

INTERNATIONAL COURT OF JUSTICE

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

(GEORGIA v. RUSSIAN FEDERATION)



**COMMENTS OF GEORGIA ON THE RUSSIAN FEDERATION'S
ANSWERS TO JUDGES' QUESTIONS**

1 OCTOBER 2010

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JUDGES' QUESTIONS**

QUESTION FROM JUDGE KOROMA

The question:

What precisely, in the view of the Parties, is the object and purpose of the clause contained in Article 22 of the Convention on the Elimination of All Forms of Racial Discrimination which reads as follows: "which is not settled by negotiation or by the procedures expressly provided for in this Convention"?

In its Written Response, Russia has restated the arguments it made in its *Preliminary Objections* and during the oral hearings to the effect that negotiations and recourse to the procedures provided for in the Convention "constitute preconditions to States' acceptance of the Court's jurisdiction." Georgia has fully explained in the written and oral phases why it rejects Russia's arguments and will not here repeat those reasons, which are maintained in full.

Georgia notes that the parties are in agreement that the concept of "object and purpose" relates to the treaty as a whole, and not to individual words or phrases. The concept is referred to on eight occasions in the 1969 Vienna Convention: in seven instances the phrase used is "the object and purpose of the treaty," and in the eighth the words used are "its object and purpose" (emphasis added), making it clear that the concept refers to the treaty as a whole. This is also the approach taken by the Court: *see, e.g., Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 6, at 22 (para. 41) and at 25-26 (para. 52).

Russia invokes the "principle of *effet utile*" as an interpretative technique. Georgia notes that the "principle" is not to be found in the 1969 Vienna Convention, and submits that it cannot supplant or supplement the rules of interpretation to be found in that Convention.

That said, Georgia's interpretation of Article 22 is fully consistent with this "principle," in that it attributes meaning to all the words and phrases in the Article, including: "which is not settled by negotiation or by the procedures expressly provided for in this Convention." Georgia submits that the "*effet utile*" of this language is to deny recourse to the Court in regard to a dispute under the Convention only if the dispute has already been settled by diplomatic negotiations between the parties, or if it has been settled by the conciliation procedures provided for in Part II of the Convention.

Since the dispute between Georgia and Russia plainly has not been settled by negotiation or by the procedures provided for in the Convention, it follows that the Court has jurisdiction under Article 22. This conclusion does not deprive the quoted language, which is cited in Judge Koroma's question, of its intended meaning or effect; to the contrary, it gives the proper effect to the text by interpreting it in accordance with its plain meaning.

QUESTION FROM JUDGE ABRAHAM

The question:

Au stade actuel de la procédure, la Cour est appelée seulement à se prononcer sur les exceptions préliminaires soulevées par la Partie défenderesse. Compte tenu des débats qui ont eu lieu au cours des audiences, faut-il comprendre que la Russie a retiré sa troisième exception en tant qu'exception préliminaire?

In its Written Response, Russia states that it “is not meant to be understood that the third objection ... should be considered as withdrawn,” and that it has “merely ... suggested that the objection should be decided at any merits stage” and it “reserves its right to come back to this objection as part of the proceedings on the merits.”

Georgia notes the ambiguity of Russia’s response. Russia appears to recognise (correctly in Georgia’s view) that it is for the Court and not for a party to decide whether or not an objection raised as a preliminary matter is properly to be joined to the merits. Russia has not withdrawn the objection or formally requested that it be joined to the merits, and has done no more than reserve its right to raise this issue at the merits stage. Georgia further notes that Russia has made no attempt to explain why its third preliminary objection should be joined to the merits, and has not sought in any way to provide a substantive response to Georgia’s submission that the Court should reject the third preliminary objection at this stage.

In the second round of the oral proceedings, Russia conceded that Georgia had provided “full argument”¹ on why the third preliminary objection should be rejected at this stage, yet chose not to respond to Georgia’s argument.

In circumstances in which Georgia’s argument stands entirely unrebutted, it is submitted that there is no reason for the Court to delay its decision. Georgia invites the Court to reject the third preliminary objection now.

QUESTION FROM JUDGE CANÇADO TRINDADE

The question:

In your understanding, does the nature of human rights treaties such as the CERD Convention (regulating relations at intra-State level) have a bearing or incidence on the interpretation and application of a compromissory clause contained therein?

Georgia notes that Russia’s Written Response does not directly address the question raised by Judge Cançado Trindade. Georgia observes that there is nothing in Russia’s response to contradict or undermine Georgia’s response to the question put, namely that “[t]he character of human rights treaties -- in particular their non-synallagmatic character -- provides a reason for

¹ CR 2010/10, p. 47, para. 49 (Zimmermann).

the broad interpretation of compromissory clauses, and not for their narrow or restrictive interpretation.”

To the contrary, Russia’s response recognises that the obligations under the Convention are not to be performed exclusively at the intra-State level; that the Convention adopts “a form of collective guarantee of respect” for its provisions; and that “the obligations under the Convention are of an *erga omnes* nature.” These statements by Russia acknowledge that the Convention was intended to serve as an effective instrument for eliminating the scourge of racial (including ethnic) discrimination in all its forms. In that regard, they support Georgia’s position on the interpretation of Article 22. Recourse to the Court under that Article is a principal means by which States may enforce the Convention’s provisions against other States, and thereby make the Convention more effective. To read *preconditions* on the seisin of the Court into Article 22, in a manner that contradicts the plain meaning of the text, as Russia proposes, would frustrate the object and purpose of the Convention: it would render access to the Court impossible for all practical purposes, and diminish the Court’s role as a means for timely enforcement of the Convention’s *erga omnes* obligations.