

SEPARATE OPINION OF JUSTICE FATSAH OUGUERGOUZ

1. I believe that the application lodged against the Republic of Gabon by *Convention Nationale des Syndicats du Secteur Education* (CONASYSED) must be rejected. However, the lack of jurisdiction *ratione personae* of the Court being manifest in this case, this application should not have been dealt with by a decision of the Court; rather, it should have been rejected *de plano* by a simple letter of the Registrar (on this point, see my argumentation in my separate opinion appended to the judgment in the case *Michelot Yogogombaye vs. Republic of Senegal*, as well as in my dissenting opinion appended to the decision in the case *Ekollo Moundi Alexandre vs. Republic of Cameroon and Federal Republic of Nigeria*).

2. I am not favorable to the judicial examination of a complaint against a State Party to the Protocol which has not made the optional declaration accepting the compulsory jurisdiction of the Court to receive complaints from individuals or non-governmental organizations, or against an African State not party to the Protocol or not member of the African Union, as was the case of several applications already dealt with by the Court. I am even less favorable to such a judicial examination when the State concerned has not even been notified of the filing of the application against it, such as it is again the case here.

3. The Court has indeed decided not to notify Gabon of the application lodged by CONASYSED, nor even to inform Gabon of its filing. The adoption by the Court of a decision of lack of jurisdiction in such conditions is a violation of the adversarial principle (*Audiatur et altera pars*), a principle which should apply at any stage of the proceedings. This breach of fairness and equality of arms is all the more remarkable given that the application lodged by CONASYSED was, upon receipt, publicized on the website of the Court.

4. The non-transmittal of the application to Gabon further deprived the latter of the latitude to accept the jurisdiction of the Court by way of *forum prorogatum* (on this matter, see my separate opinion above).



Fatsah Ouguergouz

Robert Ené
Acting Registrar

