

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
UNIÓN AFRICANA		UMOJA WA AFRIKA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

THE MATTER OF

SAIF EDDINE MAKHLOUF

V.

REPUBLIC OF TUNISIA

APPLICATION No. 003/2026

**RULING
(PROVISIONAL MEASURES)**

6 JULY 2026



The Court composed of: Blaise TCHIKAYA, President; Chafika BENSAOULA, Vice President; Suzanne MENGUE, Tujilane R. CHIZUMILA, Stella I. ANUKAM, Imani D. ABOUD, Dumisa B. NTSEBEZA, Modibo SACKO, Dennis 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 the Court (“hereinafter referred to as the Rules”), Justice Rafaâ BEN ACHOUR, member of the Court and a national of Tunisia, did not hear the Application.

In the matter of:

Saif Eddine MAKHLOUF

Represented by:

Brahim Ben Mohammed BELGHITH

Versus

REPUBLIC OF TUNISIA

Not represented

After deliberation,

Issues this Ruling:

I. THE PARTIES

1. Saif Eddine Makhlouf (hereinafter referred to as “the Applicant”) is a national of Tunisia, a lawyer and a Member of Assembly of the Representatives of the People. He alleges the violation of his rights during the proceedings before the national courts.
2. The Respondent State became party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 21 October 1986 and to 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”) on 5 October 2007 and deposited the Declaration required under Article 34(6) of the Protocol by which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organizations on 2 June 2017. On 7 March 2025, the Respondent State submitted to the African Union Commission an instrument of withdrawal of the said Declaration. The Court decided that this withdrawal would have no effect on pending cases and new cases filed before 8 March 2026, the date on which the withdrawal took effect, that is, one year after its submission.¹

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that, on 15 March 2021, the Applicant, acting in his capacity as a Member of the Assembly of the Representatives of the People and as legal counsel, proceeded to Tunis-Carthage International Airport to assist a woman who had been prevented from travelling. A confrontation ensued with airport staff and security union

¹ *Moadh Kheriji Ghannouchi and Others v. Republic of Tunisia*, ACtHPR, Application No. 004/2023, Ruling of 17 March 2025 (Request for revocation of the Ruling on provisional measures of 28 August 2023), §§ 12-13.

members, leading to a criminal investigation of the Applicant and his referral to the Tunis District Court in a case publicly known as “the airport case”.

4. The Applicant alleges that on 30 July 2021, the Secretary-General of the National Union of Internal Security Forces also submitted a complaint to the Military Prosecutor concerning the Applicant’s confrontation with the airport staff and the security union members. A subsequent separate and parallel military investigation led to the Applicant’s referral to the Permanent Military Court of Tunis.
5. On 21 March 2022, the Tunis District Court convicted the Applicant of insulting a public official in the course of the performance of his duty and sentenced him to three-month imprisonment.
6. On 16 May 2022, the Permanent Military Court of Tunis convicted him of undermining the dignity and morale of the national army and insulting a public official, for which he received a suspended sentence of one year imprisonment.
7. The Applicant appealed the decision of the Tunis District Court before the Court of First Instance of Tunis, sitting as an appellate court, which, on 25 May 2022, upheld the conviction while suspending the custodial sentence. The Applicant did not submit further information with regard to this procedure.
8. With regards to the procedure before the Military Court, both the Prosecution and the Applicant appealed the decision of the Permanent Military Court and on 20 January 2023, the Criminal Chamber of the Military Court of Appeal upheld the guilty verdicts of the Military Court of First Instance and issued a more severe sentence to the Applicant of one year and two months’ imprisonment for “disturbing the public peace with the aim of committing an offence or opposing the execution of a law and insulting public officials while on duty”. The Applicant served eight months in prison.

Upon further appeal, a military appellate judgment on 22 October 2024 confirmed the conviction and custodial sentence.

9. The Applicant appealed against the decision of the Military Court of Appeal to the Court of Cassation, which quashed the judgment and remitted the case to the Military Court of Appeal for rehearing. On 13 June 2023, the Military Court of Appeal set aside the conviction for undermining army morale but upheld the offence of insulting a public official by words and threats, sentencing the Applicant to one-month imprisonment and a two-year ban from legal practice, without suspension. On 1 July 2024, the Court of Cassation declared a subsequent appeal inadmissible.
10. Subsequently, the Applicant fled to Algeria, where he was convicted for unlawful entry and sentenced to three-month imprisonment. He sought asylum from the Annaba Office of the United Nations High Commissioner for Refugees (hereinafter referred to as “UNHCR”) and was placed under UNHCR protection. Despite the preliminary approval by the United Kingdom for family reunification, he was surrendered by the government of Algeria to Tunisia on 18 January 2025, allegedly in violation of the Geneva Convention relating to the Status of Refugees. The Applicant provided no further information regarding events between 18 January 2025 and 4 February 2026, when he filed the present Application.

B. Alleged violations

11. In the main Application, the Applicant alleges the violation of the following:
 - i. The right to equality and equal protection of the law;
 - ii. The right not to be tried twice for the same offenses;
 - iii. The right to a competent and independent court and the prohibition of trying civilians before military courts;
 - iv. The right to defense, as a right of a fair trial;
 - v. The right to the presumption of innocence and liberty;
 - vi. The right to the legality of crimes and punishments;

- vii. The right to freedom of movement and to leave the country;
- viii. The right not to be extradited; and
- ix. The right to enjoy the human rights enshrined in the Charter and the International Covenant on Civil and Political Rights.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

- 12. On 4 February 2026, the Applicant filed the main Application together with a request for provisional measures.
- 13. The Application was served on the Respondent State on 6 March 2026 for its responses within 45 days for the request on provisional measures and, 90 days for the main Application. The Respondent State did not respond to the request for provisional measures within the timeframe allocated.

IV. PRIMA FACIE JURISDICTION

- 14. Article 3(1) of the Protocol provides that:

The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instrument ratified by the States concerned.

- 15. Under Rule 49(1) of the Rules of the Court “the Court shall conduct preliminarily examination of its jurisdiction...”. However, with respect to the provisional measures, the Court need not satisfy itself that it has jurisdiction on the merits of the case, only that it has *prima facie* jurisdiction.²
- 16. In the instant case, the Applicant alleges the violations of rights protected under Articles 1, 3, 7(1)(a), 7(1)(c), 7(1)(d), 7(2) and 12(2) of the Charter

² *Komi Koutche v. Republic of Benin* (provisional measures) (2 December 2019) 3 AfCLR 725, § 11.

and Article 14(7) of the International Covenant on Civil and Political Rights (hereinafter referred to as “ICCPR”) to which the Respondent State is a party. The Court further notes, as indicated at paragraph 2 of the present Ruling, the Respondent State is a party to the Protocol and had filed the Declaration. Furthermore, even though the Respondent State withdrew its Declaration on 7 March 2025, the Court ruled that the withdrawal has no effect on pending cases and new cases filed before 8 March 2026,³ the date on which the withdrawal took effect, that is, one year after its submission. This Application having been filed on 4 February 2026, that is, before the Respondent State’s withdrawal came into effect, is thus not affected by it.

17. The Court finds, therefore, that it has *prima facie* jurisdiction to hear the request for provisional measures.

V. PROVISIONAL MEASURES REQUESTED

18. The Applicant prays the Court for an order to “return the Applicant to the custody of the Office of the United Nations High Commissioner for Refugees (hereinafter referred to as “UNHCR”) and to allow him to depart to the country of asylum for the purpose of joining his family”.
19. According to the Applicant he has suffered, and continues to suffer, irreparable harm due to the unlawful deprivation of his liberty, which intensifies with each passing day.
20. Furthermore, the Applicant argues that irreparable harm includes the loss of his rights to freedom of movement and residence which cannot be retroactively restored or compensated as well as damage to his reputation and professional standing from convictions based on procedurally flawed proceedings and harm that may remain irreparable even with future state rehabilitation.

³ *Ghannouchi and Others v. Tunisia*, *supra*.

21. The Respondent State did not file any response to the request for provisional measures.

22. The Court notes that, pursuant to Article 27(2) of the Protocol:

In cases of extreme gravity and urgency and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.

23. The Court observes that, pursuant to Rule 59(1) of the Rules:

...the Court may, at the request of a party, or on its own accord, in case of extreme gravity and urgency and where necessary to avoid irreparable harm to persons, adopt such provisional measures as it deems necessary, pending determination of the main Application.

24. It is therefore, for the Court to decide in each case if, in the light of the particular circumstances, it should make use of the power vested in it by the aforementioned provisions.

25. The Court notes that urgency refers to “imminent risk”, while extreme gravity means risk of serious damage. The Court emphasizes that the risk in question must be real, which excludes a purely hypothetical risk and explains the need to remedy it immediately. Furthermore, the Court observes that irreparable harm is damage that cannot be sufficiently redressed or compensated through any subsequent reparation.⁴

⁴ *Houngue Éric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 004/2020, Ruling of 15 August 2022 (provisional measures), § 36; *Sébastien Germain Marie Aikoue Ajavon v. Republic of Benin* (provisional measures) (17 April 2020) 4 AfCLR 123, § § 61-62.

26. The Court underscores that the requirements of urgency or extreme gravity and irreparable harm, are cumulative, so that if one of them is lacking, the provisional measures requested cannot be ordered.
27. In determining requests for provisional measures, therefore, the Court relies on the principles outlined above, particularly, the fact that provisional measures are of a preventative nature and thus can only be granted if a party fulfils all the prerequisites.
28. In the present case, the Applicant prays the Court to order his “return ...to the custody of the UNHCR and to allow him to depart to the country of asylum for the purpose of joining his family”.
29. The Court notes that the Applicant has not provided any proof of the “unlawful deprivation of his liberty,” that he relies on to demonstrate irreparable harm. He has therefore failed to establish such harm.
30. Furthermore, the Court observes that the Applicant’s request seeks a determination on the lawfulness of his deprivation of liberty, freedom of movement, and residence, issues that are among the alleged violations raised in the main Application.
31. The Court therefore cannot rule on the requested provisional measures without first examining whether the Applicant’s surrender and detention are lawful under international law, whether the alleged irreparable harms are attributable to the Respondent State, and whether the relief sought, namely return to UNHCR custody and permission to depart to the country of asylum, would effectively resolve the very rights at issue in the Main Application. As the request for provisional measures is inextricably linked to the merits, the Court cannot grant such measures without adjudicating the merits of the Main Application.

32. Accordingly, the Court dismisses this request for failure to prove irreparable harm and given that it cannot be granted without prejudging the merits of the main Application.
33. For the avoidance of doubt, the Court recalls that this Ruling is provisional in nature and does not in any way prejudice the findings of the Court on its jurisdiction, the admissibility of the Application and merits thereof.

VI. OPERATIVE PART

34. For these reasons:

THE COURT,

Unanimously,

- i. *Holds* that it has *prima facie* jurisdiction;
- ii. *Dismisses* the request for provisional measures.

Signed by:

Blaise TCHIKAYA, President;



and Robert ENO, Registrar.



Done at Arusha, this Sixth Day of the month of July in the Year of Two Thousand and Twenty-Six, in English, French and Arabic, the Arabic version being authoritative.

