

AFRICAN UNION		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

MOADH KHERIJI GHANNOUCHI AND OTHERS

V.

REPUBLIC OF TUNISIA

APPLICATION NO. 004/2023

**RULING ON THE REQUEST FOR REVOCATION OF THE ORDER ON
PROVISIONAL MEASURES OF 28 AUGUST 2023**

17 MARCH 2025



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The Court composed of: Imani D. ABOUD, President; Modibo SACKO, Vice-President; Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Denis D. ADJEI, Duncan GASWAGA - Judges; and Robert ENO, Registrar.

In accordance 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 9(2) of the Rules of Court (hereinafter referred to as "the Rules"), Judge Rafaâ BEN ACHOUR, a member of the Court and a national of Tunisia did not hear this Application.

In the Matter of:

Moadh Kheriji GHANNOUCHI, Saida AKREMI, Elyes CHAOUACHI, Seifeddine FERJANI and Seifeddine BOUZAYENE

Represented by:

Rodney Thomas DIXON KS, Temple Garden Chambers

Versus

REPUBLIC OF TUNISIA

Represented by:

State Litigation Officer, Ministry of State Property and Land Affairs

After deliberation,

Renders this Ruling:

I. THE PARTIES

1. The Republic of Tunisia (hereinafter referred to as “the Respondent State”) seeks revocation of the Order for Provisional Measures issued by this Court on 28 August 2023 in Application No. 004/2023.¹
2. Moadh GHANNOUCHI, Saida AKREMI, Elyes CHAOUACHI and Seifeddine FERJANI (hereinafter referred to as “the First, Second, Third and Fourth Applicants” respectively) are relatives of Tunisian politicians arrested for various offences. Seifeddine BOUZAYENE (hereinafter referred to as the Fifth Applicant) is the son of the opposition politician Reda BOUZAYENE who died in early 2022 while taking part in a demonstration. They commenced this Application seeking several reliefs on behalf of their relatives.

II. SUBJECT OF THE REQUEST FOR REVOCATION

3. An Application, together with a request seeking an order for provisional measures, was filed before the Court on 1 June 2023. In the Application, the Applicants alleged violation of the rights of their family members under Articles 1, 2, 4, 5, 6, 7, 9, 10, 11, 13, 16 and 26 of the African Charter on Human and Peoples' Rights (hereinafter referred to as “the Charter”) and the corresponding provisions of the International Covenant on Civil and Political Rights (hereinafter referred to as “the ICCPR”)² and the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as “the ICESCR”).³

¹ *Moadh Kheriji GHANNOUCHI and Others v. Republic of Tunisia*, AfCHPR, Application No. 004/2023, Order of 28 August 2023 (provisional measures).

² The Respondent State became a Party to the ICCPR on 18 March 1969.

³ The Respondent State became a Party to the ICESCR on 18 March 1969.

4. On 28 August 2023, the Court issued an Order for provisional measures. On 20 October 2023, the Respondent State filed a report in which it requested a revocation of the order for provisional measures. According to the Respondent State, the Court issued the order for provisional measures prematurely when it should first have sought further clarification from the Respondent State.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

5. On 20 October 2023, the Registry received, from the Respondent State ,the request for the revocation of the order for provisional measures. On 5 June 2024, the Application and its annexes were transmitted to the Applicants for response.
6. On 22 July 2024, the Registry received the Applicants' response to the request for revocation of the order for provisional measures, which was transmitted to the Respondent State for information.
7. On 7 March 2025, the Registry received a note verbale informing it of the Respondent State's decision to withdraw its Declaration under Article 34(6) of the Protocol.

IV. PRAYERS OF THE PARTIES

8. The Respondent State prays the Court to revoke the Order for provisional measures on the basis that its conduct was already aligned with the terms of the Order for provisional measures issued by the Court.
9. The Applicants pray the Court to:

- i. Reject the request for revocation of the Order for provisional measures.
- ii. Rule that the Respondent State has failed to comply with the Order.

V. JURISDICTION

10. In its Order on provisional measures dated 28 August 2023, the Court held that it has *prima facie* jurisdiction in this matter.

11. The Court observes that, after the delivery of the above-mentioned Order, the Registry of the Court has been informed, via a note verbale dated 7 March 2025, addressed to the African Union Commission and copied to the Court's Registry, that the Respondent State has withdrawn its Declaration under Article 34(6) of the Protocol.

12. The notification of the Respondent State's withdrawal of the Declaration necessitates the Court's consideration of its effects on the present matter. As the Court has previously held, the effects of the withdrawal of a Declaration deposited pursuant to Article 34(6) of the Protocol do not have any retroactive effect.⁴ Additionally, the withdrawal has no bearing on matters pending prior to the filing of the withdrawal, as is the case with the present Application.

13. In relation to date of entry into force of the withdrawal, the Court reaffirms its settled position that such a withdrawal takes effect 12 months after the filing of the

⁴ *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (2016) 1 AfCLR 562, §§ 66-68; *Houngue Eric Noudehouenou v. Republic of Benin*, AfCHPR, Application No. 003/2020 Order of 5 May 2020 (provisional measures), §§ 4- 5 and Corrigendum of 29 July 2020; *Kouadio Kobena Fory v. Republic of Côte d'Ivoire* (merits and reparations) (2 December 2021) 5 AfCLR 682, § 2 and *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, § 38.

instrument of withdrawal.⁵ In the circumstances, the Court holds that the withdrawal of the Declaration by the Respondent State will take effect on 8 March 2026.

14. In light of the above, the Court holds that its personal jurisdiction to examine the present matter is established.

VI. ON THE REVOCATION OF THE ORDER FOR PROVISIONAL MEASURES

15. The Court notes that Rule 90 of the Rules provides that “Nothing in these Rules shall limit or otherwise affect the inherent power of the Court to adopt such procedure or decisions as may be necessary to meet the ends of justice”

16. The Court also notes, in the instant matter, that the Respondent State, while filing its report on compliance with the order for provisional measures issued on 28 August 2023 in Application No. 004/2023, requested the Court to revoke the said Order. In support of its request, the Respondent State submitted documentation which suggested that its conduct was already in compliance with the orders issued by the Court in the Order whose revocation is being sought.

17. In connection with the Respondent State’s request, the Court considers that an Order for provisional measures, is by its nature unique and different from final judgments especially due to its transient nature.

18. The main reason given by the Respondent State, in support of the prayer for revocation, is that its conduct was already in compliance with the terms stipulated in the Court’s Order, by the time the same was issued. The Court considers the reason given insufficient for purposes of revocation of the Order for provisional measures especially given that, the Respondent State, based

⁵ *Ibid.*

on its submissions, would not need to further alter its conduct to comply with the Court's Order.

19. Consequently, the Court dismisses the request for revocation of the Order for provisional measures of 28 August 2023 in Application No. 004/2023.

VII. COSTS

20. The Respondent State does not make any submissions as to the costs of the proceedings. For their part, the Applicants request that the costs of the proceedings be borne by the Respondent State.

21. Under Rule 32(2) of the Rules, "unless otherwise decided by the Court otherwise, each party shall bear its own costs, if any".
22. In the present case, the Court notes that the proceedings between the Parties are still on going and it decides to reserve its determination on the question of costs.

VIII. OPERATIVE PART

23. For these reasons

The COURT,

Unanimously

- i. *Dismisses* the request for revocation of the Order for provisional measures issued on 28 August 2023 in Application No. 004/2023.

Costs

- ii. *Decides* to reserve its determination on costs.

Signed by:

Imani D. ABOUD, President;



and Robert ENO, Registrar.



Done at Arusha on this Seventeenth Day of March in the year Two Thousand and Twenty-Five in the Arabic, English and French languages, the Arabic text being authentic.

