

005/12 Amir Adam Timan v. Sudan

African Union

African Court on Human and Peoples' Rights

In the Matter of:

Amir Adam Timan

v.

The Republic of the [sic] Sudan

Application 005/2012

Decision

The Court composed of: Gerard NIYUNGEKO, President; Sophia A.B. AKUFFO, Vice-President; Modibo T. GUINDO, Fatsah OUGUERGOUZ, Augustino S.L. RAMADHANI, Duncan TAMBALA, Elsie N. THOMPSON and Sylvain ORE- Judges; and Robert ENO - Registrar,

In the matter of:

AMIR ADAM TIMAN

V.

THE REPUBLIC OF THE [sic] SUDAN

After deliberations,

makes the following decision:

1. By an application dated 25 February 2012, Barrister Mbu ne Letang, Lawyer residing in Kinshasa, filed a case to the Court on behalf of his client, Amir Adam Timan, a Sudanese national, and a native of Darfur, currently residing in the Democratic Republic of Congo, who has been accused by the Sudanese Government of being a member of an opposing force to the legitimate Government of The Sudan. The Applicant alleges violation of Articles 12(1)

x Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

, 2

x Everyone shall be free to leave any country, including his own.

, 3

x The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

, 4

x No one shall be arbitrarily deprived of the right to enter his own country.

and 13

× An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

of the International Convention [sic] on Civil and Political Rights.

2. Pursuant to the provisions of Rule 34(1) of the Rules of Court, the Registrar, by letter dated 14 March 2012, acknowledged receipt of the application.

3. The Court first observes that in terms of Article 5(3) of the Protocol, it "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".

4. The Court further notes 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".

5. By letter dated 30 March 2012, the Registrar inquired from the Legal Counsel of the African Union Commission if the Republic of The Sudan has made the Declaration required under Article 34(6) of the Protocol.

6. By email dated 12 April 2012, the Legal Counsel of the African Union Commission informed the Registrar that the Republic of The Sudan had not made such a declaration.

7. The Court observes that the Republic of The Sudan has not made the Declaration under Article 34(6).

8. 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 on behalf of Amir Adam Timan, against the Republic of The Sudan.

Holding

9. 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 on behalf of Amir Adam Timan, against the Republic of The Sudan, and the Application is accordingly struck out from the general list of the Court.

Done at Arusha, the thirtieth day of March, in the year Two Thousand and Twelve, in English and French, the English text being authoritative.

Signed:

Gerard NIYUNGEKO, President

Robed ENO, 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.