



## Ukraine Successful in Holding Russia to Account at the European Court of Human Rights

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The decision of the European Court of Human Rights (ECtHR) issued on 25 January opens the way to hold Russia accountable for human rights violations in eastern Ukraine and order it to pay compensation. It also challenges numerous theses of Russian propaganda regarding Ukraine and the positions of countries sharing Russia's point of view. At the same time, the decision reaffirms the importance of documenting the violations committed and the need to develop international mechanisms to pay compensation awarded in case Russia refuses to do so.

**The Decision and Its Main Findings.** The 25 January decision relates simultaneously to three cases concerning eastern Ukraine (understood by the ECtHR as the part of the territory over which Ukraine lost de facto control in 2014). In the first case, Ukraine seeks a declaration that Russia has violated numerous rights of persons living in the occupied territories since 2014 (including the use of torture against them, forced labour, unlawful arrests, destruction of private property). In the second, it complains about [the practice of transferring some Ukrainian children from the area to Russia](#). The third case, initiated by the Netherlands, concerns Russia's responsibility for [the downing of flight MH17](#) in which 196 Dutch citizens were killed among the 298 onboard, and the absence of an effective Russian investigation following the crash. The purpose of the decision was to reject Russia's formal objections, including that the cases relate to events that took place outside its territory—occupied by so-called “separatists”—or that the complaining states had presented false evidence to the court.

The ECtHR categorically confirmed Russia's key role in the creation and existence of [the so-called “People's Republics” in the Ukrainian Donbas \(DPR and LPR\)](#) and its effective control over the so-called “separatists” formed in 2014. The ECtHR identified 11 May 2014—the date of the “independence” referendums held by the so-called “separatists”—as the date on which Russia must have had control of these areas. By establishing the existence of

control over the so-called “separatists”, whose actions the court described as a “separatist operation managed and coordinated by Russia”, the ECtHR officially challenged the false Russian claim that the DPR and LPR were independent and exercised the right to self-determination of the local population. It also indirectly confirmed the international nature of the conflict in eastern Ukraine as far back as 2014, contrary to [Russia's position, maintained for years, that it was an internal conflict](#). At the same time, the decision implies that the ECtHR will treat the military and other bodies of the so-called “People's Republics” as Russian bodies. This means that Russia will legally answer not only for all human rights violations committed in eastern Ukraine by its own troops and other organs but also for the actions and omissions of the so-called “separatists”. This is important because, thanks to this categorisation, Russia's attempt to avoid international responsibility, which was one of the main reasons for taking the steps to declare the “independence” of the DPR and LPR, ultimately failed. The court also firmly rejected objections to the veracity of the evidence presented to it and relied extensively on the findings of, among others, the Dutch authorities and [the EU Joint Investigation Team \(JIT\) set up to establish the circumstances of the shooting down of Flight MH17](#) or the Bellingcat investigative group.

**Wider Context.** The decision is final and therefore cannot be appealed by Russia. Notwithstanding the cases brought by

Ukraine and the Netherlands themselves, it allows the ECtHR to consider on the merits hundreds of individual cases filed directly by the affected individuals or their relatives, mainly Ukrainians, but also families of the victims of the shooting down of Flight MH17 (since 2014, some 8,500 cases have been filed against Russia from Ukraine relating to events in Ukraine, although many of them concern violations in Crimea or the rest of the territory after the 2022 Russian aggression). Although the proceedings may take several months to several years, the likelihood of damages being awarded by the ECtHR is high, as it will be very difficult for Russia to avoid responsibility due to the treatment of the bodies of the so-called “People’s Republics” as effectively Russian.

For the time being, however, there is no prospect of Russia paying compensation directly, as evidenced by, among other things, its ongoing refusal to pay the €10 million awarded as recently as 2019 in an interstate case brought by Georgia. The resistance stems from the Russian authorities’ confrontational position towards the West and institutions it considers “Western”, including the Council of Europe (CoE), within which the ECtHR operates. Following [Russia’s expulsion from the CoE](#), its authorities have refused to cooperate, despite the fact that, under Article 58 of the European Convention on Human Rights (ECHR), Russia is not exempt from its obligations under the Convention in respect of events that occurred before its expulsion took effect. This date is 16 September 2022 (six months after Russia’s exclusion from the CoE), as confirmed by the ECtHR resolutions of 22 March 2022 and the CoE Committee of Ministers of 23 March 2022 adopted in this regard. Russia is therefore obliged to pay compensation for all violations that occurred before 16 September 2022, regardless of when the proceedings of the individual cases end.

The ECtHR’s decision also has an important side effect. It strongly increases the chances of Russia being sued successfully before arbitration tribunals based on investment protection treaties binding Russia (e.g., a 1998 one between Russia and Ukraine) by Ukrainian or Western business owners who operated in eastern Ukraine and whose property was expropriated. Although these agreements usually relate to investments located on the “territory” of another state, the tribunals have so far interpreted this concept broadly also as areas under de facto control to which the state in question does not have title under international law. This was the case, for example, in the 2017 judgments in *PrivatBank v Russia* or *Stabil and*

*Others v Russia* concerning investments in Crimea. There is a good chance that the findings of the ECtHR will be taken by arbitration tribunals as a sufficient basis for recognising investments in eastern Ukraine as covered by such agreements. In the longer term, this would make it possible to award damages for losses incurred in the course of the ongoing war and without time limits, unlike in the case of the ECtHR. Again, however, Russia’s lack of cooperation when it comes to paying the amounts awarded could again be a problem.

**Conclusions and Recommendations.** The ECtHR’s decision in the eastern Ukraine cases is a major success for Ukraine and confirmation of the fallacy of many of the claims of Russian propaganda regarding developments in the now occupied part of the Donbas. Due to the independence and reputation of the court, its findings can serve as confirmation that Russia is pursuing an aggressive and imperialist policy and that the creation of the DPR and the LPR or their requests to be incorporated into Russia were fictitious. This also means that these entities cannot be treated as separate from Russia for the purpose of talks (as was the case, for example, in the negotiations under [the Minsk agreements](#)).

The fact that the judgments in the cases in question will not be made in the next few months provides an opportunity and time to take action at the international level to create a mechanism for the payment of compensation denied by Russia. It could make use of Russian state funds frozen under the already imposed sanctions. Such a mechanism could first cover at least the reparations awarded by the ECtHR, the credibility of which is difficult to challenge even by states such as Germany, so far opposed to a comprehensive international solution in this regard. If such a mechanism is not established, any future damages awarded and unpaid will form part of the post-war reparations from Russia as part of a possible peace settlement. It is in Poland’s interest as a state opposing Russian aggression to improve Ukraine’s economic situation and at the same time deplete Russia of funds that would enable it to continue its aggressive policy.

The extent to which the ECtHR relied on the findings of external institutions and investigative teams confirms the importance of the activities of groups such as [the JIT established in March 2022, investigating crimes committed in Ukraine](#), in the work of which Poland is involved. It also demonstrates the value of any initiatives to document human rights violations and support complainants with legal assistance, such as by NGOs.