

MH17 Lawyer: "The Netherlands seems like a Black Hole to me"



[Prof. Dr. iur. Elmar Giemulla](#)

Professor Giemulla, before discussing the MH17-case with you, please tell us in what other airline crash cases you gave legal assistance.

I have been involved in a number of air crashes (usually with a German Nexus): Lockerbie, Birgenair, Concorde, Lake Constance, AF447, Germanwings

Some time after the MH17 shoot down you have been contacted by Mrs. Kenke. She is the daughter of Willem Grootscholten, one of the passengers of Malaysia MH17. Did you before her visit already expect you would be consulted? And what were your first thoughts about the legal implications of this mass killing?

I expected to be contacted at least by the relatives. This is usually the case after an air crash with a German involvement. I have dealt with aviation for more than 30 years. So I can easily be found through the internet.

US Secretary of State John Kerry said there is overwhelming evidence Russia is responsible. Why did you decide to subpoena Ukraine and not Russia?

I cannot prove these allegations. I would even go that far saying that the global public will never learn who the evildoers have been. Truth would block peacemaking in Europe for the foreseeable future.

The second reason for suing the Ukraine lies in the chance to avoid such occurrences in the future. As we all know Ukraine is not the only conflict zone in the world. We cannot effectively prevent terrorists from killing people on the ground or in the air. All we can do is to remind the states of their responsibility for their airspace. This is my approach. Also the report of the DSB stresses this important aspect.

Have you been criticized for only suing Ukraine and not Russia? If so, by whom?

Yes, heavily. Usually by People living in the Ukraine.

Maybe some threats too?

One mail writer cursed me to be a nazi which is not a very unusual leverage to counterargue against a German position. Another one advised me to be careful with speeches. Whatever that means. I did not react to avoid an increase of these bad emotions.

Some legal experts claim Malaysia Airlines and even KLM also bear responsibility. Do you consider to subpoena them too?

MAS have paid for the financial loss (which was close to nothing) and have paid the spouse a small compensation for her non-pecuniary loss.

Is that the maximum that can be claimed from the airline?

Yes. At least before a German court. Our law does not provide for compensation of the moral damage of next-of-kin.

You filed the MH17 case on behalf of Mrs Kenke more than a year ago. What is the progress?

No progress at all.

Sorry, can you please explain "no progress at all"? You have no case or what?

Despite several reminders from my side the Court has never reacted – except by an acknowledgement of receipt from the clerk of the court. I do not know anything about the ideas of the court to handle the case. Has the opponent party received my application for comments? If yes, did they answer? Will there be a public hearing? And is my case admissible at all? No answer at all. It is as if the Court does not exist.

Are you surprised that, as far as we know, not any other family members of the deceased except Mrs Kenke and two other German families have initiated legal action?

This is in fact very surprising to me. Most of the victims have been Dutch. Not a single family approached me to be informed about my application.

Do you think the Dutch and other governments who lost citizens due to this crime should inform family members of the deceased about the options they have to start legal procedures?

Absolutely yes. Knowing the truth is brutal because the whole circumstances are brutal. This cannot be changed. But if you know the truth then your emotions can concentrate on that only truth. If you do not know the truth you start speculating and fancying, and you are confronted with hundreds of possible truths. And this is not something a human being can stand. You get mad from all these possible nightmares.

On the other hand, if you lost a loved one, you will never get this person back. Why you think it is still a good idea to start a legal procedure?

It is at least for two reasons: Most important is finding out the causes of a crash and being made sure that countermeasures will be taken in the future. For the bereaved families it is a big consolation to know that others are spared that tragedy. It is a tiny consolation for the blood toll they had to pay.

The second reason is fairness and acknowledgement of their fate. This is reflected by a fair compensation. The question is not: Do the families feel better when they are compensated? It

rather should be: How do the families feel if the only consequence of a crash is just compensation for the cost of the funeral? This is an offence. This is disregard of their fate. This adds an additional violation to the one they have to suffer from anyway.

Did you contact any Dutch media? If so, how did they reply?

I had sent copies of my application to Telegraaf and Volkskrant. There was no reaction from them at all.

What about contact with lawyers of Dutch families?

I contacted them and their answer was: Sorry, we are not in a position to talk to you for the time being. It is really amazing: The Netherlands seems to me as a kind of black hole.

Interviewer [Max van der Werff](#)