

International Court of Justice

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*)



Forum:	International Court of Justice
Issue:	Application for the International Convention for the Suppression of Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)
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Introduction

The case focusses on the alleged violation of two key conventions; the international convention of the suppression of financing terrorism (ICSFT) and the international convention of the elimination of all forms of racial discrimination (CERD). On 16th of January 2017, the republic of Ukraine instituted proceedings against the Russian Federation, alleging that they violated the aforementioned conventions. Alongside these allegations, Ukraine requested for provisional measures, with the aim of safeguarding the rights they had under these two conventions.

The republic of Ukraine and the Russian Federation have always had some form of political friction. In this case, Ukraine has stated that their political friction has affected the lives of Ukrainian citizens in Russia, wherein Ukrainian citizens are being discriminated and proper education is not given to them, this violating CERD. Ukraine further indicated that the Russian Federation violated clauses from CERD, but also from the ICSFT, where the Russians allegedly backed Russian armed groups in eastern Ukraine.

As such, Ukraine's desired outcome in this case is for the Russian Federation to be charged for violating both the conventions, and refrain from actions which might aggravate the dispute of both the CERD and the ICSFT before the court. On the flip side, the Russian Federation only wishes that these charges be dropped and prove that they are not to be in violation of both the conventions. In addition to proving their innocence, the Russian Federation would like to contest the Russian-Ukrainian border, more specifically the territory of Crimea, a highly disputed territory between the two states.

In context, this case further extends to the territorial conflicts between the two states in and around large parts of eastern Ukraine, when, on 17th July 2014, Malaysia Airlines Flight MH17 while it was flying over Ukrainian territory in-route between Amsterdam and



Kuala Lumpur, which have claimed a large number of lives, where none of the citizens were either Ukrainian or Russian.

The case, after undergoing trial, will specify the applications of both of the aforementioned conventions and, whilst the international court of justice does not work on precedence, will be an example of these conventions in action and in dispute.

Definition of Key Terms

Racial Discrimination

Racial Discrimination is used to deny someone the equal protection of the laws and to treat all people the same, based on, in this case, their race and citizenship.

Suppression

Suppression is to forbid or to prohibit or put an end to a thing that already exists.

Financing

Financing is the act of providing funds for a person or an enterprise.

Terrorism

Terrorism is the unlawful use of violence and intimidation, especially against civilians, in the pursuit of political aims.

Sovereignty

Sovereignty is the possession of power, control over of the constitution and the frame of government and its administration. The international independence of a state.

Federal Subject of Russia

A federal subject of Russia is any republic, city of federal importance or any other high level political division according to the Russian Constitution, these all making up the Russian Federation. Currently, the Russian Federation has 85 Federal Subjects of Russia.

General Overview

History Between the Two States

On 28 December 1922, a conference of diplomat delegations from the Russian SFSR (Soviet Federative Socialist Republic), the Transcaucasian SFSR, the Ukrainian SSR (Soviet

Socialist Republic), and the Byelorussian SSR approved the Treaty on the Creation of the USSR and the Declaration of the Creation of the USSR, forming the Union of Soviet Socialist Republics. The country was a one-party state and governed by the Communist Party, with Moscow as its capital: the Russian Soviet Federative Socialist Republic.

On 24 August 1991, the Ukrainian Soviet Socialist Republic declared its independence from the Soviet Union, leading to the formation of the independent state of modern Ukraine. As a division had occurred within the Soviet Union, the states had to act to their responsibilities. The Russian Federation, as consequence of Ukraine leaving the Soviet Union, made solemn commitments and promises to respect Ukraine's sovereignty and independence within the borders.

As tension started to rise between the two states, Russian leaders started to adopt a Soviet-style policy, aimed at restoring Russian dominance and leadership over its neighbouring countries. This resulted in Ukraine becoming the target of an escalating campaign of Russia illustrating its ability and willingness to interfere and to show off its aggression.

Russia has deliberately and repeatedly violated the sovereignty and territorial integrity of Ukraine. In 2012 Russian President Vladimir Putin ran for re-election. As he was running for the elections, there were many protests in Moscow, St. Petersburg and numerous other places against him and his ideologies. Due to the high amount of protests, Putin shifted his political strategies from economic growth to anti-western paranoia, conservative Christian orthodoxy, and a Russian imperial revival of nationalism. Between this and November 2013 tension was rising which led to political instability.

In November 2013 the Ukraine crisis officially broke out. In 2013 Ukraine's President Viktor Yanukovich rejected a trade deal with the European Union, taking a bailout from Russia instead. As Yanukovich rejected such a, at the time potentially crucial, trade, thousands of people began protesting the move at Kiev's Maidan square as many saw a European Union deal as the key to the country's economic future. As all protests were ongoing, the government tried to interfere which led to the deaths of at least 70 Ukrainians by February 2014. Ukrainian politicians removed Yanukovich from his power and paved the way for a new presidential election through which Petro Poroshenko, who supported the protests, was voted the new president in May.

As the political situation in Ukraine was settled, two aspects still interfered. Firstly, Ukraine is known to be divided between an eastern region with close historical and cultural ties to Russia and the rest of Ukraine which identifies itself with Ukraine completely. Secondly, Russia does not want to lose its influence in Ukraine. As the government collapsed, Putin invades to annex Crimea. After having the voting's in Crimea to determine whether Crimea wants to be a part of Russia or Ukraine, Putin gained a lot of supporters which leads to him striving to get power. Putin strived to obtain more power by using all of Russia's hard power which it already obtained.

After the events that occurred and took place in Crimea, a rebellion fuelled by pro-Russian separatists in other parts of eastern Ukraine escalated the situation to a higher degree. Putin supported these rebels, providing them with weapons and other materials in order to obtain more power. Rebels took control of government buildings in several eastern cities in April 2014. Quickly, Russian nationals with a high degree of fighting experience



crossed the border to lead the rebels according to the United Nations. Meanwhile, Ukraine's own forces fought back for control. During this period of time, at least 1000 people died between mid-April and mid-July, many of them being civilians. Besides that, 298 people died when the Malaysian Airlines flight 17 was apparently mistakenly shot down by rebels triggering more EU sanctions of Russia.

Orange Revolution of 2004

From late 2004 until the beginning of 2005, there were a series of protests and political events that took place in Ukraine, which was claimed to be marred by massive corruption, voter intimidation, and direct electoral fraud after the aftermath of the run-off vote of the 2004 Ukrainian presidential election. The initial protest started off by cause of the two election candidates Viktor Yushchenko and Viktor Yanukovich, as many claimed that the results were rigged by the authorities, in favour of the latter.

Before the Orange Revolution began, the Ukrainian regime created a system through which a democratic society could develop. Through creating such a system, it was considered to allow a democracy and market economy to rise. However, the Orange Revolution made apparent that the Ukrainian citizens wanted a more pluralistic government, who would be in charge of all crucial decision making.

A factor which contributed to the Orange Revolution was the so-called 'Cassette Scandal', which is also referred to as 'Kuchmagate'. During this scandal, in 2000, tapes of the Ukrainian President Leonid Kuchma were leaked in which he was heard ordering the kidnap of journalist Georgiy Gongadze. Georgiy Gongadze was kidnapped and murdered in 2000.

The Cassette Scandal provoked the citizen's desire to create a social reform movement. As not only the respect and trust in their president slowly started to diminish. In addition, the elitist ruling class, in general, started to get criticised.

Many government officials, who at the time supported Kuchma, started to support Yushchenko during the elections in 2004. Yushchenko was seen to be extremely important during this election, as all faith and trust in the government was lost by the citizens. Yushchenko was seen as a charismatic candidate, who showed the opposite of what at the time was seen within the government. He showed no indications of being corrupt and had an optimistic view on Ukraine for the future.

The nationwide protests and political events succeeded when the results of the original run-off were cancelled, and an official revote was ordered by Ukraine's Supreme Court on the 26th of December of 2004. The aims of this revote were to have a fair and free election for all citizens. After the revote, results indicated a clear victory for Yushchenko - who received approximately 52% of all votes - whereas Yanukovich received 44%. Young Ukrainian citizens had a significant impact on the results of these elections. As they were young, they were very much exposed to all negative factors from the Kuchmagate affair, and therefore had biased visions about Kuchma and of his ability to lead Ukraine. Therefore, the majority chose to give their vote to Yushchenko. Yushchenko was officially declared the



winner and after his inauguration on January 23rd, 2005, the Orange Revolution officially came to an end.

Crimea

Crimea is a peninsula located south of Ukraine, and west of Russia. In 1783, after the Russo-Turkish War (1764- 1774), Crimea became a part of the Russian Empire. After the Russian Revolution of 1917, Crimea became an autonomous republic within the Russian Soviet Federative Socialist Republic in the USSR. During World War II, Crimea was downgraded to the Crimean Oblast, which was a province of the former Russian SFSR within the Soviet Union. In 1954, Crimea was transferred to the Ukrainian SSR.

Crimea is currently considered to be a region of Ukraine, under hostile Russian occupation. From Ukraine 1991 independence until 2014, Crimea was a Ukrainian region that had special autonomy and large Russian military bases. Although it was a Ukrainian region from 1991 onwards, because it had belonged to the Soviet Union and the Russian Empire for such an extended period, the majority of the people that live there were actually Russian themselves.

In late February 2014, a couple of days after Ukraine's pro-Moscow president was evicted from power, armed gunmen began seizing government buildings in Crimea. In order to demonstrate that the Crimean's disagreed with these actions that were being taken, Crimean's held rallies to show support for the evicted president and to call to secede from Ukraine and re-join Russia. Without any casualties, Russian military forces brought the entire peninsula under military occupation. On March 16, the majority of the Crimean's voted in favour for their region to become a part of Russia.

Although it can be argued that Crimea's separation is legitimate, many see Crimea's separation vote as illegitimate. Firstly, Crimea was held under hostile Russian military occupation with no international or external monitoring. This demonstrates that the Crimean's did not have a lot of choice or guidance when it came to decision making regarding their vote. Secondly, all the events that occurred, in particular, the voting, were only announced with a couple of weeks' prior warning. As a result of this, Ukraine did not have long to prepare. And lastly, the voting of Crimea was illegal under Ukrainian law. As many laws were broken, the United States of America and the European Union have imposed economic sanctions on Russia to punish Moscow.

Major Parties Involved

Russian Federation

The Russian Federation, formally the USSR, is a country situated in Eurasia and one of the members of the permanent 5 in the United Nations Security Council. The Russian federation is the respondent in this case, charged with multiple violations of multiples conventions. They have allegedly had military presence

Ukraine

Ukraine, formerly part of the USSR, is a sovereign state in eastern Europe. They are the applicant in this case. They contend that they have been discriminated by the Russian Federation and have also been pressured and intimidated.

Republic of Crimea

The Republic of Crimea is one of the federal subjects of the Russia and is located in the Crimean Peninsula. Crimea is a vital to this case as Ukraine contest that it has unlawfully been taken over by an unconstitutional referendum held by the Russian Federation, it was later on annexed and became a Federal Subject of Russia. Only a few United Nations member states, including the Russian Federation, recognize the Republic of Crimea as part of the Russian Federation. On the other hand, the rest of the member states, including Ukraine claim that the Republic of Crimea is a vital part of Ukraine. This claim is further backed up by United Nations General Assembly Resolution 68/262

International Court of Justice

The International Court of Justice (ICJ) is a UN body that was created to solve arbitration and civil cases between states rather than individuals. The ICJ is the primary judicial branch of the UN, and its role is to settle legal disputes, and to provide opinions and advice to various organizations, nations, and UN bodies. The court was created with the UN Charter, which contained the Statute of the International Court of Justice, meaning that all UN members, while ratifying the UN Charter, have also ratified the Statute of the International Court of Justice.

Relevant Treaties and Resolutions

International Convention on the Elimination of all forms of Racial Discrimination (CERD)

The CERD, opened for ratification on the 21st of December 1965, is a convention that was created through the General Assembly resolution 2106. This convention, in accordance with the UN charter, aims to not only reinforce it in terms of human rights, but is specifically orientated towards racial discrimination. The republic of Ukraine contests that the Russian Federation violated this treaty against Ukrainian citizens.

International Convention of the Suppression of the Financing of Terrorism (ICSFT)

The ICSFT (also known as the Terrorist Financing Convention) is a treaty signed on January 10th, 2000 which was designed to criminalize the act of financing terrorism. It further seeks to promote judicial and police co-operation in order to prevent, investigate and punish such acts.

United Nations Charter

The United Nations Charter, signed on the 26th of June, 1945, is the treaty that the United Nations is built upon. In it, it lays out all the rules that ratifies of the United Nations must abide to, as well as how to United Nations is structured and the procedures it follows. This charter has been violated by the Russian Federation in their aiding of the creation of the Autonomous Republic of Crimea, and is brought into question once again with the case of the Republic of Crimea.

United Nations General Assembly Resolution 68/262

The United Nation General Assembly Resolution 68/262 was adopted on the 27th of March 2014. This resolution tackled the situation of the Russian annexation of the republic of Crimea as well the situation of Ukrainian Territory. Tis resolution was also a response to the several unsuccessful attempts made by the United Nations Security Council, due to the Russian veto.

Bibliography

“262.” *Wikipedia*, Wikimedia Foundation, 13 June 2018, en.wikipedia.org/wiki/United_Nations_General_Assembly_Resolution_68/262.

“Arbitration.” *Wikipedia*, Wikimedia Foundation, 16 June 2018, en.wikipedia.org/wiki/Arbitration.

“Crimea.” *Britannica School*, school.eb.co.uk/levels/advanced/article/Crimea/27901

“Federal Subjects of Russia.” *Wikipedia*, Wikimedia Foundation, 17 June 2018, en.wikipedia.org/wiki/Federal_subjects_of_Russia.

“Republic of Crimea.” *Wikipedia*, Wikimedia Foundation, 16 June 2018, en.wikipedia.org/wiki/Republic_of_Crimea.

“The Collapse of the USSR” *Europe at the End of the First World War - The Map as History*, www.the-map-as-history.com/index.php/kiosque/map/437-the-collapse-of-the-ussr.

“Ukraine.” *Britannica School*, school.eb.co.uk/levels/advanced/article/Ukraine/108710#275923.toc.

“Ukrainian Crisis.” *Infobase Learning - Login*, online.infobase.com/HRC/Search/Details/3?articleId=384752&q=viktor%2BYanukovych.

“What Is DISCRIMINATION? Definition of DISCRIMINATION (Black's Law Dictionary).” *The Law Dictionary*, 28 Mar. 2013, thelawdictionary.org/discrimination/.

“What Is SOVEREIGNTY? Definition of SOVEREIGNTY (Black's Law Dictionary).” *The Law Dictionary*, 7 Nov. 2011, thelawdictionary.org/sovereignty/.

“What Is SUPPRESS? Definition of SUPPRESS (Black's Law Dictionary).” *The Law Dictionary*, 28 Mar. 2013, thelawdictionary.org/suppress/.

“World Book Online Reference Center | Online Reference Book| Online Encyclopedia Crimea.” *World Book*, www.worldbookonline.com/student/article?id=ar140680&st=crimea#tab=homepage.

“World Book Online Reference Center | Online Reference Book| Online Encyclopedia Ukraine.” *World Book*, worldbookonline.com/.

International Court of Justice. “APPLICATION INSTITUTING PROCEEDINGS - TERRORISM FINANCING AND RACIAL DISCRIMINATION IN UKRAINE.” *Application of Instituting Proceedings*, 16 Jan. 2017, pp. 1–4., www.icj-cij.org/files/case-related/166/19314.pdf

International Court of Justice. “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).” *Summary Report*, 19 Apr. 2017, pp. 1–10., www.icj-cij.org/files/case-related/166/19410.pdf.

Zyberi, Gentian. “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) | International Law Observer | A Blog Dedicated to Reports, Commentary and the Discussion of Topical Issues of International Law.” *International Law Observer the Role of the International Courts and Tribunals in the Pursuit of Peace Justice and the Responsibility to Protect Comments*, 5 Feb. 2017, www.internationallawobserver.eu/2017/02/05/ukraine-v-russian-federation-icj/