

6 JULY 2023

ORDER

**APPLICATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION
OF ALL FORMS OF RACIAL DISCRIMINATION**

(ARMENIA v. AZERBAIJAN)

**APPLICATION DE LA CONVENTION INTERNATIONALE SUR L'ÉLIMINATION
DE TOUTES LES FORMES DE DISCRIMINATION RACIALE**

(ARMÉNIE c. AZERBAÏDJAN)

6 JUILLET 2023

ORDONNANCE

INTERNATIONAL COURT OF JUSTICE

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**APPLICATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION
OF ALL FORMS OF RACIAL DISCRIMINATION**

(ARMENIA *v.* AZERBAIJAN)

**REQUEST FOR THE MODIFICATION OF THE ORDER OF 22 FEBRUARY 2023
INDICATING A PROVISIONAL MEASURE**

ORDER

Present: *President* DONOGHUE; *Vice-President* GEVORGIAN; *Judges* TOMKA, ABRAHAM, BENNOUNA, YUSUF, XUE, SEBUTINDE, BHANDARI, ROBINSON, SALAM, IWASAWA, NOLTE, CHARLESWORTH, BRANT; *Judges ad hoc* DAUDET, KOROMA; *Registrar* GAUTIER.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Article 41 of the Statute of the Court and Article 76 of the Rules of Court,

Makes the following Order:

1. By an Application filed in the Registry of the Court on 16 September 2021, the Republic of Armenia (hereinafter “Armenia”) instituted proceedings against the Republic of Azerbaijan

(hereinafter “Azerbaijan”) concerning alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (also referred to as “CERD”).

2. The Application contained a Request for the indication of provisional measures submitted with reference to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court (the “first Request”).

3. Since the Court included upon the Bench no judge of the nationality of either Party, each Party proceeded to exercise the right conferred upon it by Article 31 of the Statute to choose a judge *ad hoc* to sit in the case. Armenia chose Mr Yves Daudet and Azerbaijan Mr Kenneth Keith. Following the resignation of Judge *ad hoc* Keith, Azerbaijan chose Mr Abdul G. Koroma to replace him as judge *ad hoc* in the case.

4. After hearing the Parties, the Court, by an Order of 7 December 2021, indicated the following provisional measures:

“(1) The Republic of Azerbaijan shall, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,

(a) Protect from violence and bodily harm all persons captured in relation to the 2020 Conflict who remain in detention, and ensure their security and equality before the law;

(b) Take all necessary measures to prevent the incitement and promotion of racial hatred and discrimination, including by its officials and public institutions, targeted at persons of Armenian national or ethnic origin;

(c) Take all necessary measures to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage, including but not limited to churches and other places of worship, monuments, landmarks, cemeteries and artefacts;

(2) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.” (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, pp. 392-393, para. 98.)

5. By an Order of 21 January 2022, the Court fixed 23 January 2023 and 23 January 2024 as the respective time-limits for the filing of a Memorial by Armenia and a Counter-Memorial by Azerbaijan. The Memorial was filed within the time-limit thus prescribed.

6. By a letter dated 16 September 2022, Armenia, referring to Article 76 of the Rules of Court, requested the modification of the Court’s Order of 7 December 2021 (the “second Request”).

7. By an Order dated 12 October 2022, the Court found that “the circumstances, as they [then] present[ed] themselves to the Court, [were] not such as to require the exercise of its power to modify the measures indicated in the Order of 7 December 2021”. The Court reaffirmed the provisional measures indicated in its Order of 7 December 2021, in particular the requirement that both Parties refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

8. Armenia, referring to Article 41 of the Statute and Article 73 of the Rules of Court, filed a new Request for the indication of certain provisional measures set out in its letters of 28 December 2022 and 26 January 2023 (the “third Request”).

9. After hearing the Parties, the Court, by an Order of 22 February 2023, indicated the following provisional measure:

“The Republic of Azerbaijan shall, pending the final decision in the case and in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, take all measures at its disposal to ensure unimpeded movement of persons, vehicles and cargo along the Lachin Corridor in both directions.”

10. On 21 April 2023, within the time-limit prescribed by Article 79*bis*, paragraph 1, of the Rules of Court, Azerbaijan raised preliminary objections to the jurisdiction of the Court. By an Order of 25 April 2023, the Court, noting that the proceedings on the merits were suspended by virtue of Article 79*bis*, paragraph 3, of the Rules of Court, and taking account of Practice Direction V, fixed 21 August 2023 as the time-limit within which Armenia may present a written statement of its observations and submissions on the preliminary objections raised by Azerbaijan.

11. By a letter dated 12 May 2023 and received in the Registry on 15 May 2023, Armenia, referring to Article 76 of the Rules of Court, requested the modification of the Court’s Order of 22 February 2023 (the “fourth Request”). By a communication dated 25 May 2023, Azerbaijan filed its written observations on the fourth Request within the time-limit fixed for that purpose.

12. The Parties subsequently informed the Court, through various letters, of recent developments and provided observations on each other’s respective communications.

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13. Armenia requests the Court to modify its Order of 22 February 2023 by including an additional provisional measure requiring Azerbaijan to “[w]ithdraw any and all personnel deployed on or along the Lachin Corridor since 23 April 2023 and refrain from deploying any such personnel

on or along the Lachin Corridor”. In particular, Armenia alleges that, following the Court’s Order of 22 February 2023, Azerbaijan established two checkpoints operated by its armed forces on the Lachin Corridor. Armenia contends that there has been a “drastic” change in the situation which justifies a modification of the said Order and maintains that the general conditions for the indication of provisional measures are also met.

14. In its written observations, Azerbaijan asks the Court to deny Armenia’s fourth Request because there has not been a change in the situation justifying modification of the provisional measure. It asserts that the only checkpoint that it has established is a border checkpoint, the existence and operation of which do not plausibly constitute racial discrimination under CERD. Moreover, Azerbaijan maintains that the measure Armenia seeks is neither urgent nor necessary and that a modification of the Order, if granted, would improperly infringe on Azerbaijan’s sovereign right to police its borders.

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15. In order to rule on the fourth Request of Armenia, the Court must determine whether the conditions set forth in Article 76, paragraph 1, of the Rules of Court have been fulfilled. That paragraph reads as follows:

“At the request of a party or *proprio motu*, the Court may, at any time before the final judgment in the case, revoke or modify any decision concerning provisional measures if, in its opinion, some change in the situation justifies such revocation or modification.”

16. The Court must therefore first ascertain whether, taking account of the information that the Parties have provided with respect to the current situation, there is reason to conclude that the situation which warranted the indication of a provisional measure in February 2023 has changed since that time. In considering the fourth Request, the Court will take account both of the circumstances that existed when it issued the Order of 22 February 2023 and of the changes that are alleged to have taken place in the situation which gave rise to the indication of a provisional measure. If the Court finds that there was a change in the situation since the delivery of its Order, it will then have to consider whether such a change justifies a modification of the measure previously indicated. Any such modification would only be appropriate if the new situation were, in turn, to require the indication of provisional measures, that is to say, if the general conditions laid down in Article 41 of the Statute of the Court were also met in this instance (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Order of 12 October 2022, para. 12).

17. The Court will therefore begin by determining whether there has been a change in the situation which warranted the measure indicated in its Order of 22 February 2023.

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18. Armenia states that its fourth Request is prompted by the establishment of two military checkpoints by Azerbaijan, one at the beginning of the Lachin Corridor, near the Hakari Bridge, and one further along the Corridor, near the city of Shushi. According to Armenia, the establishment of the former checkpoint constitutes a significant new impediment to the movement of persons, vehicles and cargo along the Lachin Corridor. Armenia contends, in particular, that traffic through that checkpoint has been limited to humanitarian aid delivered by Russian peacekeepers and the International Committee of the Red Cross (hereinafter the “ICRC”), and that, since 29 April 2023, the ICRC has not been able to transport new medical patients from Nagorno-Karabakh to Armenia to receive treatment. Armenia further contends that the checkpoint near the city of Shushi has been established at the site of the former so-called “protests” by persons whom Azerbaijan described as “eco-activists”. Armenia considers that the only purpose of this checkpoint is to impede free movement, noting that many ethnic Armenians are now cut off not only from Armenia, but also from other parts of Nagorno-Karabakh itself.

19. Armenia argues that the Order of 22 February 2023 was issued in the context of alleged protests by eco-activists blocking uninterrupted free movement along the Lachin Corridor. Armenia notes that these “so-called ‘protests’” have now been suspended and replaced by two checkpoints that Azerbaijan operates and controls. In Armenia’s view, contrary to Azerbaijan’s earlier claims that it did not control the Lachin Corridor, the Respondent now openly admits that it has such control. In Armenia’s view, there has thus been a “drastic change” in the situation that warranted the indication of certain provisional measures in February 2023.

20. Armenia further claims that the general conditions for the indication of provisional measures are met. It observes that the Court has already affirmed that it has *prima facie* jurisdiction. It also notes that the Court has previously considered plausible at least some of the rights that Armenia claims to have been violated in light of Articles 2 and 5 of CERD through the interruption of movement along the Lachin Corridor. Armenia argues that a link exists between these plausible rights and the requested modified measure set out in its fourth Request. Armenia finally contends that the alleged disruption of movement creates a risk of irreparable prejudice and that there is urgency.

21. In correspondence subsequent to the fourth Request, the Agent of Armenia stated, *inter alia*, that the traffic along the Lachin Corridor had recently been completely disrupted and that Azerbaijan had imposed a complete ban on any remaining humanitarian traffic through the Lachin Corridor.

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22. In its written observations, Azerbaijan states that it has “no presence anywhere along the Lachin Road, which remains under the temporary control of the Russian Federation peacekeepers”. The Respondent asserts that it does not operate a checkpoint or maintain any other presence at the former protest site, but acknowledges that it has established a border checkpoint at the beginning of the Lachin Corridor near the Hakari Bridge “to stop the illegal flow of weapons, military equipment, and soldiers into the sovereign territory of Azerbaijan”. According to Azerbaijan, the Lachin Corridor

has also been used “to smuggle illegally mined minerals from Garabagh into Armenia”. Azerbaijan contends that, for over two years before setting up the checkpoint, it has repeatedly asked the Russian Federation peacekeepers stationed along the Lachin Corridor to conduct inspections of vehicles transiting through the Corridor and to stop the illegal importation of Armenia’s weapons and armed forces into its territory. It states that it has also tried to resolve the issue diplomatically and through direct talks with Armenia. Azerbaijan further contends that the checkpoint is not a military checkpoint, that it is staffed with members of Azerbaijan’s State Border Service, that it operates under Azerbaijan’s Law on the State Border and that it performs routine checks of identity documents and cargo.

23. Azerbaijan maintains that Armenia has failed to prove that the existence and operation of that checkpoint implicate plausible rights under CERD. In its view, the mere establishment of a checkpoint to protect the international borders of a State cannot constitute racial discrimination, and Armenia has not provided evidence that Azerbaijan was operating its checkpoint in a racially discriminatory manner. Azerbaijan also asserts that the requested modification is neither urgent nor necessary, as civilian traffic can travel through the checkpoint without any impediment imposed by Azerbaijan. According to Azerbaijan, since the establishment of that checkpoint, at least 1,927 Armenian residents travelled through it between Armenia and Nagorno-Karabakh. Azerbaijan states that the ICRC decided to suspend operations temporarily pending agreement on applicable procedures to be followed at the checkpoint, but resumed operations, including the transfer of seriously ill patients from Nagorno-Karabakh to Armenia, on 17 May 2023. Azerbaijan adds that, as of 25 May 2023, civilian vehicle traffic had resumed but remained subject to restrictions and limitations imposed by Armenia itself. Azerbaijan finally contends that the relief that Armenia seeks improperly impinges on Azerbaijan’s sovereign rights in the sense that it would effectively prevent Azerbaijan from policing and securing its borders.

24. Azerbaijan finally maintains that, on 15 June 2023, Armenian armed forces attacked a group of Azerbaijani border guards and accompanying Russian Federation peacekeeping forces. Azerbaijan states that, as a result, traffic across the checkpoint was temporarily suspended and that the checkpoint was reopened on 24 June 2023 to enable the passage of Armenian residents for medical purposes and to resume transport of medical supplies.

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25. The Court recalls that, on 9 November 2020, the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation signed a statement referred to by the Parties as the “Trilateral Statement”. Under the terms of this statement, the Lachin Corridor, “which will provide a connection between Nagorno-Karabakh and Armenia . . . shall remain under the control of the Russian Federation peacemaking forces”. The statement also stipulates that “Azerbaijan shall guarantee the security of persons, vehicles and cargo moving along the Lachin Corridor in both directions”. The Court further recalls that, in its Order of 22 February 2023, it indicated a measure directing Azerbaijan, pending the final decision in the case and in accordance with its obligations under CERD, to take all measures at its disposal to ensure unimpeded movement of persons, vehicles and cargo along the Lachin Corridor in both directions (see paragraph 9 above).

26. The Court observes that, in its fourth Request, Armenia refers to two checkpoints established by Azerbaijan on the Lachin Corridor. However, Azerbaijan disputes the existence of any checkpoint near the city of Shushi. Moreover, the Agent of Armenia, in correspondence subsequent to the fourth Request, only refers to one checkpoint operated by Azerbaijan and located near the border in the vicinity of the Hakari Bridge.

27. In support of its third Request, Armenia had asserted that disruption of the movement of persons, vehicles and cargo along the Lachin Corridor was caused by “protests” allegedly orchestrated and supported by Azerbaijan. In its 22 February 2023 Order (see paragraph 9 above), the Court observed that traffic along the Lachin Corridor had been disrupted and identified the consequences of that disruption, including the impeding of transfers of persons of Armenian national or ethnic origin hospitalized in Nagorno-Karabakh to medical facilities in Armenia for urgent medical care, as well as hindrances to the importation into Nagorno-Karabakh of essential goods, causing shortages of food, medicine and other life-saving medical supplies (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Order of 22 February 2023, para. 54).

28. In its fourth Request, Armenia indicates that the “so-called ‘protests’” are no longer taking place. It claims instead that there is, at present, disruption in movement along the Lachin Corridor as a result of the establishment and operation by Azerbaijan of one or more checkpoints. The Court considers that, even if it can be said, in light of these developments, that there has been a change in the situation that existed when the Court issued its 22 February 2023 Order, the fourth Request still concerns allegations of disruption in movement along the Lachin Corridor. The consequences of any such disruption for persons of Armenian national or ethnic origin would be the same as those noted by the Court in the Order of 22 February 2023. Moreover, the measure that the Court imposed in that Order applies without limitation to the cause of the impediment of such movement.

29. In light of the above, the Court concludes that the circumstances to which Armenia refers in its fourth Request do not constitute a change in the situation justifying modification of the Order of 22 February 2023 within the meaning of Article 76 of the Rules of Court.

30. The Court considers that the tenuous situation between the Parties confirms the need for effective implementation of the measure indicated in its Order of 22 February 2023. In these circumstances, the Court finds it necessary to reaffirm the measure indicated in paragraph 67 of the said Order (see paragraph 9 above) and to reaffirm that, in accordance with the Order of 7 December 2021, both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

31. The Court recalls that its “orders on provisional measures under Article 41 [of the Statute] have binding effect” (*LaGrand (Germany v. United States of America)*, Judgment, *I.C.J. Reports 2001*, p. 506, para. 109) and thus create international legal obligations for any party to whom the provisional measures are addressed.

32. The Court finally underlines that the present Order is without prejudice as to any finding on the merits concerning the Parties' compliance with its Order of 22 February 2023.

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33. For these reasons,

THE COURT,

(1) Unanimously,

Finds that the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power to modify the Order of 22 February 2023 indicating a provisional measure;

(2) Unanimously,

Reaffirms the provisional measure indicated in its Order of 22 February 2023.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this sixth day of July, two thousand and twenty-three, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Armenia and the Government of the Republic of Azerbaijan, respectively.

(Signed) Joan E. DONOGHUE,
President.

(Signed) Philippe GAUTIER,
Registrar.
