

Case summary

By Katherine Iliopoulos, 6 February 2013

Application 008/2011 Ekollo Moundi Alexandre v Republic of Cameroon and the Federal Republic of Nigeria

Application

The Applicant seized the Court alleging a violation of Articles 3, 5, 6, 7, and 13(3) of the African Charter by Cameroon and Nigeria. In conformity with Article 22 of the Protocol and Rule 8(2) of the Rules of the Court, Judge Thompson, a Nigerian national, was recused. The Registrar was advised that neither Cameroon nor Nigeria had lodged Article 34(6) declarations, and furthermore, that Cameroon had not even ratified the Protocol.

Decision

The Court adopted the Registrar's findings and declared a manifest lack of jurisdiction to hear the application. Pursuant to Article 6(3) of the Protocol, the Court transferred the case to the African Commission on Human and Peoples' Rights (the Commission).

Dissenting Opinion of Judge Ouguergouz

Judge Ouguergouz held that the Application should have been dismissed *de plano* for manifest lack of jurisdiction, rather than being considered judicially.

Judge Ouguergouz also disagreed with the Court's decision to transfer the matter to the Commission. He argued that the transfer of a case in respect of which the Court lacks jurisdiction is unfounded in law and inconsistent with Article 6 of the Protocol when interpreted in accordance with the Vienna Convention on the Law of Treaties (VCLT). He argued that the heading of the Article ("Admissibility of Cases") strongly suggests that the action available under 6(3) applies primarily to the consideration of the admissibility of a case *over which the jurisdiction of the Court has already been established*. Furthermore, 6(1) only allows the Court to request the opinion of the Commission on the admissibility of a case instituted under Article 5(3) of the Protocol, and Article 6(3) is corroborated by Rule 119 of the Rules of the Commission.

He also criticized the lack of reasoning and lack of objective criteria provided by the Court in its decision to transfer the case despite the lack of jurisdiction. If the Court decides to retain such a practice - albeit in exceptional circumstances - clear criteria are necessary, such as the nature or gravity of the alleged violations.

Comment

Judge Ouguergouz's dissent raises some interesting questions about the possible interpretations to be given to Article 6(3) of the Protocol: (i) that it suggests that despite lack of jurisdiction, the Commission could consider both the admissibility and the merits; or (ii) that the Court may consider cases on their merit or transfer them to the Commission. The latter interpretation however would lead, as Judge Ouguergouz pointed out, to a denial of justice, since only the Court has powers of a judicial

nature. However, that impediment may be surmounted if the Court and Commission could agree on an appropriate procedure that is consistent with natural justice. Arguably, given the trend of findings of lack of jurisdiction based on the absence of Article 34(6) declarations, and absent any reform in this regard, coupled with the fact that the Court may be flooded with applications in the future, a mechanism through which the Commission could hear the merits of certain cases may ease the burden on the Court promote an even greater role for the Commission in the protection of human rights.

