential hazards that could affect the flight) was issued on the same day. That decision was based on the information that illegal armed groups in the east of Ukraine possessed small arms as well as "Ihla" and "Strila" man-portable air defence systems ("MANPADs") with a maximum firing range of 4,500 metres (approximately 15,000 feet).

12. On 14 July 2014 a Ukrainian military aircraft AN-26 was shot down at an altitude of 6,500 metres (approximately 21,300 feet). The applicants stated that on 14 July 2014 the Ukrainian Minister of Defence had said that the aircraft had been operating out of the reach of MANPADs and must have been destroyed by a more powerful missile weapon.

13. On 16 July 2014 another Ukrainian military aircraft, this time an SU-25, was shot down at an altitude of 8,250 metres (approximately 27,000 feet).

14. According to the Ukrainian Government, both the AN-26 and SU-25 were shot down at a distance of 8-10 km from the Russian border, and the attacks were at the time believed to have been carried out using Russian MiG military aircraft operating from Russian territory. On account of the Ukrainian aircraft debris falling in territory outside of the Ukrainian Government's control, it was not possible to carry out a more detailed assessment of the cause of the crashes.

15. At 6 p.m. on 14 July 2014 the Ukrainian authorities put in place a further restriction of the airspace from ground level up to flight level 320 (32,000 feet or 9,750 metres) to ensure the safety of civil aviation and issued NOTAM A1492/14.

16. The Ukrainian Government thus believed that the airspace restriction in place corresponded to the level of armament available to the illegal armed groups in the east. Ukraine had no information that the illegal armed groups had at their disposal an anti-aircraft weapon system of the Buk type capable of reaching higher altitudes.

17. The applicants stated that on 16 July 2014 the Russian authorities had restricted their airspace bordering the east of Ukraine. The Russian NOTAM contained two conflicting flight level restrictions: FL320 (32,000 feet or 9,750 metres) and FL530 (53,000 feet or 16,150 metres).

3. Facts as they appear from publicly available records

18. The facts summarised below appear from the results of the Dutch Safety Board's ("the DSB") technical investigation into the cause of the crash of the aircraft; the criminal investigation conducted by the Joint Investigation Team ("the JIT"); and the prosecution and conviction handed down by the first-instance court in The Hague on 17 November 2022.

19. The Court considers that the following information is relevant to the case and can be taken into account in accordance with the principles outlined in *Ukraine v. Russia (*re *Crimea)* ((dec.) [GC], nos. 20958/14 and 38334/18, §§ 386-88, 16 December 2020).

(a) Regulation of the Ukrainian airspace and the aviation incidents that occurred prior to the downing of flight MH17

20. According to the DSB's October 2015 report entitled "Crash of Malaysia Airlines flight MH17" ("the DSB report"), a number of Ukrainian military aircraft were shot down by Russian or Russia-backed troops over the eastern part of Ukraine between 22 April and 17 July 2014.

21. On 22 April 2014 an Antonov An-30B was shot at with an automatic weapon from the ground during a reconnaissance flight over Slovyansk. In the weeks following that event, multiple helicopters belonging to the Ukrainian Air Force were shot at above the conflict area.

22. On 6 June 2014 the Ukrainian authorities restricted the airspace above the conflict zone to FL260 (26,000 feet or 7,900 metres) for civilian aircraft by issuing NOTAM A1255/14 (for the airways) and NOTAM A1256/14 (for the area). Both NOTAMs were valid until 30 June 2014.

23. On 14 June 2014 the Ukrainian Ministry of Defence reported that a Ukrainian Air Force Ilyushin 76MD military transport aeroplane had been downed using a MANPAD while landing at Luhansk aerodrome. In the following weeks there were other incidents involving the downing of Ukrainian helicopters and fighter planes.

24. On 26 June 2014 the Ukrainian authorities extended the validity of the NOTAMs restricting the airspace usage up to FL260. The restriction was valid until 28 July 2014.

25. On 1 July 2014 illegal armed groups in the east attempted to down a Ukrainian SU-25 UB with a MANPAD. On 2 July 2014 a Ukrainian SU-24 was shot at with a MANPAD.

26. On 14 July 2014 a Ukrainian military aircraft Antonov An-26 was shot down at an altitude of 6,500 metres (approximately 21,300 feet). The Ukrainian authorities believed that a weapon "more powerful" than a MANPAD had been used for that attack. On the same day Ukraine's National Security and Defence Council ("RNBO") issued a press statement in which it was said that the weapon had probably been fired from Russian territory. As of 14 July 2014 it was thought that the weapon used had been either the

Pantsir modern ground-based air defence system or the X-24 guided air-to-air missile fired from a Russian aircraft.

27. The Dutch Military Intelligence and Security Service ("MIVD") also launched an investigation into the downing of an Antonov An-26 on 14 July 2014. It concluded that the aeroplane had either been downed with a MANPAD or with a short-range vehicle-borne air defence system. The MIVD did not have any information that would have pointed to the use of a powerful air defence system. The possibility of an air-to-air missile was not mentioned either.

28. On 14 July 2014 the Ukrainian authorities issued two NOTAMs increasing the airspace restriction to FL320 (32,000 feet or 9,750 metres). Those NOTAMs were valid until 14 August 2014.

29. On 16 July 2014 a Ukrainian Sukhoi Su-25 fighter aeroplane was shot at in the Donetsk region, near the Russian border. According to the press statement issued by the Ukrainian Ministry of Defence at 12.18 CET (Central European Time) on 17 July 2014, the incident involved an air-to-air missile, apparently fired from a Russian military aeroplane which had been conducting border control flights. On 18 July 2014 the RNBO stated that the Sukhoi Su-25 aeroplane had been flying at an altitude of 8,250 metres (27,000 feet) and had been attacked by a Russian MIG-29 medium-range air-to-air missile.

30. The DSB report noted, in that regard, that both the Antonov An-26 and Sukhoi Su-25 had been flying at altitudes beyond the effective range of MANPADs and thus had to have been targeted by weapon systems capable of reaching cruising altitudes of civil aircraft. The DSB concluded that no measures had been taken to protect civil aircraft against those types of weapons.

(b) Regulation of Russia's airspace prior to the downing of flight MH17

31. On 16 July 2014 the Russian authorities published two NOTAMs restricting the airspace bordering the east of Ukraine to FL320 (32,000 feet or 9,750 metres). However, in NOTAM no. UUUUV6158/14 it was stated that the NOTAM applied to the airspace from ground level to FL530 (53,000 feet or 16,150 metres). It thus contained two contradicting altitude restrictions. The conflict in the east of Ukraine was cited in the NOTAM as the reason for the airspace restriction.

(c) The downing of flight MH17 and the investigation carried out by the JIT

32. At 15.20 CET on 17 July 2014 Malaysia Airlines were operating flight MH17 at an altitude of FL330 (33,000 feet or 10,060 metres) over the area of Snizhne in the Donetsk region of Ukraine. The flight crew maintained contact with Ukraine's Dnipropetrovsk Radar Control operators, and the flight remained on the agreed airway.

33. At 15.20 CET the aeroplane was struck down from the separatist-controlled territory with a surface-to-air Buk missile fired from a Russia-supplied Buk-TELAR (see paragraph 8 above). Missiles launched by a Buk system can reach targets at an altitude of up to 24,000 metres (approximately 80,000 feet) (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 329).

34. The event was investigated by the JIT, which had been established by the authorities of the Netherlands, Australia, Malaysia and Belgium working together with Ukraine. The investigation undertaken by the JIT formed the basis for the prosecution and conviction on 17 November 2022 of three perpetrators of the attack by the first-instance court in The Hague. The court established the guilt of Mr Girkin, Mr Dubinskiy and Mr Kharchenko and acquitted Mr Pulatov. As there were no appeals, the judgment became final.

35. The Hague court's judgment recreated the timeline and pathway of the Buk-TELAR from the border with the Russian Federation to its launch site near Pervomaiskyi in the Donetsk region. It reads as follows (original in Dutch):

> "The court considers that the fact that, in several intercepted telephone conversations between separatists on the morning of 17 July 2014, the arrival of a Buk, and that this should go to 'Pervomaiske' is discussed, provides very convincing evidence that this field near Pervomaiskyi was the launch site and that the missile launched was a Buk.
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> ...
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> Between the evening of 16 July 2014 and the morning of 17 July 2014, the telephones of those ordered to collect equipment at the border with the Russian Federation did in fact ping transmission masts that covered the route from Donetsk to the border with the Russian Federation and back again. The telephone of the person tasked with escorting a Buk from Donetsk to 'Pervomaiske' in fact pinged successive transmission masts on the route from Donetsk via Snizhne to Pervomaiskyi in the morning and early afternoon of 17 July 2014.
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> ...
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> Then around nine o'clock in the morning, a single Buk M [was] delivered to Donetsk by Bibliothekar, on a trailer. The Buk [came] from the Russian Federation and, on Dubinskiy's orders, [travelled] directly to Pulatov in the corridor, where it [would] solve the problems of bombardment by high-flying Sushkas.
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> ...
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> The court concludes ... that in the night of 16 to 17 July 2014, DPR fighters delivered a Buk TELAR from the Russian Federation. The need for anti-aircraft artillery of this kind had long been felt, and following heavy fighting on 16 July 2014, whereby the DPR suffered heavy losses without being able to effectively defend itself, the system was more than welcome. The Buk TELAR that was delivered in the night and early morning was therefore sent on, immediately following its receipt in the morning of 17 July 2014, to the front line on the corridor between Snizhne and the border with the Russian Federation to the south of Snizhne, and in the afternoon of 17 July 2014 was deployed in the area occupied by the DPR near Pervomaiskyi in their fight against the Ukrainian army."

36. The court in The Hague also noted that the "Luhansk People's Republic" ("LPR") had also been in the process of obtaining Buk installations around 17 July 2014:

> "It also follows from the intercepted conversations that the LPR was also in the process of obtaining Buk installations, that they had in fact succeeded in doing so around 17 July 2014, but that problems had arisen with the delivered Buk."

37. Immediately after the launch of the missile that targeted flight MH17, the Buk-TELAR was removed from the launch site. It arrived in Luhansk in the early morning of 18 July 2014, from where it continued its path towards the Russian Federation and shortly crossed the Russian border (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 316-18).

(d) Actions taken by Ukraine in the aftermath of the downing of flight MH17

38. After the information about the downing of flight MH17 had become known to the Ukrainian authorities, at 15.00 Eastern European Time on 17 July 2014 they introduced a complete prohibition on the use of their airspace by civil aviation.

39. On the same day Ukraine initiated a criminal investigation into the downing of flight MH17. It was registered under no. 22014000000000239, and the downing of the aircraft was characterised as an act of terrorism (Article 258 § 3 of the Criminal Code of Ukraine).

40. On 17 July 2014 the Cabinet of Ministers of Ukraine adopted Order no. 650-p, establishing a Government Commission on the investigation of the causes of the crash of flight MH17. Between 19 and 21 July 2014 Ukrainian aviation accident investigators and OSCE observers briefly accessed the wreckage area and took photographs. According to the information made public by Ukraine's National Bureau of Air Accidents Investigation ("NBAAI"), on 20 July 2014 an international technical investigation team was established, comprising representatives of the NBAAI, the State Aviation Service of Ukraine, the State Air Traffic Services Enterprise (*Украерорух*), and authorised representatives of a number of States affected or concerned by the crash. The investigation was formally delegated to the DSB on 23 July 2014.

(e) Actions of United Nations bodies and agencies in relation to the downing of flight MH17

41. On 21 July 2014 the UN Security Council adopted Resolution 2166 (2014), in which it recognised "the efforts under way by Ukraine, working in coordination with the International Civil Aviation Organization ("ICAO") and other international experts and organizations, including representatives of States of Occurrence, Registry, Operator, Design and Manufacture, as well as States who have lost nationals on MH17, to institute an international investigation of the incident."

42. The policies and practice of the ICAO in the sphere of safety of civil aviation in armed conflict were described as follows in the DSB report (original in English):

> "In response to the questions submitted by the Dutch Safety Board, ICAO stated that the organisation has no mandate to actively intervene in the decision-making by states with regard to closing their airspace. ICAO can only notify the state in question if the former has received information about potential risks. ICAO stated that it has neither a mandate nor the facilities to investigate all risks present in states.
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> ...
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> ICAO relies on other states for information and stated that it did not receive any [information regarding the east of Ukraine that would justify an interference].
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> ...
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> During the period in which the conflict in the eastern part of Ukraine expanded into the airspace, ICAO did not ask the Ukrainian authorities about airspace management and did not offer any assistance. This did not change after the statement by the Ukrainian authorities on 14 July 2014 on the Antonov An-26 that had been shot down."

43. On 30 June 2025 the ICAO Council delivered its decision in writing in the dispute brought by Australia and the Netherlands against the Russian Federation concerning the downing of flight MH17. The ICAO found that the destruction of the aircraft by a surface-to-air missile over eastern Ukraine had been in breach of the obligations of the Russian Federation under Article 3 *bis* of the Convention on International Civil Aviation (see paragraph 45 below).

44. On 18 September 2025 the Russian Federation filed an application against Australia and the Netherlands before the International Court of Justice constituting an appeal against the decision by the ICAO Council of 30 June 2025.

B. Relevant legal framework and practice

1. International regulation of civil aviation

45. The 1944 Convention on International Civil Aviation ("the Chicago Convention"), to which Ukraine acceded in 1992, reads in its relevant parts as follows:

Article 1. Sovereignty

> "The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory."

Article 2. Territory

> "For the purposes of this Convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State."

...

Article 3 *bis*

"(a) The contracting States recognize that every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered. ..."

...

Article 9. Prohibited areas

"(a) Each contracting State may, for reasons of military necessity or public safety, restrict or prohibit uniformly the aircraft of other States from flying over certain areas of its territory .... Such prohibited areas shall be of reasonable extent and location so as not to interfere unnecessarily with air navigation. Descriptions of such prohibited areas in the territory of a contracting State, as well as any subsequent alterations therein, shall be communicated as soon as possible to the other contracting States and to the International Civil Aviation Organization.

(b) Each contracting State reserves also the right, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory ...."

46. Annex 17 to the Chicago Convention entitled "Aviation security – safeguarding international civil aviation against acts of unlawful interference", as in force at the material time, provided as follows:

"3.1.3 Each Contracting State shall keep under constant review the level and nature of threat to civil aviation within its territory and airspace above it, and establish and implement policies and procedures to adjust relevant elements of its national civil aviation security programme accordingly, based upon a security risk assessment carried out by the relevant national authorities.

...

3.1.5 Each Contracting State shall establish and implement procedures to share, as appropriate, with relevant airport operators, aircraft operators, air traffic service providers or other entities concerned, in a practical and timely manner, relevant information to assist them to conduct effective security risk assessments relating to their operations."

47. Annex 19 to the Chicago Convention entitled "Safety management", as in force at the material time, provided in paragraph 2.1.2 of Appendix 2 that "[h]azard identification shall be based on a combination of reactive, proactive and predictive methods of safety data collection."

48. In 1990 the ICAO issued the Manual concerning safety measures relating to military activities potentially hazardous to civil aircraft operations (Doc 9554-AN/932). It provided, in so far as relevant, as follows:

"10.2 The responsibility for initiating the co-ordination process rests with the States whose military forces are engaged in the conflict. The responsibility for instituting special measures to ensure the safety of international civil aircraft operations remains

with the States responsible for providing air traffic services in the airspace affected by the conflict, even in cases where co-ordination is not initiated or completed.

10.3 Based on the information which is available, the State responsible for providing air traffic services should identify the geographical area of the conflict, assess the hazards or potential hazards to international civil aircraft operations, and determine whether such operations in or through the area of conflict should be avoided or may be continued under specified conditions. An international NOTAM containing the necessary information, advice and safety measures to be taken should then be issued and subsequently updated in the light of developments ..."

2. Relevant domestic law

49. Articles 55 and 56 of the Ukrainian Constitution provide for the right of all people, irrespective of their citizenship or nationality, to obtain compensation, paid by the State, for illegal actions, decisions or omissions by the Ukrainian authorities of all levels.

(a) Aviation Code of Ukraine ("the Aviation Code") (Повітряний кодекс України), as in force on 17 July 2014

50. Articles 4 through 8 of the Aviation Code provide that the authority to regulate the Ukrainian airspace is vested in the Central Civil Aviation Authority and the Ministry of Defence by, *inter alia*, developing rules and procedures for the civil and military coordination of air traffic and by overseeing compliance with the rules for the use of Ukrainian airspace.

51. Article 87 § 1 establishes that the Central Civil Aviation Authority should continuously assess the risks and threat levels to civil aviation in order to implement respective security measures.

52. Pursuant to Articles 4 and 119 of the Aviation Code, enquiries into serious aviation incidents should be conducted by the Expert Agency for the investigation of aviation incidents. However, the Expert Agency should neither rule on individual responsibility nor replace an investigation by other relevant authorities.

(b) Criminal Code of Ukraine ("the Criminal Code"), as in force on 17 July 2014

53. Article 276 § 3 of the Criminal Code establishes criminal responsibility for violation, by an air transport employee, of safety or operational rules resulting in loss of life. The crime is punishable by imprisonment for a term of 5 to 10 years.

54. Article 291 of the Criminal Code provides that violation of transport safety regulations resulting in loss of life or other serious consequences be punishable by a fine, correctional labour, restriction of liberty or imprisonment for up to five years.

(c) Code of Criminal Procedure of Ukraine ("the Code of Criminal Procedure")

55. Article 55 of the Code of Criminal Procedure defines a victim as a natural person who has suffered moral, physical or property damage as a result of a criminal offence. The Code does not differentiate between nationals and non-nationals in this regard.

56. Articles 214, 303 and 307 of the Code of Criminal Procedure provide that the law-enforcement authorities should, within 24 hours after a crime is reported, enter the information in the Unified Register of Pre-Trial Investigations and initiate an investigation. A failure to do so may be challenged by lodging an appeal with an investigative judge, who is vested with the power to oblige the law-enforcement authorities to start an investigation.

57. Article 128 of the Code of Criminal Procedure provides that a person who has sustained pecuniary and/or non-pecuniary damage as a result of a crime may introduce a civil claim in the course of criminal proceedings against the suspect or the accused.

COMPLAINT

58. Relying on Article 2 of the Convention, the applicants stated that the Ukrainian authorities had failed to protect their relatives' lives by not completely closing the airspace above the conflict zone. The applicants argued that Ukraine's failure to close the airspace had either been negligent or intentional, and that the Ukrainian authorities had known or ought to have known about the type of armament available to Russia that was capable of targeting civilian aircraft. That knowledge, according to the applicants, had to have stemmed from the very fact of the ongoing armed conflict in the east of the country and from Ukraine's historical past as a member of the Soviet Union, the military arsenal of which had subsequently been inherited by Russia.

THE LAW

A. General considerations

59. The Court notes at the outset that it is limited in its examination of the present case by the fact that the applications are directed against Ukraine only. The present applications do not concern Russia's obligations arising from supplying the Buk-TELAR to the "DPR", which have already been the subject of the Court's judgment in *Ukraine and the Netherlands v. Russia* (cited above).

60. The Court also recalls its findings in *Ukraine and the Netherlands v. Russia* (dec.) (cited above) that it was not disputed between the parties that Ukrainian air traffic control had been responsible for managing the passage

of commercial aircraft over the territory captured by the separatists in eastern Ukraine as of the day of downing of flight MH17 (§ 702).

B. Admissibility of the applicants' complaint

1. Arguments of the parties

(a) The respondent Government

61. The Government submitted that the applicants had failed to exhaust domestic remedies, which had been effective and accessible to them. They relied on the remedies provided by civil and criminal law in this regard.

62. The Government substantiated their argument in respect of criminal law remedies by referring to the provisions of the Code of Criminal Procedure cited in paragraphs 55-57 above. The Government also submitted in support of their position a judgment of the Halytskyi District Court of Lviv of 1 June 2007, which had been delivered following the 2002 Sknyliv air show incident, awarding compensation in respect of non-pecuniary damage to one of the victims, payable by the Ministry of Defence, following the conviction of the air defence officers responsible for the incident.

63. Furthermore, the Government stated that the applicants had had civil remedies available to them, in particular those provided by Articles 1167 and 1173 of the Civil Code of Ukraine.

(b) The applicants

64. The applicants argued that Ukraine afforded no effective domestic legal remedies that they would have been required to exhaust prior to introducing their applications with the Court. They relied, in that regard, on their assumption that the Ukrainian legal remedies were not accessible to foreigners. They also argued that the Ukrainian court system did not offer "domestic" legal remedies to them because they were nationals of Germany and not Ukraine.

65. The applicants also referred to, in their own words, the systemic challenges of the Ukrainian judicial system – "incompetence, corruption [and] interference with the independence of the judiciary", citing in that regard the Court's judgment in *Oleksandr Volkov v. Ukraine* (no. 21722/11, ECHR 2013) and the judicial reform, initiated in 2014, which, in the applicants' opinion, supported their premise that they had not been required to exhaust Ukrainian legal remedies.

66. As regards the remedies offered by criminal law, the applicants pointed out that neither the JIT nor the Ukrainian investigative authorities had initiated criminal proceedings into the role of Ukraine's State agencies responsible for air traffic organisation and control. They complained that the only criminal proceedings conducted by Ukraine had been focusing on the "act of terrorism" that had resulted in the downing of flight MH17.

2. The Court's assessment

(a) General principles

(i) As to the exhaustion of domestic remedies

67. The Court has repeatedly stated that the rationale behind the rule of exhaustion of domestic remedies is to afford the national authorities, primarily the courts, the opportunity to prevent or put right the alleged violations of the Convention (see *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 84, 9 July 2015, and *Vinokurov v. Ukraine and Russia* (dec.), no. 2937/04, 16 October 2007).

68. The Court is intended to be subsidiary to the national systems safeguarding human rights, and if an application is nonetheless subsequently brought to Strasbourg, the Court should have the benefit of the views of the national courts, as being in direct and continuous contact with the vital forces of their countries (see *Vinokurov v. Ukraine and Russia* (dec.), cited above, and *Burden v. the United Kingdom* [GC], no. 13378/05, § 42, ECHR 2008).

69. Where the Government claims non-exhaustion of domestic remedies, it bears the burden of proving that the applicant has not used a remedy that was both effective and available (*Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 225, ECHR 2014 (extracts)). As a general rule, the development and availability of a remedy said to exist, including its scope and application, must be justified by the Government with reference to the domestic courts' case-law (*Parrillo v. Italy* [GC], no. 46470/11, § 90, ECHR 2015). The Government's arguments will clearly carry more weight if examples from national case-law are supplied and where examples prove to be relevant. Such case-law must in principle be well established and date back to the period before the application was lodged (*Dimitar Yanakiev v. Bulgaria (no. 2)*, no. 50346/07, § 53, 31 March 2016).

70. Mere doubts as to the prospects of success of a particular remedy, which is not obviously futile, are not a valid reason for failing to exhaust domestic remedies (see *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 142, 27 November 2023; *Vorobyeva v. Ukraine* (dec.), no. 27517/02, 17 December 2002). In a legal system providing constitutional protection for fundamental rights, it is incumbent on the aggrieved individual to test the extent of that protection and to allow the domestic courts to develop those rights by way of interpretation (see *A, B and C v. Ireland* [GC], no. 25579/05, § 142, ECHR 2010, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 84, 25 March 2014).

(ii) As to the positive obligations to safeguard the lives of those within the State's jurisdiction

71. The principles developed by the Court detailing States' positive obligations under Article 2 of the Convention to take appropriate steps to

safeguard the lives of those within its jurisdiction are summarised in *Safi and Others v. Greece* (no. 5418/15, §§ 149-52, 7 July 2022). The Court considers that it suffices, for the purposes of the present analysis, to reiterate that for a positive obligation to arise in this connection, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see also *Amaç and Okkan v. Turkey*, nos. 54179/00 and 54176/00, § 46, 20 November 2007; *mutatis mutandis*, *Osman v. the United Kingdom,* 28 October 1998, §§ 116 and 121, Reports 1998-VIII; and, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 55, ECHR 2002-II).

(b) Application of these principles to the present case

72. The Court notes that the applicants brought their complaints concerning Ukraine's alleged failure to protect the lives of their relatives by omitting to close its airspace to civil aviation directly to the Court without previously voicing them before the domestic authorities in Ukraine. The Court will thus examine the arguments the applicants put forward in support of their allegation that the Ukrainian judicial system provided no effective remedies for their grievances.

73. The Court notes at the outset that the applicants' allegation that the Ukrainian legal remedies were not open to foreigners is refuted by the provisions of the Ukrainian Constitution and the Code of Criminal Procedure cited in paragraphs 49 and 55-57 above. Furthermore, the Court has previously held that factual or legal borders are not an obstacle *per se* to the exhaustion of domestic remedies and applicants living outside the jurisdiction of a Contracting State are not exempted from exhausting domestic remedies within that State, practical inconveniences or understandable personal reluctance notwithstanding (*Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, §§ 98 and 101, ECHR 2010). The Court observes that in the present case, other than expressing their reluctance, the applicants have not sought to argue that they had encountered any difficulties in accessing domestic remedies in Ukraine. The Court therefore cannot accept the applicants' argument concerning the inaccessibility of these remedies.

74. The Court will next turn to the applicants' allegation, made by relying on the Court's judgment in *Oleksandr Volkov* (cited above) that the Ukrainian legal system as a whole was not rooted in the rule of law and could not afford them fair redress. The Court notes, in this regard, that in *Oleksandr Volkov* (cited above, §§ 109-140, 150-156), the Court identified serious defects in the procedure of judicial discipline in Ukraine and in the process of composing chambers of the Higher Administrative Court. However, the Court has never ruled that the Ukrainian legal system in its entirety was outright ineffective and unable to provide a prospect of success to the applicants who believed

that their rights had been infringed upon by the Ukrainian authorities (see *Ryashentseva and Others v. Ukraine* (dec.), nos. 54680/15 and 3 others, §§ 54-55, 9 September 2025; see also, for illustrative purposes, the following Committee cases as the examples in which Ukraine was held to have ensured an effective judicial system in respect of allegations of murder and police negligence: *Volovod v. Ukraine*, no. 527/07, § 68, 21 May 2015; *Chayka v. Ukraine* (dec.), no. 43800/15, §§ 57-58, 11 March 2021; and *Repey v. Ukraine* (dec.), no. 66975/10, § 29, 25 August 2020).

75. In two comparable cases, which concerned the 2002 Sknyliv air show accident as a result of which 77 people were killed and hundreds sustained injuries, the Court found that Ukraine had carried out an effective investigation into the events (*Mikhno v. Ukraine*, no. 32514/12, § 151, 1 September 2016, and *Svitlana Atamanyuk and Others v. Ukraine*, nos. 36314/06 and 3 others, § 155, 1 September 2016). The Court noted that both pilots, the air show flights director, the aerobatic performance director and the chief of the flight safety service had been found guilty and sentenced at the domestic level (see *Mikhno*, cited above, § 51). The Court thus concluded that no violation of the procedural limb of Article 2 of the Convention had taken place and that the applicants had lost their victim status with regard to the substantive limb of that Article.

76. In the light of the above, the Court dismisses the applicants' argument concerning the ineffectiveness of the Ukrainian legal system as a whole.

77. The Court will lastly turn to the applicants' argument that Ukraine did not *proprio motu* initiate an investigation into the role of its agencies responsible for air traffic organisation and control, but instead limited its investigation to the "act of terrorism" which had resulted in the downing of flight MH17. The Court has previously held that the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective and independent investigation is conducted into alleged breaches of the right to life. The authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures (see *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, §§ 164-65, ECHR 2011).

78. In line with this obligation, in the present case Ukraine initiated a criminal investigation into the downing of MH17 on the day of the event (see paragraph 39 above). It was registered under no. 22014000000000239, and the downing of the aircraft was characterised as an act of terrorism (Article 258 § 3 of the Criminal Code). A safety investigation was also initiated by Ukraine on 17 July 2014. It was formally delegated to the Dutch Safety Board on 23 July 2014 (see paragraph 40 above). Indeed, the UN Security Council recognised Ukraine's efforts and cooperation in instituting an international investigation into the incident (see paragraph 41 above).

79. The Court reiterates that the applicants alleged that the Ukrainian authorities had either intentionally or negligently failed to protect their relatives' lives. It would thus have been reasonable for them to resort to the criminal law remedy existing in Ukraine (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §§ 158-160, 25 June 2019). If the applicants believed that the scope of the criminal investigation carried out by Ukraine had been unduly limited, it was open to them to approach the investigative authorities and raise their complaints about the specific aspects of the investigation that the applicants believed required additional attention. However, the applicants did not contact the law-enforcement authorities dealing with the criminal proceedings.

80. The applicants also had the opportunity to bring a separate criminal complaint to the Ukrainian law-enforcement authorities under Article 214 of the Code of Criminal Procedure (see paragraph 56 above). Furthermore, had the domestic authorities decided against opening an investigation, the applicants would have had at their disposal the mechanism of an appeal to an investigative judge, as provided by Article 303 of the Code of Criminal Procedure, who has the power to impose an obligation on law-enforcement authorities to initiate an investigation (ibid.).

81. Thus, in the circumstances of the present case the rule of exhaustion of domestic remedies provided by Article 35 § 1 of the Convention placed on the applicants the initial burden of informing the authorities of their specific grievances and requesting that they evaluate the appropriateness of the airspace measures the Ukrainian authorities had put in place in the days preceding the downing of flight MH17.

82. Without the benefit of the domestic authorities' inquiry into the matter, it would be incumbent on the Court to analyse the aviation incidents that took place in Ukraine's airspace prior to 17 July 2014 (see paragraphs 26-30 above), the types of weapon at the time believed to have been used in the attacks and the appropriateness of Ukraine's response to the perceived level of threat. The Court would also need to ascertain the nature and timeliness of the military information available to Ukraine at the time about the "DPR" being in possession of a Buk-TELAR.

83. The Court considers that the purpose of exhaustion of domestic remedies in the present case would be to allow the Ukrainian authorities to evaluate the appropriateness of the decision-making in the sphere of civil aviation by, *inter alia*, ascertaining what inferences were to be made from the aerial incidents of 14 and 16 July 2014 (see paragraphs 26-30 above). The Court notes that, according to the DSB report, multiple theories had been considered: a ground-based air defence system and the X-24 guided air-to-air missile from a Russian aircraft (see paragraph 26 above). The domestic authorities were therefore undoubtedly better placed to assess whether the partial closure of Ukraine's airspace for civil aviation was an appropriate response to the risk level based on the theories considered at the time.

84. The Court cannot speculate as to whether the Ukrainian authorities regulating civil aviation were or should have been aware of the presence of the Buk-TELAR in the hands of the "DPR" armed groups as of 17 July 2014. It was not until 2022 that the trial court in The Hague established that flight MH17 had been attacked with a Russia-supplied Buk missile. What is more, according to that court's findings, the Buk had not been delivered to the "DPR"-controlled territory of Ukraine from Russia until the late evening of 16 July 2014 (see paragraph 35 above). It would also be inappropriate for the Court and contrary to its subsidiary role to speculate whether Ukraine ought to have known as of 17 July 2014 that the Buk-TELAR crew had no radar to differentiate between a "friend" and a "foe", which led to the targeting of the civilian aircraft (see, for more information, *Ukraine and the Netherlands v. Russia* [GC], cited above, § 459).

85. The Court considers that all the issues outlined above should have been the subject of a domestic investigation under Ukrainian law. As described in paragraphs 53-54 above, Ukraine criminalises fatal violations of transport safety regulations and provides for a possibility to submit a civil claim in criminal proceedings against the suspect or the accused (paragraph 57 above). The effectiveness of this mechanism is supported by the example provided by the Government of a judgment of the Halytskyi District Court of Lviv region awarding compensation in respect of non-pecuniary damage to be paid by the Ministry of Defence to one of the victims of the 2002 Sknyliv air show accident, based on the criminal conviction of the air defence officers responsible for the incident (see paragraphs 62 and 75 above).

86. The Court therefore concludes that the Ukrainian legal system provided an adequate criminal law remedy to raise and examine the applicants' complaints, to assess the issue of attribution of any liability and to claim damages within the criminal proceedings, before applying to the Court (see *Repey* (dec.), cited above, § 28). In the light of these findings the Court considers that it is not necessary to examine the availability and effectiveness of the civil law remedies relied on by the Government (see paragraph 63 above).

87. In the light of the foregoing the Court finds that the applicants' complaints must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the applications inadmissible.

Done in English and notified in writing on 12 February 2026.

Ilse Freiwirth Registrar	Ivana Jelić President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	73776/14	Ioppa v. Ukraine	24/11/2014	**Elena IOPPA** 1970 Rheine German	Elmar GIEMULLA
2.	973/15	Lauschet v. Ukraine	18/12/2014	**Tim LAUSCHET** 1991 Stanhope Gardens German	Elmar GIEMULLA
3.	4407/15	Kenke v. Ukraine	12/01/2015	**Chris KENKE** 1988 Buxtehude German	Elmar GIEMULLA
4.	4412/15	Kenke v. Ukraine	13/01/2015	**Denise KENKE** 1984 Buxtehude German	Elmar GIEMULLA