



INTERNATIONAL COURT OF JUSTICE

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Press Release

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Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)

Provisional Measures

The Court indicates *inter alia* that both Parties shall refrain from any act of racial discrimination and from sponsoring, defending or supporting such acts; that they shall facilitate humanitarian assistance; and that they shall refrain from any action which might prejudice the respective rights of the Parties or might aggravate or extend the dispute

THE HAGUE, 15 October 2008. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today issued its Order on the request for the indication of provisional measures submitted by Georgia in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation).

In its Order, the Court

“reminding the Parties of their duty to comply with their obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,

Indicates the following provisional measures:

A. By eight votes to seven,

Both Parties, within South Ossetia and Abkhazia and adjacent areas in Georgia, shall

- (1) refrain from any act of racial discrimination against persons, groups of persons or institutions;
- (2) abstain from sponsoring, defending or supporting racial discrimination by any persons or organizations,
- (3) do all in their power, whenever and wherever possible, to ensure, without distinction as to national or ethnic origin,

- (i) security of persons;
 - (ii) the right of persons to freedom of movement and residence within the border of the State;
 - (iii) the protection of the property of displaced persons and of refugees;
- (4) do all in their power to ensure that public authorities and public institutions under their control or influence do not engage in acts of racial discrimination against persons, groups of persons or institutions;

B. By eight votes to seven,

Both Parties shall facilitate, and refrain from placing any impediment to, humanitarian assistance in support of the rights to which the local population are entitled under the International Convention on the Elimination of All Forms of Racial Discrimination;

C. By eight votes to seven,

Each Party shall refrain from any action which might prejudice the rights of the other Party in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve;

D. By eight votes to seven,

Each Party shall inform the Court as to its compliance with the above provisional measures.”

History of the proceedings

On 12 August 2008 Georgia filed an Application instituting proceedings against the Russian Federation for violation of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter “CERD”). On 14 August 2008 Georgia, referring to Article 41 of the Statute of the Court and to Articles 73, 74 and 75 of the Rules of Court, submitted a Request for the indication of provisional measures in order to preserve its rights under CERD “to protect its citizens against violent discriminatory acts by Russian armed forces, acting in concert with separatist militia and foreign mercenaries”. On 25 August 2008 Georgia, referring to “the rapidly changing circumstances in Abkhazia and South Ossetia”, submitted an Amended Request for the Indication of Provisional Measures of Protection. Public hearings, in the presence of both Parties, were held from 8 to 10 September 2008.

Reasoning of the Court

— Jurisdiction of the Court

The Court notes that Georgia at the present stage of the proceedings seeks to found its jurisdiction solely on the compromissory clause contained in Article 22 of CERD which provides that:

“[a]ny dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement”.

The Court seeks to establish whether that provision appears, *prima facie*, to afford a basis on which the jurisdiction of the Court might be founded such as would allow it, should the circumstances so warrant, to indicate provisional measures. The Court need not in fact finally satisfy itself, before deciding whether or not to indicate such measures, that it has jurisdiction on the merits of the case.

The Court begins by noting that both Georgia and the Russian Federation are parties to CERD without any reservations.

Second, the Court indicates that the Parties disagree on the territorial scope of the application of the obligations of a State party under CERD. It observes in this respect that “there is no restriction of a general nature in CERD relating to its territorial application” and that, in particular, “neither Article 2 nor Article 5 of CERD, alleged violations of which are invoked by Georgia, contain a specific territorial limitation”. It consequently finds that these provisions “generally appear to apply . . . to the actions of a State party when it acts beyond its territory”.

Third, the Court notes that the Parties express conflicting points of view as to whether the dispute between them falls within the provisions of Article 22 of CERD, i.e. whether it concerns the interpretation and the application of the Convention. Georgia contends that “the evidence it has submitted to the Court demonstrates that events in South Ossetia and in Abkhazia have involved racial discrimination of ethnic Georgians living in these regions and therefore fall under the provisions of Articles 2 and 5 of CERD”. The Russian Federation, in contrast, is of the opinion that “the facts in issue relate exclusively to the use of force, humanitarian law and territorial integrity and therefore do not fall within the scope of CERD”. The Court observes that “the Parties disagree with regard to the applicability of Articles 2 and 5 of CERD in the context of the events in South Ossetia and Abkhazia” and that consequently “there appears to exist a dispute between the Parties as to the interpretation and application of CERD”. The Court adds that “the acts alleged by Georgia appear to be capable of contravening rights provided for by CERD, even if certain of these alleged acts might also be covered by other rules of international law, including humanitarian law”. The Court finds that “this is sufficient at this stage to establish the existence of a dispute between the Parties capable of falling within the provisions of CERD, which is a necessary condition for the Court to have *prima facie* jurisdiction under Article 22 of CERD”.

The Court, having established that such a dispute exists within the meaning of Article 22 of CERD, finally seeks to ascertain whether the procedural conditions set out in that article have been met. The latter provides that a dispute relating to the interpretation or application of CERD may be referred to the Court if it “is not settled by negotiation or by the procedure expressly provided for in this Convention”. The Court holds that that phrase “does not . . . suggest that formal negotiations in the framework of the Convention or recourse to the procedure referred to in Article 22 thereof constitute preconditions to be fulfilled before the seisin of the Court”. However, it considers that it suggests that some attempt should have been made by the Parties “to initiate . . . discussions on issues that would fall under CERD”. From an examination of the case file, it deduces that “such issues have been raised in bilateral contacts between the Parties, and, that these issues have manifestly not been resolved by negotiation prior to the filing of the Application”. The Court observes moreover that the issues in dispute have not been brought to the attention of the Committee on the Elimination of Racial Discrimination, to which “the procedures expressly provided for” mentioned in Article 22 of the Convention relate. In view of all the foregoing, the Court considers that, *prima facie*, it has jurisdiction under Article 22 of CERD to deal with the case and may accordingly address the Request for the indication of provisional measures submitted by Georgia.

— Link between the alleged rights to be protected and the subject of the proceedings on the merits

The Court recalls that the power to indicate provisional measures under Article 41 of its Statute “has as its object the preservation of the respective rights of the parties pending the decision of the Court, in order to ensure that irreparable prejudice shall not be caused to rights which are the subject of dispute in judicial proceedings”. It observes that it must “be concerned to preserve by such measures the rights which may subsequently be adjudged by the Court to belong either to the Applicant or to the Respondent”. The Court must thus first ensure that a link exists between “the alleged rights the protection of which is the subject of the provisional measures being sought, and the subject of the proceedings before the Court on the merits of the case”. After considering the arguments of the Parties, the Court notes that Articles 2 and 5 of CERD oblige States parties to take certain specific measures in order to protect individuals from racial discrimination and, moreover, attribute to States parties the right to demand compliance by a State party with specific obligations incumbent upon it pursuant to those provisions. The Court thus deduces that “there is a correlation between respect for individual rights, the obligations of States parties under CERD and the right of States parties to seek compliance therewith”. It concludes that “the rights which Georgia invokes in, and seeks to protect by, its Request for the indication of provisional measures have a sufficient connection with the merits of the case it brings for the purposes of the current proceedings”. It consequently asserts that attention must be focused upon the rights thus claimed in its consideration of Georgia’s Request for the indication of provisional measures.

— Risk of irreparable harm and urgency

The Court recalls that the power to indicate provisional measures under Article 41 of its Statute “presupposes that irreparable prejudice shall not be caused to rights which are the subject of a dispute in judicial proceedings”. It points out that this power will be exercised “only if there is urgency in the sense that there is a real risk that action prejudicial to the rights of either party might be taken before the Court has given its final decision”.

The Court observes that it is not called upon, at this stage of proceedings, “to establish the existence of breaches of CERD, but to determine whether the circumstances require the indication of provisional measures for the protection of rights under CERD”. It regards the rights in question in these proceedings, in particular the right to security of persons, the right to protection by the State against violence or bodily harm (Article 5, paragraph (b)) and the right to freedom of movement and residence within a State’s borders (Article 5, paragraph (d) (i)) to be of such a nature that prejudice to them could be irreparable.

The Court declares that it “is aware of the exceptional and complex situation on the ground in South Ossetia, Abkhazia and adjacent areas and takes note of the continuing uncertainties as to where lines of authority lie”. It further indicates that “based on the information before it in the case file . . . the ethnic Georgian population in the areas affected by the recent conflict remains vulnerable”. The Court adds that “the situation in South Ossetia, Abkhazia and adjacent areas in Georgia is unstable and could rapidly change [and] given the ongoing tension and the absence of an overall settlement to the conflict in this region . . . the ethnic Ossetian and Abkhazian populations also remain vulnerable”. Finally, the Court notes that “while the problems of refugees and internally displaced persons in this region are currently being addressed, they have not yet been resolved in their entirety”.

In light of the foregoing, the Court considers that “with regard to these above-mentioned ethnic groups of the population, there exists an imminent risk that the rights at issue . . . may suffer irreparable prejudice”.

Provisional measures indicated

The Court declares that it “is satisfied that the indication of measures is required for the protection of rights under CERD which form the subject-matter of the dispute”. It notes that it “has the power, under its Statute, when a request for provisional measures has been made, to indicate measures that are in whole or in part other than those requested, or measures that are addressed to the party which has itself made the request”. The Court “does not find that, in the circumstances of the case, the measures to be indicated are to be identical to those requested by Georgia”. Having assessed the material before it, the Court “considers it appropriate to indicate measures addressed to both Parties”.

The Court recalls that the provisional measures which it indicates “have binding effect” and “thus create international legal obligations which both Parties are required to comply with”. Finally, it stipulates that its decision in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application, or relating to the merits themselves, and that it “leaves unaffected the right of the Governments of Georgia and the Russian Federation to submit arguments in respect of those questions”.

Composition of the Court

The Court was composed as follows: President Higgins; Vice-President Al-Khasawneh; Judges Ranjeva, Shi, Koroma, Buergenthal, Owada, Simma, Tomka, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov; Judge ad hoc Gaja; Registrar Couvreur.

Vice-President Al-Khasawneh and Judges Ranjeva, Shi, Koroma, Tomka, Bennouna and Skotnikov append a joint dissenting opinion to the Order; Judge ad hoc Gaja appends a declaration to the Order.

A summary of the Order appears in the document “Summary No. 2008/4”, to which a summary of the declaration and of the opinion are annexed. In addition, the present press release, the summary of the Order and the full text of the Order can be found on the Court’s website (www.icj-cij.org).

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