

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

IN THE MATTER OF

NATIONAL CONVENTION OF TEACHERS TRADE UNION

v.

THE REPUBLIC OF GABON

APPLICATION 012 /2011

DECISION

The Court composed of: Sophia A.B. AKUFFO, Vice-President; Jean MUTSINZI, Bernard M. NGOEPE, Modibo T. GUINDO, Fatsah OUGUERGOUZ, Augustino S.L. RAMADHANI, Duncan TAMBALA, Elsie N. THOMPSON, Sylvain ORE - Judges ;
and Robert ENO – Acting Registrar
In the matter of:

**NATIONAL CONVENTION OF TEACHERS TRADE UNION
v.
THE REPUBLIC OF GABON**

After deliberations,

makes the following decision:

1. By Application dated 3 August 2011, the teachers, trade union leaders of the National Convention of Teachers Trade Union (CONASYSED) domiciled in Libreville, in the Republic of Gabon, seized the Court with a petition against the Republic of Gabon, for violations of trade union rights enshrined in the Universal Declaration of Human Rights and Articles 10 and 15 of the African Charter on Human and Peoples' Rights.
2. Pursuant to the provisions of Rule 34 of the Rules of Court, the Registry, by letter dated 4 August 2011, acknowledged receipt of the Application and registered it as Application No. 012/2011.
3. By letter dated 2 August 2011, the Registry of the Court inquired from the Legal Counsel of the African Union Commission if the Respondent State has made the Declaration required under Article 34(6) of the Protocol establishing the Court.
4. By letter dated 16 August 2011, the Legal Counsel of the African Union Commission informed the Registry that the Republic of Gabon had not yet made the Declaration required under Article 34(6), and forwarded to the Registry the updated list of Member States of the African Union which have ratified the Protocol and made the Declaration.
5. By letter dated 28 October 2011, the Registry inquired from the African Commission on Human and Peoples' Rights (hereinafter called the "Commission") if the Applicant has observer status with the said Commission.
6. By letter dated 1 December 2011, the Registry wrote to CONASYSED to provide the Court with its statutory documents and specify its legal status.



7. By email of 8 December 2011, the African Commission on Human and Peoples' Rights informed the Registry of the Court that CONASYSED does not have observer status with the Commission.

8. The Court notes in the first instance that in terms of Article 5(3) of the Protocol *"The Court may entitle relevant Non-Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with Article 34(6) of this Protocol"*.

9. The Court notes further that Article 34(6) of the Protocol provides that: *"At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under Article 5(3) of this Protocol. The Court shall not receive any petition under Article 5(3) involving a State Party which has not made such a declaration"*.

10. The Court observes that CONASYSED does not have observer status before the Commission and furthermore, the Republic of Gabon has not made the declaration required under Article 34(6).

11. In view of Articles 5(3) and 34 (6) of the Protocol, it is evident that the Court manifestly lacks jurisdiction to receive the Application submitted by CONASYSED against the Republic of Gabon.

12. For these reasons,

THE COURT,

Unanimously:

Decides that pursuant to Articles 5 (3) and 34 (6) of the Protocol, it manifestly lacks jurisdiction to receive the Application submitted by CONASYSED against the Republic of Gabon, and the Application is accordingly struck out.

Done in Accra, this Fifteenth day of December 2011, in English and French, the French text being authentic.

(signed)



Sophia A. B. AKUFFO, Vice-President

Robert ENO, Acting Registrar



In conformity with Article 28 (7) of the Protocol and Rule 60 (5) of the Rules of Court,
Judge Fatsah OUGUERGOUZ appended a separate opinion to the present decision.



SEPARATE OPINION OF JUSTICE FATSAH OUGUERGOUZ

1. I believe that the application lodged against the Republic of Gabon by *Convention Nationale des Syndicats du Secteur Education (CONASYSED)* must be rejected. However, the lack of jurisdiction *ratione personae* of the Court being manifest in this case, this application should not have been dealt with by a decision of the Court; rather, it should have been rejected *de plano* by a simple letter of the Registrar (on this point, see my argumentation in my separate opinion appended to the judgment in the case *Michelot Yogogombaye vs. Republic of Senegal*, as well as in my dissenting opinion appended to the decision in the case *Ekollo Moundi Alexandre vs. Republic of Cameroon and Federal Republic of Nigeria*).

2. I am not favorable to the judicial examination of a complaint against a State Party to the Protocol which has not made the optional declaration accepting the compulsory jurisdiction of the Court to receive complaints from individuals or non-governmental organizations, or against an African State not party to the Protocol or not member of the African Union, as was the case of several applications already dealt with by the Court. I am even less favorable to such a judicial examination when the State concerned has not even been notified of the filing of the application against it, such as it is again the case here.

3. The Court has indeed decided not to notify Gabon of the application lodged by CONASYSED, nor even to inform Gabon of its filing. The adoption by the Court of a decision of lack of jurisdiction in such conditions is a violation of the adversarial principle (*Audiatur et altera pars*), a principle which should apply at any stage of the proceedings. This breach of fairness and equality of arms is all the more remarkable given that the application lodged by CONASYSED was, upon receipt, publicized on the website of the Court.

4. The non-transmittal of the application to Gabon further deprived the latter of the latitude to accept the jurisdiction of the Court by way of *forum prorogatum* (on this matter, see my separate opinion above).

Fatsah Ouguergouz

Robert Eno
Acting Registrar

