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

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Ukrainian authorities' response to military air show crash was satisfactory

In today's **Chamber** judgments[1] in the cases of **Mikhno v. Ukraine** (application no. 32514/12) and **Svitlana Atamanyuk and Others v. Ukraine** (nos. 36314/06, 36285/06, 36290/06 and 36311/06) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 2 (right to life/investigation) of the European Convention on Human Rights; and,

a violation of Article 6 § 1 (right to a fair trial within a reasonable time) and of **Article 13 (right to an effective remedy)** of the European Convention on account of the length of the proceedings concerning Ms Mikhno's claims for damages and the lack of an effective remedy with which to accelerate her claim.

Both cases concerned a military aircraft crash during an aerobatics display at an air show on 27 July 2002 at the Sknyliv aerodrome in Lviv. The cases were brought by relatives of persons killed when the aircraft crashed into spectators at the show and exploded (referred to as the "Sknyliv accident"). As a result of the crash, 77 people died and over 290 sustained injuries.

The Court found in particular that the circumstances of the accident had been addressed satisfactorily at the national level, with the applicants having been adequately compensated and those responsible – five military officers, including the two pilots of the crashed plane – having been identified and punished following an investigation which had been sufficiently independent, adequate and prompt.

Principal facts

The applicants in the first case are two Ukrainian nationals, Nina and Anastasiya Mikhno, a grandmother and her granddaughter. They were born in 1940 and 1997 respectively and live in Lviv (Ukraine). Tetiana and Sergiy Mikhno, Anastasiya's mother and father, were in the epicentre of the accident and died at the scene. Anastasiya, who was five at the time, witnessed her parents being crushed by the aircraft.

The applicants in the second case are four Ukrainian nationals: two sisters, Svitlana and Lyudmila Atamanyuk, their mother, Ganna Atamanyuk (now deceased) and Svitlana Atamayuk's niece, Anna Loskutova. They were born in 1953, 1946, 1920 and 1984 respectively. The Atamanayuk sisters and Anna Loskutova live in Lviv (Ukraine). Svitlana Atamanyuk's daughter, son-in-law and two grandchildren, who attended the air show, all died on the spot. Her niece, Anna Loskutova, who had gone with them to the air show, survived.

Following the accident, several concurrent investigations were opened, notably by a special commission set up by the Government, by the Ministry of Defence, by a commission set up by the Lviv local authorities and by a non-governmental organisation founded by survivors of the accident and those who had lost relatives at the air show. The Special Commission issued its report within several months of the accident and the others between September 2002 and October 2003. Those investigations all reached similar conclusions concerning the major factual circumstances

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

surrounding the air show accident. Notably, the primary cause of the accident had been a technical mistake by one of the two military pilots flying the plane which had crashed. The pilot had executed an aerobatics manoeuver not featured in his mission order and not practiced by him before the air show, and his co-pilot and the ground crew had failed to intervene in time and guide the plane back to the aerobatics zone it had exited from during the faulty manoeuver. Furthermore, the investigations also unanimously found that the organisation of the air show had generally had significant safety-related shortcomings. In particular, the relevant general regulatory framework was insufficiently detailed and the military and civilian authorities alike had failed to make full use of the existing framework for implementing all reasonable measures to minimize the risks to spectators' lives. These factors cumulatively resulted in an inadequate preparation of both the airfield for safe accommodation of spectators as well as of the crew for their performance.

The domestic criminal investigation, launched on the same day of the accident, resulted in the conviction of five military officers, including the two pilots who had successfully ejected from the aircraft before the crash, the air show flights director, the aerobatic performance director and the chief safety officer. Relying extensively on the findings of the Government's special commission and an aviation experts' assessment, the national courts convicted and sentenced them in a final decision of March 2006 to prison terms varying between four and 14 years' imprisonment. They notably found that the first pilot had been guilty of breaching his mission order, that three of the other officers – including the second pilot – had been responsible for failing to intervene in his misconduct and that the chief safety officer had failed to put in place a meaningful emergency prevention plan.

Further domestic decisions were taken not to prosecute a number of other military officers and to acquit in a final decision of October 2008 four high-ranking Air Force officials responsible for authorising the air show and military training. The courts concluded that those officers had not directly caused the accident, which had been the first pilot's fault, emphasising that holding the most senior officers accountable for not having supervised his training and performance any closer would constitute an overbroad interpretation of the military statutes and other relevant legal acts. Three of those acquitted officers were, however, dismissed and the fourth demoted following disciplinary proceedings brought against them. Disciplinary proceedings were also brought against a number of other officers, who had never been prosecuted in criminal proceedings, and they received reprimands.

In the meantime, Nina and Anastasiya Mikhno had brought proceedings – lodged within the framework of the criminal proceedings against the military officers – in December 2002 and February 2003, respectively, for compensation. They were subsequently each awarded 50,000 Ukrainian hryvnias (UAH), which was paid in full to Anastasiya Mikhno in December 2006 and her grandmother, Nina Mikhno, in December 2012. The applicants in the second case had lodged similar claims for damages in 2003 and obtained their awards in 2006. In another claim, Anastasiya Mikhno was also awarded an allowance to be paid by the Ministry of Defence until her 18th birthday. Lastly, like other victims of the accident, the applicants in both cases received lump-sums from State financial aid programmes.

Complaints, procedure and composition of the Court

Relying in particular on Article 2 (right to life), all six applicants alleged that the Ukrainian authorities had been responsible for the airplane crash resulting in the deaths of their relatives, notably by failing to put in place the necessary legislative, administrative and practical safeguards to protect lives during the air show; and that they had failed to carry out an effective and independent investigation into the crash. Further relying on Article 6 § 1 (right to a fair trial within a reasonable time) and Article 13 (right to an effective remedy), all the applicants also alleged in particular that the courts dealing with their claims for damages had lacked independence and impartiality, that

those proceedings had lasted too long and that they had no effective remedies to accelerate their claims. The applicants in the second case lastly complained under Article 3 (prohibition of inhuman or degrading treatment) about the authorities' organisation of the procedure to identify the crash victims' bodies and the way in which their relatives' remains had been handled, alleging that it had caused them emotional distress.

The applications were lodged with the European Court of Human Rights on 30 August 2006 and 1 September 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Ganna **Yudkivska** (Ukraine),
Khanlar **Hajiyev** (Azerbaijan),
Erik **Møse** (Norway),
André **Potocki** (France),
Yonko **Grozev** (Bulgaria),
Carlo **Ranzoni** (Liechtenstein),

and also Milan **Blaško**, *Deputy Section Registrar.*

Decision of the Court

Article 2

Overall, the Court concluded that **the investigation into the accident** in both cases had been sufficiently independent, adequate and prompt and that the applicants had been given necessary access to the proceedings.

In particular, there were no grounds to conclude that the investigation lacked independence. The investigative and prosecutorial authorities had come to substantively similar conclusions as the other independent entities investigating the accident and had consistently insisted on pressing charges against the accused military officers throughout the proceedings. The experts involved in the final aviation expert assessment had never, as alleged, been in the chain of command of the 14th Corps Commander, one of the high-ranking officers indicted during the proceedings. The judges involved in adjudicating the criminal case against the military officers had acquitted four officers, but it was unlikely that that had been under pressure from the Ministry of Defence as those acquitted officers had already been subjected to disciplinary liability by the Ministry.

Nor did the Court find any arbitrariness in the domestic decisions regarding the decisions to convict the five military officers or consider that their punishments had been lenient. Furthermore, the domestic decisions not to prosecute certain officers, as well as to acquit four high-ranking Air Force officials, had been based on a careful establishment and assessment of the relevant facts, which concluded that the officers concerned had performed within the scope of their authority and had not been directly responsible for the accident. In addition to the criminal conviction of the five servicemen, a number of other servicemen, including several high-ranking Air Force officers, had been subjected to disciplinary liability. Insofar as responsibility of the local civilian authorities had been concerned, it was notable that they had not hosted the show and that their role in its organisation had been ancillary. Their responsibility for shortcomings in procedure had not and could not as such have resulted in causing the accident.

Moreover, bearing in mind the factual complexity of the proceedings and the number of participants involved, including several hundred injured parties, the Court considered that the investigation had also been prompt. Notably, the investigation by the specially set up Government's Commission, opened on the very day of the accident, issued its report within several months. The criminal

investigation, also opened on the day of the accident, resulted in the final conviction of five military officers in March 2006, after the case had been considered by the courts at two levels of jurisdiction. The trial of the four high-ranking Air Force officers ended in October 2008, after their case had also been examined by the courts at two instances.

Lastly, the Court noted that the applicants had been admitted in the criminal proceedings as injured parties and civil claimants, which had enabled them to access various case-file materials and lodge procedural requests personally or through their legal counsel.

As concerned **the State's responsibility for the accident**, the Court considered that it was not necessary for it to review the principal or contributing causes of the crash as the major conclusions between all the domestic entities which had concurrently investigated the accident had been highly detailed and unanimous. Nor indeed were the parties in dispute that the State had been responsible for the deaths of their relatives in the Sknyliv air show accident, notably on account of both the conduct of its military pilots and their ground crew as well as on account of the safety-related shortcomings in the organisation of the air show by the authorities. However, in its overall conclusion, the Court found that the circumstances of the accident had been addressed satisfactorily at the national level, with the applicants having been adequately compensated and those responsible having been identified and punished following an effective investigation. It therefore considered that the applicants had lost their victim status in respect of this part of their complaint under Article 2.

There had therefore been no violation of Article 2 either as concerned the investigation into the accident or as concerned the State's responsibility for the accident.

Article 3

As concerns the complaint by the applicants in the second case about the organisation of the procedure to identify the crash victims' bodies and the way in which their relatives' remains had been handled, the Court rejected these complaints as manifestly ill-founded for non-exhaustion of domestic remedies and for being lodged out of time2.

Article 6

As concerned the applicants' allegation that the military courts dealing with their claims for damages had lacked independence and impartiality, the Court considered that there was no basis for it to conclude that the judges adjucating the applicants' civil claims, although military servicemen with the rank of officer, had acted in the interests of the Armed Forces or the Ministry of Defence. Although military judges were subordinate to the Ministry of Defence, the applicable law expressly prohibited them from carrying out any duties other than adjudication of cases and there was nothing to suggest that they reported on their performance to any military official. Indeed, procedures concerning their appointment, promotion, disciplining and removal were similar to those in place for their civilian counterparts. Similarly, according to the applicable law, the military courts themselves were integrated into the system of ordinary courts of general jurisdiction and operated under the same rules of procedure as the ordinary courts in the determination of criminal cases. As regards funding and administration, the Supreme Court, which incorporated the Military Panel, was independent and primary responsibility for administering inferior military courts was vested in the State Judicial Administration. Nor did the Court consider that any special relationship had existed between the defendants and the judges involved in adjucating the applicants' civil claims or that there was any other substantiated argument showing that the judges lacked independence or were biased. The Court therefore rejected that part of the applicants' complaint under Article 6 § 1 as manifestly ill-founded.

[2] For an application to be admissible it has to be lodged within six months following the last judicial decision in the case.

However, the Court noted that the proceedings concerning Ms Mikhno's claim for damages had lasted ten years and that that delay had mostly been caused by the non-enforcement of the final judgment in her favour. The Government not having provided any explanation whatsoever for that delay, the Court found that there had been a violation of Article 6 § 1 of the Convention.

Article 41 (just satisfaction)

The Court held that Ukraine was to pay Ms Mikhno 3,600 euros (EUR) in respect of non-pecuniary damage and EUR 360 for legal fees.

The judgment is available only in English.

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