

Case summary

By Katherine Iliopoulos, 6 February 2013

Application 005/2012 Amir Adam Timan v Republic of the Sudan

Application

The Applicant, Timan, a Sudanese national from Darfur, currently residing in DRC, seized the Court with a petition against Sudan alleging violation of Articles 12(1), 2, 3, 4 and 13 of the African Charter on Human and Peoples' Rights (the Charter). Timan was accused by the Government of being a member of an opposing force to the legitimate Government of the Sudan.

Decision

The Court observed that Sudan 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 Sudan or 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.

