NEWS

Transcript of the MH17 judgment hearing

This is the transcript of the oral delivery of the judgment.

Transcript of the MH17 judgment hearing
17 November 2022, 1.30 p.m. – JCS, Schiphol, Netherlands

Good afternoon ladies and gentlemen,
Today, the court sits once again in the MH17 criminal case.
The District Court of The Hague will deliver its judgment in that case today.

As the court stated on 9 March 2020, this criminal case had been long awaited by many, just as many will have been looking forward to this day, the day on which this court would deliver its judgment.

And so it is too that, there are so many interested parties and persons present here today. Naturally, the prosecutors, Pulatov's defence counsel, and counsel for the MH17 relatives are all present, but there are also many relatives and foreign representatives. There is also a great deal of interest from the media. I welcome you all to the hearing, whether you are seated in this courtroom or in one of the other courtrooms in this building. Welcome, too, to the people following the proceedings via the livestream, which will not only be broadcast in English today but also in Russian.

Defence counsel for Pulatov is present today, however. They have informed the court in advance that they have been authorised explicitly. His case will be defended.

The other three accused, Girkin, Dubinskiy and Kharchenko, are aware of today's hearing. Their cases will be heard in absentia.

The defence, the prosecution and counsel for the relatives have indicated prior to this hearing that they do not wish to speak today. May I assume this is still the case? I am looking in particular at defence counsel for Pulatov. (I see you are nodding in agreement.)

The composition of the court is the same as on 22 September 2022, although only those three judges who will deliver the judgments are present, as well as the clerks, of course.

The court will now close the trial in all four cases and immediately deliver its judgments.

The delivery of these judgments brings the criminal proceedings before this court to an end.

The court has spoken many times about the extraordinary nature of this criminal case. It may be said that these proceedings and the extraordinary moments in it have left an indelible mark.

At the same time, this criminal case is also a case that has proceeded in the ordinary way in accordance with Dutch law, and it is pursuant to that law that the court delivers its judgments, aloud and in public, today.

As is usual with such lengthy judgments, the court will not read the full text of the judgments out verbatim but will read out a summary instead. The relevant decisions and reasons are set out in the judgments alone.

Before the court can address whether the charges have been proven or not, the court must answer a number of procedural questions. Legally, these must be addressed first.

One important procedural question is whether the prosecutor was allowed to prosecute the accused. In that regard, the court will consider, inter alia, the conflict that was taking place in eastern Ukraine in 2014, the nature of that conflict, and the application of the provisions of international humanitarian law.

The court will then address the question of whether there is conclusive evidence in the case file to prove what caused MH17 to crash, followed by the question of whether the accused played a criminal role in this.

The claims for compensation will also be discussed, and, if relevant, also sentencing.

So as not to keep you in unnecessary suspense, the court will already say the following. The court has determined that flight MH17 was caused to crash by a Buk missile fired from a farm field near Pervomaiskyi, resulting in the deaths of all 283 passengers and 15 crew members.

The delivery of this judgment will take approximately one hour and 45 minutes, and there will not be a break.

Procedural aspects, nature of the conflict and admissibility of the prosecution

First the procedural issues. The writ of summons is valid. The District Court of The Hague has been designated to conduct this criminal trial and is therefore competent.

Several aspects are relevant in answering the question as to whether the Dutch prosecution was authorised to prosecute in this case. It is an issue of jurisdiction, limitation of jurisdiction and the question as to whether the prosecution has forfeited its right to prosecute.

Jurisdiction

The first concerns the right to prosecute. This so-called jurisdiction is not self-evident in the event of offences that have taken place outside the Netherlands. However, because flight MH17 was shot down over Ukraine, and Ukraine has transferred the resulting jurisdiction to the Netherlands, the Netherlands already has jurisdiction for that reason alone. This means that prosecution is possible in the Netherlands, irrespective of the nationalities of the victims.

Limitations of jurisdiction under international law

The second aspect relates to the possible limitation of jurisdiction arising from application of international humanitarian law, also known as the law of war. Pulatov's defence counsel has offered no defence regarding possible limitation of jurisdiction. The court finds it necessary to address this aspect, since it could be relevant for the admissibility of the prosecution, in the cases of all the accused.

To determine whether this case is subject to such a limitation, the court must first determine whether there was armed conflict when flight MH17 crashed, and, if so, whether said conflict was an international or a non-international armed conflict.

criminally prosecuted for deploying the weapon and the consequences thereof.

An armed conflict may be international by nature from the outset, if the conflict is between two states. A non-international armed conflict that appears to be taking place between a state and a group may also qualify as an international armed conflict, however, if another state is de facto directing said group. The court will discuss the situation in Ukraine prior to 17 July 2014, step by step.

The court is of the opinion that the armed conflict in eastern Ukraine between the Ukrainian army and the organised separatist group starting in April 2014 was so intense, that it may qualify as a non-international armed conflict.

Nevertheless, such a non-international armed conflict may nonetheless be regarded as an international armed conflict. This may be the case, for example, if another state has de facto overall control over a combatant group, so that in this manner said state is involved in the conflict.
In this case, the question is specifically whether the Russian Federation had overall control over the DPR in 2014. The court finds that this was the case for several reasons.

Several of the leaders within the DPR at the time were Russian nationals. Moreover, a number had a Russian military background, including the accused Girkin and Dubinskiy.

Some DPR leaders had close ties with the Russian Federation.

In intercepted conversations, for example, contacting highly placed persons in the Russian Federation, identified as 'Moscow' or more specifically the Kremlin, is regularly mentioned.

From June to August 2014, for example, DPR Prime Minister Borodai, maintained contact almost daily with Surkov, a close advisor to President Putin at the time. According to Borodai, Surkov was 'our man in the Kremlin'.

DPR leaders and Surkov were also in contact regarding appointments for multiple ministerial positions within the DPR.

Characteristically, for example, in a recorded phone conversation from 16 May 2014, Borodai states that the DPR government is to be announced, and that Moscow took him by surprise, as he is to be appointed prime minister.

In addition to these close contacts, the Russian Federation offers battle support.

Organisations such as the OSCE and Human Rights Watch reported the supply, arming and financing of separatists by the Russian Federation. These reports mention convoys of military weapons being transported across the border. This impression emerges from intercepted conversations as well.

With regard to the issue of overall control, the question as to whether the Russian Federation adopted a coordinating role and issued instructions to the DPR is also relevant.

There are ample indications of such.

For example, in addition to reports to 'Moscow' about the situation on the field, such as setbacks and successes, a number of intercepted conversations indicate planning by the Russian authorities.

On 11 July 2014, for example, Surkov informed DPR Prime Minister Borodai that he had spoken with the people in charge of 'this whole military story', and that they have indicated that they are making preparations and intend to accelerate everything.
The role of Moscow with regard to specific operations is also mentioned. In an intercepted conversation dated 4 July 2014 about the Ukrainian city of Sloviansk, a DPR leader states that 'Moscow' does not want Sloviansk to be surrendered. because no actual support arrived, accused Girkin has left Sloviansk, however, and has transferred his headquarters to Donetsk.

On 21 July 2014, four days after the crash of flight MH17, Borodai had a call with a Russian telephone number. Borodai asked to speak with 'the boss', because he needed advice and instructions about handling the MH17 crash. For example with regard to the refrigerated vehicles and the black box.

Borodai also wanted to know discussion topics for a press conference. Borodai noted that he assumed that 'our neighbours' would want to say something about the matter.

In the opinion of the court, that Borodai mentions 'our neighbours' here and asks for 'the boss', even though he has the highest office within the DPR, confirms that the boss he is asking to speak with is a representative of the Russian authorities.

A number of organisations mention artillery fire on Ukrainian territory, which from the start of July 2014 were said to originate fromg the Russian Federation. Witnesses have also issued statements about Russian equipment with Russian military personnel crossing the border, carrying out shelling and subsequently returning.

In an intercepted conversation from 17 July 2014, defendant Pulatov said that Russia could kick off, while accused Dubinskiy replied that Russia intended to fire at Ukrainian positions from its side. These are clear indications of mutually coordinated military actions.

From mid-May 2014 onwards, the Russian Federation furthermore had a decisive influence on appointments in senior positions within the DPR and was involved in coordinating military actions as well as in performing military actions on Ukrainian territory.

These factors, which are described in more detail in the judgment, lead the court to conclude that the situation from mid-May 2014 onwards was one in which the Russian Federation exercised overall control over the DPR.

The court is therefore of the opinion that from mid-May 2014 onwards, and also on 17 July 2014, an international armed conflict was taking place on the territory of Ukraine between Ukraine and the DPR, in which the DPR was controlled by the Russian Federation.

What does this mean with respect to the position of the accused and the possibilities for prosecuting them?

As stated, only members of the armed forces of one of the combatant parties in an international armed conflict may invoke immunity, under certain circumstances. The question is therefore whether the DPR and its members may be regarded as elements of the Russian armed forces. That would require the Russian Federation to accept the DPR as pertaining to it and taking responsibility for the conduct and actions of combatants under the command of the DPR.

The court notes that this is not the case.
To this day, the Russian Federation denies any control over or involvement with the DPR during that period. The accused have also publicly denied being part of the armed forces of the Russian Federation at that time. DPR combatants and therefore also the accused cannot be regarded as part of the armed forces of the Russian Federation.
For that reason alone, they have no right to take part in the hostilities and likewise have no right to immunity from prosecution in connection with the crash of flight MH17.
The conclusion is that there is no limitation of jurisdiction under international law.

Arguments by the defence about violation of provisions of law and rules of procedure

Pulatov's defence counsel has argued that the prosecution has forfeited the right to prosecute. She listed a great many violations of law and treaty provisions and principles of due process, which in her view are sufficiently grave that they must be cause for finding that the prosecution has forfeited the right to prosecute and should be declared inadmissible. In assessing potential procedural errors, the court considers the overall fairness of the trial. Only procedural errors that directly affect the right to a fair trial may be cause for the gravest legal consequence of the prosecution being declared inadmissible.

The issue is that the court must investigate the accusation independently, impartially, openly and without bias. And the accused needs to be able to request an investigation and to have adequate ability to present a defence against the charges.

The court will discuss five topics put forward by the defence as reasons why the prosecution should not have been permitted to prosecute. These include publication of results of the investigation, issue of the summons without prior notice, the biased approach of the prosecution, compilation of the case file and restriction of the right to examine witnesses.

Publication of results of the investigation

First, this relates to statements issued by the JIT and the prosecution prior to the start of these criminal proceedings at press conferences, in fairly categorical terms, about what is believed to have happened to flight MH17. On 19 June 2019 the names and photographs of the four accused in the criminal proceedings were linked to these statements.

The court was aware of these and other statements in the media and explicitly mentioned them during the first court day. The court steered clear of this media coverage and was not influenced by it.

As to whether the prosecution exceeded boundaries at the press conferences, the court has considered that informing the general public and relatives of the intended prosecution is intrinsically an important and justifiable objective. This certainly applies in a case so important and with such social impact as that of flight MH17.

The statements by the prosecution and the JIT about the fate of flight MH17 and the disclosure of the accused may indeed, however, have contributed to forming public opinion on this criminal case.

Releasing personal details of the accused and showing their photographs at the press conferences is therefore a potential infringement of their right to privacy and is thus a procedural shortcoming. According to the court, it is not immediately clear that this information had to be issued to the general public, and that it could not be made known to the relatives in any other way than via a press conference that could be viewed worldwide.

At the same time, the court notes that upon announcement of their prosecution, the accused were also internationally identified and placed on wanted lists, which meant that their identities were in any case released. After all, a quick search on the Internet revealed the names and photographs of the accused immediately.

Nor does the interview in the leading Dutch newspaper NRC Handelsblad, several days after the prosecution's address and sentencing request, with the leader of the prosecution team investigating the flight MH17 crash change this view. That interview included very categorical and sometimes even blunt statements outside the hearing in ongoing criminal proceedings. Essentially, however, those statements were merely reiterations of the prosecution's address and sentencing request that concluded shortly before.

As regards the fairly categorical and blunt statements by other senior public officials, these cannot be held against the prosecution. These statements did not influence the opinion of the court in this criminal case.

And then there is the application posted on the internet by the prosecution on 18 May 2022.

The website reads, 'In this digital publication, you may read, hear and see which evidence the prosecution file comprises'.

At a hearing, the court already expressed its surprise about the launching of this application because of the timing and way in which it was placed online. The prosecution provided no explanation at the hearing.

Given the way in which it is set up and designed, in the opinion of the court, this application is not a spontaneous instrument. The opposite is the case; it took a great deal of time, effort and preparation. Sharing inter alia documents from the prosecution file with the general public, at a carefully chosen moment and in a planned manner, is inappropriate because the prosecution file was still sub judice.

The prosecution was aware of this and according to the court therefore acted deliberately in contravention of this principle. Moreover, less than two hours before this application was placed online, the court had lifted a restriction on the provision of information to relatives, which had been in place until that point in time. Nevertheless, provision of information remained subject to conditions appropriate to the proper administration of justice. For that reason, the publication can be described as being in blatant disregard of an express decision by the court.

Moreover, the application lacks any qualification or reference to the defence's detailed arguments and positions inter alia regarding the usability and evidentiary value of certain documents that were also included in the application.

The court is therefore of the opinion that the prosecution cannot reasonably claim that the publication of this application served any purpose in criminal justice, let alone that it was the result of a fair and reasonable balancing of interests. It was unnecessary and seriously detracts from the magisterial performance that must and may be expected of the prosecution.

Launching this application is in counter to the principles of due process.

Nevertheless, the court did not allow this to influence its open-minded and unbiased view and assessment of the case file and the charges. Nor has this had any consequences for the fair conduct of the trial as such. With that in mind, the court will not apply what would be the gravest consequence for this error: barring the prosecution.

Summons without prior notice

Second, the defence mentions the summons served without prior notice on the defendant Pulatov, without him having been informed of the charge against him. She refers to this as a summons without prior notice. Pulatov's position could have been taken into account in the decision to prosecute. He could also have asked the investigating judge to carry out a counter-inquiry, rather than doing so at a public hearing, whereby an assessment framework more favourable for him would have been used.

The consequences of the summons without prior notice mentioned by the defence do not, however, lead to the conclusion that the trial was unfair.

The prosecution is allowed to issue a writ of summons without informing the accused in advance.

Contrary to the defence's assertions, the court did not apply a criterion for assessing the requests for investigation other than the one that the investigating judge would have used. Indeed, the court applied the broad relevance criterion. The court also fails to see how the defendant may have been disadvantaged by having to submit his requests for investigation at the public hearing rather than in the privacy of the office of the investigating judge. Moreover, the defendant declined to use certain possibilities to prevent a public hearing of his criminal case.

Defence counsel could, for example, have requested the prosecution to withdraw the writ of summons. Or on the first court day, defence counsel could have requested the court for an open referral to the investigating judge to be able to submit requests for investigation to the investigating judge. Moreover, the accused did not complain about the summons without prior notice by presenting a preliminary objection before the trial proper but did so only much later during its oral arguments, in other words after the substance of the case had been heard.

The defence was offered the opportunity by the court and indeed made full use of thereof to submit requests for investigation to the court to be able to submit whatever it considered necessary for the defence, in response to the results of the original investigation.

prevent the public hearing of his criminal case. On the advice of his Dutch lawyers, in that interview he invoked his right to remain silent. Pulatov did indicate that he wished to testify to a Dutch court, but in the end he never did so.

Pulatov opted to use video messages as a means to contribute without indicating that he felt that as a consequence his rights had been restricted or curtailed.

Taking all these matters into consideration leads the court to conclude that the summons without prior notice did not result in a breach of procedural rules.

Biased approach by the prosecution

Third, the defence argued that, during the investigation, the prosecution failed to maintain an objective and critical view at all times. The thrust of this line of defence is that the prosecution was guided by statements made by the Ukrainian Security Service (the SBU) immediately following the crash of flight MH17. Moreover, much of the evidence in this criminal case was obtained from or via the SBU.

The court sees this differently. The prosecution conducted its own investigation. Whenever using evidence submitted by or via the SBU, the prosecution explicitly acknowledged the origin of that material. This ensured caution and led verification and validation investigation to be performed.

Compilation of the prosecution file

The fourth subject refers to the fact that the defence continues to doubt whether all relevant documents were included in the prosecution file.

It is true that even after this had been repeatedly and explicitly pointed out by the court, the prosecution wrongly failed to conclude at its own initiative that certain documents were relevant for inclusion in the prosecution file. Rather, the prosecution left that decision to the court. The prosecution should have taken the decision itself.

The question as to what is relevant, however, also requires greater substantiation by the defence than merely suggesting that the investigation file may contain exculpatory details. After all, whether something is relevant also depends on what the defendant has to say about the charges.

If such a position has not been stated or has not been sufficiently, the relevance of a particular document is more difficult to assess. Up to the moment when he defence counsel present oral arguments, such clear positions were for the most part lacking and thus could not be taken into account when determining whether specific details were relevant.

Moreover, the defence was provided or was given access to large numbers of documents from the investigation file that are not part of the prosecution file. The defence only quoted from a small number of those documents in its oral arguments and requested inclusion of still fewer (of those documents in the prosecution file. Apparently, therefore, few of them were relevant.

Given that state of affairs and compared with the considerable size of the prosecution file, the court is convinced that the prosecution file contains the documents relevant to permit a judgment in these criminal proceedings.

Witnesses and the right to examine

The fifth and final subject is the assertion that, compared with the very large number of witnesses and expert witnesses in this complex and lengthy investigation, the very limited number of defence requests for investigation granted restricted Pulatov's ability to exercise his right of defence so severely, that it prejudiced his right to a fair trial.

Pulatov's defence counsel also argues that they were too severely restricted in their right to examine witnesses in cases where witness interviews were granted.

With regard to the restrictions applied to the interviews approved and conducted, the court sees no reason to find that more restrictions were applied by the investigating judge than necessary to protect the legal interests that were served.

Moreover, more important than the number of requests granted or rejected is the question whether the court will use specific statements as evidence, and, if so, how those statements relate to the other material used as evidence. This line of defence can therefore not result in a declaration of inadmissibility.

Conclusion regarding the right to prosecute

What do the above arguments mean for the right of the prosecution to prosecute? Two defects remain.

launch of the application containing the evidence of what happened to flight MH17, and who was responsible for it?

The court states first and foremost that it was not swayed by these defects, and that the defence's ability to present lines of defence was also not curtailed as a consequence. All things considered, these legal proceedings cannot be qualified as unfair. Moreover, seen in context, and given the massive scale of the investigation and the importance of the case, the defects do not justify the gravest sanction of barring the prosecution.

Course of events in the MH17 crash and assessment of the evidentiary material

The court will now discuss the evidence used in arriving at its judgment. The court will first focus on the cause of the disaster and will then discuss the possible role of the accused.

On 17 July 2014, flight MH17 crashed in Ukraine, resulting in the deaths of 283 passengers and fifteen crew members.

The court considers it legally and conclusively proven that flight MH17 crashed as a result of being struck by a Buk missile launched from a farm field near Pervomaiskyi.

There is ample evidence that justifies this conclusion.

Important evidence for the conclusion that the missile was launched near Pervomaiskyi is provided by photographs of a smoke trail, also known as an inversion trail. This evidence is supported by the statement of witness M58 and by satellite images of said launch site.

The impression conveyed by this evidence is also fully reflected in the content of intercepted conversations and visual material. The butterfly-shaped warhead fragment from a Buk missile that was discovered in the remains of a crew member and pieces of a Buk missile found in a groove and a truss of the aircraft also provide evidence that a Buk missile was fired. The results of investigation by the Netherlands Forensic Institute (the NFI) and the Belgian Royal Military Academy (the RMA) also provide evidence of such.

The court will shortly discuss this evidence in greater detail, but before it does so, it wishes to make the following comment.

The prosecution file contains dozens of reports from expert witnesses, both registered and otherwise, as appointed by the investigating judge. Prior to their appointment, the investigating judge not only determined their subject expertise but also their independence and objectivity.

On the one hand, the court views the representative of the Russian Almaz-Antey as a person with expertise on the subject. After all, Almaz-Antey is the designer and manufacturer of the Buk weapon system. On the other hand, Almaz-Antey is a state-owned enterprise, associated with the authorities of the Russian Federation.

Specifically these authorities deny any involvement in the conflict in eastern Ukraine and any involvement in the MH17 crash. In support of these claims, the authorities of the Russian Federation have repeatedly presented material intended to prove that not they but the Ukrainian authorities were responsible for the MH17 crash.

This so-called evidence, however, has repeatedly turned out to be forged or revealed clear signs of tampering. For that reason already, the association of Almaz-Antey with the authorities of the Russian Federation compromises the convincing weight of its assertions or those of its representative.

Furthermore, Almaz-Antey as an organisation has an interest in the outcome of the investigation, because sanctions were imposed on Almaz-Antey in connection with MH17. The court therefore does not view the representative of Almaz-Antey as an objective and independent expert witness as envisaged by law.

This reason alone does not render the findings and conclusions of this representative devoid of merit.

To convince the court hat its findings were accurate, Almaz-Antey should not merely have advanced assertions but should have substantiated its findings in a completely clear, transparent and verifiable manner.

It failed in this respect. Simply referring to its long experience and many reports on its own research are insufficient to cause the court to doubt the results of investigations conducted by objective and independent expert witnesses.

Nor have the reports from an American agency tendered by Pulatov's defence counsel convinced the court. Put briefly, the content of these reports simply repeats the conclusions reached by Almaz-Antey, based on the principles asserted by Almaz-Antey, but without any further supporting argument or own investigation.

As will become clear, these reports therefore offer hardly any added value.

Deliberations on the evidence structure

a Buk missile fired from a farm field near Pervomaiskyi.

The person who took the first series of photos was interviewed as a witness. He stated that the pictures were taken from a balcony in his house in Torez on 17 July 2014 at 16.25. The pictures, the camera and the memory card have been examined by the NFI. Nothing indicates any tampering with the images on these photographs. The time at which the photos were taken was verified by the Royal Netherlands Meteorological Institute (KNMI).

Based on the examination of the landscape features on the photos, the court concludes that the pictures were taken in Torez, and that the inversion trail originates from the direction of Pervomaiskyi. These conclusions, combined with the time the pictures were taken and assuming the position of flight MH17 at the time that it disappeared from the radar, allow the court to determine that these photos display the inversion trail of a missile fired from the direction of Pervomaiskyi towards flight MH17 at around the time flight MH17 crashed.

Moreover, the file comprises two other photos of an inversion trail that were found on the internet. The person who took these photos has not been identified. The photos are found to have been uploaded on 17 July 2014 and have what is known as a 'File Modification Date' of 17 July 2014 16.22. The landscape features on this photo place the photographer in a block of flats in the centre of Snizhne and indicate an inversion trail toward the south, where Pervomaiskyi is located. These photos have been examined by the KNMI as well.

Each of the photos from Torez and Snizhne indicate only a direction of the origin of the inversion trail. When seen in context and considering the slope in the landscape, however, these directions intersect slightly to the west of Pervomaiskyi.

Furthermore, the court has made use of the statements by witness M58. He is an important eyewitness and made very comprehensive and detailed statements.

M58 stated that he was part of the reconnaissance group under the command of the accused Kharchenko. On the afternoon that flight MH17 was shot down, he was located near a checkpoint close to an intersection on the road from Snizhne to Marinovka.

Based on the point on a satellite image where witness M58 drew the intersection, other drawings he made of the intersection, and what he stated about it, it appears to be the intersection on the T0522, slightly west of Pervomaiskyi. On that afternoon, M58 was positioned at some point in a field in the northwest corner of the intersection.

He was near the tent or tents that had been erected in that field and heard something driving along the unpaved road in the field to the south of the field where he was positioned. He described the sound as that of the caterpillar tracks of a tank. A bit later he heard a loud explosion and noticed a missile zigzagging that left a smoke trail behind.

He did see how the aircraft fell from the sky after the missile exploded. Next, when he walked towards the crossroads and looked in the adjacent field, he observed a Buk TELAR that was short of one missile. Subsequently, the Buk TELAR passed him on the crossroads. The court considers that the field referred to M58 as being where he observed the Buk missing a missile, is located exactly in the area from which the smoke trail originated that is on the pictures from Torez and Snizhne that have just been discussed.

Based on a report by a court psychologist, the defence argued that M58's statements are unreliable owing to a large number of shortcomings.

Like the prosecution, the court finds that these examples of alleged shortcomings are very often based on an incorrect representation of the statements themselves or of the circumstances under which they were made, such that the court will disregard the conclusions drawn in the report.

However, this has no bearing on the fact that the court itself must assess the reliability of witness M58 and his statements. The court remarks the following in this respect.

The accuracy of the many aspects of M58's statement with regard to his participation in the armed combat on the side of the DPR have been verified. Not merely by means of publicly available information, but also by means of information that was not shared with the public. Therefore, the court sees no reason to doubt his statements about said participation. This also applies to his presence at the relevant crossroads on the day that MH17 crashed.

However, this still does not mean that there is no reason to doubt the essence of his account of what happened on that day, as M58 did make inconsistent statements with regard to some matters during various interviews.

The court has explained at length in the judgment why, when it studied the interviews and the manner in which the contacts with M58 were conducted, it did not find any indication that such inconsistencies were due to intentional inaccuracies. This means that M58 did not make deceitful statements.

However, the court also has consider whether the inconsistencies in his statement affect the probative value of the essence of his account, as his memory may have failed him.

Given the lapse of time and the hectic situation, the court does not consider it surprising that a degree of uncertainty arose with M58. This regards details that he was not aware at the time he observed them, could become relevant.

For instance, the time at which and the exact location where he was, the exact distance between the Buk TELAR and the crossroads and at what altitude the aircraft was flying.

This means, on the one hand, that the probative value of M58's statement with regard to such details is not great, but, on the other hand, that such inconsistencies do not affect his statement with regard to those observations that must have made a much greater impact due to their nature. This pertains to the actual firing of a Buk missile and the joy about hitting a military aircraft and the transition from joy to horror when it became clear quite soon that a passenger aircraft had been hit instead of a military aircraft. He was never in doubt when it came to such matters that would necessarily make a big impression on a person.

Consequently, the court holds that M58's statement is reliable.

The use of M58's statements is also not contrary to a fair trial.

The defence was able to interview this witness for several days before the investigating magistrate. In doing so, the defence and the prosecution had ample opportunity to ask questions and M58 responded to all questions put to him. Some restrictions applied to the conduct of the interview, but those were required to protect the witness.

Furthermore, M58's statement is not isolated in the total evidential structure. The evidence also comprises validated photos, videos, intercepted conversations, transmission mast details and expert reports.

The file also comprises an analysis of the satellite images of the farm field. That analysis supports the conclusion that the farm field indicated by M58 was the launch site. A comparison of the satellite image of this farm field made on 16 July with those made on 20 and 21 July 2014 shows that several changes occurred in that period that may indicate that a missile was fired in the intervening period.

This pertains to a dark-coloured triangular patch of the field in the north-western corner of the field. The journalist who observed and filmed that part of the field on 22 July 2014 mentioned traces of fire. Firing a Buk missile causes a flame jet that may cause a fire.

Further down, tracks are visible that run into the discoloured patch of the field and are over three meters wide, similar to those of a Buk TELAR. Those tracks are in the corner designated by the KNMI, based on the wind direction, as the most probable corner in that patch of the field for the launch.

That northern side of the field also meets the requirements for deployment of a Buk TELAR. The ground is accessible, secured by a separatist checkpoint and free of high voltage cables. Furthermore, the field is at the highest elevation in a five kilometre radius and barely visible due to the rows of trees. For targets flying at high altitude the distance of a Buk TELAR from the row of trees is less relevant. In addition, the row of trees provides direct cover.

Added to that, it was discussed in several intercepted telephone conversations between the separatists in the morning of 17 July 2014 that a Buk was on its way and had to proceed to 'Pervomaiske'. The court deems this to be very convincing evidence that this field near Pervomaiskyi was the launch site and that it was a Buk missile.

The probative value of the substance of these conversations is bolstered once more by the fact that the picture painted in these conversations about where the Buk TELAR originated from and where it was to go is confirmed by the transmission mast data. In short, the relocation of the telephones that were tasked with the transport according to the intercepted conversations tallies with the route travelled by the Buk TELAR.

The Buk TELAR was also captured on footage on several occasions at a time that matches this route up to near Pervomaiskyi. As such, the Buk TELAR was moved eastbound from Donetsk via Makiivka, Zuhres and Torez to Snizhne.

In this respect, the court refers to the picture taken on Illicha Avenue in Donetsk, the video recorded near the Motel roundabout in Donetsk, the video near Makiivka, the video in Zuhres, and the photo and video in Torez, which show how a Buk TELAR was transported towards Snizhne, in each instance on the very same Volvo flatbed trailer with a white cabin.

The images from Donetsk clearly show that the Buk TELAR carried green Buk missiles with a white head. The court saw on the video recorded in Makiivka that four were present at that time.

The photo and video of a Buk TELAR driving south from Snizhne towards Pervomaiskyi show a Buk TELAR that is not transported on a flatbed trailer but driving self-propelled at the time.

This indicates that the Buk TELAR was not far from its intended deployment site. At the time that this video was recorded, the Buk TELAR was actually only a few kilometres from the relevant field near Pervomaiskyi.

TELAR.

These images have been verified to the extent possible with regard to location and timing and scrutinized for authenticity. No traces of tampering were found.

Finally, the court bases its conviction that a Buk missile was fired at MH17 and actually downed MH17 on the findings with respect to the fragments originating from a weapon found on the crash site that have been analysed.

In doing so, the court took into account fragments that are both specific to a particular weapon and, at the same time, have an evident link to the cause of the crash, i.e., because they were retrieved from bodies of victims or were trapped in pieces of wreckage and, consequently, must originate from the weapon.

A specific fragment was retrieved from the body of one of the crew members in the cockpit. The court recognises a clear incomplete bow-tie shape in this fragment.

Furthermore, the investigation shows that this fragment can hardly be distinguished, or not at all, in terms of elemental composition from, and belongs to the same group as, other fragments that were retrieved from bodies and pieces of wreckage. It also appears that these fragments cannot be distinguished, or hardly so, from bow-tie shaped fragments from one of the reference Buk warheads of the new type.

The defence argued, referring to research performed by Almaz Antey, that the fragment found cannot be from the unique bow-tie shaped fragment since it is too light.

However, the court considers that it follows from the arena test with a full missile with a Buk warhead of the new type that upon detonation warhead fragments break into smaller pieces. Some bow-tie shaped fragments with an original weight of 8.1 grams only weighed 2.5 grams after detonation.

As such, it seems possible that the 5.7-gram fragment that was retrieved was also, originally, a bow-tie shaped fragment, based on that weight, which is unique to a warhead of the new type.

A second fragment that is relevant to the court is the green lump that was found embedded in the groove of the left cockpit window. This lump was analyse and it was concluded that the lump matches the base plate of both the old and new type of Buk missile. In view of the many similarities in appearance that were also observed by the court itself, there is no doubt whatsoever that the green lump is part of such a base plate.

This also applies to a metal part that was retrieved coiled and embedded in a frame. This metal part was also investigated for outward appearance such as shape, stripes, and traces. It was concluded that the part matches the sliding panel of both of these types of Buk missile. These observations were also made by the court itself, and the composition of this part also matches a specific part of both the old and the new type of Buk missile. The dynamically impacted lump and the metal part are unique to a Buk weapon system according to the RMA expert.

In view of where they were found, the bow-tie shaped fragment, the lump and the metal part of the weapon must originate from the weapon that struck MH17. Based on their outward appearance and their metallurgical composition, these objects identify the weapon as a Buk missile. None of these fragments relating to the cause of the disaster, point to a weapon other than a Buk missile. That is why the court accords great probative value to these pieces of evidence.

In conclusion, the court considers that each of the said sources, the photos from Torez and Snizhne, the statements by M58, the satellite footage, the intercepted conversations and transmission mast data, the photos and videos of a Buk TELAR on 17 and 18 July 2014 and the findings with regard to the fragment in the body, the objects in the frame and the groove of the aircraft, constitute strong evidence in themselves for the conclusion that MH17 was, in fact, struck by a Buk missile. However, when considered in context and one in relation with the other, the court holds that no reasonable doubt remains whatsoever.

Pulatov stated that the intercepted telephone conversations were intended to mislead and to give the enemy the impression that a Buk TELAR was present when this was actually not true, or at least that said Buk TELAR was not operational.

The court holds this to be totally implausible. The evidence used demonstrates that there was indeed a Buk TELAR with missiles that drove towards Pervomaiskyi, that actually fired a Buk missile from a farm field, which downed MH17. Consequently, this line of defence is very largely belied by the evidence.

Some of the accused and other individuals have suggested, far from the courtroom, that the evidence, such as images and audio material has been tampered with. The court remarks in this respect that this suggestion does not take account of the fact that it is not a matter of one single photo, video, or intercepted conversation, but rather of a multitude of types of evidence, that in many cases became available swiftly.

The court deems it inconceivable that such a quantity of evidence of different types could have been fabricated so quickly, effectively and consistently without leaving a single trace.

Must it have been Zaroshchenske?

Pulatov's defence has argued that the Buk missile must have been fired from a location near Zaroshchenske. She referred to the findings contained in the reports from Almaz-Antey and the statements made by the representative of Almaz-Antey to the investigating judge. The court can only attribute any value to the findings of Almaz-Antey if they are verifiable and the reasoning is entirely clear, transparent and reproduceable.

However, the court notes that the expert witnesses of the Netherlands Aerospace Centre (the NLR) and the Belgian Royal Military Academy (RMA) agree that the methods and principles of Almaz-Antey are not transparent.

Specifically, since the methods and basic principles of Almaz-Antey that suggest a launch area close to Zaroshchenske are not clear, transparent and reproduceable for the other expert witnesses, and as a consequence are also not verifiable by the court, the reports and findings of Almaz-Antey and its representative lack any cogency.

The previously mentioned American agency also referred to the calculated launch area. This report criticises the findings of the NLR and the RMA. At the same time, in a reference to the findings and basic principles of Almaz-Antey, without any substantiating argument, it is submitted that the conclusions of Almaz-Antey are correct.

The report by the American agency also fails to clarify why these basic principles, findings and conclusions are allegedly correct and, as a consequence, still fails to lend the necessary cogency to the calculations by Almaz-Antey.

The question arises as to whether it is nevertheless possible that the launch area should in fact be sought near Zaroshchenske, and whether sufficient investigation was conducted into the possibility of another scenario than the main scenario. Besides this main scenario, the JIT did conduct extensive investigations into other scenarios but cast them aside, for a number of convincing reasons.

Whatever the case may be, those other possibilities are already excluded by lawful and convincing evidence which in the opinion of the court incontrovertibly and conclusively demonstrates that MH17 was downed by a Buk missile, fired from a field near Pervomaiskyi. It is therefore unnecessary to exhaustively follow up other lines of inquiry.

Finally, with reference to a report by the American agency, Pulatov's defence referred to what it considers to be the more plausible alternative scenario: that a Ukrainian Buk TELAR must have fired a Buk missile from an area slightly to the east of Zaroshchenske, aimed at an Air India aircraft that had crossed the border with the Russian Federation, travelling from the east.

The court first points out that this scenario is already refuted by the previously discussed evidence and as such represents no alternative scenario that does not contradict the evidence. There are, however, more reasons why this scenario should be despatched to the realm of fantasy.

At the moment the missile was launched, the Air India aircraft was already far beyond the range of the Buk missile. At that point, it is not technically possible to launch a Buk missile.

Moreover, the functioning of the radar echoes excludes the possibility that the on-board receiver on the Buk missile could have picked up the signal of the MH17 in flight. After all, the radar of the Buk TELAR would be constantly transmitting signals at an angle of ten degrees to the east, towards the Air India aircraft, the alleged original target. As at that moment MH17 was approaching from a different direction, namely the northwest, those signals could not have possibly reached MH17 and been reflected by MH17.

The court further doubts whether a Buk missile - launched in an easterly direction - possesses sufficient manoeuvrability that it would be capable, in flight, of completing the U-turn that would have been necessary to hit MH17. However, the court considers it unnecessary to investigate this possibility, given the previously mentioned technical reasons that already exclude this scenario.

Moreover, the court considers it irrelevant and hence unnecessary to hear the rapporteurs associated with the American agency as expert witnesses, given the above-mentioned lack of credibility and cogency of the reports of this agency. The court therefore rejects this request.

MH17 was therefore downed by a Buk missile fired at MH17 from a TELAR from a field near Pervomaiskyi.

Role of the accused and the legal interpretation of that role

The court ascertained from a large number of intercepted conversations what took place in the days prior to the crashing of MH17 in Eastern Ukraine.

Extensive investigations into the reliability and authenticity of intercepted conversations revealed no indications to suggest that this material was not reliable or authentic. Investigations also convincingly identified who took part in the conversations.

On the basis of this investigation, the court concludes that all intercepted conversations used by the court in evidence were conducted by the accused on the telephone numbers attributed to them, and that those conversations were authentic and not tampered with.

occurred that can be seen and heard on the material. In a number of cases, the maker of the visual material and other persons who were present during the recording of the visual material were heard. Wherever possible, the recording devices were investigated.

The court itself also ordered further expert examination inter alia of a video of a self-propelled Buk TELAR in Snizhne and a photograph of a Buk TELAR on a trailer in Donetsk. No evidence of manipulation was found in this examination.

In the judgement, the court describes a large number of intercepted conversations and much visual material, and on that basis draws a number of conclusions regarding the behaviour of the accused and their role.

For example, the court asserts that in the night of 16 to 17 July 2014, a Buk TELAR was transported from the Russian Federation, by DPR fighters. The need for anti-aircraft artillery of this kind had existed for some time and following heavy fighting on 16 July 2014, whereby the DPR suffered heavy losses without being able to offer sufficient defence against air strikes, the system was more than welcome.

The Buk TELAR transported in the night and early morning was sent from Donetsk to the frontline near the passage known as the corridor, between Snizhne and the border with the Russian Federation to the south. In the afternoon of 17 July 2014, that same Buk TELAR was deployed in territory occupied by the DPR near Pervomaiskyi, in their fight against the Ukrainian army. As a consequence of that deployment, flight MH17 was downed, with fatal consequences.

After it became clear that this disaster had been caused by the deployment of the Buk TELAR, it was swiftly returned to the Russian Federation, in the expectation of averting an international outcry.

It follows from the evidence that the actual arrival of the Buk TELAR was initiated by the accused Dubinskiy, and that the transport of the Buk TELAR to and from the launch site was organised and managed under his direct command.

There was also a direct and active role in that transport operation for accused Kharchenko, who was actually responsible for and organised the escort of the Buk TELAR from Donetsk to Pervomaiskyi. Kharchenko was also responsible for ensuring that the Buk TELAR was guarded and protected at the eventual launch site. The escorting and guarding of the Buk TELAR during the transport to and at the suitable site is a crucial task that makes an essential contribution to the deployment of the Buk TELAR.

Accused Pulatov was informed by Dubinskiy of the arrival and presence of the Buk TELAR. Accused Pulatov met accused Kharchenko, who on the morning of 17 July 2014 was escorting the Buk TELAR, at the Furshet in Snizhne where he saw the Buk TELAR. The deployment of the Buk TELAR took place in the context of the fighting which took place to the south of Snizhne on 17 July 2014 and on the preceding days. The aim of this fighting was to create a passage through the area, the so-called corridor, to the Russian Federation.

Accused Pulatov, acting on the instructions of accused Dubinskiy, had conducted advance reconnaissance for that corridor and had a coordinating role in creating and defending the corridor. On 17 July 2014, accused Pulatov was heavily involved in fulfilling his responsibilities with regard to that corridor.

In the months leading up to, on and after 17 July 2014, as Minister of Defence, accused Girkin was the military commander of the DPR. He was responsible for the establishment and deployment of the military arsenal and for the deployment of DPR combatants. He controlled and commanded the conflict against the Ukrainian army, consulted with his commanders in the field and issued them with clear strategic instructions. He held discussions with the LPR and with responsible persons in Moscow. He also requested assistance from Moscow for and during the fighting.

The court notes that the actions of the crew of the Buk TELAR when launching the Buk missile at MH17 cannot be established on the basis of the case file.

The case file also fails to identify who issued the instruction to launch a missile, and why that instruction was issued. Nevertheless, even without that specific knowledge, certain comments must be made about the deployment of a Buk TELAR, as an essential element of the legal deliberations by the court.

The primary purpose of a Buk weapon system is to down aircraft. The court itself observed the enormous destructive power of the weapon and its consequences during the judicial site visit. The possibility of the occupants of an aircraft surviving a Buk missile attack is zero. Anyone deploying a costly, specialist weapon like a Buk TELAR will be fully aware of this fact.

In what is known as the target acquisition process that precedes the firing of a Buk TELAR, a target is first identified. The target is then checked, and the decision is taken whether or not to fire a missile at that target.

These stages and decisions not only relate to the technical functioning of a Buk TELAR, but are also prescribed for participating in hostilities, according to international humanitarian law. Consideration must also be given to whether the deployment of the weapon will or can result in damage to objects or unintended victims.

This may lead to the decision to abort or abandon deployment of the weapon, for example, if it is recognised that the target is in fact a civil aircraft.

Making the system ready and the actual firing of a missile follow a set procedure. That procedure breaks down into several stages, which means that the firing of a Buk missile does not take place accidentally or on impulse, but very deliberately and consciously, according to a method based on technical requirements.

In the opinion of the court therefore, the firing of the missile at the target in question was intentional and involved premeditation. Given the nature of the weapon and the target at which it was fired, the consequences of firing the missile are abundantly clear: namely, causing the aircraft to crash and the death of all its occupants.

The court is of the opinion that although it appears that the Buk missile was launched intentionally, this was done so in the belief that the target aircraft in question was military and not civil. In that respect, it must have been an error. Nevertheless, an error of this kind does not detract from the intent and the premeditation.

It is also important to consider that due to the absence of any combatant immunity, just like any other civilian, the accused were not entitled to fire at any aircraft whatsoever, also not a military aircraft, thereby killing the military occupants. The realised criminal act of downing an aircraft and killing the occupants was therefore inherent in the original plan.

To convince the court of the accuracy of its findings, Almaz-Antey should not have limited itself to advancing assertions, but instead should have supported its findings in a completely clear, transparent, reproduceable and verifiable manner.

It failed in this respect. Simply referring to its long experience and many reports on its own research are insufficient to cause the court to doubt the results of expert opinions that were provided by objective and independent expert witnesses.

The reports from an American agency tendered by Pulatov's defence have until now not convinced the court. Put briefly, the content of these reports amounts to nothing more than a repetition of the conclusions drawn by Almaz-Antey, on the basis of the basic principles and findings presented by Almaz-Antey, but without any further supporting argument or own investigation.

As will become clear, as a consequence, these reports offer barely any added value.

The sentence to be delivered

Firstly, the court wishes to state that persons other than the accused in this criminal case may be reproached for the fact that the separatists deployed and used a Buk weapon system.

The fact of the matter is that the weapon had to be provided before it could be deployed. It had to be transported and guarded, and the deployment itself must have been planned and implemented.

It is the view of the court that anyone who played a role in this bears, at least, moral responsibility for the consequences of deploying such a weapon, a weapon which by its very nature is capable of causing the total destruction observed during the judicial site visit.

That destructive force led, most importantly, to the death of the 298 people, men, women and children onboard. In an instant, without warning, their lives, and those of their loved ones seated next to them, were cruelly ended. In that single moment, these people were robbed of their life and future.

The accounts of the relatives make it abundantly clear how the victims had been enjoying full lives. Their lives were far from over, indeed some had barely begun, and their futures could have held so much. The future was brutally stolen from them.

This threw the lives of their relatives into disarray. It was made clear to the court, with great effect, just how completely different those relatives' lives were after the MH17 crash: clearly, there was life before the crash and life after it.

The court considers it impossible for anyone to comprehend how it was for the relatives to receive the message that their loved ones had died as a result of MH17 being downed and how it was for them to have to continue on afterwards.

The consequences for many relatives have proven to be unimaginably great. In some cases, they have lost several children, grandchildren, parents, grandparents, brothers, sisters and other members of the family. At a stroke, their life has been changed in a terrible way; a situation that persists to this day and will continue forever.

The court also wishes to say a word about the impact that the crash has had on the local people of eastern Ukraine. They too were confronted with the awful consequences of the downing of MH17 on 17 July 2014. Wreckage and people fell from the sky, in some cases literally through the roof of their homes. Quite some time passed before recovery and repatriation of the victims and wreckage began. This too must have been appalling for them.

To date, no one has come forward to clarify who was responsible for this tragedy. Uncertainty about the cause of and the reasons for this catastrophe therefore persists. This is a source of frustration to the relatives and stymies their healing process.

Once it became clear what had happened on 17 July 2014 and the accused understood that a civil airplane had been downed causing hundreds of deaths, including those of dozens of children, all three became actively engaged in transporting the Buk TELAR back to the territory of the Russian Federation, from where it had arrived earlier that day.

their acts in a further negative light and is an aggravating factor with respect to the weight of the sentence to be delivered.

The court also takes into account that none of the accused have come forward to the JIT to make a statement, in which they could have cast light on what actually happened. However, far from this courtroom, they have made statements about this criminal case and about the fact that they were charged, but have denied being involved in any way.

Girkin has repeatedly and somewhat suggestively claimed that the DPR fighters did not participate in the downing of flight MH17. Beyond that he remains silent on the matter. He has, however, made very hurtful comments about the occupants of the airplane, comments that were close to being disrespectful.

Dubinskiy has said on a number of occasions that he was not involved in the MH17 flight crash. He rejects all involvement out of hand and casts doubt on the investigation and its results by making baseless statements about manipulation of intercepted telephone calls and non-existent witnesses. That is in stark contradiction to the determinations which the court makes in its judgment based on the evidence available. It is apparent from all that the court has considered that he does know better.

Kharchenko has stated that there was no Buk TELAR located in the relevant area, nor did he ever see it. In so doing, he too rejects any involvement out of hand. This position too stands in stark contradiction to the many facts and circumstances ascertained by the court. He too knows better.

The court considers the stance and behaviour of the accused, who only react or dare to react from afar, to be divorced from reality and therefore disrespectful and unnecessarily hurtful to the relatives. This can, therefore, in no way have a positive effect on the weight of the sentence to be delivered.

Therefore, although the accused entirely knowingly contributed to the intentional downing of an airplane in the knowledge that those on board would die, a military airplane – which was probably the intended target – does not as a rule have 298 persons on board.

Although the downing of a military aircraft was also prohibited, the court cannot ignore the fact that in the context of the combat waged, a military aircraft would indeed have been of a different order to shooting down a civil airplane knowingly and wilfully killing 298 men, women and children with no connection to the combat.

Although the intention does not lessen the gravity of the event, it does go to the degree of culpability.

In the opinion of the court, the consequences of the crime are so grave, and the attitude of the accused with respect to what happened is so reprehensible, that a limited prison sentence cannot suffice.

The trial did not reveal any personal facts or circumstances that the court need take into account when sentencing. However, the court does find reason in the sentencing decisions of international tribunals, in particular, to take the individual role and position of the accused into consideration in determining an appropriate sentence. That is why the court has also studied the different roles of the accused, their position and responsibilities within the DPR.

As Minister of Defence, Girkin had the highest rank in operational terms in the armed combat, and as such was responsible for his men. Although it cannot be established that he was aware of the deployment of this specific Buk TELAR, it could be established that he approved and supported anti-aircraft defence practices of this type that took place under his responsibility.

As commanding officer, Dubinskiy can also be seen as the coordinator of and cooperating foreman in all activities related to the supply, transport, deployment and removal of the weapon. He therefore not only held a high hierarchical position, just below Girkin, but also played a major role in, and thus made an important contribution to, perpetration of the crime.

Kharchenko is the one who, through carrying out the orders that he received from his commander, Dubinskiy, was most directly involved in the actual perpetration of the offences deemed to be proven. However, in executing those orders, he in turn also gave orders to his subordinates. He therefore was part of the middle level of the hierarchy.

The court is of the opinion that the high hierarchical position and the considerable coordinating role which Dubinskiy played in having the Buk TELAR collected from the Russian border in the night of 16 to 17 July 2014, and in its direct deployment that same day, as a consequence of which flight MH17 was downed, as well as his role in the removal of the Buk TELAR, can only be punished with a sentence of life imprisonment.

The court asked itself whether the fact that it cannot be established that Girkin had any knowledge of the deployment of this specific Buk TELAR and that he made no concrete contribution to it, means that a (maximum) limited prison sentence would suffice for him.

However, the court is of the opinion that a limited prison sentence would not do justice to the responsibility that Girkin bore, as Minister of Defence and commander of the armed forces of the DPR, for the deployment of weapons in the conflict. After all, with respect to this specific deployment, it is certain that Girkin not only accepted such deployments, but even made them possible thanks to his contacts with the Russian Federation. In addition, he directly intervened in the return of the Buk TELAR to the Russian Federation and took action to facilitate it.

justice to his direct and active involvement in the deployment throughout the operation.

He was, after all, the one who gave his men orders leading to the Buk TELAR arriving at the launch site. He was also personally directly involved in the transport to, and guarding of, the Buk TELAR at the launch site, and the Buk TELAR was removed again that same evening and night under his direct supervision. His lower hierarchical position, therefore, does not counter-balance the above considerations such that a limited prison sentence might suffice. The facts are too grave and his role too great for that to be the case. That means that the court will also sentence Kharchenko to life imprisonment.

Which leaves the question as to whether a reasonable period of time has been exceeded. The court holds that, given the interrelated nature of the four criminal cases and the expeditious criminal proceedings against the defendant Pulatov, a reasonable timeframe has not been exceeded and therefore this aspect need not be taken into consideration.

Finally, the court recalls that which it stated during the preliminary questions with regard to naming the names with personal details and showing pictures of the accused during a press conference, as well as with regard to the application published by the prosecution. The court will now address the consequences which these breaches of privacy should have when determining the sentence. The court has taken into account the extent to which the defendant has indicated that these procedural errors have damaged his interests.

Unlike the defendant Pulatov, the accused Girkin, Dubinskiy and Kharchenko have not indicated that their interests have been damaged, let alone explained what interests, specifically, might have been harmed. Under these circumstances, the court sees no reason to attribute such weight to the procedural errors that were also made in their cases that a limited prison sentence rather than life imprisonment would, nonetheless, apply in their cases. In the current circumstances, the consequences of a breach does not sufficiently weigh up against the gravity of the charges proven.

In summary, the court finds the offences proven are so grave and the consequences so great that it, in this case, only the heaviest prison term possible is a fitting sentence for what the accused have done, causing so much suffering to the many victims and their relatives.

The court realises that imposing this sentence cannot take away the grief, but expresses the hope that the fact that the matter of guilt or innocence has now, exactly eight years and four months after the disaster, been determined can provide some comfort to the relatives.

All the above leads the court to sentence Girkin, Dubinskiy and Kharchenko to life imprisonment.

Considering the gravity of the charges proven, the sentence imposed, and the serious violation of the rule of law, the court orders the arrest of those convicted.

The court acquits the defendant Pulatov.

The court refers to the full text of the judgments with respect to its other decisions. As regards the decisions concerning seizures, the prosecution will not execute those decisions until the cases against the accused have been declared final. These objects, including the reconstruction, will be available for further investigation as long as these cases are before the courts.
What does this mean for the assessment of charges against the accused?

The court first points out, contrary to the assertions of the prosecution, that there is no evidence that the accused formed a close-knit, collaborating perpetrator group that focused on downing Ukrainian aircraft. No basis can be found in that assertion for the criminal liability of the accused. For that reason, the court has looked further to the actual actions of the accused.

The court further determined for each suspect whether they can be considered a co-perpetrator, by themselves having made a sufficiently weighty contribution to the deployment of the Buk TELAR, and whether they thereby collaborated consciously and closely with others.

If this is not the case, the court then determined whether the accused can nonetheless be held responsible for another person's contributions to the deployment. This latter situation is referred to as functional co-perpetration.

A number of conditions have been developed in the case law of the Netherlands Supreme Court with regard to this functional responsibility. In brief, it means firstly that it must be determined that the accused accepts or ordinarily accepts that the crime is to be committed. Secondly, it must be determined that the accused is in a position to determine whether the crime will be committed, in other words that he has authority over the committing of the crime, and that he can make or break it.

In this respect, the approach of the court is the opposite to that of the prosecution. The court finds it more appropriate to first evaluate the specific personal contribution of the accused to the crime. Only once it has been concluded that a person cannot be seen as perpetrator or co-perpetrator, does the court arrive at the question of whether this accused should be characterised as a functional co-perpetrator because he is responsible for another person's contribution.

That then outlines the legal framework. The court will now consider the conduct of the accused, in the light of this framework.

subordinates in the implementation of those tasks. He also subsequently informed Dubinskiy of the successful deployment of the Buk TELAR and of the fact that it had been secured. In addition, once again on the instructions of Dubinskiy, he organised the removal of the Buk TELAR.

The court views Kharchenko as a collaborating foreman in essential actions that contributed to the actual firing of the Buk missile. His effort and involvement in advance, and also in the return of the Buk TELAR to the Russian Federation, represent substantial contributions to the eventual deployment of the Buk TELAR at the launch site. In so far as Kharchenko himself contributed to the execution, he did so in close and conscious collaboration with others involved in the deployment, including the crew. As such, Kharchenko must be viewed as a co-perpetrator in both charges.

However, in both a factual and legal sense, he is also criminally responsible for the contribution of his subordinates to the deployment of the Buk TELAR. After all, he was not only aware of the plans regarding the deployment of the Buk TELAR, but also instructed his subordinates to make a substantial contribution to that deployment, specifically consisting of escorting the Buk TELAR, guarding the Buk TELAR at the field and subsequently firing the Buk TELAR.

Because the court has already qualified the personal contribution by Kharchenko to the deployment of the Buk TELAR as co-perpetration, the court has no need to qualify his instruction of his subordinates as the actions of a functional co-perpetrator. For that reason, in respect of Kharchenko, the court declares the principal charges under 1 and 2 (classic) co-perpetration to be proven.

Dubinskiy, the ranking military commander within the DPR, fulfilled an initiating and organising role in the transport of the Buk TELAR from the Russian Federation, in the night and early morning of 16 to 17 July 2014, and a guiding role on 17 July 2014 as the party who ordered the transport and guarding of the TELAR at the launch site. He left the actual implementation of these tasks to his subordinates, to whom he issued the necessary orders and in respect of whom he was therefore in a position of authority as their superior. The court considers these actions to be of such essential and substantive importance for the committing of the crime that these actions can be classified as co-perpetration.

At the very least, Dubinskiy cooperated closely and consciously with Kharchenko and the crew. These actions are furthermore confirmed in the actions of Dubinskiy in the removal of the Buk TELAR following its use. In respect of Dubinskiy, the principal charges under 1 and 2 as (classic) co-perpetrator can therefore be declared legally and conclusively proven.

At operational level Girkin was the ranking military commander of the DPR, and as such held (final) responsibility for the deployment of military equipment in and for the DPR. Intercepted conversations reveal that Girkin maintained very regular contacts with Moscow concerning equipment and obtaining actual military support, including anti-aircraft artillery with trained specialists, with a view to holding Eastern Ukraine. This can have had no other purpose than to actually deploy these systems in the conflict being undertaken by the DPR. It follows from the case file that this actually took place. Under Girkin's authority as ranking military commander, much fighting took place, resulting in loss of life and injuries, and much material damage. This included firing on aircraft and helicopters, which on numerous occasions resulted in their crashing.

Although extremely plausible given his position, the material evidence does not prove that Girkin was aware of the availability of a Buk TELAR on 17 July 2014, before it was fired. It is therefore not possible to determine any individual or active contribution to this event by Girkin. As such, he was not a classic co-perpetrator.

Nevertheless, Girkin was and continued to be kept abreast of the current situation regarding the fighting around the corridor, in which connection he issued orders. He issued instructions for the supply and movement of tanks and determined who was in command. However, Girkin made no reference by telephone to a Buk or its deployment.

As ranking military commander, Girkin was in a position to decide whether or not a Buk TELAR should be deployed. That authority followed from his position as Minister of Defence, the hierarchical superior to Dubinskiy and Kharchenko, and is also reflected by the telephone conversations held by Girkin, once it became clear that the deployment of the Buk TELAR had gone wrong. At that point, Girkin became actively involved in the return of the Buk TELAR to the Russian Federation, issued the necessary orders and maintained telephone contact on the matter to ensure that he was informed that his orders had in fact been carried out.

Furthermore, conducting the armed conflict was an important means, and was indeed specifically the primary means employed under the authority of Girkin as ranking military commander for achieving the objectives of the DPR. Part of that armed conflict was the downing of aircraft. That the deployment of military means had led to loss of life was a fact of which Girkin was also of course fully aware. This is certainly also the case in respect of the deployment of anti-aircraft artillery to down aircraft; something which had already occurred on numerous occasions prior to 17 July 2014.

Although the case file contains no evidence that Girkin was aware of the availability of a Buk TELAR on 17 July 2014, it can automatically be argued that a deployment such as that of the Buk TELAR on 17 July 2014, resulting in loss of life, was something that Girkin would certainly have accepted. The court arrives at this conclusion based on his role and senior position, his request for decent anti-aircraft artillery, the fact that Girkin was aware of the deployment of military equipment with which various aircraft had already been downed, resulting in loss of life (events against which no action had been taken) and the fact that on and around 17 July 2014, Girkin was actively involved in the military operation in and around the corridor.

considers it legally and conclusively proven that Girkin was in a position to decide on the deployment and use of the Buk TELAR, and that he accepted that deployment, including all its consequences. Girkin can therefore be classified as a functional co-perpetrator of the co-perpetrated offences. However, in respect of him, this does not result in the same conclusion as for Kharchenko and Dubinskiy, namely that the principal charges under 1 and 2 as co-perpetrator can be declared legally and conclusively proven.

In the indicted period, Pulatov was area commander in the extended environment of Snizhne. In that area he commanded the troops and was tasked with establishing and maintaining the previously mentioned corridor. The court notes that the said corridor occupied an essential function in maintaining and reinforcing the position of the DPR in the Donbas area. Seen in that context, as coordinator, Pulatov fulfilled a very important position and role in that part of the Donbas.

It follows from assembled information from the aforementioned intercepted conversations that on 17 July 2014, the broader task of managing the corridor at least involved taking delivery and strategically deploying a number of tanks supplied by the Vostok battalion and taking delivery of and deploying the Buk TELAR.

In the morning of 17 July 2014, Dubinskiy informed Pulatov that Kharchenko intended to provide Pulatov with a Buk TELAR, and Dubinskiy instructed Pulatov where the weapon system should be installed, together with the instruction to coordinate all these activities. A short time previously, Dubinskiy had issued similar instructions to Kharchenko, when he told him to travel to Pervomaiske, with the Buk TELAR and that it was his task to escort and guard the Buk TELAR. It follows from the case file that after receiving this instruction from Dubinskiy, Kharchenko did actually set off for Snizhne, with the Buk TELAR, where he agreed to meet Pulatov at the Furshet.

It follows from the intercepted conversations that in the early afternoon of 17 July 2014, a meeting did actually take place between Kharchenko and Pulatov at the Furshet in Snizhne, at the moment that Kharchenko arrived there with the convoy that included the Buk TELAR. However, it cannot be determined from the case file what happened or what was said at the Furshet.

It is certain that following this meeting, Kharchenko simply continued carrying out the instruction he had received from Dubinskiy. The court is therefore unable to conclude that Kharchenko continued his journey towards Pervomaiskyi on the instructions of Pulatov. After all, he had already been issued with this instruction by Dubinskiy, the superior of both Kharchenko and Pulatov. It is, however, certain that Pulatov did not stop Kharchenko from continuing to carry out his instructions.

It also follows from the evidence that shortly following this meeting, Pulatov called and was called back by a telephone number that can be attributed to the crew of the Buk TELAR. However, no contact was established.

In this evidence, the court sees no proof of any active or even crucial involvement by Pulatov in the execution of the instruction issued by Dubinskiy. After all, the telephone connection was not made, and nonetheless the instruction continued to be carried out. The failed contacts can also have had no decisive influence on the carrying out of the instruction, or at least no such decisive influence can be determined.

In the opinion of the court, the relationship established by the prosecution between Pulatov and aircraft spotters is speculative at best, and in no way justifies the conclusion that it confirms Pulatov was the linchpin between the intelligence branch of the DPR on the one hand and the crew of the Buk TELAR on the other.

There is also no evidence available on the basis of which it can be concluded that Pulatov was responsible for coordinating the placement, guarding or deployment of the Buk TELAR. It is further sufficiently certain that Pulatov was not in the vicinity of the launch site at or around the moment at which the Buk TELAR actually fired its missile.

The court therefore does not consider it legally and conclusively proven that defendant Pulatov made any personal contribution to the deployment of the Buk TELAR such that, unlike Dubinskiy and Kharchenko, he cannot be classified as a classic co-perpetrator.

What remains is the question whether defendant Pulatov, just like accused Girkin, must be considered a functional co-perpetrator.

In that framework, the court considers it proven that defendant Pulatov was aware of the deployment of the Buk TELAR in the operation for which he was designated coordinator. Moreover, nowhere is there any evidence that Pulatov objected to the arrival and deployment of the Buk TELAR from the moment that he knew that the said Buk TELAR was available for the separatists and that it was to be deployed in the operation around the corridor. For that reason, in the opinion of the court, it can be concluded that Pulatov accepted the deployment of said Buk TELAR. This then satisfies the first requirement.

As concerns the second requirement, the existence of power of disposition or command over the deployment of the said Buk TELAR, the court concludes that Pulatov had received the specific order from Dubinskiy to remain in the vicinity of Pervomaiske to guard the Buk TELAR that was en route towards him and to organise all related matters. However, as already stated, the instruction to escort the Buk TELAR to Pervomaiske and to guard it had also been issued to Kharchenko, by Dubinskiy, shortly beforehand.

Kharchenko actually carried out this instruction; he escorted the transport from Donetsk via Snizhne to Pervomaiskyi and organised the guard on arrival. Therefore, not only is there no evidence whatsoever that the intervention by Pulatov made any contribution to the carrying out of the instruction as issued to Kharchenko by Dubinskiy, but also there is no indication that he could have changed the situation.

withdraw an order issued directly by Dubinskiy to Kharchenko. His coordinating role in the military operation around the corridor did not place him above Dubinskiy.

The court therefore concludes that the power of disposition required for functional co-perpetration was lacking in relation to defendant Pulatov.

In brief, in the opinion of the court, there is no evidence that Pulatov himself made any actual contribution to the deployment of the Buk TELAR. Moreover, Pulatov bears no criminal responsibility for the contribution of others to this deployment.

The conclusion therefore is that Pulatov must be acquitted of each of the charged variants of both offences.

Defendant Pulatov's defence has submitted provisional requests for investigation. A number of those requests have been separately discussed in the judgment. The court further considers, as regards the not yet discussed requests that given the acquittal of Pulatov, those requests are not or are no longer relevant, and as a consequence no longer necessary. For that reason, those requests are denied. The same applies to the application by the prosecution for his imprisonment.

Accused Girkin, Dubinskiy and Kharchenko are found guilty. The court qualifies the proven facts in their cases as two or more offences arising from the same act

- together and in association with others, intentionally and unlawfully causing an aircraft to crash, although this was likely to endanger to the lives of the occupants of said aircraft, and said occupants were killed as a result and
- together and in association with others, committing murder, at least one time, namely 298 times.

These are criminal offences for which the accused Girkin, Dubinskiy and Kharchenko are punishable by law.

Claims for compensation

The court has received 306 claims for compensation from relatives. The 304 claims submitted by counsel for the relatives concern compensation for pain and suffering exclusively.

Two claims submitted by the relatives themselves concerned, in addition to compensation for pain and suffering, also compensation for material damages, namely for the loss of a laptop and compensation for travel costs to the crash site in the summer of 2014.

The court finds, in accordance with the law, that in the case of Pulatov, the injured parties do not have standing as Pulatov has been acquitted.

The cases of the three other accused, who have been convicted, have been heard in absentia. The court finds that the leave to proceed in absentia also applies to the claims submitted by injured parties. The court is competent to rule on these claims.

According to the provisions of the so-called Rome II Regulation, claims by injured parties arising from wrongful acts must be considered on the merits pursuant to Ukrainian law.

Under Ukrainian civil law, in 2014, relatives had the right to hedonic damages. In Dutch civil law, further to an amendment of the law, the right to compensation for emotional damages only applies if that harm was caused after 1 January 2019. The court finds that, in the cases of Girkin, Dubinskiy and Kharchenko, this amendment to the law does not preclude claims for compensation for emotional damages caused before 1 January 2019 from being admissible based on Ukrainian law.

Now that the accused Girkin, Dubinskiy and Kharchenko have been convicted on both charges, both the wrongful act and the intent required by Ukrainian civil law are given. There can be no doubt that there is a causal link between the wrongful acts of the accused and the claims for moral damages by the relatives. All that is left is for the court to determine whether the nature and scale of the damages claimed can be awarded under Ukrainian law: in other words, the type of damage and the amount.

Pursuant to Ukrainian law, both material and moral damages that have been directly suffered by the relatives of a deceased person are eligible for compensation. To be entitled to this compensation, the relative must be a member of the group of entitled persons. This means the spouse or registered partner, as long as they are not of the same sex. It also includes the parents, adoptive parents, children and adopted children of the deceased, and the persons, including stepchildren, with whom the deceased lived and shared a household. Siblings who did not live with the victim are not eligible.

On 17 July 2014, the injured parties were suddenly confronted with the death of one or more loved ones as a result of the disaster involving flight MH17. It is unbearable for the injured parties that they must live with ongoing uncertainty about what must have happened in the aircraft in the final moments and to what extent their relatives were aware of their fate.

The roles the victims played in their families, their extended families, their communities, at school or in the gym, at work or in their friendship groups was made clear to the court in the written victim impact statements and the addresses the relatives made to the court. It was also made clear how terribly they are still missed by those they have left behind. In the judgments, the court has included thirteen quotations from relatives about that loss and its consequences.

loved one (or a loved one's remains) can result in a feeling of unreality for the relatives, a feeling that it has not happened, while knowing full well that the loved one is no longer alive.

Furthermore, this court finds that there are other circumstances that must be taken into consideration in this case, for example, the inaccessibility of the crash site, not only for relatives wishing to visit the place where their loved ones died, but also for emergency workers. Flight MH17 crashed in a conflict zone and emergency workers were denied access to the crash site in that area, greatly hindering recovery of the victims and their possessions.

The bodies were left out in the open for days, weeks, or even months, exposed to the elements. This all caused great uncertainty for the relatives, who could do nothing but wait, helpless, in the hope that their loved ones and their possessions might be recovered, and then repatriated and identified.

This waiting to hear if a loved one might be found also caused a delay in the grieving process. In some cases, only a small part of a loved one's remains could be recovered: a piece of bone from a hand, part of a leg, or a foot. In two cases, no remains of the deceased loved one could be recovered at all.

The explanatory notes to the claims submitted by the injured parties also show that the accused's stance in these proceedings increased the suffering of the relatives. In addition to any involvement in the MH17 disaster, disclosing little and failing to cooperate with the investigation, they made negative statements regarding the disaster on a number of occasions.

These are all aspects that are relevant when considering the amount of the compensation. In its consideration of the merits, the court has found that the extent of the harm has been clearly reasoned. This extent has not been challenged by the accused. It now only remains for the court to consider whether these claims are unjust or unfounded.

First and foremost, the court states that the grief suffered by the injured parties can in no way be expressed in monetary terms. The amount claimed is within the bounds of Ukrainian compensatory practice. The court thus finds that the amounts claimed for moral damages are not unjust or unfounded.

Therefore, the court does not concur with the prosecution's arguments that estimation of the moral damages should be based on the Dutch Emotional Damages Compensation Decree and that a lower amount for compensation be determined than that claimed.

The court therefore finds that the claimed moral damages are fully allowable.

The court will not apply the exclusion of partners of the same sex stipulated under Ukrainian law, as this exclusion contravenes laws against discrimination.

The court will not include payments by third parties when estimating the claimed moral damages and will not subtract these amounts from the agreed amounts to be awarded.

In Ukrainian civil law, just as in Dutch civil law, siblings who did not live with the deceased are not entitled to compensation. For that reason, counsel for the relatives did not submit any such claims in this criminal case. During the hearings, the court observed that many siblings were hurt by this ineligibility and felt it was very unjust.

The victim impact statements made very clear that the lives of siblings were radically changed because of the disaster. These changes were not only caused by grief over the loss of the sibling, but also because of the new and more intensive role they play – obviously taken on with love but also of necessity – in the care of their siblings' children or in the care of their own parents since the disaster. This new or more intensive role also means they are more intensely confronted with the grief of these children or parents.

For these reasons, the court supports the call from the relatives that the position of siblings who did not live with the victim be explicitly included in the anticipated evaluation of the law regarding emotional damages.

The claim for compensation for the lost laptop is not eligible under Ukrainian law and cannot be taken into consideration. The relatives who submitted this claim therefore have no standing with respect to that part of their claim. The travel and accommodation costs relating to the visit to the crash site claimed are eligible for compensation as funeral costs. The court finds these are not unjust or unfounded.

This means that the court sentences the accused Girkin, Dubinskiy and Kharchenko severally to pay compensation totalling over 16 million euros to the injured parties. The claimed statutory rate of interest is also awarded.

The court will also impose a compensation order on the accused for each awarded claim.

Conclusion

Judgment has now been delivered in all four cases, bringing the proceedings in this trial court to a close.

To the extent the law allows, an appeal against these judgments may be lodged within 14 days.

afternoon at the latest.

The English version of the full judgments will be available in a number of weeks.

Russian and English translations of a short summary of the court's decisions will be available from today on the Rechtspraak website and on www.courtmh17.com.

That brings this hearing to a close. The court will leave the courtroom, after which the livestream will be ended.

The people present in court should leave quietly when invited to do so by the court usher and members of the court police.

Prosecutors, defence counsel and counsel for the relatives will remain in the courtroom to receive a copy of the judgments from a member of the court staff.

I thank you for your attention.

More information:

The operative paragraphs in English

The operative paragraphs in Russian

Transcript of the MH17 judgment hearing in Russian

The judgment in extenso in English will be available in the second half of December 2022

Livestream of the verdict

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