

## **Legal Battles Over Nagorno-Karabakh: A Review of the Jurisprudence to Date**

### **Introduction**

Since the conflict over Nagorno-Karabakh erupted in the 1990s, the two neighbouring countries (Armenia and Azerbaijan) have not maintained diplomatic relations. A 1994 ceasefire agreement froze the conflict, though periodic escalations led to renewed hostilities. However, the 44-day war in 2020 significantly altered the status quo that had persisted since the 1994 ceasefire. Four years after the November 2020 ceasefire statement<sup>1</sup> over the conflict regarding Nagorno-Karabakh, Armenia and Azerbaijan continue to wage legal battle in international courts, invoking numerous legal avenues to address alleged violations that occurred before, during, and after the 2020 war.

This *Insight* will provide an overview of the legal proceedings and key milestones related to the Nagorno-Karabakh conflict. Its relevance is heightened by the progress and developments achieved thus far. With these proceedings still underway, it is crucial to maintain focus on them, even as other conflicts and their associated legal actions dominate global attention.

### **International Court of Justice**

In September 2021, Armenia<sup>2</sup> and Azerbaijan<sup>3</sup> each brought cases against the other before the International Court of Justice (ICJ), simultaneously seeking provisional measures. Both sides alleged systemic discrimination against their respective ethnic groups—Armenians in Azerbaijan and Azerbaijanis in Armenia—under the framework of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Since then, the ICJ has issued three provisional measures orders against

Azerbaijan<sup>4</sup> and one against Armenia,<sup>5</sup> reflecting the urgency and seriousness of specific allegations raised by both parties.

On November 12, 2024, in significant judgements on preliminary objections raised by both parties, the ICJ allowed both cases to proceed and clarified the scope and application of CERD to these disputes.<sup>6</sup>

In the case of *Armenia v. Azerbaijan*, the ICJ dismissed all of Azerbaijan's preliminary objections, including the argument that Armenia had not exhausted “negotiation” efforts as required under Article 22 of CERD. The Court first found that Armenia had made a genuine attempt to engage in negotiations with Azerbaijan since the end of 2020, aiming to resolve the dispute. By the time Armenia filed its application in 2021, the ICJ concluded, these negotiations had indeed become futile.<sup>7</sup> Second, the ICJ affirmed that human rights conventions, including CERD, remain applicable even during armed conflicts.<sup>8</sup> In addressing Azerbaijan’s third objection, the Court confirmed that Armenia’s claims of discriminatory treatment toward ethnic Armenians in Azerbaijan—covering both civilians and military personnel—fall within the scope of CERD, requiring further examination of alleged racially motivated violence, hate speech, and inhumane treatment, with a detailed assessment to follow at the merits stage.<sup>9</sup>

In the case between Azerbaijan and Armenia, the Court upheld two of Armenia’s three objections regarding the scope of CERD, specifically regarding its temporal and material application to the conflict.

The Court first made an unprecedented ruling that the temporal scope of the Convention could only impose obligations on the two parties from the moment both became signatories. As a result, despite Azerbaijan's argument that the Convention should apply as from 1993 (when Armenia acceded to the Convention), the Court determined that the relevant timeframe for applying CERD began in 1996,<sup>10</sup> only after Azerbaijan had acceded to the Convention. Thus, the temporal scope of the CERD with respect to the dispute between the parties did not extend to events from the First Karabakh War between Azerbaijan and Armenia (1992-1994)—assuming, however, the Court, during its examination of the merits, determines that no continuing or composite wrongful acts began before the critical date of 1996 and persisted thereafter.<sup>11</sup>

Furthermore, the Court rejected Armenia's second preliminary objection, deeming it moot, as it had already ruled (in the order on provisional measures from December 7, 2023) that no evidence had been adduced indicating that placing landmines and booby-traps

by Armenia had the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of rights of persons of Azerbaijani national or ethnic origin.<sup>12</sup> The Court also noted that Azerbaijan had changed its arguments in this regard, stating that laying landmines and booby-traps does not constitute in itself a violation of the obligation under CERD, but is alleged to be part of Armenia's broader alleged policy of ethnic cleansing of Azerbaijanis from Nagorno-Karabakh, which should be addressed during the examination of the merits.<sup>13</sup>

Regarding Armenia's third objection concerning allegations of environmental harm targeted at Azerbaijanis based on their national or ethnic origin—such as claims of pillaging natural resources, deforestation, destruction of water infrastructure, and overexploitation of resources in areas previously inhabited by ethnic Azerbaijanis—the Court concluded that these actions were not sufficiently linked to racial discrimination as defined under CERD. The ICJ determined that the alleged environmental damage did not stem from discriminatory intent or actions motivated by ethnic or national origin and thus fell outside the Convention's scope.<sup>14</sup> Even if these actions were attributed to Armenia, the Court concluded that they did not involve differential treatment based on national or ethnic origin, nor did they violate the human rights of ethnic Azerbaijanis as protected by the Convention.<sup>15</sup>

In summary, the Court allowed the proceedings in both cases to continue to the merits stage, where the Court will examine the presence of racial discrimination in violation of CERD in both cases. However, these decisions help clarify the relative strengths of the legal positions of the parties, especially considering that Azerbaijan did not comply with the provisional measures issued by the Court.<sup>16</sup> Following the ICJ's decisions on provisional measures and its rulings that have limited the scope of Azerbaijan's arguments under CERD, Armenia's legal position appears to be comparatively stronger. The narrowing of Azerbaijan's claims, coupled with the dismissal of key allegations unrelated to racial discrimination, has highlighted the robustness of Armenia's legal strategy and its alignment with the Court's interpretative framework.

## **European Court of Human Rights**

Since the outbreak of the Nagorno-Karabakh war in September 2020, both Armenia<sup>17</sup> and Azerbaijan<sup>18</sup> have filed interstate applications against each other at the European Court of Human Rights (ECtHR), seeking urgent interim measures aimed at halting military actions and protecting civilians. These applications called for an end to artillery and missile strikes and the withdrawal of forces from disputed areas. The ECtHR

responded by advising both countries to refrain from military actions that might violate the rights protected under the European Convention on Human Rights, including the right to life and the prohibition of torture.<sup>19</sup>

In addition, in 2020 Armenia lodged an interstate complaint against Turkey<sup>20</sup> alleging that Turkey's involvement in the 2020 conflict,<sup>21</sup> specifically its recruitment and transfer of Syrian mercenaries to support Azerbaijan, resulted in human rights violations. The ECHR is currently reviewing all three of these cases to assess the alleged breaches of Convention rights.

Alongside these interstate cases, the ECtHR has also received hundreds of individual applications from people displaced or impacted by the conflict, largely concerning property rights, displacement, and family life issues. All these cases remain under consideration by the Court.

### **International Criminal Court and Universal Jurisdiction**

As of February 2024, Armenia was the 124th state party to the Rome Statute of the International Criminal Court (ICC).<sup>22</sup>

Since then, NGOs and individuals have submitted several communications regarding the situation in Nagorno-Karabakh to the ICC prosecutor pursuant to Article 15 of the Rome Statute.<sup>23</sup> Additional communications related to the Nagorno-Karabakh conflict are expected to be filed, and therefore at some point the ICC prosecutor will review them and decide on further action, especially considering the related findings by the various courts described herein.

Another way to trigger ICC proceedings is through referral under Article 14 of the Rome Statute by a state party, either Armenia or another member. However, it is unlikely that Armenia, currently in “peace” negotiations with Azerbaijan, will use this trigger mechanism in the near future, as it would be seen as bad faith in the peace process.

On the national level, Armenia has incorporated the Rome Statute into its criminal code<sup>24</sup> and is working on a law to establish clear procedures for cooperating with the ICC, which will outline responsibilities for communication and cooperation. National investigations have already begun, but it is unlikely that Azerbaijani suspects will ever enter the country and thus Armenia cannot realistically arrest fugitives.

## **Administrative Court of Germany**

A recent judgment by the German Administrative Court in Kassel from September 16, 2024,<sup>25</sup> granted refugee status to a family from Nagorno-Karabakh, making notable findings related to refugee status and issues surrounding deportation.

The court first determined that Armenians from Nagorno-Karabakh are stateless, rejecting Azerbaijan's continuing claims that these individuals hold Armenian citizenship. Furthermore, as residents of Nagorno-Karabakh have never held Azerbaijani documents or engaged with Azerbaijani authorities, the court found that they lacked Azerbaijani citizenship as well.

Finally, the court found that ethnic Armenians in Azerbaijan face systematic discrimination, citing long-standing case law on the persecution of Armenians there, including the denial of citizenship and re-entry. Given this well-documented history, the court concluded it is highly probable that if the plaintiffs returned, they would face severe restrictions on housing, employment, healthcare, and protection from both state and non-state abuses.

As a result, the court held that the plaintiffs were entitled to refugee status. While this judgment is a national-level decision focused on a specific case, it is likely to influence other asylum claims from Nagorno-Karabakh and could serve as a reference in broader legal contexts, including proceedings before the ICJ.

## **Conclusion**

The Nagorno-Karabakh conflict remains one of the most complicated legal disputes in international law.

On the positive side, it is encouraging that both Armenia and Azerbaijan have begun to utilize international legal mechanisms and to bring their claims forward. This marks a crucial step toward addressing the longstanding issues surrounding the conflict through legal process and may pave the way for a more structured resolution on the international stage.

However, it is unfortunate that these proceedings were initiated only after the escalation of violence in the 2020 Nagorno-Karabakh war. Had international legal measures been

utilized earlier, they might have helped prevent the loss of countless lives and the severe humanitarian consequences that followed.

Moreover, despite the ongoing legal proceedings, the broader issue of accountability remains challenging. With both countries having complex and opposing narratives, the international community's role is pivotal in ensuring that any legal outcomes lead to long-term peace, justice, and reconciliation. It is increasingly crucial for the international community to remain focused on the ongoing conflict, ensuring that states uphold international legal principles.

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<sup>1</sup> Press Release, Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation (Nov. 10, 2020), <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/>.

<sup>2</sup> Application of the Int'l Convention on the Elimination of All forms of Racial Discrimination (Arm. v. Azer.), Request for Provisional Measures (Sept. 16, 2021), <https://www.icj-cij.org/sites/default/files/case-related/180/180-20210916-APP-01-00-EN.pdf>.

<sup>3</sup> Application of the Int'l Convention on the Elimination of All forms of Racial Discrimination (Azer. v. Arm.), App. Instituting Proceedings (Sept. 23, 2021), <https://www.icj-cij.org/sites/default/files/case-related/181/181-20210923-APP-01-00-EN.pdf>.

<sup>4</sup> Application of the Int'l Convention on the Elimination of All forms of Racial Discrimination (Arm. v. Azer.), Order (Dec. 7, 2021), <https://www.icj-cij.org/sites/default/files/case-related/180/180-20211207-ORD-01-00-EN.pdf> (ordering Azerbaijan to suppress hatred against Armenians); Application of the Int'l Convention on the Elimination of All forms of Racial Discrimination (Arm. v. Azer.), Order (Feb. 22, 2023), <https://www.icj-cij.org/sites/default/files/case-related/180/180-20230222-ord-01-00-en.pdf> (ordering Azerbaijan to deblock the Lachin Corridor); Application of the Int'l Convention on the Elimination of All forms of Racial Discrimination (Arm. v. Azer.), Order (Nov. 17, 2023), <https://www.icj-cij.org/sites/default/files/case-related/180/180-20231117-ord-01-00-en.pdf> (ordering Azerbaijan to ensure the return of Armenians).

<sup>5</sup> Application of the Int'l Convention on the Elimination of All forms of Racial Discrimination (Azer. v. Arm.), Order (Dec. 7, 2021), <https://www.icj-cij.org/sites/default/files/case-related/181/181-20211207-ORD-01-00-EN.pdf>. Other requests of Azerbaijan were rejected.

<sup>6</sup> Application of the Int'l Convention on the Elimination of All forms of Racial Discrimination (Arm. v. Azer.), Judgment (Nov. 12, 2024), <https://www.icj-cij.org/sites/default/files/case-related/180/180-20241112-jud-01-00-en.pdf>; Application of the Int'l Convention on the Elimination of All forms of Racial Discrimination (Azer. v. Arm.), Judgment (Nov. 12, 2024), <https://www.icj-cij.org/sites/default/files/case-related/181/181-20241112-jud-01-00-en.pdf>.

<sup>7</sup> *Arm. v. Azer., id.*, ¶¶ 56-58.

<sup>8</sup> *Id.* ¶¶ 76-78.

<sup>9</sup> *Id.* ¶¶ 91-95.

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<sup>10</sup> *Azer. v. Arm.*, *supra* note 6, ¶¶ 52-55.

<sup>11</sup> *Id.* ¶ 62.

<sup>12</sup> *Azer. v. Arm.*, *supra* note 5, ¶ 53.

<sup>13</sup> *Azer. v. Arm.*, *supra* note 6, ¶ 76.

<sup>14</sup> *Id.* ¶¶ 97-99.

<sup>15</sup> *Id.* ¶ 97.

<sup>16</sup> Armenian compliance is an ongoing obligation. Since the issuance of provisional measures, there is no indication that Armenia on the political level targets Azeris domestically.

<sup>17</sup> *Arm. v. Azer.*, App. No. 42521/20.

<sup>18</sup> *Azer. v. Arm.*, App. No. 47319/20.

<sup>19</sup> Press Release, Eur. Ct. H.R., The Courts grants an interim measure in the case of *Arm. v. Azer.* (Sept. 30, 2024), <https://hudoc.echr.coe.int/eng-press?i=003-6809725-9108584>; Press Release, Eur. Ct. H.R., Request for interim measures lodged by Azer. against Arm. Concerning conflict in Nagorno-Karabakh (Oct. 27, 2024), <https://hudoc.echr.coe.int/eng-press?i=003-6838228-9156311>; Press Release, Eur. Ct. H.R., European Court decides to indicate interim measures in the “Lachin Corridor” (Dec. 21, 2022), <https://hudoc.echr.coe.int/eng-press?i=003-7528728-10337270>.

<sup>20</sup> Press Release, Eur. Ct. H.R., Receipt of a completed application form in the inter-State case *Arm. v. Turk.* (May 18, 2021), <https://hudoc.echr.coe.int/eng-press?i=003-7022025-9472980>.

<sup>21</sup> Press Release, Eur. Ct. H.R., The Court’s decision on the request for an interim measure lodged by Armenia against Turkey (Oct. 6, 2020), <https://hudoc.echr.coe.int/eng-press?i=003-6816855-9120472>.

<sup>22</sup> Gurgen Petrossian, *Armenia as the 124th Member to the Rome Statute*, OPINIOJURIS (Sept. 22, 2023), <http://opiniojuris.org/2023/09/22/armenia-as-the-124th-member-to-the-rome-statute/>.

<sup>23</sup> Center for Truth & Justice, The Planning, Inciting, Ordering, Instigating, and Implementing of Genocide by President Ilham Aliyev and other High Ranking Officials (Apr. 18, 2024), <https://www.cftjustice.org/wp-content/uploads/2024/04/ICC-Communication-NEW-IND.pdf>, Siranush Ghazanchyan, *Complaint filed to ICC Prosecutor a year after forced displacement of Armenians from Nagorno Karabakh*, Public Radio of Arm. (Sept. 19, 2024), <https://en.armradio.am/2024/09/19/complaint-filed-to-icc-prosecutor-a-year-after-forced-displacement-of-armenians-from-nagorno-karabakh/>.

<sup>24</sup> See Armenian Criminal Code, <https://legislationline.org/sites/default/files/2023-12/Criminal%20Code%20of%20the%20Republic%20of%20Armenia%20%282022%29%20%28English%29.pdf>.

<sup>25</sup> VG Kassel, Judgment, 1 K 1819/23.KS.A, ECLI:DE:VGKASSE:2024:0916.1K1819.23.KS.A.00 (Sept. 16, 2024), <https://www.rv.hessenrecht.hessen.de/bshe/document/LARE240001210>.