

## Case summary

By Katherine Iliopoulos, 6 February 2013

### **Application 002/2012 Delta International Investments v Republic of South Africa**

#### Application

The Applicants, Mr and Mrs De Lange, seized the Court with a petition against South Africa alleging torture and violation of their rights to dignity, property, information, privacy and discrimination, contrary to the South African Constitution and the African Charter on Human and Peoples' Rights (the Charter).

Judge Ngoepe, a South African, was recused on the basis of Article 22 of the Protocol and Article 8(2) of the Rules of the Court.

#### Decision

The Court observed that South Africa had not made a declaration under Article 34(6) of the Protocol and held that the Court manifestly lacks jurisdiction. It struck the Application from the docket of the Court.

#### Separate Opinion of Judge Fatsah Ouguergouz

As he has held in similar cases, Judge Ouguergouz considered that the application should not have been dealt with by a decision of the Court but rejected *de plano*.

He also observed that the Court gave consideration to the Application without transmitting it to South Africa nor informing it that an application had been lodged against it, in violation of the adversarial principle. Failure to transmit deprived the State of the opportunity to accept the jurisdiction of the Court by way of *forum prorogatum* (see his Separate Opinion in *Yogogombaye v Senegal*).

#### Comment:

Unlike in some previous cases, the Court did not decide to transfer the case to the African Commission under Article 6(3) of the Protocol. It remains unclear as to the reasons behind a decision by the Court to transfer a case to the Commission. In the interests of legal certainty, and in order to develop consistent practice in this regard, clear guidelines should be developed and applied.