

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

SOUFIANE ABABOU

V.

THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA

APPLICATION NO. 002 / 2011

DECISION

The Court composed of : Gérard NIYUNGEKO, President; Sophia A.B. AKUFFO, Vice-President; Jean MUTSINZI, Bernard M. NGOEPE, Modibo T. GUINDO, Joseph N. MULENGA, Augustino S.L. RHAMADHANI, Duncan TAMBALA, Elsie N. THOMPSON and Sylvain ORE- Judges; and Robert ENO - Acting Registrar.

IN THE MATTER OF:

SOUFIANE ABABOU

V.

THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA

After deliberations,

makes the following decision:

1. By application dated 20 February 2011, Mr. Soufiane Ababou, living and residing in *Cité des Jardins Lamtar - CP 22360 Wilaya of Cidi Bel Abbes, Algeria* (hereinafter referred to as the Applicant), acting through his representative, Youssef Ababou, lodged a complaint to the Court, against the People's Democratic Republic of Algeria (hereinafter referred to as Algeria), regarding his forceful conscription into the Algerian army.
2. In conformity with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as the Protocol), and Rule 8 (2) of the Rules of Court (hereinafter referred to

as the Rules), Mr. Fatsah Ouguergouz, member of this Court, of Algerian nationality, recused himself.

3. By letter dated 18 March, 2011, the Registry acknowledged receipt of the application and requested the Applicant to submit a signed copy of the application, to specify the alleged violation, to show proof of the exhaustion of local remedies or of their inordinate delay, and to specify the measures or the remedies requested from the Court.
4. By letter dated 25 March, 2011, in accordance with Article 34 (1) (2) and (4) of the Rules, the representative of the Applicant submitted a signed copy of the application to the Registry, and provided information on the exhaustion of local remedies.
5. The Court notes that in order for it to receive an application coming directly from an individual against a State Party, there must be compliance with, amongst others, Articles 5 (3) and 34 (6) of the Protocol.
6. Article 5 (3) of the Protocol provides that "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".
7. On its part, 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".

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8. It emerges from a combined reading of the above-mentioned provisions that direct access to the Court by an individual is subject to the making of a special declaration by the Respondent State, authorizing such an access.
9. By letter dated 10 June, 2011, the Registrar of the Court wrote to the Legal Counsel of the African Union Commission, to find out whether the Respondent State had made the declaration required under Article 34 (6) of the Protocol.
10. By a memorandum dated 13 June, 2011, the Legal Counsel of the African Union Commission informed the Court that the Respondent State had not made such a declaration.
11. On this basis, the Court concludes that Algeria has not accepted the Court's jurisdiction to receive applications directly from individuals and non-governmental organizations filed against her. Consequently, it is clear that the Court manifestly does not have jurisdiction to receive the application.
12. Article 6 (3) of the Protocol provides that the Court may consider cases or transfer them to the Commission. The Court notes that in view of the allegations contained in the application, it would be appropriate to transfer the case to the African Commission on Human and Peoples' Rights.

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13. For these reasons:

THE COURT,

Unanimously:

1. Declares that pursuant to Article 34 (6) of the Protocol, it does not have jurisdiction to receive the application submitted by Mr. Soufiane Ababou against the People's Democratic Republic of Algeria.
2. Decides to transfer the case to the African Commission on Human and People's Rights in accordance with Article 6 (3) of the Protocol.

Done in Arusha, this Sixteenth Day of June, Two Thousand and Eleven, in French and in English, the French text being authoritative.

Signed:

Gérard NIYUNGEKO, President



Robert ENO, Acting Registrar

