

Case summary

By Marie O'Leary, 23 December 2011

Application 007/2011 Youssef Abadou v. The Kingdom of Morocco

Application

On 18 May 2011, the *African Court on Human and People's Rights* ("AfCHPR") received an application from Moroccan national Mr. Youssef Abadou brought against the Kingdom of Morocco: ([Application No. 007/2011](#)). According to the case summary, Mr. Abadou alleged that the Kingdom of Morocco failed to issue him with a National Identity Card and passport despite his repeated application to the Moroccan Consulate in Algeria. The summary indicates that Mr. Abadou asserts that he has proof of having exhausted all other remedies; however, it additionally notes that he "did not indicate any specific relief" in his application.

While the case summary provides that Mr. Abadou is married with four children, the other relevant details are sparse. Namely, it is not known whether he or his family has ever resided in Morocco or if he has ever possessed proof of citizenship of the country prior to his application. Additionally, as it states he is a resident of Algeria, it is unclear as to what, if any, other citizenship status he may possess which could factor into any considered application.

Decision

The [decision](#) outlined the steps of the Registry to acquire further details from Mr. Abadou, specifically noting that the application:

- Was not signed;
- Did not specify the alleged violation;
- Did not specify how local remedies were exhausted; and,
- Did not seek a specific remedy from the Court.

While Mr. Abadou returned a signed copy of his application on 20 June 2011, there is no indication that he further responded to the other queries raised by the Court. Furthermore, the decision notes that on 19 July 2011, upon inquiry by the AfCHPR Registry, the Legal Counsel of the African Union Commission informed the Court that the Kingdom of Morocco is not a member of the African Union and has neither signed nor ratified the Protocol establishing the Court.

Given these circumstances, the AfCHPR summarily dismissed Mr. Abadou's application based on a lack of jurisdiction under Article 3, which provides that:

"The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned".

The Court concluded that: “As this is an application brought against a State which is not a member of the African Union, which has neither signed nor ratified the Protocol establishing the Court, the Court concludes that manifestly, it does not have the jurisdiction to hear the application.”

Comment

Unlike other AfCHPR cases dismissed for lack of jurisdiction, this application falls short of the most fundamental jurisdictional requirement: that a State Party against which a claim is lodged is a member of the African Union (“AU”). While the Court cites Article 3 as providing the jurisdictional constraint, by a sole reading of the Protocol language cited, the Court could hold Morocco (or any State) accountable for any human rights instrument the State had ratified. However, when read in conjunction with Article 1, which establishes the Court ‘within’ the AU, it is clear that only AU State Parties are the intended subject of any claims before the Court. This basic element of AU membership is further understood when considering the Court’s premise of complementing the African Commission. The holding in *Abadou* jurisprudentially reinforces that there can be no standing for *or against* a party that is not a present member of the AU.

This highlights one of the most interesting ramifications of Morocco’s non-membership in the AU. Morocco, which is currently the only all-African state not in the AU, was formerly a member of the AU’s predecessor, the Organisation of African Unity (OAU). However, in 1984, following a dispute over the formal recognition of the Sahrawi Arab Democratic Republic, Morocco withdrew its membership. While the intervening years have included discussion of the readmission of Morocco to the AU, without formal readmission the AfCHPR lacks primary jurisdiction over disputes against Morocco as a non-contracting State Party.

Even if Morocco was to regain admission to the AU, the Court’s decision alludes to the other terms that must be met for claims to be made against it by individuals – namely, the State must ratify the Protocol establishing the Court and additionally make the declaration found in Article 34(6). While Article 3(2) grants the Court wide discretion to resolve disputes of jurisdiction, to date, the Protocol’s constraints have considerably limited the Court’s jurisdiction with regard to claims by individuals: only five (5) member States have made the Article 34(6) declaration. The rigid adherence to these requirements was emphasized at in the Court’s first decision, *Yogogombaye v. Senegal* (*para. 31*) (see also the [ARC summary](#) of the case). Therefore, until other State Parties fulfil these requirements, individuals will continue to have very limited standing before this Court. This reality demonstrates the larger picture of the competing ‘carrot and stick’ presented by the Court: the desire of a State to provide its citizens with an avenue for human rights claims but a potential reluctance to expose itself to potential liability before the Court.

What is not known from the *Abadou* summary or decision – and seemingly not even from the application – is what provision of the Charter or relevant human rights instrument Mr. Abadou is claiming has been violated. Given this omission, and the lack of public detail on the background of this case, it is impossible to know whether Mr. Abadou may have a remedy elsewhere or indeed at the AfCHPR in the future. What is known is that the underlying subject of this claim, rooted in citizenship and nationality – while not considered here – is certainly a complex and topical issue that is likely to arise again in claims presented to the Court.

