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

FIFTH SECTION

DECISION

Application no. 32545/12
Ganna Viktorivna MAKAROVA and Oleksandr Ivanovych MAKAROV
against Ukraine
and 16 other applications
(see list appended)

The European Court of Human Rights (Fifrth 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

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 the applicants' relatives, were killed.

4. On the same date 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 civil claims lodged by the applicants, awarding them various amounts in compensation to be paid by the Ministry of Defence (see details in the appended table 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' and their relatives' appeals.

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 this set of 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.

15. On various dates most of the applicants also obtained various payments in State and municipal aid from the funds designated to support the Sknyliv accident victims. 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).

16. In many cases, compensatory payments were also made to other relatives of the applicants, not themselves applicants in the present case.

B. Relevant domestic law and International materials

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

COMPLAINTS

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

19. They 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.

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

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

THE LAW

A. Joinder of the applications

22. 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

23. The applicants complained that the State authorities had failed to put in place necessary legislative, administrative and practical safeguards to

protect the lives of their relatives during the air show; that they had been directly responsible for the airplane crash resulting in their relatives' deaths and that the investigation of the circumstances of the crash had not been either 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

24. The Government submitted that the breach of the applicants' relatives' 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 view of the above, 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.

25. The applicants disagreed referring to the complaints outlined in paragraphs 18 and 23 above.

2. The Court's assessment

(a) Substantive limb of Article 2 of the Convention

26. The Court notes that arguments similar to those cited in paragraphs 24-25 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).

27. 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 the 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.

28. 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.

29. 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

30. In light of the 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) and of the particular circumstances of the present case, 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

31. 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.

32. 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

33. The Government contested the applicants' submissions. In their view, the military courts had been sufficiently independent and impartial, and the length of the proceedings in 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.

34. The applicants disagreed.

2. The Court's assessment

35. 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

36. 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.

37. This aspect of the applicants' complaint should therefore be rejected as inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

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

38. 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.

39. 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).

40. 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.

41. 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).

42. 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 therefore manifestly ill-founded.

43. 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

44. 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).

45. 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

46. 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 21 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).

47. 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	Immediate victim Relationship to the applicants	Global compensation to the applicants (including court award and out-of-court payments from State funds (rounded in hryvnias)[1]
1.	32545/12	**Ganna Viktorivna MAKAROVA** 11/02/1946 Slovyansk **Oleksandr Ivanovych MAKAROV** 25/01/1974 Slovyansk	**Volodymyr Ivanovych MAKAROV** son brother	**150,000**
2.	32586/12	**Vasyl Mykolayovych KORENCHUK** 25/11/1957 Zhovkva **Olena Vasylivna YUFYM** 17/07/1980 Zhovkva	**Taras Vasyliovych KORENCHUK** son brother	**125,000**
3.	32588/12	**Lyudmyla Mykhaylivna KONCHAKOVSKA** 02/06/1974 Gorodok **Bronislava Yosypivna KONCHAKOVSKA** 26/09/1938 Pidruddya **Sergiy Volodymyrovych KONCHAKOVSKYY** 14/08/1959 Ovruch **Lyubov Volodymyrivna KRYSHCHENKO** 25/02/1958 Ovruch	**Volodymyr Stepanovych KONCHAKOVSKIY** father-in-law husband father father **Volodymyr Volodymyrovych KONCHAKOVSKIY** husband son brother brother	**360,000**

1. In majority of cases further payments were received by other, non-applicant, relatives of the same deceased persons. These payments are **not included** in the table. Likewise, payments from charitable funds managed by the authorities to assist the Sknyliv accident victims are **not included** in the table.

No.	Application no.	Applicant Date of birth Place of residence	Immediate victim Relationship to the applicants	Global compensation to the applicants (including court award and out-of-court payments from State funds (rounded in hryvnias)[1]
4.	32597/12	**Anastasiya Oleksandrivna KOLOMIYETS** 17/03/1926 Lviv **Volodymyr Fedorovych KOLOMIYETS** 05/08/1948 Lviv **Olena Volodymyrivna YATSKIY** 18/04/1972 Lviv	**Viktor Volodymyrovych KOLOMIYETS** grandson son brother	**140,000**
5.	32628/12	**Volodymyr Oleksiyovych IVANOV** 24/03/1951 Lviv **Nina Oleksandrivna IVANOVA** 14/06/1950 Lviv	**Roman Volodymyrovych IVANOV** son son	**170,000**
6.	32894/12	**Olga Ivanivna DUDCHENKO** 01/02/1961 Lviv	**Sergiy Petrovych DUDCHENKO** husband **Maryana Sergiyivna DUDCHENKO** daughter	**125,000**

No.	Application no.	Applicant Date of birth Place of residence	Immediate victim Relationship to the applicants	Global compensation to the applicants (including court award and out-of-court payments from State funds (rounded in hryvnias)[1]
7.	32969/12	**Viktor Volodymyrovych BUDASOV** 14/04/1968 Lviv **Vitaliy Viktorovych BUDASOV** 11/08/1992 Lviv **Anastasiya Mykhaylivna DOLYNNA** 11/02/1949 Lviv **Roman Stepanovych DOLYNNYY** 04/08/1972 Lviv	**Galyna Stepanivna BUDASOVA** wife mother daughter sister	**180,000**
8.	32995/12	**Tetyana Anatoliyivna TYMOSHENKO** 05/05/1962 Lviv	**Yevgeniya Sergiyivna YAKYMENKO** daugther	**140,000**
9.	32998/12	**Dmytro Vyacheslavovych VESELOV** 02/11/1977 Lviv **Vyacheslav Oleksandrovych VESELOV** 05/09/1950 Lviv **Tetyana Volodymyrivna VESELOVA** 06/11/1954 Lviv	**Nina Vyacheslavivna VESELOVA** sister daughter daugther	**135,000**

No.	Application no.	Applicant Date of birth Place of residence	Immediate victim Relationship to the applicants	Global compensation to the applicants (including court award and out-of-court payments from State funds (rounded in hryvnias)[1]
10.	33047/12	**Andriy Yuriyovych GITAYLO** 25/12/1977 Lviv **Ivan Vasylyovych TYMAN** 14/07/1967 Lviv **Ganna Vasylivna TYMAN** 25/01/1944 Vyshnya **Valentyna Mykolayivna GITAYLO** 02/02/1957 Lviv **Yuriy Ivanovych GITAYLO** 18/11/1952 Lviv	**Nataliya Yuriyivna TYMAN** sister wife daugther-in-law daughter daugther **Oleg Ivanovych TYMAN** nephew son grandson grandson grandson	**330,000**
11.	33140/12	**Ivan Blazheyovych DUSHENKO** 17/05/1959 Gorodok **Iryna Yaroslavivna SOLTYS** 08/02/1984 Gorodok **Yaroslav Ivanovych SHYNAL** 17/05/1959 Gorodok **Olena Yosypivna DUSHENKO** 17/05/1959 Gorodok **Galyna Yaroslavivna GLADKA** 04/05/1986 Gorodok	**Ganna Vasylivna SHYNAL** daughter mother wife daughter mother **Yaroslav Yaroslavovych SHYNAL** grandson brother son grandson brother	**435,000**

No.	Application no.	Applicant Date of birth Place of residence	Immediate victim Relationship to the applicants	Global compensation to the applicants (including court award and out-of-court payments from State funds (rounded in hryvnias)[1]
12.	33150/12	**Mariya Vasylivna IVANYUK** 20/08/1944 Korolivka **Oleksandra Mykhaylivna SHUMEIDA (SERBYN)** 18/03/1970 Stryy	**Volodymyr Markiyanovych SERBYN** son-in-law husband **Rostyslav Volodymyrovych SERBYN** grandson son **Yuriy Volodymyrovych SERBYN** grandson son	**325,000**
13.	33168/12	**Galyna Mykhaylivna PRYTULYAK** 09/02/1955 Lviv **Oleksandr Alimovych PRYTULYAK** 15/06/1981 Lviv	**Sergiy Alimovych PRYTULYAK** son brother	**150,000**
14.	33176/12	**Yaryna Pavlivna PAVLOVYCH** 18/11/1983 Lviv **Nataliya Semenivna PAVLOVYCH** 24/05/1963 Lviv	**Pavlo Volodymyrovych PAVLOVYCH** father husband **Ruslan Pavlovych PAVLOVYCH** brother son	**205,000**

No.	Application no.	Applicant Date of birth Place of residence	Immediate victim Relationship to the applicants	Global compensation to the applicants (including court award and out-of-court payments from State funds (rounded in hryvnias)[1]
15.	33183/12	**Ganna Andriyivna CHYZHO** 15/05/1957 Shchyrets **Mariya Ivanivna ONYSHCHAK** 15/10/1955 Semenivka **Volodymyr Mykolayovych CHYZHO** 15/06/1951 Shchyrets	**Oleg Bogdanovych ONYSHCHAK** son-in-law son son-in-law **Yuriy Bogdanovych ONYSHCHAK** brother **Iryna Volodymyrivna ONYSHCHAK** daughter daughter-in-law daughter **Yaryna Olegivna ONYSHCHAK** granddaughter granddaughter granddaughter	**545,000**
16.	33194/12	**Ananiy Mykhaylovych OMELCHUK** 13/11/1932 Lviv **Nadiya Grygorivna OMELCHUK** 09/02/1934 Lviv	**Viktor Ananiyovych OMELCHUK** son son **Andriy Viktorovych OMELCHUK** grandson grandson	**125,000**
17.	33208/12	**Oksana Volodymyrivna MOTUZYUK** 17/08/1977 Lviv **Volodymyr Ivanovych MOTUZYUK** 16/02/1952 Lviv **Nataliya Yosyfivna MOTUZYUK** 10/10/1954 Lviv	**Bogdan Volodymyrovych MOTUZYUK** brother son son **Iryna Yevgenivna MOTUZYUK** sister-in-law daugther-in-law daugther-in-law	**190,000**