

007/12 Baghdadi Ali Mahmoudi v. Tunisia

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

IN THE MATTER OF

BAGHDADI ALI MAHMOUDI

V.

THE REPUBLIC OF TUNISIA.

APPLICATION 007/2012

DECISION

The Court composed of: Gerard NIYUNGEKO, President; 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 and Sylvain ORE- Judges; and Robert ENO - Registrar,

In the matter of

BAGHDADI ALI MAHMOUDI

V.

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After deliberations,

makes the following decision:

1. By a letter dated 31 May 2012, Mr. Baghdadi Ali Mahmoudi (hereinafter referred to as "the Applicant"), through his lawyer, informed the Registry of the Court of his intention to submit an Application before the Court with a request for interim measures, against the Republic of Tunisia (hereinafter referred to as "the Respondent").
2. On 1 June 2012, the Registry of the Court received the Applicant's Application, together with the request for interim measures.
3. Pursuant to the provisions of Rule 34(1) of the Rules of Court, the Registrar, by a letter dated 7 June 2012, acknowledged receipt of the Application and registered the same. In the same letter, the Registrar requested the Applicant to satisfy the Court that the Application meets the requirements under Rule 34 of the Rules of Court, in particular, the exhaustion of local remedies.
4. By a letter dated 12 June 2012, the Applicant responded to the Registrar's letter of 7 June 2012, and submitted copies of judgments from the Court of Appeal of Tunis as proof of exhaustion of local remedies.
5. By a letter of 14 June 2012, the Applicant submitted additional information relating to the exhaustion of local remedies.
6. 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".

7. 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".

8. By a letter dated 18 June 2012, the Registrar inquired from the Legal Counsel of the African Union Commission if the Republic of Tunisia has made the Declaration required under Article 34(6) of the Protocol.

9. By an email dated 19 June 2012, the Legal Counsel of the African Union Commission informed the Registry of the Court that the Republic of Tunisia had not made such a declaration.

10. The Court observes that the Republic of Tunisia has not made the declaration 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 Mr. Baghdadi Ali Mahmoudi, against the Republic of Tunisia.

12. For the Court to make an order for interim measures, it has to satisfy itself that it has *prima facie* jurisdiction, which as indicated in paragraph 11 above, it does not have.

13. For these reasons,

THE COURT,

Unanimously:

i. Decides that pursuant to Articles 5(3) and 34(6) of the Protocol, it manifestly lacks jurisdiction to receive the Application submitted by Mr. Baghdadi Ali Mahmoudi, against the Republic of Tunisia;

ii. Decides that in view of paragraph (i) above, it cannot grant the Applicant's request for provisional measures.

Done at Arusha, this twenty-sixth day of June, Two Thousand and Twelve, in English and French, the French text being authoritative.

Signed:

Gérard NIYUNGEKO, President

Robert 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.