



Application of the International Convention on the Elimination of All Forms of Racial Discrimination - Georgia v Russia

ARGUED: 18 November 2018

DECIDED: 18 November 2018

1 The Court was asked to determine whether the actions of the Russian Federation within the Republic of
2 Georgia constituted racial discrimination as set forth by the International Convention on the Elimination of all Forms
3 of Racial Discrimination and whether the Court had jurisdiction to provide a decision on such an issue.

4 The Republic of Georgia requested the removal of Russian peacekeepers from Georgia, who, they claim, were
5 dislocating and killing ethnic Georgians: a claim of ethnic cleansing. The Republic of Georgia argued that the Court
6 had jurisdiction under the notion that their negotiations regarding the cease-fire with the Russian Federation as well
7 as S/RES/876 were sufficient to meet the requirements of Article 22 of the Convention. The Republic of Georgia also
8 advocated for jurisdiction under Article 36 of the Statute of the Court. The Republic of Georgia further requested
9 that the Court affirm their recognition of the states territorial integrity as presently recognized by the international
10 community at large, as well as their commitment to the protection of the sovereignty of the Republic of Georgia.

11 The Russian Federation contended that the Court does not have jurisdiction, arguing that the Republic of
12 Georgias attempts at negotiation did not meet the requirements set forth by Article 22 of the Convention. Further,
13 they argued that there was no evidence for violation of the Convention, claiming that the Republic of Georgia had
14 been remiss in their submission of reports for consideration by the Committee in accordance with Article 9 of the
15 Convention. Additionally, the Russian Federation asserted that their actions were protected under Article 51 of the
16 Charter of the United Nations, which affirms the inherent right of individual or collective self-defense if an armed
17 attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to
18 maintain international peace and security, as well as Article 55, which the advocates cited to reaffirm their respect
19 for the self-determination of the territories of South Ossetia and Abkhazia.

20 The Court has determined that it does not have jurisdiction to provide a judgment as the preconditions
21 outlined for the application of Article 22, which requires the prior exhaustion of attempts at direct negotiation or
22 settlement through methods otherwise detailed in the Convention, were not met.

23 While the arguments of the Republic of Georgias advocates were compelling, there is a lack of substantial
24 documented evidence of attempts at negotiation or consideration through the Convention Committee, therefore
25 failing to meet the requirements set by Article 22 of the Convention. Moreover, the Court does not deem S/RES/876
26 as a proper form of negotiation under the Convention.

27 The opinion and explanation of the reasons of the court are as follows:

28 Article 22 of the International Convention on the Elimination of all Forms of Racial Discrimination clearly
29 states that

30 Any dispute between two or more States Parties with respect to the interpretation or application of this
31 Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall,
32 at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision,
33 unless the disputants agree to another mode of settlement.

34 The Court finds that the attempted negotiations between the Republic of Georgia and the Russian Federation
35 were insufficient because they were not properly addressed or submitted for remediation in accordance with the
36 Convention. The Court finds that a proper negotiation would take place through the Convention, starting with the

37 submission of a State report by the Republic of Georgia noting the perpetration of racially discriminatory actions by
38 the Russian Federation to the Convention Committee. The Republic of Georgia did not document the allegations of
39 racial discrimination or ethnic cleansing, specifically in the form of periodical reports to the Convention Committee.
40 The Court is unable to find any documented attempted negotiations between Georgia and Russia on the topic of
41 racial discrimination within the region. Due to the absence of such documentation, and the failure of the Republic
42 of Georgia to provide such, the Court finds no grounds on which to assume jurisdiction under Article 22.

43 We the United Nations International Court of Justice advise:

44 First, the Court recommends that the Republic of Georgia submit a report to the Convention Committee
45 defining the actions of the Russian Federation that constitute racial discrimination and/or ethnic cleansing. Fur-
46 ther negotiations might include but are not limited to mediation, arbitration, or bilateral negotiations within the
47 Convention.

48 Second, pertaining to the issue of territorial disputes regarding South Ossetia and Abkhazia as territories of
49 Georgia, the Court suggests that the Republic of Georgia and the Russian Federation seek diplomatic and peaceful
50 means of resolution in this area. This includes bilateral and/or multilateral negotiations between the parties involved.
51 The Court considers this dispute independent of the case at hand.

52 Third, if negotiations through the Convention are not successful and an alternative remedy cannot be found
53 for the allegations of racial discrimination and ethnic cleansing, then the State(s) may request the Court revisit the
54 matter, but must be able to provide substantial proof of this dispute, as well as the requisite attempts at initial
55 negotiation and mediation through the Convention.

56 Fourth, the Court did not find documented claims of racial discrimination through the Convention to allow
57 for acceptance of compulsory jurisdiction, a right of the Court found in Article 36 of the Statute of the International
58 Court of Justice.

59 Fifth, the Court strongly condemns all acts of racial discrimination and ethnic cleansing and reminds all
60 states of their obligations as parties to the Convention and members of the international community.

61 Therefore, the Court does not have jurisdiction in regards to the determination of whether the Russian
62 Federations alleged actions within or against the Republic of Georgia constituted a violation of Articles 2 through 6
63 of the International Convention on the Elimination of all Forms of Racial Discrimination.

Signed By

Justice Audrey Johannes

Justice Pravallika Chirumamilla

Justice Tessa Schutt

Justice Rob Hickey

Justice Hannah Ray

Justice Trey Smallwood

Justice Raegan Mach

Justice Jacqueline Miranda

Justice Josh Cianek

Justice Hope Rodell

Justice Donald Edgerton

Justice Nadia Ayensah

Justice Alex Tiller