

DECLARATION OF JUDGE IWASAWA

Article 4 of CERD requires that measures to eradicate incitement to racial hatred and discrimination must be adopted “with due regard to the principles of the Universal Declaration of Human Rights”, including freedom of expression — The Parties were engaged in large-scale hostilities in their recent history — Statements made by organizations and private persons need to be understood in this context.

1. Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter “CERD”) requires that measures designed to eradicate incitement to racial hatred and discrimination must be adopted “with due regard to the principles of the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of th[e] Convention”. This includes, most notably, freedom of expression. Freedom of expression is an indispensable condition for the full development of the person and the foundation stone for a free and democratic society. The exercise of the right to freedom of expression carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, which are, however, only permitted under specific conditions (see Article 19, paragraph 3, of the International Covenant on Civil and Political Rights). Measures designed to eradicate incitement to racial hatred and discrimination are compatible with the protection of freedom of expression, provided that they meet those conditions.

2. The Parties to the present case were twice engaged in large-scale hostilities against each other in their recent history, between 1991 and 1994 and again in 2020. As a result, animosity appears to persist between the two States and among some segments of their populations. Statements made by organizations and private persons need to be understood in this context.

3. In the present Order, the Court indicates that Azerbaijan shall, in accordance with its obligations under CERD, take all necessary measures to prevent the incitement and promotion of racial hatred and discrimination targeted at persons of Armenian national or ethnic origin (paragraph 98 (1) (b) of the Order). The Court indicates this measure in the circumstances described in paragraph 2 above.

(Signed) IWASAWA Yuji.
