

Case summary

By Jennifer Castello, 13 November 2012

Application 012/2011 National Convention of Teachers Trade Union v. The Republic of Gabon

Application

On 3 August 2011, the National Convention of Teachers' Trade Union (CONASYSED) domiciled in Libreville, Gabon seized the African Court of Human and Peoples' Rights (AfCHPR) with a petition against the Republic of Gabon. The application states that the Republic of Gabon is in violation of trade union rights enshrined in the Universal Declaration of Human Rights and Article 10 and 15 of the African Charter on Human and Peoples' Rights (the Charter).

On 2 August 2011, the Registry made enquiries of the African Union Commission (the Commission) as to whether the Republic of Gabon had deposited the declaration accepting the Court's competence to hear cases brought under Article 5(3) of the Protocol to the African Charter. Indeed, such a declaration is required in order to allow individuals and/or non-governmental organizations (NGOs) to petition the AfCHPR directly. The African Commission then informed the Court by letter received on 16 August 2011 that the Republic of Gabon had not deposited the declaration required under Article 34(6).

The summary of this application is not available online. The allegation can be found in the decision itself and was that the Republic of Gabon violated the Universal Declaration of Human rights as well as Articles 10 and 15 of the African Charter on Human and Peoples' Rights, which states respectively that "(1) *Every individual shall have the right to free association provided that he abides by the law,* (2) *Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association*" and "*that Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.*"

On 28 October 2011 the Registry asked the African Commission if the Applicant has observer status with the said commission and also requested CONASYSED to provide the Court with its statutory documents and to specify its legal status. On 8 December 2011, the Commission informed the Registry that CONASYSED did not have observer status before it.

Decision

Since CONASYSED did not have observer status and the Republic of Gabon had not made a declaration under Article 34(6), the AfCHPR declined to entertain the case against the Republic of Gabon for lack of jurisdiction.

Dissenting Opinion of Judge Fatsah Ouguergouz

The Judge Fatsag Ouguergouz issued a dissenting opinion. The Judge reiterated mainly the arguments he made in the application of *Ekollo Moundi Alexandre v Cameroon and Nigeria* in which he determined that in cases where the AfCHPR does not have jurisdiction, the application should nonetheless be communicated to the State concerned for information purposes in order to give the

State party the opportunity to accept the Court's jurisdiction and also to fully respect the adversarial principle. No such communication was made in the case of National convention of teachers' trade Union to the Republic of Gabon. Additionally, Judge Fatsag Ouguergouz is of the view that there should not be a judicial examination of a complaint against a State that has not made the optional declaration under Article 34(6) hereby accepting the jurisdiction of the Court over complaints from individuals or NGOs, as this was the case for most of the applications already dealt with by the Court. He argued that the lack of jurisdiction *rationae personae* being so manifest should not have been dealt with by the Court itself, rather it should have been rejected *prima facie* by a letter from the Registry.

Comment

Given that the application was rejected for lack of jurisdiction, the Court's second finding that CONASYSED did not have observer status before the African Commission was unnecessary. Indeed, Article 5(3) provides that only NGOs with observer status before the Commission can petition the Court directly.

Given the step forward embodied by the existence of such mechanism under Article 5 of the Protocol, by which individuals and NOGs can submit applications directly to the Court, it is maybe time to allow it a proper effect. As the Court up to now seems to be a "rejecting Chamber".