

## Case summary

*By Katherine Iliopoulos, 6 February 2013*

### **Application 007/2012 Baghdadi Ali Mahmoudi v Republic of Tunisia**

#### Application

The Applicant informed the Registry of his intention to submit an Application with a request for interim measures against Tunisia. He submitted copies of judgments from the Court of Appeal of Tunis as proof of exhaustion of local remedies.

#### Decision

The Court observed that Tunisia had not made a declaration under Article 34(6) of the Protocol and held that the Court manifestly lacks jurisdiction. It accordingly did not make an order for interim measures, as it did not have *prima facie* jurisdiction.

#### 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 Tunisia 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:

The decision simply follows previous jurisprudence whereby applications were rejected for lack of subject matter jurisdiction due to an absence of an Article 34(6) declaration by the State party to the case.