

SEPARATE OPINION  
OF JUDGE *AD HOC* SKOTNIKOV

1. I concur with the Court's conclusion that the conditions required by its Statute for the indication of provisional measures in respect of the rights alleged by Ukraine under the International Convention for the Suppression of the Financing of Terrorism ("ICSFT") are not met. Ukraine has indeed failed to show that the rights it seeks to protect under the ICSFT are at least plausible. It has not demonstrated that either of the crucial elements set out in Article 2, paragraph 1 (namely the requisite purpose, intention or knowledge) are present (see paragraphs 75 and 76 of the present Order). Consequently, I support the Court's decision not to indicate provisional measures on the basis of the ICSFT.

2. The right which Ukraine seeks to protect with respect to the banning of the *Mejlis*, and which, in the view of the Court, fulfils the condition of plausibility (see paragraph 83 of the present Order) does not fall within the scope of the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD"). Paragraph 96 of the Order refers to Article 5, paragraphs (c), (d) and (e), of CERD as containing rights which could be irreparably harmed if no provisional measures are indicated. However, paragraph (c) of Article 5 is limited to "political rights, in particular the right to participate in elections — to vote and to stand for election — on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service". It is clear that this provision is not relevant to an organization which claims to represent a certain ethnic group as a self-government body with quasi-executive functions. No rights specifically referred to in Article 5, paragraph (c), could have been infringed with respect to the *Mejlis*. This is of course not to say that the Crimean Tatars or any other ethnic group have no right to have their own representative organizations. However, this is not a right covered per se by CERD, which is a treaty dealing with discrimination.

The other provision referred to by the Court as relevant to the Ukraine case on the *Mejlis* is Article 5, paragraph (d). One might assume that the Court focuses on subparagraph (ix) dealing with "the right to peaceful assembly and association". I will make three points in this respect. First,

it is far from obvious that the reference to freedom of association, given the subject-matter of CERD, is intended to cover organizations similar to the *Mejlis*. Second, in any event, since there are currently around thirty Crimean Tatar organizations representing more than 20,000 members, the banning of the *Mejlis* cannot be considered to be a discriminatory measure against this ethnic group. Third, the key word in subparagraph (ix) paragraph is “peaceful”. The Russian Federation has noted that the *Mejlis* was banned due to its involvement in “extremist activities”, which included participation in the blockade of electricity and water supplies of Crimea and statements calling for violence. This decision, which was taken on security grounds and for public order reasons that bore no relation to the ethnicity of the members of the *Mejlis*, was upheld by the Supreme Court of Crimea and the Supreme Court of the Russian Federation. Curiously, there is not a single paragraph in the Order even attempting to assess these decisions. Hence, the Ukrainian assertion on the subject has been taken at its face value.

Finally, the measure contained in paragraph 1 (a) of the operative clause may be seen as prejudging the merits.

For the reasons stated above, in spite of its seemingly careful wording, I voted against paragraph 1 (a).

3. The second provisional measure contained in paragraph 1 (b) of the operative clause requests Russia to ensure the availability of education in the Ukrainian language. Strictly speaking, the right to education and training, referred to in Article 5, paragraph (e), subparagraph (v) of CERD does not necessarily encompass education in one’s own language. However, this provision is relevant, since the Ukrainian language is one of the three State languages in Crimea. Although I do not think that in this case the conditions of irreparable harm and urgency are met, I felt compelled to support this measure of general and non-controversial nature.

(Signed) Leonid SKOTNIKOV.

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