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

FIFTH SECTION

DECISION

Application no. 32604/12
Oleksiy Oleksiyovych KHRAMKOV and Yevgeniya Oleksiyivna KHRAMKOVA against Ukraine
and 4 other applications
(see list appended)

The European Court of Human Rights (Fifth Section), sitting on 29 August 2017 as a Committee composed of:

Nona Tsotsoria, *President,*
Síofra O'Leary,
Lətif Hüseynov, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having regard to the above applications lodged on 30 August 2006,

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. A list of the applicants is set out in the appendix. They were represented by Mr D.A. Gudyma and Ms S.V. Khyliuk, lawyers practising in Lviv.

2. The Ukrainian Government ("the Government") were represented by their Agents, most recently Mr I. Lishchyna.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. Facts general for all applicants

3. On 27 July 2002 the Air Force of Ukraine staged a military aviation show at the Sknyliv aerodrome in Lviv. During the aerobatics performance, an SU- 27 military aircraft crashed into a crowd of spectators and exploded. Both pilots had successfully ejected before the explosion. As a result of the crash, seventy-seven persons, including relatives of all applicants except Mr Khamyk, were killed and over 290 persons, including six of the applicants, sustained damage to their health (see details in paragraphs 16-17, 23-25, 29-30 and 34-35 below).

4. On the date of the accident criminal proceedings were instituted to establish the cause of the crash.

5. On various dates the applicants were admitted in these proceedings as injured parties and civil claimants.

6. On 27 August 2004 the criminal proceedings against four officers of the rank of General (hereinafter "the organisers' case") were disjoined from the criminal proceedings against the pilots and the supporting land crew (hereinafter "the performers' case").

7. On 23 June 2005 the Central Region Military Court of Appeal examined "the performers' case" and found the two pilots of the crashed aircraft and three supporting crew members guilty of negligence. These officers were sentenced to various terms of imprisonment.

8. On the same date the court also ruled on the applicants' civil claims, awarding them various amounts in compensation to be paid by the Ministry of Defence (see details in paragraphs 18-19, 22, 26-28, 31-32 and 36-37 below).

9. The applicants appealed, seeking, in particular, an increase in the compensation payments.

10. On 2 March 2006 the Military Panel of the Supreme Court of Ukraine rejected the applicants' appeals and the judgment in the "performers' case" became final.

11. Between June 2006 and February 2007 all the judgment awards due to the applicants were paid.

12. A number of applicants lodged further civil claims within the framework of the "organisers' case", still on-going at the material time.

13. On 11 June 2008 the Central Region Military Court of Appeal examined "the organisers' case" and acquitted the four officers charged in these proceedings.

14. On 22 October 2008 this decision was upheld by the Military Panel of the Supreme Court of Ukraine and all the civil claims lodged within the framework of the "organisers' case" were left unexamined in view of the acquittal.

15. On various dates, in addition to the compensation awarded by the court, the applicants also obtained various payments in State and municipal aid from the Sknyliv accident victim relief funds. They also obtained further

payments from charitable funds managed by the authorities (for more details concerning the accident, the ensuing investigation and State aid to the victims see *Mikhno v. Ukraine,* no. 32514/12, §§ 6-8, 12-58 and 67-71, 1 September 2016 and *Svitlana Atamanyuk and Others v. Ukraine*, nos. 36314/06 and 3 others, §§ 6-64 and 71-75, 1 September 2016).

2. Facts specific to individual applicants

(a) Application no. 32604/12

16. The first applicant, Mr Oleksiy Oleksiyovych Khramkov, and the second applicant, Ms Yevgeniya Oleksiyivna Khramkova, lost Ms Tamara Khramkova born in 1988, their daughter and sister respectively.

17. The second applicant, present on site of the accident, also sustained minor bodily injuries (hematomas).

18. The first applicant received a global amount of UAH 86,000 (hryvnias) in connection with the death of his daughter (court award and out-of-court payments from the State and municipal funds).

19. The second applicant received a global amount of UAH 43,000 (court award and out-of-court payments from the State and municipal funds) in connection with her sister's death and the injuries sustained by her personally.

20. Two other, non-applicant family members (the mother and another sister of Ms T. Khramkova) received a global amount of UAH 156,000 from the State funds in connection with her death. Further payments were made to the family from the charitable funds administered by the authorities.

(b) Application no. 32621/12

21. The applicant, Mr Sergiy Ivanovych Khamyk, suffers from permanent disability as a result of the injuries sustained. He suffered from traumatic amputation of the left leg, bone fractures and wounds.

22. He received a global amount of UAH 123,000 (court award and out-of-court payments from the State and municipal funds). Further payments were made to him from the charitable funds administered by the authorities.

(c) Application no. 33164/12

23. The first applicant, Mr Valeriy Vitaliyovych Rud, the second applicant, Mr Yuriy Valeriyovych Rud, the third applicant, Mr Vitaliy Illich Rud, and the fourth applicant, Mrs Zinoviya Kostyantynivna Rud, lost Mr Oleksandr Rud born in 1978, their brother, uncle, and the son of the last two applicants respectively.

24. The first applicant also suffered bruises, abrasions and post-traumatic stress disorder.

25. The second applicant suffered cerebral concussion, fractures of two ribs, lung and liver contusions, pneumothorax and a shock of the second degree as a result of the accident.

26. The first applicant received a global amount of UAH 26,000 in connection with the death of his brother and his own injuries (court award and out-of-court payments from the State and municipal funds).

27. The second applicant received a global amount of UAH 56,000 (court award and out-of-court payments from the State and municipal funds) in connection with his uncle's death and the health damage sustained by him personally.

28. The third and the fourth applicant received the global amount of UAH 120,000 in connection with the death of their son. Further payments were made to the family from the charitable funds administered by the authorities.

(d) Application no. 33198/12

29. The first applicant, Mrs Galyna Vasylivna Mruz, the second applicant, Mr Oleksandr Ivanovych Mruz, and the third applicant, Mr Denys Volodymyrovych Mruz lost Mr Volodymyr Mruz born in 1956, their husband, brother and father respectively.

30. The first applicant also suffered post-traumatic stress disorder.

31. The first applicant received a global amount of UAH 73,000 (hryvnias) in connection with the death of her husband and her own trauma (court award and out-of-court payments from the State and municipal funds).

32. The second and third applicants received the global amount of UAH 86,000 (court award and out-of-court payments from the State and municipal funds) in connection with the death of their brother and father respectively.

33. Three other, non-applicant family members (the mother and two other children of Mr V. Mruz) received a global amount of around UAH 256,000 in connection with his death. Further payments were made to the family from the charitable funds administered by the authorities.

(e) Application no. 33222/12

34. The first applicant, Mr Yaroslav Mykhaylovych Vayda, the second applicant, Mrs Tetyana Yaroslavivna Vayda, the third applicant, Mr Mykhail Dmytrovych Vayda, the fourth applicant, Mrs Stefaniya Mykolayivna Vayda, and the fifth applicant, Mrs Olga Grygorivna Krupa, lost Mr Oleg Vayda born in 1978, their son, brother, and the grandson of the last three applicants respectively.

35. The first applicant also sustained a leg wound, as well as bruises and abrasions.

36. The first applicant received a global amount of UAH 70,000 in connection with the death of his son and his own trauma (court award and out-of-court payments from the State and municipal funds).

37. The remaining applicants received the global amount of UAH 80,000 (court award) in connection with the death of their brother and their grandson respectively.

38. Mr O. Vayda's mother, who is not an applicant in the present case, also received UAH 36,000 from the State and municipal funds in connection with the death of her son. Based on the case file, it does not appear that she lodged any civil claims in court proceedings. Further payments were made to the family from the charitable funds administered by the authorities.

B. Relevant domestic law

39. The relevant provisions of domestic law are cited in the Court's judgment in the case of *Mikhno* (cited above, §§ 76-105).

COMPLAINTS

40. The applicants complained under Article 2 of the Convention that the State authorities had failed to take reasonable measures to protect their and/or their relatives' lives during the air show; that they had been directly responsible for the deaths of their relatives and/or the risk to which their own lives had been subjected; and that the investigation into the accident had been ineffective.

41. The applicants also complained under Article 6 § 1 of the Convention that the criminal proceedings, in which they had participated as injured parties and civil claimants, had been inordinately lengthy and unfair. In particular, the judicial military authorities had been neither independent, nor impartial.

42. The applicants next complained under Article 13 of the Convention about lack of any means to speed up the consideration of their compensation claims.

43. Finally, the applicants also invoked Articles 3 and 14 of the Convention and Article 1 of Protocol no. 1 to the facts of the present case. They also complained under these provisions that the State authorities had refused to conclude a friendly settlement agreement with them; that the compensation awarded to them had been calculated arbitrarily and had been much lower than that paid by Ukraine for the deaths of the Russian and Israeli nationals in an airplane crash of 4 October 2001 pursuant to a

friendly settlement agreement concluded in that case between the Governments of Russia, Ukraine, and Israel.

THE LAW

A. Joinder of the applications

44. The applications should be joined pursuant to Rule 42 § 1 of the Rules of Court given their similar factual and legal background.

B. Alleged violations of Article 2 of the Convention

45. The applicants complained that the State authorities had failed to put in place necessary legislative, administrative and practical safeguards to protect their lives and/or the lives of their relatives during the air show; that they had been directly responsible for the airplane crash and that the investigation of the circumstances of the crash had not been adequate, prompt or independent. The applicants referred to Article 2 of the Convention, which, insofar as relevant, reads as follows:

> "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."

1. Submissions by the parties

46. The Government submitted that the alleged breach of the right to life had been acknowledged at the domestic level and the applicants had obtained compensation for that breach. In addition to that, the domestic criminal investigation of the circumstances of the accident had been prompt and effective. In these circumstances, the Government argued that the applicants' complaint under the substantive limb of Article 2 of the Convention should be rejected as incompatible *ratione personae* with the provisions of the Convention on account of the fact that the applicants had lost victim status within the meaning of Article 34 of the Convention. Their complaint under the procedural limb should, in turn, be rejected as manifestly ill-founded.

47. The applicants disagreed, reiterating the complaints outlined in paragraphs 40 and 45 above.

2. The Court's assessment

(a) Substantive limb of Article 2 of the Convention

(i) Complaints concerning the applicants' deceased relatives

48. The Court notes that arguments similar to those cited in paragraphs 46-47 above were presented by the parties in the aforementioned cases of *Mikhno* (cited above, §§ 110-115 and 122-123) and *Svitlana Atamanyuk and Others* (cited above, §§ 114-118 and 127-128). In those cases the Court allowed the Government's objection as to the loss of victim status, having decided that the matter had been properly addressed at the domestic level. Notably, the Court established that the breach of the applicants' relatives right to life had been acknowledged and redressed at the domestic level, as the State authorities had conducted an official investigation of the circumstances of the accident, which complied with the effectiveness requirement for the purposes of the Convention. In addition, the applicants had been provided with fair and prompt compensatory redress (see *Mikhno*, cited above, §§ 116-120, 130 and 151-154 and *Svitlana Atamanyuk and Others*, cited above, §§ 119-125, 135 and 155-158).

49. The Court considers that the findings in the aforementioned *Mikhno* and *Svitlana Atamanyuk and Others* judgments concerning the effectiveness of the investigation and the adequacy of compensation received are equally pertinent in the present case. It further observes that compensatory redress disbursed by the State authorities to the families of the diseased applicants' relatives was made available promptly and its global amount was comparable to the just satisfaction as provided for under Article 41 of the Convention.

50. It follows that the applicants' complaints under the substantive limb of Article 2 of the Convention concerning the deaths of their relatives are incompatible *ratione personae* with the provisions of the Convention as the applicants lost their status as victims within the meaning of Article 34 of the Convention.

51. These complaints must therefore be rejected as inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(ii) Complaints concerning the risk to life and injuries sustained by the accident survivors

52. The Court notes that in various cases it has found Article 2 applicable to the complaints raised by fortuitous survivors of life-threatening incidents (see, for instance, *Krivova v. Ukraine*, no. 25732/05, §§ 44-45, 9 November 2010; *Budayeva and Others v. Russia*, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, § 146, ECHR 2008 (extracts); and *Kolyadenko and Others v. Russia*, nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05,

§ 151, 28 February 2012). The present cases were communicated under Article 2 and the respondent Government has not contested its applicability.

53. Leaving aside questions relating to the applicability of Article 2 which might arise in relation to other cases involving survivors of accidents, in the present case, having assessed the redress provided to these applicants at the domestic level (see paragraphs 18-19, 22, 26-28, 31-32 and 36-37 above), the Court considers that these complaints have also been sufficiently addressed by the national authorities (see also *mutatis mutandis Mindrova v. Ukraine* no. 32454/06 (dec.), §§ 23-25 and 27-28, 31 January 2017).

54. It follows that these complaints are likewise incompatible *ratione personae* with the provisions of the Convention due to the loss of victim status by the applicants concerned.

55. These complaints must therefore be rejected as inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(b) Procedural limb of Article 2 of the Convention

56. In light of its findings in the aforementioned *Mikhno* and *Svitlana Atamanyuk and Others* judgments (see *Mikhno*, cited above, §§ 151-152 and *Svitlana Atamanyuk and Others*, cited above, §§ 155-156) the Court considers that the applicants' complaints do not raise an issue under the Convention and should be rejected as manifestly ill-founded within the meaning of Article 35 §§ 3 (a) and 4 of the Convention.

C. Alleged violations of Articles 6 and 13 of the Convention

57. The applicants further complained that the criminal proceedings concerning their claims for damages lodged within the framework of the criminal proceedings against the military officers had been unfair. In particular, the military courts had not been sufficiently independent of the Ministry of Defence and of the military authorities, and had acted in the interests of those entities. In addition, the proceedings had also been inordinately lengthy and the applicants had had no effective remedies allowing them to accelerate the resolution of their civil claims.

58. The applicants referred, in respect of the above complaints, to Articles 6 § 1 and 13 of the Convention, which, insofar as relevant, read as follows:

Article 6

"1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

1. Submissions by the parties

59. The Government contested the applicants' submissions. In their view, the military courts had been sufficiently independent and impartial, and the length of the proceedings at issue, including the enforcement of judgments stage, was reasonable. They further argued that in view of these considerations, there was no issue under Article 13 of the Convention.

60. The applicants disagreed.

2. The Court's assessment

61. The Court considers that Article 6 of the Convention under its civil limb is applicable to the proceedings at issue in respect of the periods during which the applicants acted in those proceedings as civil claimants (see *Mikhno*, cited above, §§ 157 and 174, with further references and *Svitlana Atamanyuk and Others*, cited above, §§ 167 and 185).

(a) Concerning the complaint under Article 6 of the Convention regarding alleged unfairness of the proceedings

62. Insofar as the applicants argue that the proceedings were unfair, the Court notes that it has already examined and dismissed similar arguments as manifestly ill-founded in its judgments in the aforementioned cases of *Mikhno* (see paragraphs 160-171) and *Svitlana Atamanyuk and Others* (see paragraphs 170-182). It does not see any reason to depart from its previous findings in the present case.

63. This aspect of the applicants' complaint should therefore be rejected as manifestly ill-founded in accordance with the requirements of Article 35 §§ 3 (a) and 4 of the Convention.

(b) Concerning the complaint under Article 6 regarding the length of the proceedings

64. Insofar as the applicants complain that the proceedings were inordinately lengthy, the Court notes that the applicants lodged their civil claims and received the judgment awards in the "performers' case" on different dates. It also notes that, based on the information in the case-file, a number of applicants, but not all of them, lodged further civil claims within the framework of the "organisers' case," which was disjoined from the initial set of the criminal proceedings. Accordingly, the periods to be taken into account for the determination of the length of the proceedings in each applicant's case are different. However, the Court finds it not necessary to make individual calculations, because it considers that the overall length of

the criminal proceedings within the framework of which the applicants' civil claims were lodged was in any event not such as to raise an issue under Article 6 § 1 of the Convention.

65. The Court notes in this respect that the criminal proceedings in question were initiated on 27 July 2002 (see paragraph 4 above). The judgment in the "performers' case", whereby the applicants' civil claims were partly allowed, became final on 2 March 2006 (see paragraph 10 above) and the awards were paid to the applicants between June 2006 and February 2007 (see paragraph 11 above). Insofar as some applicants lodged additional civil claims within the framework of the "organisers' case" disjoined from the initial criminal case, these proceedings lasted until 22 October 2008 (see paragraph 14 above).

66. The total period of the criminal proceedings, including the enforcement of judgment stage for the "performers' case", was six years and three months for two levels of jurisdiction, with the periods relevant for the determination of the civil claims lodged by individual applicants being shorter.

67. In the Court's view, regard being had to the criteria established in its jurisprudence (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII) and the nature and complexity of the particular proceedings at issue in the present case, the aforementioned period was not such as to attract the liability of the respondent Government under the Convention (see also *Svitlana Atamanyuk and Others*, cited above, §§ 186-187).

68. The complaint concerning the length of the proceedings with a view to determination of the applicants' civil claims raised by the applicants under Article 6 of the Convention is accordingly manifestly ill-founded.

69. It should therefore be rejected as inadmissible in accordance with the requirements of Article 35 §§ 3 (a) and 4 of the Convention.

(c) Concerning the alleged breach of Article 13 of the Convention

70. In view of the Court's finding in the preceding paragraph that the applicants' complaints concerning the length of the proceedings do not raise an arguable claim under Article 6 of the Convention, the guarantees of Article 13 of the Convention do not apply to the applicants' complaint about the impossibility of accelerating these proceedings (see, in particular, *Vergelskyy v. Ukraine,* no. 19312/06, § 124, 12 March 2009 and *Svitlana Atamanyuk and Others*, cited above, § 191).

71. It follows that the applicants' complaints under Article 13 of the Convention should be rejected as inadmissible in accordance with the requirements of Article 35 §§ 3 (a) and 4 of the Convention.

D. Other complaints

72. The Court examined the applicants' remaining complaints under Articles 3 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention (see paragraph 43 above). Having regard to all the material in its possession, and in so far as these complaints fall within the Court's jurisdiction, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention (see also *Mindrova,* cited above*,* § 26).

73. It follows that these complaints must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 21 September 2017.

Anne-Marie Dougin
Acting Deputy Registrar

Nona Tsotsoria
President

APPENDIX

No.	Application no.	Applicant Date of birth Place of residence
1.	32604/12	**Oleksiy Oleksiyovych KHRAMKOV** 15/09/1959 Veltrusy **Yevgeniya Oleksiyivna KHRAMKOVA** 14/05/1987 Veltrusy
2.	32621/12	**Sergiy Ivanovych KHAMYK** 15/11/1972 Lviv
3.	33164/12	**Valeriy Vitaliyovych RUD** 02/11/1972 Lviv **Yuriy Valeriyovych RUD** 19/01/1995 Lviv **Vitaliy Illich RUD** 02/12/1950 Lviv **Zinoviya Kostyantynivna RUD** 13/12/1948 Lviv
4.	33198/12	**Galyna Vasylivna MRUZ** 23/06/1966 Lviv **Oleksandr Ivanovych MRUZ** 31/07/1962 Lviv **Denys Volodymyrovych MRUZ** 17/08/1988 Lviv
5.	33222/12	**Yaroslav Mykhaylovych VAYDA** 11/02/1951 Lviv **Tetyana Yaroslavivna VAYDA** 05/08/1983 Pykulovychi **Mykhayil Dmytrovych VAYDA** 12/05/1927 Lviv **Stefaniya Mykolayivna VAYDA** 07/09/1931 Lviv **Olga Grygorivna KRUPA** 31/12/1926 Pykulovychi