



INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands

Tel.: +31 (0)70 302 2323 Fax: +31 (0)70 364 9928

Website: www.icj-cij.org Twitter Account: @CIJ_ICJ

Press Release

Unofficial

No. 2017/15

19 April 2017

The Court finds that Russia must refrain from imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis, and ensure the availability of education in the Ukrainian language

THE HAGUE, 19 April 2017. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, has today delivered its Order on the request for the indication of provisional measures submitted by Ukraine in the case concerning Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation).

On 16 January 2017, Ukraine instituted proceedings against the Russian Federation with regard to alleged violations of the International Convention for the Suppression of the Financing of Terrorism (ICSFT) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). On the same day, Ukraine submitted a request for the indication of provisional measures, aimed at safeguarding the rights it claims under those two conventions pending the Court's decision on the merits (see Press Release No. 2017/2).

Reasoning of the Court

The Court observes that it may indicate provisional measures only if the provisions relied on by the Applicant appear, *prima facie*, to afford a basis on which its jurisdiction could be founded, but need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case. Having established its *prima facie* jurisdiction, the Court may exercise its power to indicate such measures only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible. Moreover, a link must exist between the rights whose protection is sought and the provisional measures being requested. However, the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court gives its final decision.

The Court points out that it is not called upon, for the purposes of its decision on the request for the indication of provisional measures, to establish the existence of breaches, but to determine whether the circumstances require the indication of provisional measures for the protection of rights. The decision given 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 to the merits themselves. It leaves unaffected the right of the Parties to submit arguments in respect of those questions.

The Court is fully aware of the context in which the present case has been brought before it, in particular the fighting taking place in large parts of eastern Ukraine and the destruction, on 17 July 2014, of Malaysia Airlines Flight MH17 while it was flying over Ukrainian territory en route between Amsterdam and Kuala Lumpur, which have claimed a large number of lives. Nevertheless, the case before the Court is limited in scope. In respect of the events in the eastern part of its territory, Ukraine has brought proceedings only under the ICSFT. With regard to the events in Crimea, Ukraine's claim is based solely upon CERD, and the Court is not called upon, as Ukraine expressly recognized, to rule upon any issue other than allegations of racial discrimination made by the latter.

Moreover, the Court reminds the Parties that the Security Council, in its resolution 2202 (2015), endorsed the "Package of Measures for the Implementation of the Minsk Agreements", adopted and signed in Minsk on 12 February 2015. The Court expects the Parties, through individual and joint efforts, to work for the full implementation of this "Package of Measures" in order to achieve a peaceful settlement of the conflict in the eastern regions of Ukraine.

1. Prima facie jurisdiction

The Court notes that Ukraine seeks to found the jurisdiction of the Court on Article 24, paragraph 1, of the ICSFT and on Article 22 of CERD. Ukraine and the Russian Federation are parties to both conventions. The Court observes that the jurisdictional clauses contained in those instruments make its jurisdiction conditional on the existence of a dispute arising out of the interpretation or application of the Convention to which they relate. It states in this regard that the evidence before the Court is sufficient at this stage to establish, prima facie, the existence of a dispute between the Parties concerning the interpretation and application of the ICSFT and of CERD.

The Court adds that the jurisdictional clauses contained in the ICSFT and in CERD also set out procedural preconditions to be fulfilled prior to the seisin of the Court. In respect of the ICSFT, the dispute in question must be a dispute that "cannot be settled through negotiation within a reasonable time"; it must have been submitted to arbitration at the request of one of the parties, and may be referred to the Court only if the parties have been unable to agree on the organization of the arbitration within six months from the date of the request. With regard to CERD, the dispute referred to the Court must be a dispute "not settled by negotiation or by the procedures expressly provided for in th[e] Convention". The Court is of the view that the evidence before it is sufficient at this stage to establish, prima facie, that the procedural preconditions for the seisin of the Court, set out in Article 24, paragraph 1, of the ICSFT and in Article 22 of the CERD, have been met.

2. The rights whose protection is sought and the measures requested

(a) The International Convention for the Suppression of the Financing of Terrorism

The Court notes that, for the purposes of the request for the indication of provisional measures, Ukraine invokes its rights and the respective obligations of the Russian Federation solely under Article 18 of the ICSFT. This Article provides in substance that States parties are obliged to co-operate to prevent the financing of terrorism, i.e., the provision or collection of funds with the intention that they should be used or in the knowledge that they are to be used in order to carry out acts of terrorism as defined in Article 2 of the Convention. Consequently, for the purposes of a request for the indication of provisional measures, a State party to the Convention may avail itself of the rights under Article 18 only if it is plausible that the acts complained of constitute acts of terrorism.

The Court observes that the acts to which Ukraine refers have given rise to the death and injury of a large number of civilians. However, in order to determine whether the rights for which Ukraine seeks protection are at least plausible, it is necessary to ascertain whether there are sufficient reasons for considering that the elements set out in Article 2, such as intention and knowledge, as well as the element of purpose, are present. The Court is of the view that, at this stage of the proceedings, Ukraine has not put before it evidence which affords a sufficient basis to find it plausible that these elements are present. Therefore, it concludes that the conditions required for the indication of provisional measures in respect of the rights alleged by Ukraine on the basis of the ICSFT are not met.

(b) The International Convention on the Elimination of All Forms of Racial Discrimination

The Court notes that Articles 2 and 5 of CERD are intended to protect individuals from racial discrimination. Consequently, for the purposes of a request for the indication of provisional measures, a State party to CERD may avail itself of the rights under Articles 2 and 5 only if it is plausible that the acts complained of constitute acts of racial discrimination under the Convention. In the present case, on the basis of the evidence before the Court, it appears that some of the acts complained of by Ukraine fulfil this condition of plausibility. This is the case with respect to the banning of the Mejlis and the alleged restrictions on the educational rights of ethnic Ukrainians.

As the Court has already recalled, there must be a link between the measures which are requested and the rights which are claimed to be at risk of irreparable prejudice. In the current proceedings, this is the case with respect to the measures aimed at safeguarding the rights of Ukraine under Articles 2 and 5 of CERD, with regard to the ability of the Crimean Tatar community to conserve its representative institutions and with regard to the need to ensure the availability of Ukrainian-language education in schools in Crimea.

3. Risk of irreparable prejudice and urgency

In view of its earlier conclusion that the conditions required for the indication of provisional measures in respect of the rights alleged by Ukraine on the basis of the ICSFT are not met, the Court considers that the issue of the risk of irreparable prejudice and urgency arises only in relation to the provisional measures sought with regard to CERD.

The Court notes that certain rights in question in these proceedings, in particular the political, civil, economic, social and cultural rights guaranteed by Article 5 of CERD, are of such a nature that prejudice to them is capable of causing irreparable harm. Based on the information before it at this juncture, the Court is of the opinion that Crimean Tatars and ethnic Ukrainians in Crimea appear to remain vulnerable. In this regard, the Court takes note of recent reports by the Office of the United Nations High Commissioner for Human Rights concerning the human rights situation in Ukraine, and of the report of the OSCE Human Rights Assessment Mission on Crimea. The Court considers that these reports show, *prima facie*, that there have been limitations on the ability of the Crimean Tatars to choose their representative institutions, and restrictions in terms of the availability of Ukrainian-language education in Crimean schools. The Court concludes from this that there is an imminent risk that the acts, as set out above, could lead to irreparable prejudice to the rights invoked by Ukraine.

4. Conclusion and measures to be adopted

The Court concludes from all of the above considerations that the conditions required by its Statute for it to indicate provisional measures in respect of CERD are met. In order to protect the rights claimed by Ukraine, it is therefore appropriate for it to indicate the following measures:

“(1) With regard to the situation in Crimea, the Russian Federation must, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,

(a) By thirteen votes to three,

Refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis;

(b) Unanimously,

Ensure the availability of education in the Ukrainian language;

(2) Unanimously,

Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”

Composition of the Court

The Court was composed as follows: President Abraham; Vice-President Yusuf; Judges Owada, Tomka, Bennouna, Cançado Trindade, Greenwood, Xue, Donoghue, Gaja, Sebutinde, Bhandari, Robinson, Crawford; Judges ad hoc Pocar, Skotnikov; Registrar Couvreur.

Judge Owada appends a separate opinion to the Order of the Court; Judge Tomka appends a declaration to the Order of the Court; Judges Cançado Trindade and Bhandari append separate opinions to the Order of the Court; Judge Crawford appends a declaration to the Order of the Court; Judges ad hoc Pocar and Skotnikov append separate opinions to the Order of the Court.

A summary of the Order appears in the document entitled “Summary No. 2017/2”, to which summaries of the separate opinions and declarations are annexed. This press release, the summary and the full text of the Order are available on the Court’s website (www.icj-cij.org), under the heading “Cases”.

Note: The Court’s press releases do not constitute official documents.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United

Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the “World Court”, it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

Information Department:

Mr. Andrey Poskakukhin, First Secretary of the Court, Head of Department (+31 (0)70 302 2336)

Mr. Boris Heim and Ms Joanne Moore, Information Officers (+31 (0)70 302 2337)

Mr. Avo Sevag Garabet, Associate Information Officer (+31 (0)70 302 2394)

Ms Genoveva Madurga, Administrative Assistant (+31 (0)70 302 2396)