

Advisory Committee
on Public International Law

Compensation as reparation: the legal practice pertaining to lump sum settlements

Advisory report no. 53, 22 June 2026

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Introduction

In connection with the process of invoking the responsibility of the Russian Federation for the downing of flight MH17, the Minister of Foreign Affairs requested the Advisory Committee on Issues of Public International Law (CAVV) on 17 December 2025 to prepare an advisory report on the determination of lump sum compensation for damage suffered by a group of individuals as a result of an internationally wrongful act. For the broader legal framework, the Minister referred to the work of the United Nations International Law Commission (ILC) on compensation as a form of reparation.[1]

More specifically, the Minister requested an analysis of 'international legal practice and the views of states on the law governing the determination of lump sums'. The CAVV understands that the request for an advisory report relates to the circumstances that determine whether a lump sum settlement is appropriate and to the legal criteria used to identify heads of damage and determine the size of the lump sum.

One of the factors prompting the request is a judgment of the European Court of Human Rights (ECtHR) in *Ukraine and the Netherlands v. Russia.*[2] In that judgment, dating from July 2025, the Grand Chamber of the ECtHR held that the Russian Federation was responsible for violations of the right to life and the prohibition of torture and inhuman or degrading treatment, and found a violation of the right to an effective remedy in relation to the downing of flight MH17 (Articles 2, 3 and 13 of the European Convention on Human Rights (ECHR)).

The ECtHR held, however, that the issue of compensation was not yet ready for a decision.[3] It based that finding on two considerations. First, the issue of compensation is also part of the parallel individual applications lodged with the ECtHR by the family members of the victims of flight MH17. Second, in May 2025, the Council of the International Civil Aviation Organization (ICAO), in *Australia and the Netherlands v. the Russian Federation*, found that the Russian Federation had breached its international obligations by shooting down flight MH17, but held that the question of reparation would be best addressed through negotiations between the parties.[4] In light of these two considerations, the ECtHR decided to separate the issue of compensation from the remainder of the case. The issue of compensation in relation to flight MH17 therefore remains unresolved for the time being.

This advisory report discusses the issue of lump sum agreements in three parts. Part I outlines the applicable legal framework. Part II contains an analysis of lump sum agreements in which parties have agreed to compensation. Part III discusses the practice of international courts, tribunals and claims commissions. The first section of part III provides a concise overview of the compensation practice of the International Court of Justice (ICJ), the International Criminal Court (ICC), the Eritrea–Ethiopia Claims Commission (EECC) and the United Nations Compensation Commission (UNCC). The second section of part III deals with the practice of the European Court of Human Rights (ECtHR).

– Part I

Lump sum agreements: the legal framework

The legal consequences of an internationally wrongful act are set out in the ILC Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), which the Netherlands regards largely as a reflection of customary international law.[5] Article 30 of the ARSIWA provides first of all that the state responsible for the internationally wrongful act is under an obligation (a) to cease that act, if it is continuing; and (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require. If the internationally wrongful act has caused injury, Article 31 of the ARSIWA further provides that the responsible state is under an obligation to make full reparation for the injury caused. Te herstellen schade kan zowel materieel als immaterieel zijn.[6] Injury includes any damage, whether material or moral.[7]

Full reparation may take the form of restitution, compensation and satisfaction.[8] In principle, the state responsible for an internationally wrongful act is under an obligation to make restitution, provided and to the extent that restitution is not materially impossible and does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.[9] If the damage cannot be made good by restitution, the responsible state is under an obligation to compensate for the damage caused; this compensation must cover any financially assessable damage, including loss of profits in so far as it is established.[10] If the injury cannot be made good by restitution or compensation, the responsible state is under an obligation to provide satisfaction, which may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality,[11] such as establishment of the truth or symbolic measures.[12] Interest on any principal sum due is payable when necessary in order to ensure full reparation. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.[13] Finally, the ARSIWA provide that when reparation is determined, account must be taken of the contribution to the injury by wilful or negligent action or omission of the injured state or any person or entity in relation to whom reparation is sought.[14]

Although the provisions of the ARSIWA on reparation are generally regarded as a reflection of customary international law,[15] they also raise numerous questions about the substance and scope of, in particular, the obligation to pay compensation. This explains why this subject has been added to the ILC's agenda.

It is indeed true that the ARSIWA do not determine *how* compensation is to be arranged. Where a large number of claims have been brought against the responsible state, particularly by individuals or entities having the nationality of another state, a practice has developed under which the responsible state pays a lump sum to that other state. Such claims could, in principle, be submitted to international arbitral tribunals or mixed claims commissions, but states are often reluctant to do so. Lump sum agreements have the advantage of resolving all outstanding individual claims definitively in a single settlement, while allowing the states themselves to determine the terms of the settlement. A single global sum is paid out to the recipient state, which in turn distributes it among the individual claimants.

Lump sum agreements are generally concluded through diplomatic negotiations between states and are intended to compensate for the damage suffered by nationals of one of the states.[16] They often take the form of a bilateral treaty between the claimant state, exercising diplomatic protection on behalf of its nationals, and the respondent state which caused the damage and pays a lump sum in settlement. Sometimes, a lump sum may also be agreed upon in a non-legally binding memorandum of understanding or a political declaration.[17] Some lump sum agreements are concluded as part of (or in the context of) a peace treaty following an armed conflict, as happened after the end of the Second World War.[18] A large number of international claims have been settled by means of a lump sum agreement since the Second World War, particularly during the Cold War.[19]

Lump sum agreements may stipulate that the respondent state pays the lump sum in discharge of its obligation under international law to make reparation (full or otherwise) for the injury caused by the internationally wrongful act.[20] They may, however, also provide that the payment is purely *ex gratia*, in which case the

respondent state does not acknowledge its responsibility under international law, but is willing to settle.

Lump sum agreements are typically a product of diplomatic negotiations, which are often very protracted. Recent research has shown that the conclusion of lump sum agreements is often facilitated politically and economically by the presence in the claimant state of frozen assets belonging to the respondent state, or by the claimant state granting market access to goods or services of the respondent state.[21] In such a case, the lump sum is either financed from the frozen assets or their proceeds, or functions as a *quid pro quo* for the opening or reopening of an export market.

As the modalities of a lump sum are the result of diplomatic negotiations, the balance of power between the parties and certain economic incentives, lump sum agreements are determined to a large extent by political considerations and therefore have only limited legal value for the formation of customary international law.[22] This applies particularly to the amount of compensation. There does, however, seem to be some legal convergence among lump sum agreements in terms of who can receive compensation and when conduct is attributable to the state.[23]

Lump sum agreements sometimes follow a judgment in which an international court has established the legal responsibility of the respondent state without ruling on compensation.[24] Strictly speaking, international courts and tribunals do not award lump sums themselves; in some cases, however, they may award a global or aggregate sum as equitable compensation for the damage suffered, particularly if the parties to the dispute fail to reach a settlement among themselves (see Part III below).

The conclusion of a lump sum agreement generally results in the settlement of a large number of claims brought by the claimant state on behalf of its nationals against the respondent state.[25] In principle, the claimant state is not under any obligation under international law on diplomatic protection to conclude a lump sum agreement. Nor is it required to take into consideration the victims' views on compensation. Likewise, it is not obliged to distribute among the victims the sum paid by the respondent state. In certain circumstances, however, the ILC may recommend that this be done by a claimant state.[26]

In practice, the claimant – receiving – state generally distributes the lump sum payment among the individual claimants through a national claims commission or other national authority.[27] The precise amount received by each individual is, in principle, determined by the internal law of the recipient state, although lump sum agreements sometimes give a broad indication of the amount to be awarded to each individual.[28]

When concluding a lump sum agreement, the claimant state will generally waive all claims connected with the wrongful act that caused the damage. If a state waives such claims *on behalf of an individual* it may be infringing that person's human rights. After all, it could be argued that the individual has an independent right to compensation, particularly in cases involving human rights violations.[29] In practice, the claimant state often gives individuals the possibility of opting in, meaning that the individual accepts the terms of the lump sum agreement and the payment arrangements and waives any other potential claims.[30] The CAVV considers that a lump sum agreement, other than in the context of a peace agreement or postwar settlement,[31] should always leave to the concerned individual the decision whether to waive individual claims through an opt-in or opt-out mechanism.

An individual who chooses to opt out may still bring a claim elsewhere, particularly before domestic or international courts. In practice, however, this will not necessarily be straightforward as state immunity generally precludes proceedings before domestic courts in countries other than the respondent state, and courts in the respondent state may not always function independently. Moreover, international courts may lack jurisdiction and, even where a judgment is ultimately obtained, there is no assurance that it will be enforceable.

– Part II
Lump sum agreements

The following analysis of lump sum agreements is based on a study of agreements in which the parties agreed on compensation.

As this advisory report concerns the measures taken to hold the Russian Federation responsible for the downing of flight MH17, the CAVV has focused primarily on agreements concluded since the Second World War that concern the downing of an aircraft or comparable acts of violence against a ship.[32] It has disregarded agreements concluded following an armed conflict.[33]

The CAVV's study was dependent on the availability of information about these agreements. Consequently, the CAVV was unable to include in its study any agreements about which no information was publicly available. It is also possible that some incidents have not been the subject of an agreement. The CAVV identified ten public agreements or arrangements concerning compensation in the period since the Second World War. These relate to nine incidents, seven involving aircraft and two involving ships (the USS *Cole* and the USS *Liberty*).

The table below lists these incidents in reverse chronological order, based on when the relevant agreement was concluded.

Wherever possible, the CAVV has based its analysis on primary sources (agreements and diplomatic correspondence). Where these were not available, it has consulted reliable secondary sources, including academic publications and news reports.

– 1
Overview of the incidents

This section begins with a few remarks about the nine incidents that form the basis of this analysis. Four of the incidents were due to an aircraft or ship being misidentified. This was the case with the downing of a Siberia Airlines flight in 2001,

Table 1. Lump sum agreements since WWII.

Incident	Parties to agreement	Date of agreement	Number of victims
USS *Cole* (2000)	US, Sudan	30 October 2020	17 fatalities, 39 injured
Pan Am flight 103 (Lockerbie-incident) (1988)	Libya, US	15 August 2003, 14 September 2008	270 fatalities, including 11 inhabitants of Lockerbie, Scotland
Siberia Airlines flight 1812 (2001)	Russian Federation, Ukraine	26 December 2003	38 Russian fatalities
Siberia Airlines-vlucht 1812 (2001)	Israel, Ukraine	20 November 2003	40 Israeli fatalities
UTA flight 772 (1989)	DC 10 Families in Anger! (organisation representing victims' next of kin), Gaddafi International Foundation for Charity Associations	10 September 2003	170 fatalities
Iran Air flight 655 (1988)	Iran, US	9 February 1996	290 fatalities
USS *Liberty* (1967)	Israel, US	27 May 1968	34 fatalities, 75 injured
El Al flight 402 (1955)	Bulgaria, Israel	20 May 1963	58 fatalities
Cathay Pacific Airways flight C-54 (1954)	China, United Kingdom	23 October 1954	10 fatalities, 8 injured
C-47A US transport flight (1946)	US, Yugoslavia	20 September 1946	5 fatalities

an Iran Air flight in 1988 and a Cathay Pacific Airways flight in 1954, and the bombing of the USS *Liberty* in 1967. Three of the incidents were terrorist attacks: the downing of a UTA flight in 1989 and a Pan Am flight in 1988 (the Lockerbie incident), and the attack on the USS *Cole* in 2000. The remaining two incidents involved the deliberate downing of aircraft by states, but were not acts of terrorism: namely an El Al flight in 1955 and a United States military transport aircraft in 1946. The downing of the Iran Air flight in 1988 and the Pan Am flight in 1988 resulted in the highest death tolls (290 and 270 fatalities respectively).

a Legal basis of the agreements

The CAVV observes that in most cases states reached agreements on compensation on an *ex gratia* basis, i.e. without an acknowledgement of responsibility. In other words, a state made a payment without acknowledging any legal obligation to provide compensation. For example, the United States made a voluntary payment to Iran following the downing of an Iran Air flight in 1988, while acknowledging that the incident was a 'terrible human tragedy' and expressing 'deep regret over the loss of lives caused by the incident'.[34] Sudan made a payment to the United States in connection with the Al-Qaeda attack on the USS *Cole* in 2000.[35] Although Sudan denied any involvement, it acknowledged and condemned the attack as 'horrific' and expressed its deepest condolences to the victims.[36] Likewise, Ukraine made *ex gratia* payments to Israel and the Russian Federation following the downing of a Siberia Airlines flight in 2001.[37]

By contrast, Israel acknowledged responsibility to the United States for the attack on the USS *Liberty* in 1967. Although it did so immediately in 1967,[38] it is apparent from an agreement concluded between the United States and Israel in 1980 that Israel's acknowledgement did not constitute the legal basis for the payment it made to the United States.[39] It seems that Libya also acknowledged responsibility to the United States for the attack on the Pan Am flight (the Lockerbie incident) in 1988. But it did not do so until 2003, i.e. 15 years after the attack.[40]

b Legal and political background to the agreements

As regards the three terrorist attacks (the attack on the USS *Cole* and the attacks on the Pan Am and UTA flights), Sudan and Libya had clear legal and political reasons for agreeing to pay compensation. Both states had long featured on the US list of state sponsors of terrorism.[41] Removal from that list was important for Sudan and Libya because, under US law, listed states are no longer entitled to state immunity before US domestic courts. Victims of these attacks had in fact brought claims against Sudan and Libya and had instituted legal proceedings against both states in the United States.[42] Libya was also on UN sanctions lists.[43] It is apparent from the text of the agreements concluded by the United States with Sudan and Libya that both states paid compensation in exchange for being removed from the list of state sponsors of terrorism and for termination (by the victims' next of kin) of the pending legal proceedings in the United States.[44]

Following the downing of a UTA flight in 1989, a few months after the Lockerbie bombing in 1988, Libya sought to normalise its relations with France. Its primary aim was to secure France's support for its removal from a UN sanctions list. France supported the lifting of the UN Security Council sanctions against Libya in exchange for the payment of compensation by Libya to the next of kin of the victims of the UTA flight. Exceptionally, however, the compensation arrangements in respect of the UTA flight were contained in an agreement between two non-state parties (representatives of the victims' next of kin and the Gaddafi International Foundation for Charity Associations) rather than in an agreement between France and Libya.[45]

– 2 Characteristics of the agreements

The ten agreements and arrangements analysed by the CAVV have a number of relevant characteristics as regards the compensation payments (lump sums). All the documents contain provisions about: (a) the amount of the compensation (the lump sum); (b) the class of beneficiaries; (c) the relationship between compensation and the termination of national or international legal proceedings; and (d) the mechanism or method by which the sum was to be transferred and/or distributed.

a Amount of the lump sum compensation

The largest compensation payments were those made in connection with the three terrorist attacks: the attack on the USS *Cole* and the downing of a Pan Am flight (Lockerbie) and a UTA flight.

Sudan paid the United States USD 335 million (equivalent to approximately USD 442 million in 2026 when adjusted for inflation) in connection with the attack on the USS *Cole* and the 1998 attacks on the US embassies in Nairobi (Kenya) and Dar es Salaam (Tanzania).[46] The agreement did not specify how this amount was to be distributed among the next of kin of the victims of these attacks. The attack on the USS *Cole* claimed the lives of 17 people and injured 39 others. The bombings of the US embassies in Kenya and Tanzania killed 224 people and injured over 4,500. The US-Sudan agreement provided for the establishment of a commission responsible for distributing the compensation to the non-American victims of the embassy bombings.

As compensation for the downing of the Pan Am flight (Lockerbie), in which 270 people were killed, Libya first paid the United States USD 2.7 billion in 2003 and subsequently an additional USD 1.5 billion in 2008 (equivalent to approximately USD 4.7 billion and USD 2.7 billion, respectively, in 2026 when adjusted for inflation).[47] Each victim's family was ultimately due to receive a total of USD 10 million, payable in three instalments.[48]

With respect to the downing of the UTA flight, Libya paid USD 170 million in compensation (through the Gaddafi International Foundation for Charity Associations) to a French foundation representing the next of kin of the 170 people killed in the attack (equivalent to approximately USD 302 million in 2026 when adjusted for inflation). Libya thus paid USD 1 million for each victim. This was considerably lower than the compensation Libya paid to the United States for the Lockerbie attack (USD 10 million per victim), but substantially higher than the amount France had agreed with Libya under an earlier settlement.[49]

The amounts of compensation agreed in the settlements for the 2001 Siberia Airlines incident and the 1988 Iran Air incident were relatively modest. Following the downing of the Siberia Airlines flight in 2001, in which 78 people were killed, Ukraine concluded separate agreements with Israel and the Russian Federation in 2003. Ukraine paid USD 7,809,000 to the Russian Federation and USD 7,590,933.34 to Israel (equivalent to approximately USD 13.9 million and USD 13.5 million, respectively, in 2026 when adjusted for inflation). The agreements contained no provisions on the exact amount to be received by the victims' next of kin.

Under the agreement concluded in respect of the downing of the Iran Air flight in 1988, in which 290 people were killed, the United States paid USD 61.8 million to Iran (equivalent to approximately USD 128.7 million in 2026 when adjusted for inflation).[50] Unlike the agreements discussed above, this agreement did contain provisions governing the distribution of this amount to the victims' next of kin: USD 300,000 was to be paid to the next of kin of a wage-earning victim and USD 150,000 to the next of kin of a non-wage-earning victim (equivalent to approximately USD 625,000 and USD 312,500, respectively, in 2026 when adjusted for inflation).[51]

The amounts awarded by domestic courts in cases against airlines in respect of aircraft incidents are generally not much higher than the compensation provided under the settlements (i.e. the agreements between Ukraine and the Russian Federation, between Ukraine and Israel and between Iran and the United States), although the amounts vary depending on the facts of the case and the jurisdiction. For example, in 1996, a US court awarded compensation of USD 512,300 (equivalent to approximately USD 1.2 million in 2026 when adjusted for inflation) to the husband of a woman who was killed when a Korean Air Lines flight was shot down in 1983.[52] The compensation Korean Air Lines was ordered to pay included USD 120,000 (equivalent to approximately USD 291,000 when adjusted for inflation) for pre-death pain and suffering and USD 392,300 (equivalent to approximately USD 952,000 when adjusted for inflation) for loss of financial contributions.[53]

b Class of beneficiaries

Some agreements specify which persons are eligible to receive compensation (i.e. the class of

beneficiaries). Where an agreement deals with this topic, it generally refers to the applicable national law.

For example, the settlement agreements between Ukraine and Israel and between the United States and Iran refer to the national law applicable to the victims. The 2003 settlement agreement between Ukraine and Israel provides that an Israeli 'heir, legatee or dependent' of a victim is eligible for compensation and lists the names of the 78 victims in an annex.[54] The precise meaning of the terms 'heir, legatee or dependent' was to be determined by Israeli law.[55]

Likewise, the 1996 agreement between the United States and Iran provided that the term 'heirs' was to be interpreted in accordance with Iranian law.[56] Iranian law would also determine the amount of compensation to which the beneficiaries were entitled.[57] An annex to the agreement listed the names of the 248 Iranian victims.[58]

Only the 2003 agreement between Ukraine and the Russian Federation defined the class of beneficiaries. Under the agreement, the following family members of the Russian victims were eligible for compensation: spouses, parents and children, including adoptive parents and adopted children.[59]

The CAVV assumes that, where an agreement does not specify the class of beneficiaries, the party that receives the lump sum is free to determine the class as it sees fit.

c Termination of proceedings before international and domestic courts

Several agreements have resulted in the termination of proceedings before international and domestic courts. For example, the 1996 agreement between the US and Iran led to the withdrawal of pending proceedings between the two states before the ICJ.[60] The agreements concluded by the US with Libya (2008) and Sudan (2020) provided that proceedings pending before domestic courts would be terminated and that no further proceedings could be instituted.
The 2008 Libya-US Claims Settlement Agreement was intended not only to achieve a final settlement of claims for compensation, but also to secure the termination of proceedings pending against Libya before courts in the United States and to prevent future proceedings.[61] The scope of this agreement about the termination of pending proceedings was broad and covered much more than the downing of Pan Am flight 103 (Lockerbie), namely 'the following acts occurring prior to June 30, 2006: (a) an act of torture, extrajudicial killing, aircraft sabotage, hostage taking or detention or other terrorist act, or the provision of material support or resources for such an act; or (b) military measures.'[62] The agreement, however, did not specify how the US was to ensure that pending proceedings would be terminated and that proceedings could not be brought in future.[63]

By contrast, the agreement between the US and Sudan contained detailed provisions on precisely this issue. This agreement was also intended to achieve a settlement of claims for compensation, the termination of pending proceedings and the prevention of comparable proceedings in the future.[64] The US agreed to prevent future proceedings by enacting legislation restoring Sudan's entitlement to immunity before US courts.[65] The scope of this obligation was as broad as that entered into by the US under the Libya Agreement and therefore extended beyond proceedings relating to the attacks on the USS *Cole* and the US embassies in Kenya and Tanzania. As such, it covered: 'personal injury (…) death, or property loss caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking or detention or other terrorist act, or the provision of material support or resources for such an act, occurring outside of the United States of America and prior to the date of execution of this Agreement'. An annex to the agreement contained a list of specific pending lawsuits that would have to be terminated, including a case before an arbitral tribunal established under the auspices of the Permanent Court of Arbitration.

One of the aims of the agreements that Ukraine concluded with Israel and the Russian Federation was to prevent future proceedings before domestic courts and, possibly, inter-state proceedings as well.[66] To achieve this, the parties used waiver forms by which the victims' next of kin agreed to accept the settlement as the full and final satisfaction of all claims. Compensation was conditional upon the claimants signing and submitting a waiver form. Some next of kin chose not to waive their claims for compensation and

instead instituted proceedings before domestic courts. These cases were, however, dismissed by the Ukrainian courts.[67]

d Transfer and distribution of the lump sum

States responsible for internationally wrongful acts have adopted different methods of paying lump sums to the recipient state and subsequently to the beneficiaries. One relatively straightforward approach is for the responsible state to transfer the agreed sum to the recipient state, which then assumes full responsibility for distributing it among the beneficiaries. Ukraine, for example, remitted the agreed sums to Israel and the Russian Federation by depositing them in accounts held with the central banks of those countries. The recipient states then assumed full responsibility for distributing the compensation among the beneficiaries.[68] In the case of the attack on the USS *Cole*, Sudan agreed to transfer the compensation to the US, after which the US Department of State was to be responsible for disbursing the funds to the beneficiaries.[69]

The agreement concluded between the US and Iran and the agreements concluded by Libya and Sudan with the US were more complex. The most complex payment arrangement was that between the US and Iran, which communicated through Swiss diplomatic channels in 1996. The US transferred the agreed sum to a joint account held by the Federal Reserve Bank of New York (part of the US central banking system) and Bank Markazi, Iran's central bank, at the Union Bank of Switzerland (UBS).[70] The Swiss Embassy in Tehran then disbursed the funds to the beneficiaries on behalf of the US. The funds were therefore distributed through the Swiss embassy rather than through the Iranian authorities themselves.

A different solution was adopted in relation to the Lockerbie incident, as the US and Libya agreed that the latter would transfer the sum in question to a humanitarian settlement fund, which the parties would establish for that purpose.[71] France and Libya adopted a similar arrangement in relation to the 1989 UTA incident. They agreed to establish a French foundation to disburse the funds.[72]

– Part III: Practice of international courts, tribunals and claims commissions

The minister requested that the CAVV take into account international procedures when drafting its advisory report. As explained in part II, international courts and tribunals do not, as such, award lump sums, although they may occasionally award a global or aggregate sum as compensation for harm suffered. Part III analyses the practice of these courts and tribunals, as well as of international claims commissions. The focus is on the methodology they use to determine the amount of compensation. As will become apparent, the methodologies employed are often inconsistent and provide relatively little guidance for determining lump sum awards or other flat-rate amounts in future cases.

Section 1 provides a concise overview of the compensation practice of the International Court of Justice (ICJ), the International Criminal Court (ICC), the Eritrea–Ethiopia Claims Commission (EECC) and the United Nations Compensation Commission (UNCC, in relation to Iraq/Kuwait).

Section 2 examines the practice of the European Court of Human Rights (ECtHR). This is a more in-depth analysis as the ECtHR's practice is of particular importance to the resolution of the MH17 case. As noted earlier, on 9 July 2025, the Grand Chamber of the ECtHR held the Russian Federation responsible for the downing of flight MH17 in proceedings brought by the Netherlands and Ukraine. The ECtHR has, however, not yet awarded compensation. In addition, several individual applications lodged on behalf of Dutch next of kin against the Russian Federation in connection with the downing of MH17 are still pending before the ECtHR. It is possible that the ECtHR will award compensation in these cases.

– 1 Practice of the International Court of Justice, the International Criminal Court, the Eritrea-Ethiopia Claims Commission and the United Nations Compensation Commission

1.1 International Court of Justice (ICJ)

The ICJ's case law on compensation is very limited. Only four of the ICJ's judgments in its more than 80-year history have addressed the

subject of compensation.[73] The most recent of those, namely its 2022 judgment in the case of the *Democratic Republic of the Congo v. Uganda*, is also the most relevant for the purposes of this advisory report.[74] In a previous judgment in 2005, the ICJ had found Uganda responsible for violating the prohibition on the use of force and the prohibition of intervention and infringing international humanitarian law and international human rights law in connection with the armed conflict in the Democratic Republic of the Congo (DRC) between 1998 and 2003.[75] Uganda was one of the African states involved in that armed conflict. The ICJ held that Uganda had an obligation to make reparation to the DRC, which was the injured state in the case. After the parties failed to reach a friendly settlement, the DRC resumed the proceedings before the ICJ in 2015 in order to obtain a ruling on the issue of compensation.

During the compensation phase of the proceedings, the ICJ heard arguments concerning four heads of damage: damage to persons, damage to property, damage to natural resources and macroeconomic damage. The ICJ rejected the DRC's claim for macroeconomic damage. Regarding the remaining heads of damage, the ICJ ordered Uganda to pay the DRC USD 325 million, comprising USD 225 million for damage to persons, USD 40 million for damage to property, and USD 60 million for damage to natural resources. Uganda was required to pay this sum in annual instalments of USD 65 million between 2022 and 2026, along with interest at a rate of 6 per cent. The ICJ also noted that the sum was within Uganda's financial capacity.

The ICJ reached the figure of USD 325 million on the basis of a global sum approach, taking into account the lack of sufficient evidence to establish the precise extent of the damage caused by Uganda. The ICJ held that:

> '[t]he Court may, on an exceptional basis, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking account of equitable considerations. Such an approach may be called for where the evidence leaves no doubt that an internationally wrongful act has caused a substantiated injury, but does not allow a precise evaluation of the extent or scale of such injury.'[76]

Ultimately, the ICJ did not clarify what it meant by the term 'equitable considerations', much to the disappointment of some of its members who expressed their views in separate opinions.[77] Nor did the ICJ explain in its judgment what it meant by the 'range of possibilities' in relation to the various heads of damage. For example, the judges did not specify the range of possibilities with respect to the number of civilian fatalities, the amount of compensation for a human life lost or the equitable considerations they considered relevant. The judgment is therefore of only limited value as a precedent, as the ICJ failed to clarify the criteria for determining and quantifying damages.

1.2 International Criminal Court

The ICJ's approach contrasts with that of the ICC, which has heard parallel cases arising from the situation in the Democratic Republic of the Congo, also on the basis of limited evidence. Following the conviction of a defendant, the ICC may also award reparations to be paid through the ICC Trust Fund for Victims. With respect to the situation in the Democratic Republic of the Congo, the ICC convicted three individuals of crimes against humanity and war crimes, namely Thomas Lubanga Dyilo, Germain Katanga and Bosco Ntaganda. In each case, the ICC also awarded reparations to the victims of these crimes, including the next of kin of those who died.[78] The ICC's approach to determining these reparations is the most relevant for the purposes of this advisory report.

In the *Katanga* case, for example, the ICC established fixed sums for various heads of damage, including psychological harm connected to the death of a relative. With respect to certain heads of damage for which the ICC had only limited evidence, the judges determined a fixed sum on an ex aequo et bono basis (i.e. on the basis of equity and fairness).[79] This basis for assessing damage is comparable to the approach adopted by the ICJ, which used the term 'equitable considerations'. Unlike the ICJ, however, the ICC specified fixed sums for the various heads of damage. The ICC determined ex aequo et bono the following fixed sums for psychological harm connected to the death of a relative, namely USD 8,000 for the death of a near relative (spouse, parent, child or grandchild) and USD 4,000 for the death of a more distant relative.[80]

Drawing on the approach of the Inter-American Court of Human Rights, the ICC took into account certain factors, or criteria, when determining fixed amounts, namely:

> '…the death of several members of the same family, changes in living conditions, anguish caused by the suffering experienced by the nearest and dearest, the impossibility of burying corpses, the indignity of burials not performed in keeping with the rites and customs of the people in question, the destruction of family roles, the fragmentation of the community as a result of a massacre and the exacerbation of suffering due to a failure on the part of the national authorities to prosecute or convict.'[81]

The ICC also referred to the Inter-American Court's presumption that 'the suffering or death of a person causes their children, spouse or companion, mother, father and siblings a non-pecuniary damage that need not be proved.'[82] Although the ICC thus explained what factors were relevant in determining a fixed sum for psychological harm connected to the death of a relative, it remains unclear how it calculated the specific amounts.

1.3 Eritrea-Ethiopia Claims Commission

The ICJ's approach as outlined in section 1.1 above is partly based on the approach adopted by the Eritrea-Ethiopia Claims Commission (EECC), which also encountered difficulties due to a lack of sufficient evidence of large-scale war damage. The EECC was established in 2000 as part of the agreement that finally terminated the hostilities between Ethiopia and Eritrea (1998-2000). Its mandate was to decide, through binding arbitration, all claims for loss, damage, or injury brought by one government against the other related to the armed conflict and resulting from violations of international law.[83]

For the quantification of damage, the EECC required 'less rigorous proof' than it did for establishing that damage had actually been suffered. An assessment or estimate was considered sufficient when determining the amount of the damage, whereas 'clear and convincing evidence' was required in order to establish that damage had actually been suffered.[84] The EECC also recognised that 'when obligated to determine appropriate compensation, it must do so even if the process involves estimation, or even guesswork, within the range of possibilities indicated by the evidence'.[85] Where the EECC was presented with inconclusive evidence regarding the numbers of persons injured or property destroyed or damaged, and the financial consequences thereof, it made a 'best estimate' on the basis of the available evidence.[86] The EECC reduced the compensation levels in order to take account of the uncertainties flowing from the evidence and its use of a lower standard of proof.[87] It awarded compensation for various heads of damage, including personal injury and property damage, but not in relation to deaths. The EECC's decisions are therefore of only limited relevance to this advisory report.

1.4 UN Compensation Commission (UNCC)

The UNCC used fixed sums and specified ceilings when determining compensation. Following Iraq's invasion and occupation of Kuwait in 1990-1991, the UN Security Council determined that Iraq had violated international law and was liable for the consequences of that violation, including damage suffered by states and their nationals (individuals and businesses).[88] The UN Security Council established the UNCC to administer a compensation fund and to process and decide on compensation claims.[89] Countries and international organisations submitted approximately 2.69 million claims to the UNCC, including claims made on behalf of individuals and businesses.[90] Ultimately, the UNCC awarded a total of USD 52.4 billion in compensation in respect of 1.5 million claims.[91] Three of the six categories of claims are relevant to this advisory report: Category B for claims arising from death or serious personal injury, Category C for individual claims of less than USD 100,000 for various losses and Category D for individual claims exceeding USD 100,000 for various losses.

Category B claims were intended to provide a simple and expedited procedure for the settlement of urgent claims submitted by individuals who had suffered personal loss as a result of the invasion and occupation of Kuwait.[92] The Governing Council of the UNCC decided to award fixed compensation amounts to certain next of kin, namely the spouse, children or parents of a victim who had died as a result of the invasion or occupation.[93] For each death,

the UNCC awarded a sum of USD 2,500 upon submission of basic documentation establishing the death and the family relationship, subject to a ceiling of USD 10,000 per family (spouse, children and parents).[94] The UNCC did not require documentation of the actual amount of loss arising from the death.[95] For individuals whose losses exceeded USD 2,500, this payment constituted interim relief.[96] Next of kin were entitled to submit additional claims to the UNCC under other categories of loss, including Category C.

Category C claims were also intended to allow the expedited processing of urgent claims for individuals with losses of up to USD 100,000. Category C overlapped with Category B, partly because both categories included death-related claims. For the purposes of this advisory report, the approach to mental pain and anguish adopted by the UNCC Governing Council is of particular relevance. The Governing Council established compensation ceilings for mental pain and anguish (among other heads of damage) in death-related cases, namely USD 15,000 per claimant and USD 30,000 per family unit.[97] The Governing Council expected UNCC members to apply criteria in determining the appropriate amount to be awarded for the various categories of mental pain and anguish.[98] To formulate such criteria, the UNCC requested a panel of experts to identify distressing circumstances that would aggravate a person's mental pain and anguish.[99]

First, the panel established USD 5,000 as the minimum level of compensation in death-related claims where there are no relevant (distressing) circumstances.[100] Second, the panel identified a number of modifying factors on the basis of which a claimant would be entitled to the compensation at the ceiling amount (namely USD 15,000 per claimant and USD 30,000 per family unit), namely:

i) The claimant is less than 21 years old and loses both parents;

ii) The claimant is less than 21 years old and loses his or her only parent; and

iii) The death of the claimant's family member occurred as a result of cruel, inhuman or degrading treatment (e.g., death as a result of torture, execution, sexual assault or being held as a "human shield").[101]

Finally, the panel identified a number of other modifying factors that would justify an increase in the amount of compensation over and above the minimum lump-sum amount, namely:

i) Multiple losses suffered by claimant…;

ii) Intentionality of actions or events by officials, employees, members of the armed forces or other agents of Iraq leading to the death of the claimant's family member…;

iii) Degrading burial or other improper treatment of the deceased family member's body…;

iv) Non-recovery of a deceased family member's body;

v) Loss of a family member who is the only child;

vi) Loss of primary family support-earner; and

vii) Lack of medical care due to the invasion and occupation of Kuwait contributed to the death of the claimant's family member. [102]

The panel also indicated that the presence of more than one of these factors would entitle the claimant to compensation at the ceiling amount.[103] The panel assumed that 'the death of a family member normally leads to a period of grief for the surviving family members and exposes them to an increased risk of psychological or other illness'.[104] hese factors increase the likelihood of this occurring.

The UNCC also established lump sum awards for Category D claims involving damages exceeding USD 100,000 as a result of a death, in particular for the loss of the victim's financial support. Where the victim had been economically active, the panel was able to make detailed calculations for Category D claims of the losses suffered by the surviving family members on the basis of the evidence and actuarial principles.[105] Where the victim had not been economically active, however, the panel established lump sum awards based in part on 'the expected economic contribution to the household or potential earning capacity of each member of the household which was lost'.[106] For example, the spouse of a victim who had not been economically active could

receive a lump sum award of USD 100,000 where the victim was under the age of 55, and USD 60,000 where the victim was over the age of 55 (55 was the age of retirement in Kuwait at that time).[107]

1.5 Conclusions

This section has examined the compensation practices of the ICJ, the ICC, the EECC and the UNCC.

The CAVV's analysis shows that the practice of the ICJ and the EECC is of limited relevance to the settlement of the MH17 disaster, which is a key consideration in this advisory report. The ICJ has awarded a global sum in only one judgment. It did not, however, specify an amount per death or explain what equitable considerations were relevant in determining the global sum. Although the EECC did award compensation for various heads of damage, it did so only for personal injury and property damage, not for death-related claims.

By contrast, the practice of the ICC and the UNCC is relevant for this advisory report. Although the ICC has explained what factors are relevant in determining a global sum for psychological harm suffered as a result of the death of a relative, it remains unclear how it calculated the specific amounts. Regarding the UNCC, the CAVV would draw attention to the categories of claims applied by the UNCC in determining compensation for deaths, including compensation for mental pain and anguish associated with a death. The UNCC developed a practice under which minimum and maximum amounts of compensation could be awarded to certain next of kin, in particular the spouse, children or parents of the victim. At the same time, it identified various factors that entitled claimants to a higher amount.

– 2
The European Court of Human Rights (ECtHR)

The practice of the European Court of Human Rights (ECtHR) is of particular importance in light of its judgment of 9 July 2025 in the case of *Ukraine and the Netherlands v. Russia.*[108] The ECtHR held that the Russian Federation was responsible for the downing of flight MH17,[109] and found that, in that context, it had violated its substantive positive obligations under the right to life (Article 2 of the ECHR) by failing to take appropriate measures to prevent the use of lethal weapons in eastern Ukraine from causing civilian casualties.[110] The Russian Federation also violated the procedural limb of Article 2 through its failure to conduct an effective investigation into the downing of flight MH17 and through its lack of cooperation with the investigation carried out by the Joint Investigation Team established by the Netherlands, Australia, Belgium, Malaysia and Ukraine;[111] and it also violated the right to an effective remedy.[112] In addition, the Russian Federation violated the prohibition of inhuman treatment (Article 3 of the ECHR). According to the ECtHR, the suffering endured by the next of kin exceeded the minimum level of severity required in order to fall within the scope of Article 3, because they were, for example, unable to avoid viewing media images of the victims' bodies, the disrespectful manner in which those bodies were treated, and the Russian Federation's lack of transparency and honesty regarding the events in question.[113]

The ECtHR decided to address the issue of the just satisfaction claims for the violations arising from the downing of flight MH17 in separate proceedings and also indicated that developments in the parallel proceedings currently pending (namely, the invocation of state responsibility under general international law, the proceedings before the ICAO, and the applications brought by the next of kin against the Russian Federation under the Convention's individual application procedure) would be relevant in this connection.[114]

This section begins by describing the ECtHR's general practice concerning compensation (section 2.1). The CAVV then goes on to consider some specific aspects of awards of compensation to next of kin under Articles 2 and 3 of the ECHR (section 2.2), as well as cases involving multiple victims (section 2.3). This is followed by a brief discussion of the relevance of the existence of parallel compensation proceedings before the ECtHR and other bodies (section 2.4). The section ends with conclusions (section 2.5).

2.1 The ECtHR's general practice on compensation

Under Article 41 of the ECHR, the ECtHR may afford just satisfaction to the injured party if it has found a violation of the Convention. The ECtHR

has, however, repeatedly emphasised that '[a] warding of sums of money to applicants by way of just satisfaction is not one of the Court's main duties'.[115] Article 41 provides that the ECtHR may afford just satisfaction to the injured party if the internal law of the state concerned allows only partial reparation, but, in practice, the ECtHR does not usually examine whether this condition is met.[116] Just satisfaction may be awarded in respect of pecuniary damage, non-pecuniary damage and costs and expenses, provided that there is a causal link between the damage suffered and the violation found.[117] The ECtHR does not award punitive damages[118] It generally sets a payment time-limit of three months from the date on which the judgment becomes final. If payment is not made within that period, default interest is payable.[119] The Committee of Ministers of the Council of Europe supervises the implementation of judgments affording just satisfaction.

If a victim has already received compensation for certain damage, the ECtHR will deduct it from the amount awarded as just satisfaction.[120] The only point of relevance is whether the earlier compensation relates to the same head of damage, not whether it was paid by the state itself. The ECtHR does not appear to attach particular importance to the legal basis on which the earlier compensation was awarded. In *Fraisse and Others v. France*, for example, the compensation awarded in the domestic proceedings on the basis of the state's strict liability (and hence without any finding of culpable conduct) was deducted from the amount of compensation awarded by the ECtHR for non-pecuniary damage for the violation of the ECHR.[121] Compensation for pecuniary damage suffered by the next of kin of a victim in connection with a violation of the right to life may include funeral expenses, medical expenses resulting from the trauma suffered, and the loss of the deceased's earnings. A claim for compensation for pecuniary damage must be supported by sufficient evidence.[122] Calculating the loss of future earnings is complex and intrinsically speculative.[123] The relevant case law does not reveal how the ECtHR determines the amount of compensation awarded under this head of damage.

Where there has been a violation of the procedural aspect of the right to life, there will be no causal link between the loss of earnings and the violation.[124] However, where there has been a breach of the duty of diligence under Article 2 of the ECHR, a causal link can often be established,[125] although this cannot be presumed. For example, in *Tagayeva and Others v. Russia*, the ECtHR rejected claims for compensation for pecuniary damage relating to loss of earnings on the ground that a sufficient causal link was required and stated: '[n]oting the absence of individual fact-finding about the circumstances of the deaths and injuries caused and the extensive schemes for medical and social rehabilitation put in place for the victims of the terrorist act, the Court does not find it appropriate in the circumstances of this case to make an award under this head'.[126]

Where a causal link is established, the amount of compensation will depend on factors relating to the deceased (particularly age and earnings) and factors relating to the next of kin (e.g. the age of any children). By way of illustration, in *Aktaş v. Turkey*, the ECtHR awarded EUR 226,065 for loss of earnings to the widow and daughter of a deceased 24-year-old shopkeeper.[127] In *Kotilainen and Others v. Finland*, it awarded EUR 31,571.97 to the young child of a deceased 26-year-old student.[128] And in *Aslakhanova and Others v. Russia*, the Court awarded EUR 16,000 to the mother, widow and three daughters of a breadwinner who was aged 32 and unemployed at the time of his disappearance.[129]

The ECtHR awards compensation for non-pecuniary damage only in 'situations where the applicant has suffered evident trauma, whether physical or psychological, pain and suffering, distress, anxiety, frustration, feelings of injustice or humiliation, prolonged uncertainty, disruption to life, or real loss of opportunity', where 'the impact of the violation may be regarded as being of a nature and degree as to have impinged so significantly on the moral well-being of the applicant' that a mere finding of a violation does not constitute sufficient just satisfaction.[130] According to the ECtHR, it is in the nature of non-pecuniary damage that it does not lend itself to precise calculation.[131] The guiding principle is 'equity', which, according to the ECtHR, 'above all involves flexibility and an objective consideration of what is just, fair and reasonable in all the circumstances of the case, including not only the position of the applicant as well as his or her own possible contribution to the situation complained

of, but the overall context in which the breach occurred'.[132] The ECtHR stresses in this connection that its non-pecuniary awards 'serve to give recognition to the fact that moral damage occurred as a result of a breach of a fundamental human right and reflect in the broadest of terms the severity of the damage; they are not, nor should they be, intended to give financial comfort or sympathetic enrichment at the expense of the Contracting Party concerned'.[133] It has been noted in this connection, however, that the ECtHR seeks to strike a balance between the interests of the different parties.[134] The amounts of compensation awarded by the ECtHR for non-pecuniary damage are generally regarded as modest and have indeed even been described as 'ungenerous'.[135]

Although justice for individuals is not the primary objective of inter-state cases,[136] the ECtHR may still award just satisfaction to individual victims or their next of kin in such proceedings. The ECtHR first applied Article 41 of the Convention in an inter-state case in *Cyprus v. Turkey*.[137] According to the ECtHR, Article 41 follows the same logic as that of international law, under which an injured state is entitled to obtain compensation for the damage it incurs as a result of an internationally wrongful act from the state which committed it.[138] Inter-state claims under Article 41 are comparable to the exercise by the injured state of its right to diplomatic protection for its nationals who have become victims of violations of international law.[139] The ECtHR emphasises that when just satisfaction is afforded in an inter-state case 'it should always be done for the benefit of individual victims', for the simple reason that 'it is the individual, and not the State, who is directly or indirectly harmed and primarily injured by a violation of one or several Convention rights'.[140] It should be noted that, under Articles 33 and 41 of the ECHR, a state may, unlike in the exercise of diplomatic protection, also claim compensation on behalf of persons who are not its nationals.

The nature and gravity of the violation is one of the factors which the ECtHR takes into account when determining the amount of the compensation.[141] Violations of the right to life and the prohibition of torture (Articles 2 and 3 of the ECHR) undoubtedly constitute serious violations for which higher awards of compensation are appropriate.[142] Although the extent of the suffering of the next of kin does not necessarily depend on whether the respondent state intentionally violated the right to life or whether it breached its duty of care under Article 2 of the ECHR, this distinction is nevertheless relevant to the nature and gravity of the violation.

The ECtHR also takes into account the local economic circumstances in the respondent state, which means that it may have regard to both the cost of living and the respondent state's financial capacity.[143] This criterion is generally thought to be reasonable as 'it is the concrete benefit secured to the victims that must be commensurate, not the amount per se'.[144] The CAVV notes, however, that this applies only where the victim resides in the respondent state. It is unclear from the case law of the ECtHR whether it also takes into account the local economic circumstances of the respondent state in cases where the victim resides in a state with different economic circumstances.[145]

The literature contains extensive criticism of the ECtHR's practice on compensation, which is often seen as incoherent and unpredictable.[146] The ECtHR generally does not explain how it arrives at a given amount of compensation for non-pecuniary damage.[147] This criticism can be illustrated by a number of cases concerning compensation awarded to the next of kin of victims who died as a result of substantive and procedural violations of Article 2 of the ECHR.

In *Tagayeva and Others v. Russia*, the Russian Federation was held responsible for a violation of the right to life under Article 2 of the ECHR, due, among other things, to a breach of the obligation to plan and control an operation involving the use of lethal force so as to minimise the risk to the lives of individuals.[148] The next of kin of the many direct victims in that case were required to share among themselves an award of EUR 10,000 for each deceased victim.[149] In 2025, the ECtHR delivered judgment in *Fraisse and Others v. France*,[150] a case which is similar in some important respects to the *Tagayeva* case. Here too, Article 2 of the ECHR was found to have been violated because of a failure to plan and control an operation involving the use of lethal force in such a way as to minimise the risk to the lives of individuals. The ECtHR awarded each of the deceased victim's four next of kin a sum of EUR 20,000, resulting in a total award of EUR 80,000.[151] It is impossible to determine whether this disparity between the two cases reflects the

different economic circumstances of the Russian Federation and France or differences in the facts of the two cases.[152]

In 2014, the ECtHR ordered the Netherlands to pay a sum of EUR 25,000 for a breach of the procedural obligation under Article 2 of the ECHR, on account of failings in the investigation into a fatal shooting incident at a checkpoint in Iraq involving a Dutch soldier.[153] The ECtHR noted that in the *Al-Skeini* case, which also concerned a violation of the procedural aspect of Article 2 of the ECHR, it had awarded the applicants the sum claimed in respect of non-pecuniary damage, namely EUR 17,000. Accordingly, in the case at hand, the ECtHR also awarded the applicant the full amount claimed.[154] In *Storimans-Verhulst and Others v. Russia*, the ECtHR found that the Russian Federation had violated Article 2 of the ECHR on account of its failure to conduct an effective investigation into the death of a Dutch photojournalist who was killed by cluster munitions carried by a missile fired by the Russian Federation in Georgia.[155] The next of kin had claimed compensation only for loss of earnings, but the ECtHR held that the claim could not be granted because Article 1 jurisdiction did not exist in respect of the bombing itself. As there was no causal link between the procedural violation and the pecuniary damage alleged, the ECtHR decided to award the next of kin jointly a sum of EUR 10,000 in respect of non-pecuniary damage.[156]

Where a violation of the ECHR has already been established by the ECtHR, the parties to a dispute may choose to agree on compensation by way of a friendly settlement.[157] If the ECtHR considers the settlement to be equitable, then it strikes the case out of its list of cases.[158]

2.2 Damage suffered by next of kin of a victim of a violation of Articles 2 and 3 of the ECHR

Where there has been a violation of Article 2 of the ECHR, the ECtHR generally awards compensation for non-pecuniary damage to the next of kin jointly.[159] Although the close family members of a victim of a violation of the right to life are themselves treated as (indirect) victims[160] of the violation in such cases,[161] the compensation for their suffering is usually not assessed on an individual basis. For example, in *Aslakhanova and Others v. Russia*, the mother of one disappeared man, as his sole next of kin, was awarded EUR 60,000 by the ECtHR, whereas the mother of another disappeared man had to share the same award of EUR 60,000 with his wife and three daughters.[162] In the *Tagayeva* case too, an award of EUR 10,000 was in some instances granted to a single next of kin and in others jointly to two, three or four next of kin.[163] This practice seems, in any event, to be difficult to reconcile with the recognition of family members as indirect victims, since their 'trauma, whether physical or psychological, pain and suffering, distress, anxiety, frustration, feelings of injustice or humiliation, prolonged uncertainty…'[164] does not diminish merely because the next of kin are more numerous.

The ECtHR occasionally departs from this practice. For example, in *Fraisse and Others v. France*, each of the four next of kin was awarded EUR 20,000[165] and more recently, in *Magherini and Others v. Italy*, the father and mother of a man who died following the police's excessive use of force during his arrest were awarded EUR 50,000 jointly, his wife and son were also awarded EUR 50,000 jointly and his brother received EUR 20,000 and his nephew EUR 10,000.[166] In *Khadzhialiyev and Others v. Russia*, the ECtHR ruled that there had been a violation of Article 3 of the ECHR because only partial remains of two brothers, for whose deaths the Russian Federation was held responsible, were recovered. As compensation for non-pecuniary damage, the ECtHR awarded the parents of the two men EUR 50,000 jointly and the son of one of the men EUR 20,000.[167]

It is difficult to form a clear picture of how exactly the ECtHR determines which next of kin qualify as indirect victims. In the *Magherini* case, the ECtHR held as follows:

> 'The Court has recognised that close family members, including a parent, spouse, child, sibling, nephew, or uncle of a person whose death is alleged to engage the responsibility of the respondent State can themselves claim to be indirect victims of an alleged violation of Article 2 of the Convention[…]. On the other hand, the Court has previously found that the victim status of cousins, unlike that of close family members such as those listed above, is not automatically recognised by the Court.'[168]

There are, however, also cases in which more distant relatives (such as uncles, aunts and grandparents) are not awarded compensation where the application has also been brought by the victim's close relatives. For example, in *Tagayeva and Others v. Russia*, one grandmother was awarded EUR 20,000 in connection with the deaths of her two grandchildren,[169] whereas most of the other grandmothers received no compensation because other applicants were more closely related to the deceased.[170]

Which family members the ECtHR recognises as indirect victims is even harder to predict in cases under Article 3 of the ECHR. Many of these cases concern disappearances, and the ECtHR then takes into account not only the proximity of the family tie but also the role played by the family member in uncovering the truth about the disappearance.[171] In *Çakici v. Turkey*, the ECtHR indicated that it attached particular weight to the parent-child bond when determining whether there had been a violation of Article 3 of the ECHR. In *Luluyev v. Russia*, however, the ECtHR did not precisely examine how close the family ties were or what role the individual family members had played in uncovering the truth, and instead found that there had been a violation of Article 3 of the ECHR in respect of the disappeared woman's children, husband, parents and brothers.[172] All family members who had submitted claims in respect of non-pecuniary damage were awarded compensation individually: each child received EUR 12,000, the mother EUR 10,000 and each brother EUR 2,000.[173]

2.3 Cases involving multiple direct victims

First, experts have noted that the ECtHR often awards significantly lower amounts of compensation in cases involving large numbers of victims.[174] The CAVV also notes that, in cases involving multiple direct victims, the ECtHR generally awards the same amount of compensation for non-pecuniary damage in respect of each direct victim. Each of the men in the *Aslakhanova* case disappeared in different circumstances and had a different personal background, as did the direct victims in the *Tagayeva* case. In other words, the ECtHR does not generally assess the trauma suffered by individual indirect victims, nor does it usually distinguish between different direct victims in any given case.

The ECtHR has awarded compensation for non-pecuniary damage in a number of inter-state cases concerning violations of the rights of large or very large numbers of victims. For example, in *Cyprus v. Turkey* in 2014, the ECtHR ordered Turkey to pay EUR 30,000,000 in compensation for non-pecuniary damage resulting from the enforced disappearance of 1,456 persons.[175] In *Georgia v. Russia (II)* in 2023, the ECtHR awarded a lump sum of EUR 3,250,000 in respect of non-pecuniary damage suffered by 'a group of at least fifty victims of the administrative practice of killing of civilians in Georgian villages in South Ossetia and in the "buffer zone"'.[176] In 2025, in *Georgia v. Russia (IV)*, the ECtHR awarded a lump sum of EUR 1,300,000 in respect of the non-pecuniary damage suffered by a group of at least 20 victims of violations of both the substantive and procedural limbs of Article 2.[177] Although the ECtHR considers the existence of a sufficiently precise and objectively identifiable group of persons whose rights have been violated to be a prerequisite for awarding compensation in inter-state cases,[178] to date direct and indirect victims in such cases have not been identified by name. The ECtHR has also held that the respondent state must distribute the lump sum among the individual victims, explaining that 'if just satisfaction is afforded in an inter-State case, it should always be done for the benefit of individual victims'.[179] The respondent state is responsible for establishing an effective mechanism for distributing the awarded sum. Given the rather inconsistent nature of the ECtHR's case law, the state appears to have considerable discretion in determining which next of kin qualify as indirect victims,[180] as well as in apportioning the compensation among them.

The claimant states in these cases did not seek compensation for pecuniary damage on behalf of their nationals. This seems to suggest that an inter-state claim for a lump sum settlement is not considered an appropriate mechanism for compensating pecuniary damage, such as loss of earnings. Since the ECtHR's awards of compensation for non-pecuniary damage are of a relatively imprecise nature even in individual cases and are often determined on a lump sum basis (without taking into account the individual characteristics of the direct and indirect victims), it would require only a relatively small

step to award lump sum compensation for non-pecuniary damage in an inter-state case involving a sufficiently well-defined group of direct victims. The position is different with regard to compensation for pecuniary damage. This does not mean that such damage cannot be compensated in an inter-state case, but the CAVV expects that the ECtHR would award such compensation only on the basis of individual calculations, taking into account the specific individual circumstances of the victims and their next of kin, rather than by means of lump sums. Moreover, the CAVV expects that a friendly settlement, in which the claimant and respondent states agree on a lump sum covering both pecuniary and non-pecuniary damage, might be deemed equitable by the ECtHR and that the case could therefore be struck out of its list of cases.[181]

In *Georgia v. Russia (I)*, the ECtHR held that it was for the Russian Federation to prove that the persons identified by Georgia had not been victims of the violations of the Convention as established in the merits judgment. This reversal of the burden of proof was justified by the fact that the violations had been committed on Russian territory.[182]

The CAVV also observes that, to date, the lump sum awards made in inter-state cases have never been paid by the respondent state.[183] In the specific case of the Russian Federation, it should also be noted that, following its expulsion from the Council of Europe, it enacted legislation barring any further compliance with judgments of the ECtHR.[184] Although the responsible state may not rely on the provisions of its internal law as justification for a failure to comply with its international obligations (see Article 32 of the ARSIWA), such domestic legislation may nonetheless prevent the implementation of an ECtHR judgment.

2.4 Parallel compensation proceedings before the ECtHR and other bodies

The existence of parallel proceedings may be relevant in cases before the ECtHR. For example, an individual application is inadmissible if it is 'substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.'[185]

Cases are not considered 'substantially the same' if they have not been introduced by the same persons.[186] Accordingly, an inter-state application may overlap with individual applications concerning the same underlying facts.[187] In the *Varnava* case, for example, the ECtHR emphasised that its judgment in *Cyprus v. Turkey* did not mean that the individual applicants no longer had a legally protected interest in pursuing their own claims:

> '[I]n individual applications the Court has the competence to issue just satisfaction awards for pecuniary and non-pecuniary damage suffered by individual applicants and to give indications under Article 46 as to any general or individual measures that might be taken. It cannot be said therefore that the present applications are incapable of giving rise to issues or outcomes different to those of the fourth inter-State case, or that the individual applicants' interests have somehow been subsumed by the judgment in that case such that it is no longer justified to continue the examination of their applications. The Cour is accordingly satisfied that a legal interest remains in pursuing the examination of these applications.[188]

The parallel existence of an individual application and an inter-state case may, however, affect an individual's victim status in inter-state proceedings before the ECtHR. In *Georgia v. Russia (I)*, for example, the ECtHR noted that a number of the individuals included on the list of victims supplied by Georgia had already lodged individual applications and could not therefore be regarded as victims for the purposes of the inter-state case.[189] Although the ECtHR left it to Georgia to distribute the lump sum that had been awarded, it expressly stated that those individuals had to be excluded from the distribution.[190] Similarly, in the just satisfaction phase of *Cyprus v. Turkey*, Cyprus itself recognised that because compensation had already been awarded in respect of some of the disappearances through the judgment in *Varnava and Others v. Turkey*, the individuals concerned should be removed from the original list of victims.[191] It is worth noting that, whereas the compensation for non-pecuniary damage awarded for each disappeared person in the *Varnava and Others* case in 2009 amounted to EUR 12,000, the lump sum awarded in *Cyprus v. Turkey* in 2014 effectively amounted to over EUR

20,000 per person. Although Cyprus had initially claimed EUR 12,000 for each direct victim, in keeping with the approach adopted in *Varnava and Others*, it subsequently amended its claim and instead requested the ECtHR to award just satisfaction 'at a standard rate in accordance with equitable principles', stating that it 'considered that the sum of EUR 12,000 per person awarded in *Varnava and Others* did not correspond to the considerably higher amounts awarded in other recent and legally similar cases'.[192]

Similarly, where a violation of the victims' rights under the ECHR has been established (either expressly or in substance) in domestic proceedings and appropriate and sufficient redress has been provided, the ECtHR will not recognise the applicant as a victim.[193] This is, however, not always the case where compensation has already been awarded under internal law: the award of damages without a corresponding finding that there has been a violation means that victim status remains intact.[194] As already noted, however, such compensation may be deducted from the compensation awarded by the ECtHR.[195]

In the MH17 case, the ECtHR has already examined the case on its merits.[196] However, any overlap with other proceedings or an inter-state agreement may influence the ECtHR's handling of the compensation claim. If the ECtHR treats an inter-state agreement as a friendly settlement within the meaning of Article 39 of the ECHR and also considers the settlement to be equitable, it will strike the inter-state case out of its list.[197] If all or part of the damage resulting from the violations found by the ECtHR has already been compensated through other international proceedings, it seems likely that the ECtHR, in line with its practice regarding compensation awarded under internal law, will take this into account by deducting it from the amount of the compensation to be awarded.

Likewise, the principle that the same damage must not be compensated twice applies where the ECtHR has awarded compensation to a victim and a claim for the same heads of damage is subsequently instituted in respect of the same victim in another international proceeding. This is not altered by the fact that the formal legal basis of the second proceeding is different: provided that the claim concerns the same victim and the same actual damage, any amount already awarded by the ECtHR will be deducted from the compensation to be determined in the second proceeding.

This does not necessarily mean that no compensation will be awarded in the second proceeding. The basic question is whether the compensation awarded by the ECtHR can be regarded as 'full reparation' within the meaning of the relevant general principle of international law (Article 31 of the ARSIWA). The answer to this question cannot be assumed to be in the affirmative: given the often modest amounts awarded by the ECtHR for non-pecuniary damage, it is arguable that an ECtHR award constitutes only partial reparation and that an additional award made through another international proceeding may not only be permissible but may even be necessary in order to satisfy the principle of full reparation.

2.5 Conclusions

The ECtHR's practice on compensation sheds little light on the legal criteria it applies either when determining the amount of compensation for non-pecuniary damage or when deciding who qualifies as an indirect victim of a violation of Articles 2 and 3 of the ECHR. The CAVV notes, however, that in the cases it has studied the ECtHR does not make either the direct or the indirect victim its central focus when awarding compensation for non-pecuniary damage. This is evident, for example, from the fact that in cases involving multiple direct victims it often does not individualise the damage suffered by the next of kin. Moreover, it frequently awards identical lump sums for each direct victim, thus requiring the next of kin to divide the amounts awarded among themselves. As a consequence, victims who have suffered comparable levels of harm may receive different amounts of compensation, depending on the number of next of kin among whom the lump sum must be shared.[198] In addition, the level of compensation for non-pecuniary damage awarded by the ECtHR is generally regarded as modest when compared with awards made in domestic proceedings or under inter-state settlements.

On a number of occasions, the ECtHR has awarded a lump sum as compensation for non-pecuniary damage in inter-state cases involving a sufficiently identifiable group of victims. In those judgments, the direct and indirect victims are not identified

by name, although the ECtHR does refer to lists containing the names of victims and uses fairly precise estimates of the number of victims.

There are no examples of compensation being awarded for pecuniary damage in inter-state cases. Pecuniary damage will, however, often be significantly higher than the average sums awarded by the ECtHR as compensation for non-pecuniary damage in cases concerning Articles 2 and 3 of the ECHR. In the CAVV's opinion, the ECtHR could conceivably award individually determined compensation for pecuniary damage to each victim in an inter-state case involving a very precisely defined group of victims. In such a case, compensation for non-pecuniary damage could still be awarded as a lump sum, although it is also conceivable that the ECtHR might award such compensation on an individual basis in keeping with its practice in individual cases involving large numbers of victims.

Conclusion and advice

In this advisory report, the CAVV has analysed how lump sum compensation for damage suffered by groups of individuals as a result of an internationally wrongful act is determined under international law, against the background of the damage suffered by the next of kin of the victims of the MH17 disaster.

The CAVV has arrived at the following conclusions and recommendations:

1. Where a large number of individual claims have been brought against the responsible state, the practice that has developed involves the responsible state paying a lump sum to the state of the victims' nationality. Lump sum agreements have the advantage of resolving all outstanding individual claims in a single, final settlement on terms determined by the states themselves. A lump sum agreement also provides a practical means of compensating next of kin for non-pecuniary damage since that is hard to quantify on an individual basis.

2. Lump sum agreements are mainly instruments of political negotiation and their legal form has been standardised only to a limited extent. The CAVV's analysis shows that because the content, size and structure of lump sum agreements are largely shaped by the interplay of political negotiations, power relations and economic considerations, they provide only limited guidance for future cases.

3. There is no consistent legal method for deciding how large a lump sum should be. Both state practice and international case law show that compensation amounts are often agreed without reference to clear or uniform criteria. Some institutions such as the ICJ may sometimes adopt a 'global sum' approach in the absence of evidence about damage, and others, such as the UNCC, use standardised amounts and factors, albeit without applying them consistently.

4. The prevailing practice is for states to make *ex gratia* payments without admission of responsibility. In many cases, states opt to pay compensation without formally acknowledging responsibility under international law. This allows disputes to be resolved politically, but provides less legal clarity and may well leave victims with a feeling that justice has not been done.

5. There has, however, been some convergence with respect to categories of damage and categories of beneficiaries. Although compensation amounts vary widely, there are similarities between agreements as regards recognition of certain categories of beneficiaries (for example, close family members) and types of damage (as in the case of death).

6. Victims attach importance not only to financial compensation but also to acknowledgement of responsibility, apologies and establishment of the truth.

7. Lump sum agreements are often linked to broader political goals. Compensation agreements are frequently accompanied by the lifting of sanctions, the normalisation of diplomatic relations and the termination of legal proceedings, which emphasises their hybrid legal and political character.

8. Lump sum agreements may clash with the individual rights of victims. In particular, the waiver by states of individual claims may be at odds with human rights standards, especially in cases involving serious violations. Mechanisms for victim participation, such as opt-in procedures, may then be appropriate.

9. In practice, the distribution of compensation is left, in part, to internal law. As the recipient state generally enjoys broad discretion as to how the lump sum is allocated internally, this may result in differences in outcomes for victims. It is therefore important to apply clear domestic criteria for the distribution of compensation.

List of abbreviations

ARSIWA	Articles on Responsibility of States for Internationally Wrongful Acts
CAVV	Advisory Committee on Issues of Public International Law
DRC	Democratic Republic of Congo
EECC	Eritrea-Ethiopia Claims Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICC	International Criminal Court
ILC	International Law Commission
UN	United Nations
UNCC	United Nations Compensation Commission
US	United States of America

Endnotes

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5 See, for example, https://www.centruminternationaalrecht.nl/staatsaansprakelijkheid

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7 Article 31, para. 2, ARSIWA.

8 Article 34 of the ARSIWA.

9 Article 35 of the ARSIWA.

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11 Article 37, paras. 1 and 2 of the ARSIWA.

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22 ICJ, 5 February 1970, *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Judgment, I.C.J. Reports 1970*, paras. 61 and 62.

23 B.H. Weston, R.B. Lillich and D.J. Bederman, *International Claims: Their Settlement by Lump Sum Agreements, 1975-1995*, Transnational Publishers, 1999, pp. 21-50.

24 As regards flight MH17, see, in particular, ECtHR, 9 July 2025, ECLI:CE:ECHR:2025:0709JUD000801916 *(Ukraine and the Netherlands v. Russia)*, and the decision of the ICAO Council of 30 June 2025, in which the Russian Federation was held responsible for downing flight MH17; see paras. 47 and 48 in ICJ, 18 September 2025, Application Instituting Proceedings, *Appeal from the Decision of the ICAO Council under Article 84 of the Convention of International Civil Aviation (Russian Federation v. Commonwealth of Australia and Kingdom of the Netherlands)*, pp. 23-25.

[25] Permanent Court of International Justice (PCIJ), 30 August 1924, *The Mavrommatis Palestine Concessions*, Judgment No. 2, Series A, para. 21: 'It is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights – its right to ensure, in the person of its subjects, respect for the rules of international law.'

[26] Article 19 of the ILC's 'Draft Articles on Diplomatic Protection (2006)', in: *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10*, UN Doc A/61/10: 'A State entitled to exercise diplomatic protection according to the present draft articles, should: (a) give due consideration to the possibility of exercising diplomatic protection, especially when a significant injury has occurred; (b) take into account, wherever feasible, the views of injured persons with regard to resort to diplomatic protection and the reparation to be sought; and (c) transfer to the injured person any compensation obtained for the injury from the responsible State subject to any reasonable deductions.'

[27] R. Bank and F. Foltz, 'Lump Sum Agreements' in: Max Planck Encyclopedia of Public International Law, 2013, para. 1.

[28] See, for example, the Agreement Between the Government of the Russian Federation and the Government of Ukraine on the Settlement of Claims Arising from the Aerial Catastrophe of 4 October 2001, https://zakon.rada.gov.ua/laws/show/en/643_246#Text [hereinafter: Ukraine-Russian Federation Agreement (2003)], the preamble to which mentions a sum of USD 200,000 per victim.

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[30] See, for example, the Ukraine-Russian Federation Agreement (2003), Annex.

[31] ICJ, 3 February 2012, *Jurisdictional Immunities of the State (Germany v. Italy; Greece intervening), Judgment, I.C.J. Reports 2012*, para. 94: 'Moreover, against the background of a century of practice in which almost every peace treaty or post-war settlement has involved either a decision not to require the payment of reparations or the use of lump sum settlements and setoffs, it is difficult to see that international law contains a rule requiring the payment of full compensation to each and every individual victim as a rule accepted by the international community of States as a whole as one from which no derogation is permitted.'

[32] Most lump sum agreements concluded by states since the Second World War relate to compensation for expropriation of foreign investments. See: L.N. Skovgaard Poulsen, 'Beyond Adjudication: Lump Sum Agreements, Economic Hostages and Market Access' in: *European Journal of International Law* 36(2), 2025. As the compensation in those cases relates to property damage rather than personal injury, these agreements are less relevant to this advisory report.

[33] ICJ, 3 February 2012, *Jurisdictional Immunities of the State (Germany v. Italy; Greece intervening), Judgment, I.C.J. Reports 2012*, para. 94.

[34] Settlement Agreement on the Case Concerning the Aerial Incident of 3 July 1988 before the International Court of Justice, 9 February 1996, *International Legal Materials 35(3)*, Cambridge University Press, 1996, p. 553, [US-Iran Agreement (1996)] preamble.

[35] Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of the Sudan, 30 October 2020 [hereinafter: US-Sudan Agreement (2020)], preamble, para. 5.

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[37] See, for example, the Agreement Between the Government of the Russian Federation and the Government of Ukraine on the Settlement of Claims Arising from the Aerial Catastrophe of 4 October 2001, https://zakon.rada.gov.ua/laws/show/en/643_246#Text [hereinafter: Israel-Ukraine Agreement (2003)], preamble, Art. I, VII; Ukraine-Russian Federation Agreement (2003), Art. II.

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[40] Letter dated 15 August 2003 from the Chargé d'affaires a.i. of the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations addressed to the President of the Security Council', UN Doc S/2003/818 (2003), p. 1.

[41] For the up-to-date list, see: US Department of State, Bureau of Counterterrorism, State Sponsors of Terrorism, https://www.state.gov/state-sponsors-of-terrorism; US State Department, Bureau of Counterterrorism, Country Reports on Terrorism 2019, p. 200 (latest report on Sudan); US State Department, Office of the Coordinator for Counterterrorism, Country Reports on Terrorism, 28 April 2006, Report (latest report on Libya).

[42] See, for example, US-Sudan Agreement (2020), Annex.

[43] 'Letter dated 15 August 2003 from the Chargé d'affaires a.i. of the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations addressed to the President of the Security Council', UN Doc S/2003/818 (2003), p. 2.

[44] US-Sudan Agreement (2020), Article III, para. 1and Article IV, para. 2 (b); Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiryia, 14 August 2008 [hereinafter: US-Libya Agreement (2008)], Article I (second objective) and Article III; see also S.D. Murphy, 'Libyan Payment to Families of Pan Am Flight 103 Victims', *American Journal of International Law* 97(4), 2003, p. 990.

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[48] S.D. Murphy, 'Libyan Payment to Families of Pan Am Flight 103 Victims', *American Journal of International Law* 97(4), 2003, p. 990. See, however, J. Henley, 'Libya agrees payout for French bombing', *The Guardian* 10 January 2004: 'up to 50% of the Lockerbie deal could disappear in legal fees and taxes'.

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[51] Ibid., Annex 2, Article 3.

[52] United States Court of Appeals for the District of Columbia Circuit, 21 May 1996, 84 F.3d 446, *(Forman v. Korean Air Lines Co., Ltd.)*.

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[60] Settlement Agreement on the Case Concerning the Aerial Incident of 3 July 1988 before the International Court of Justice, 9 February 1996, *International Legal Materials 35(3)*, Cambridge University Press, 1996, p. 553, [US-Iran Agreement (1996)], Annex 3; ICJ 22 February 1996, *Aerial Incident of 3 July 1988 (Islamic Republic of Iran v United States of America), Order of 22 February 1996, I.C.J. Reports 1996*, p. 9.

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144 O. Ichim, *Just Satisfaction under the European Convention on Human Rights*, Oxford University Press, 2014, p. 47.

145 See Ichim, ibid., pp. 159–160, who argues that the economic circumstances in the victim's place of residence should be the decisive factor.

146 See, for example, Ichim, ibid., p. 272; D. Shelton, *Remedies in International Human Rights Law (third edition)*, Oxford University Press, 2015, p. 325ff; E. Lambert and E. Özlü, 'Just Satisfaction: European Court of Human Rights (ECtHR)', *Max Planck Encyclopedia of Public International Law*, para. 52; V. Fikfak 'Non-pecuniary damages before the European Court of Human Rights: Forget the victim; it's all about the state', *Leiden Journal of International Law* 33, 2020, p. 336.

147 O. Ichim, *Just Satisfaction under the European Convention on Human Rights*, Oxford University Press, 2014, pp. 46-52.

148 ECtHR, 13 April 2017, ECLI:CE:ECHR:2017:0413JUD002656207 *(Tagayeva and Others v. Russia)*.

149 Ibid., see Annex.

150 ECtHR, 27 February 2025, ECLI:CE:ECHR:2025:0227JUD004762621 *(Fraisse and Others v. France)*.

151 Ibid., para. 167.

152 It has been argued in the literature that the number of direct victims in a case also appears to influence the amount of compensation for non-pecuniary damage awarded by the ECtHR. See also footnote 176.

153 ECtHR, 20 November 2014, ECLI:CE:ECHR:2014:1120JUD004770808 *(Jaloud v. The Netherlands)*, para. 235..

154 Ibid.

155 ECtHR, 7 October 2025, ECLI:CE:ECHR:2025:1007JUD002630210 (*Storimans-Verhulst and Others v. Russia)*.

156 Ibid., para. 44.

157 Article 39 of the ECHR.

158 Rules of Court, Rule 75 § 4 and Rule 43 § 3. See, for example, ECtHR, 10 January 2008, ECLI:CE:ECHR:2008:0110JUD002396002 *(Zeman v. Austria)*.

159 See, for example, ECtHR, 13 April 2017, ECLI:CE:ECHR:2017:0413JUD002656207 *(Tagayeva and Others v. Russia)*; ECtHR, 17 September 2020, ECLI:CE:ECHR:2020:0917JUD006243912 *(Kotilainen and Others v. Finland)* and ECtHR, 18 September 2009, ECLI:CE:ECHR:2009:0918JUD001606490 *(Varnava and Others v. Turkey)*.

160 See ECtHR, 17 July 2014, ECLI:CE:ECHR:2014:0717JUD004784808 *(Centre for Legal Resources on behalf of Valentin*

Câmpeanu v. Romania), para. 97ff. See also ECtHR Registry, 'Key Theme – Article 34/35 The locus standi of relatives (indirect victims) to bring a case to the Court when the direct victim has died', last updated 28 February 2026.

161 See, for example, ECtHR, 17 September 2020, ECLI:CE:ECHR:2020:0917JUD006243912 *(Kotilainen and Others v. Finland)*, paras. 51 and 52.

162 ECtHR, 18 December 2012, ECLI:CE:ECHR:2012:1218JUD000294406 *(Aslakhanova and Others v. Russia)*, Annex II.

163 ECtHR, 13 April 2017, ECLI:CE:ECHR:2017:0413JUD002656207 *(Tagayeva and Others v. Russia)*, Annex.

164 Ibid.

165 ECtHR, 27 February 2025, ECLI:CE:ECHR:2025:0227JUD004762621 *(Fraisse and Others v. France)*.

166 ECtHR, 15 January 2026, ECLI:CE:ECHR:2026:0115JUD003270719 *(Magherini and Others v. Italy)*, para. 166.

167 Ibid., para. 151.

168 ECtHR, 15 January 2026, ECLI:CE:ECHR:2026:0115JUD003270719 *(Magherini and Others v. Italy)*, para. 71.

169 See, for example, ECtHR, 13 April 2017, ECLI:CE:ECHR:2017:0413JUD002656207 *(Tagayeva and Others v. Russia)*, Annex, applicant no. 45.

170 Ibid., e.g. applicants no. 3, 13 and 31.

171 ECtHR, 8 July 1999, ECLI:CE:ECHR:1999:0708JUD002365794 *(Çakici v. Turkey)*, para. 98. See T. Feldman, 'Indirect Victims, Direct Injury: Recognising Relatives as Victims under the European Human Rights System', *European Human Rights Law Review* 1, 2009, pp. 50-69.

172 ECtHR, 9 November 2006, ECLI:CE:ECHR:2006:1109JUD006948001 *(Luluyev v. Russia)*, paras 116-118.

173 Ibid., para. 156.

174 V. Fikfak, 'Changing State Behaviour: Damages before the *European Court of Human Rights', European Journal of International Law 29*, 2018, p. 353.

175 ECtHR, 12 May 2014, ECLI:CE:ECHR:2014:0512JUD002578194 *(Cyprus v. Turkey)*, para. 58.

176 ECtHR, 28 April 2023, ECLI:CE:ECHR:2023:0428JUD003826308 *(Georgia v. Russia (II))*, para. 40.

177 ECtHR, 14 October 2025, ECLI:CE:ECHR:2025:1014JUD003961118 *(Georgia v. Russia (IV))*, para. 16.

178 ECtHR, 12 May 2014, ECLI:CE:ECHR:2014:0512JUD002578194 *(Cyprus v. Turkey)*, para. 43; ECtHR, 31 January 2019, ECLI:CE:ECHR:2019:0131JUD001325507, *(Georgia v. Russia (I))*, para. 22.

179 ECtHR, 12 May 2014, ECLI:CE:ECHR:2014:0512JUD002578194 *(Cyprus v. Turkey)*, para. 46.

180 With the exception of individuals who lodge an individual application; see footnotes 191 and 192

181 See footnote 160.

182 ECtHR, 31 January 2019, ECLI:CE:ECHR:2019:0131JUD001325507, *(Georgia v. Russia (I))*, para. 69.

183 See V. Fikfak, 'Changing State Behaviour: Damages before the European Court of Human Rights', *European Journal of International Law* 29, 2018, p. 1124.

184 See K. Koroteev, 'Non-execution of Strasbourg Judgments against Russia: the Case for a Trust Fund', *Russian Politics* 9, 2024, p. 122.

185 Article 35, para. 2 (b) of the ECHR.

186 ECtHR, 18 September 2009, ECLI:CE:ECHR:2009:0918JUD001606490 *(Varnava and Others v, Turkey)*, para. 118: 'for an application to be substantially the same as another which has already been examined by the Court or other procedure of international investigation or settlement for the purposes of Article 34 § 2 (b), it must concern substantially not only the same facts and complaints but be introduced by the same persons.'

187 In 2025, 18% of the individual applications pending before the ECtHR overlapped with an inter-state case; see I. Risini, 'Beyond the Fog of War, On the ECtHR's Ukraine, The Netherlands, v. Russia judgment on the merits', *Verfassungsblog*, 12 July 2025.

188 ECtHR, 18 September 2009, ECLI:CE:ECHR:2009:0918JUD001606490 *(Varnava and Others v. Turkey)*, para. 119.

[189] ECtHR, 31 January 2019, ECLI:CE:ECHR:2019:0131JUD001325507, *(Georgia v. Russia (I))*, para. 70. See also the individual applications lodged against Russia by the next of kin of the MH17 victims referred to in ECtHR, 9 July 2025, ECLI:CE:ECHR:2025:0709JUD000801916 *(Ukraine and the Netherlands v. Russia)*, paras. 18 and 1651.

[190] Ibid., par. 79.

[191] ECtHR, 12 May 2014, ECLI:CE:ECHR:2014:0512JUD002578194 *(Cyprus v. Turkey)*, para. 48.

[192] ECtHR, 12 May 2014, ECLI:CE:ECHR:2014:0512JUD002578194 *(Cyprus v. Turkey)*, para. 49. It should be noted that Turkey has not paid the compensation awarded in either the inter-state case or the Varnava and Others case (ECtHR, 18 September 2009 ECLI:CE:ECHR:2009:0918JUD001606490 *(Varnava and Others v. Turkey)*. See: https://hudoc.exec.coe.int.

[193] ECtHR, 29 March 2006, ECLI:CE:ECHR:2006:0329JUD003681397 *(Scordino v. Italy (I))*, paras. 178-213.

[194] See, for example, ECtHR, 27 February 2025, ECLI:CE:ECHR:2025:0227JUD004762621 *(Fraisse and Others v. France)*, paras. 79-87 and 167.

[195] Ibid. See footnote 121.

[196] See ECtHR, 4 October 2006, ECLI:CE:ECHR:2006:1004DEC007664201 *(Association SOS Attentats and De Boery v. France)* as regards the question of how a lump sum settlement can affect the admissibility of a case before the ECtHR.

[197] See footnotes 160 and 183.

[198] See also V. Fikfak, 'Changing State Behaviour: Damages before the European Court of Human Rights', *European Journal of International Law 29*, 2018, p. 360.