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# The ruling of the European Court against Russia - the history of terrorist acts



The European Court of Human Rights has taken a huge step towards legally sanctioning Russia as an aggressor and apostate, and one day, perhaps, a terrorist state.

In a ruling from January 25, the European Court accepted jurisdiction over the joint lawsuit of the Netherlands and Ukraine against Russia, regarding the shooting down of a Malaysia Airlines flight and the killing of 298 people in 2014.

This is an important decision that will open up a process on the merits of this case before this Court later this year.

This is the second important court decision related to the tragedy, which took place in 2014 over the territory of eastern Ukraine, under the control of Russia.

In November, the Dutch court sentenced three Russians to life imprisonment as directly responsible for the shooting down of the Malaysian Boeing 777. Two of them are former members of the Russian intelligence services, and the third is the then leader of the pro-Russian forces in eastern Ukraine, Leonid Kharchenko.

After the decision of the European Court of Human Rights regarding the shooting down of flight MH-17, there has been convincing evidence that Russia was behind one of the most brutal murders committed in peacetime.

## Preventive Russian withdrawal from the Council of Europe

Russia does not recognise the decision of the court, which is generally accepted in Europe. Russia's withdrawal from the pan-European organisation, the Council of Europe, which is the founder of the European Court of Human Rights, followed by its ceasing to be a member of the European Convention on Human Rights last September, does not absolve Russia of responsibility for the shooting down of the Malaysian plane.

The court concluded that Russia was a member of the European Convention on Human Rights at the time of the tragedy, so its provisions apply to Russia in this case.

The fact that Russia left the Council of Europe and renounced the European Charter in the midst of its aggression against Ukraine may have been motivated by its desire to avoid responsibility for shooting down the plane in 2014. However, last week's ruling will not allow that.

The consequences of this first step in the process against Russia before the European Court of Human Rights will be an important precedent for some future processes concerning crimes committed in Ukraine.

"The conclusion (of the Court) that Russia controlled the separatist areas of Eastern Ukraine from 2014 up to the oral hearing in the case in 2022 and to this day is legally and factually unimpeachable. It will be applied in all future cases dealing with the Ukrainian conflict", concluded Marko Milanović, Professor of Public International Law at the University of Reading School of Law and amicus curiae in the case before the European Court of Human Rights.

## The way to prosecute war crimes

Ukrainian and international institutions have collected a lot of evidence about the war crimes of the Russian army in Ukraine. While some verdicts have already been reached before Ukrainian national courts, international legal fora have been searching for the form in which war crimes would be prosecuted.

In this regard, the decision of the European Court of Human Rights determines how it is possible to perceive the continuity of Russian aggressive actions not only against Ukraine, but against international security.

The shooting down of the Malaysian plane, where two-thirds of the passengers were

citizens of the Netherlands, long before the aggression against Ukraine, shows Russia's renegade character and its violation of the international legal and civilisational order.

War crimes committed in Ukraine during the aggression were the reason for the parliaments of the three Baltic States and Poland, and later the European Parliament, to designate Russia as a state sponsor of terrorism.

The decision of the European Court of Human Rights regarding the shooting down of a civilian plane in 2014 opens the way to extend the designation of Russia as a terrorist state to the period before the aggression against Ukraine.

## Putin's Russia and Gaddafi's Libya - recognition of terrorism

The shooting down of a civilian plane with a huge number of casualties puts Russia at the same level as Gaddafi's Libya, which in 2003 admitted to the United Nations that it was responsible for the shooting down of a Pan Am flight over Lockerbie in 1988, when 270 people died.

The then Libyan leader admitted that it was a terrorist act, incited by the state he led, which was a condition for the sanctions imposed by the UN against Libya to be lifted.

There is no difference between the actions of Gaddafi's Libya at the time and Putin's Russia in the occupied territories of Ukraine in 2014, and it is an important analogy for future legal proceedings against Russia in relation to war crimes.

The image of Russia as a country prone to committing terrorist acts was also supported by the recent statement of the former President of Ukraine, Viktor Yushchenko, who said that he was convinced that the Kremlin was responsible for the crash of Polish President Lech Kaczyński's plane in 2010 near Smolensk, Russia.

Yushchenko was himself exposed to an assassination attempt by the Russian secret services while he was President of Ukraine.

Regarding the tragedy near Smolensk in 2010, in which 95 people died in addition to the President of Poland, he said that he is "convinced" of the Kremlin's responsibility.

At that time, the presidents of Poland and Ukraine, Kaczyński and Yushchenko, fostered very close relations between the two countries and opposed the policies of Putin's Russia.

From that time, bear in mind the words of the Polish President Kaczyński after the Russian invasion of Georgia (2008): "First Georgia [may be the victim of Moscow's aggression], then Ukraine, next the Baltic states and finally maybe Poland".