

Recent case-law of the ICJ and its significance for International Law

OC - (ILA-14159) - “KNOW THYSELF”: RACIAL DISCRIMINATION BEFORE THE INTERNATIONAL COURT OF JUSTICE – RECENT JURISPRUDENTIAL DEVELOPMENTS

Ioannis Konstantinidis (Qatar)¹

1 - Assistant Professor of International Law, Qatar University, College of Law - Secretary of the International Law Association (Qatari Branch) -

Ioannis Konstantinidis

Dr Ioannis Konstantinidis (PhD and LL.M. in Public International Law, Sorbonne Law School/ Université Paris 1 Panthéon-Sorbonne – MA, Institut d'Études Politiques de Paris-Sciences Po) is an Assistant Professor of Public International Law at Qatar University, College of Law (Department of Public Law) and Affiliate Member of the Center for Law and Development. He is the Secretary of the Qatari Branch of the International Law Association (ILA).

Dr Konstantinidis practiced public international law and international arbitration at a leading public international law firm in London. He has advised in connection with disputes heard at the International Court of Justice, the International Tribunal for the Law of the Sea, the International Centre for Settlement of Investment Disputes, the European Court of Human Rights and at a multitude of ad hoc and institutional arbitral fora. Before that, he worked at the International Tribunal for the Law of the Sea and the Office of Legal Affairs of the United Nations.

Dr Konstantinidis combines being an academic with being a practitioner in the field of public international law. He acts for States, international organisations and private entities in contentious and advisory matters. He is currently involved as counsel in cases before the International Court of Justice and in investor-State arbitrations. Dr Konstantinidis has been recently nominated on the List of Arbitrators under Annex VII of the United Nations Convention on the Law.

His research and practice focus on general international law, law of the sea, international organisations, international investment law, international litigation and arbitration, human rights, and international humanitarian law.

Abstract

Being the oldest United Nations human rights treaty and enjoying widespread participation, the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD” or the “Convention”) was adopted in 1965 and entered into force in 1969. The Convention sets forth an overarching goal: the elimination of all forms of racial discrimination. In pursuit of this goal, the Convention requires States Parties to respect and protect fundamental human rights and the dignity of human beings against racial discrimination.

Article 22 of the Convention grants jurisdiction to the International Court of Justice (“ICJ” or “Court”) over any dispute regarding the interpretation or application of the CERD “which is not settled by negotiation or by the procedures expressly provided for in this Convention.”

Having fallen into oblivion for almost four decades, Article 22 has preoccupied the judges of the ICJ since 2008. After granting provisional measures in the case *Georgia v. Russia*, the Court subsequently dismissed the case for want of jurisdiction. Later, in 2017 and 2018 respectively, the ICJ granted provisional measures in the cases *Ukraine v. Russia* and *Qatar v. United Arab Emirates (“UAE”)*. In June 2019, it rejected the request for the indication of provisional measures submitted by the UAE in the latter case. The above-mentioned disputes are still pending before the Court.

In the aforementioned instances, the ICJ has had the opportunity to partially elucidate certain abstruse aspects of the CERD, thus contributing to the development of international human rights law. In light of its recent jurisprudence, this paper sets out to present and assess the Court’s contribution to the decipherment of the CERD. In particular, it focuses on the following topical issues: the scope *ratione materiae* of the Convention, the alternative or cumulative character of

Article 22 preconditions for the seisin the Court and the exhaustion of local remedies as precondition for admissibility of inter-State claims of breach of the CERD.

Palavras-chave : Racial discrimination, CERD, Jurisdiction