



INTERNATIONAL COURT OF JUSTICE

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

Conclusion of the public hearings on Georgia's request for the indication of provisional measures

THE HAGUE, 11 September 2008. The public hearings on the request for the indication of provisional measures submitted by Georgia to the International Court of Justice (ICJ) in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation) were concluded yesterday.

On 12 August 2008 Georgia filed its application instituting proceedings against Russia for violations of the Convention on the Elimination of All Forms of Racial Discrimination (see Press Release No. 2008/23). It submitted its request for the indication of provisional measures on 14 August 2008 (see Press Release No. 2008/24).

Two rounds of public hearings on the request were held from Monday 8 to Wednesday 10 September 2008 at the Peace Palace in The Hague, seat of the Court. During the hearings, the delegation of Georgia was led by Ms Tina Burjaliani, First Deputy-Minister of Justice, and H.E. Ms Maia Panjikidze, Ambassador of Georgia to the Netherlands, as Agents. The delegation of the Russian Federation was led by Mr. Roman Kolodkin, Director, Legal Department, Ministry of Foreign Affairs of the Russian Federation, and H.E. Mr. Kirill Gevorgian, Ambassador of the Russian Federation to the Netherlands, as Agents.

The Court's decision will be delivered at a public sitting, the date of which will be announced in due course.

At the hearings, Georgia developed its arguments in support of its request for the indication of provisional measures of 14 August 2008 (see Press Release No. 2008/24), which it had amended on 25 August 2008.

At the end of Georgia's second round of oral observations, Ms Burjaliani, the latter's Agent, set out Georgia's request for provisional measures as follows:

"Georgia respectfully requests the Court, as a matter of urgency, to order the following provisional measures, pending its determination of this case on the merits, in order to prevent irreparable harm to the rights of ethnic Georgians under Articles 2 and 5 of the Convention on Racial Discrimination:

- (a) The Russian Federation shall take all necessary measures to ensure that no ethnic Georgians or any other persons are subject to violent or coercive acts of racial discrimination, including but not limited to the threat or infliction of death or bodily harm, hostage-taking and unlawful

detention, the destruction or pillage of property, and other acts intended to expel them from their homes or villages in South Ossetia, Abkhazia and/or adjacent regions within Georgia;

- (b) The Russian Federation shall take all necessary measures to prevent groups or individuals from subjecting ethnic Georgians to coercive acts of racial discrimination, including but not limited to the threat or infliction of death or bodily harm, hostage-taking and unlawful detention, the destruction or theft of property, and other acts intended to expel them from their homes or villages in South Ossetia, Abkhazia and/or adjacent regions within Georgia;
- (c) The Russian Federation shall refrain from adopting any measures that would prejudice the right of ethnic Georgians to participate fully and equally in the public affairs of South Ossetia, Abkhazia and/or adjacent regions of Georgia.

Georgia further requests the Court as a matter of urgency to order the following provisional measures to prevent irreparable injury to the right of return of ethnic Georgians under Article 5 of the Convention on Racial Discrimination pending the Court's determination of this case on the merits:

- (d) The Russian Federation shall refrain from taking any actions or supporting any measures that would have the effect of denying the exercise by ethnic Georgians and any other persons who have been expelled from South Ossetia, Abkhazia, and adjacent regions on the basis of their ethnicity or nationality, their right of return to their homes of origin;
- (e) The Russian Federation shall refrain from taking any actions or supporting any measures by any group or individual that obstructs or hinders the exercise of the right of return to South Ossetia, Abkhazia, and adjacent regions by ethnic Georgians and any other persons who have been expelled from those regions on the basis of their ethnicity or nationality;
- (f) The Russian Federation shall refrain from adopting any measures that would prejudice the right of ethnic Georgians to participate fully and equally in public affairs upon their return to South Ossetia, Abkhazia, and adjacent regions.”

To those requests as presented in its 25 August amended provisional measures Request, the Agent continued, Georgia has added one other: “The Russian Federation shall refrain from obstructing, and shall permit and facilitate, the delivery of humanitarian assistance to all individuals in the territory under its control, regardless of their ethnicity.”

At the hearings, Russia told the Court that it should not indicate provisional measures as requested by Georgia; Russia asked the Court “to remove the case introduced by the Republic of Georgia on 12 August 2008 from the General List”.

At the end of the Russian Federation's second round of oral observations, Mr. Kolodkin, the latter's Agent, summarized the position of his Government as follows:

“First: The dispute that the Applicant has tried to plead before this Court is evidently not a dispute under the 1965 Convention. If there were a dispute, it would relate to the use of force, humanitarian law, territorial integrity, but in any case not to racial discrimination.

Second: Even if this dispute were under the 1965 Convention, the alleged breaches of the Convention are not capable of falling under the provisions of the said Convention, not the least because Articles 2 and 5 of the Convention are not applicable extraterritorially.

Third: Even if such breaches occurred, they could not, even prima facie, be attributable to Russia that never did and does not now exercise, in the territories concerned, the extent of control required to overcome the set threshold.

Fourth: Even if the 1965 Convention could be applicable, which, I repeat, is not the case, the procedural requirements of Article 22 of 1965 Convention have not been met. No evidence that the Applicant proposed to negotiate or employ the mechanism of the Committee on Racial Discrimination prior to reference to this Court, has been nor could have been produced.

Fifth: With these arguments in mind, the Court manifestly lacks jurisdiction to entertain the case.

Sixth: Should the Court, against all odds, find itself prima facie competent over the dispute, we submit that the Applicant has failed to demonstrate the criteria essential for provisional measures to be indicated. No credible evidence has been produced to attest to the existence of imminent risk of irreparable harm, and urgency. The circumstances of the case definitely do not require measures, in particular, in the light of the ongoing process of post-conflict settlement. And the measures sought failed to take account of the key factor going to discretion: the fact that the events of August 2008 were born out of Georgia's use of force.

Finally: Provisional measures as they were formulated by the Applicant in the Requests cannot be granted since they would impose on Russia obligations that it is not able to fulfil. The Russian Federation is not exercising effective control vis-à-vis South Ossetia and Abkhazia or any adjacent parts of Georgia. Acts of organs of South Ossetia and Abkhazia or private groups and individuals are not attributable to the Russian Federation. These measures if granted would prejudice the outcome of the case.”

The verbatim records of the hearings held from 8 to 10 September 2008 are available on the Court's website (www.icj-cij.org).

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