

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		

THE MATTER OF

BRAHIM BEN MOHAMED BEN BRAHIM BELGEITH

V.

REPUBLIC OF TUNISIA

APPLICATION NO. 004/2025

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 Court (hereinafter referred to as “the Rules”), Justice Rafaâ BEN ACHOUR, judge of the Court and a national of Tunisia, did not hear the Application.

In the Matter of:

Brahim Ben Mohamed Ben Brahim BELGEITH

Self-Represented

Versus

REPUBLIC OF TUNISIA

Unrepresented

After deliberations,

Issues this Ruling:

I. THE PARTIES

1. Mr. Brahim Ben Mohamed Ben Brahim Belgeith (hereinafter referred to as “the Applicant”), is a Tunisian national and a lawyer residing in France with his office in Montfleury, Tunisia. He alleges violation of the fundamental rights of Tunisians by the Republic of Tunisia following its withdrawal of the Declaration filed in accordance with Article 34(6) 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 “the Protocol”).
2. The Application is filed against the Republic of Tunisia (hereinafter referred to as “the Respondent State”), which became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as the “Charter”) on 16 March 1983, and to the Protocol on 21 August 2007. It deposited, on 16 April 2017, the Declaration under Article 34(6) of the Protocol by virtue of which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations having observer status before the African Commission on Human and Peoples’ Rights (hereinafter referred to as “the Declaration”). On 7 March 2025, the Respondent State deposited, with the African Union Commission, an instrument withdrawing the said Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before 8 March 2026, which is the day on which the withdrawal took effect, being a period of one year after its deposit.¹

¹ *Mouaz Khariji Ghannouchi and Others v. Republic of Tunisia*, AfCHPR, Application No. 004/2023, Decision of 17 March 2025 (setting aside the ruling on provisional measures of 28 August 2023), §§ 12 and 13.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The Applicant alleges that the President of the Respondent State, Mr. Kais Saied, invoked the exceptional circumstances based on Chapter 80² of the Respondent State's Constitution of 2014. In particular, the President assumed a position above the Constitution and seized the executive and legislative powers. According to the Applicant, this Court has ruled that the exceptional measures taken were unconstitutional and it issued a decision nullifying those measures, ordered a return to constitutional democracy, and the establishment of a constitutional Court.³
4. The Applicant also alleges that the Respondent State did not comply with the decision of this Court, issued more orders that undermined the democratic process, and further promulgated a new constitution in 2022, which consolidated the authority of the President of the Republic.
5. The Applicant cites some of the presidential orders and decrees previously issued by the President of the Respondent State as follows:
 - Decree-Law No. 2022-11 on the High Judicial Council, under which the President of the Republic and the executive branch intervene in

² Article 80 of the 2014 Constitution stipulates the following: "In the event of an imminent danger to the existence of the country and the security and independence of the country, which makes it impossible for the normal functioning of the wheels of the State, the President of the Republic may, after consulting the Prime Minister and the Speaker of the Assembly of the People's Representatives, and informing the President of the Constitutional Court, and announce the measures in a statement to the people.

These measures shall be aimed at ensuring the return of the normal functioning of the State as soon as possible, and the Assembly of People's Representatives shall be considered in permanent session during this period. In such a case, the President of the Republic may not dissolve the Assembly of the People's Representatives, nor may a censure be filed against the Government.

Thirty days after the entry into force of these measures, and at any time thereafter, the Constitutional Court shall be entrusted with a request by the Speaker of the Assembly of the People's Representatives or thirty of its members to decide whether or not the state of exception shall be maintained. The Court shall announce its decision publicly within a maximum period of fifteen days.

Those measures shall cease to be in force when their causes are eliminated. The President of the Republic shall make a statement to the people in this regard."

³ *Brahim Ben Mohamed Ben Ibrahim Belgeith v. Republic of Tunisia*, AfCHPR, Application No. 017/2021, Judgment of 22 September 2022 (merits and reparations), § 147.

the appointment and dismissal of members of the High Judicial Council, and amend its composition.

- Presidential Decree No. 2022-35, which grants the President of the Respondent State the authority to dismiss judges and prosecutors without disciplinary or administrative procedures and also without the right to challenge such decision by exercising their right to defence.
- Presidential Decree No. 2022-516, in relation to the dismissal of 54 judges without due procedures. The judges who obtained a stay of execution from the President of the Administrative Court were unable to resume their duties. Four of them resorted to this Court, which issued an order of provisional measures to suspend the implementation of Decree 35/2022 and Order 516/2022 pending consideration of the merits of the case. However, the Respondent State did not comply with the decision of the Court.
- Organic Law No. 2014-16, relating to elections and referenda, which was amended to allow the President of the Respondent State to appoint and dismiss members of the Independent High Electoral Commission and control the course and outcome of elections;
- Decree No. 2022-54 on combating cybercrime and “false information” online, particularly in chapter 24, which is used in prosecuting journalists, activists, and critics. This decree is a subject of a case before this Court, Application No. 006/2022 – *Salaheddine Kchouk v. Republic of Tunisia*.⁴

6. The Applicant also alleges that the Respondent State withdrew the Declaration, which constitutes a violation of a number of human rights as outlined in his Application before this Court.

B. Alleged violations

7. The Applicant alleges the violation of the following rights:

⁴ A case pending before the Court.

- i. The right to have one's case heard, guaranteed by Articles 1 and 7 of the Charter, 5 and 14 of the International Covenant on Civil and Political Rights⁵ (hereinafter referred to as "ICCPR"), Articles 5(3), 34(6) and 35 of the Protocol and articles 31(3), 26 and 60(1) of the Vienna Convention on the Law of Treaties (hereinafter referred to as "VCLT");
- ii. The right to participate freely in the public affairs of one's country as provided for in Articles 13(1) of the Charter and Article 25(a) of the ICCPR;
- iii. The right to information guaranteed in Article 9(1) of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

- 8. The main Application, together with a request for provisional measures, were filed on 7 July 2025.
- 9. On 21 July 2025, the main Application, together with the request for provisional measures, were served on the Respondent State, which was granted 45 days to respond to the request for provisional measures and 90 days to respond to the main Application. At the expiration of these deadlines, the Respondent State had not filed any Responses.
- 10. On 3 December 2025, the Respondent State was reminded of the expiration of the deadlines and was granted an additional 30 days to file its Responses but it did not do so.

IV. *PRIMA FACIE* JURISDICTION

- 11. Article 3 of the Protocol provides as follows:

- 1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the

⁵ The Republic of Tunisia ratified the ICCPR on 18 March 1969.

Charter, this Protocol, and any other relevant human rights instrument ratified by the States concerned.

2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.
12. The Court recalls that, pursuant to Rule 49(1) of the Rules, it “shall preliminarily ascertain its jurisdiction” However, as regards requests for provisional measures, it is not necessary at this stage of the proceedings for the Court to satisfy itself that it has jurisdiction to examine the merits of the Application. The Court must only satisfy itself that it has *prima facie* jurisdiction in the matter.⁶
13. In the instant case, the Court observes that the Applicant alleges violation of rights protected under the Charter and the ICCPR, instruments to which the Respondent State is a party.
14. The Court further notes that, as stated in paragraph 2 of this Ruling, the Respondent State became a party to the Charter on 16 March 1983, and to the Protocol on 21 August 2007, and deposited the Declaration on 16 April 2017. On 7 March 2025, the Respondent State deposited, with the African Union Commission, an instrument withdrawing the said Declaration. The Court had held that this withdrawal has no bearing on pending cases and new cases filed before 8 March 2026, which is the day on which the withdrawal took effect, being a period of one year after its deposit.⁷ This Application having been filed on 7 July 2025 is thus not affected by the withdrawal of the Declaration.
15. In the circumstances, the Court finds, therefore, that it has *prima facie* jurisdiction to consider the Request for provisional measures.

⁶ *Komi Koutche v. Republic of Benin* (provisional measures) (2 December 2019) 3 AfCLR 725, § 14.

⁷ *Ghannouchi and Others v. Tunisia*, *supra*, §§ 12 and 13.

V. ON THE REQUEST FOR PROVISIONAL MEASURES

16. The Applicant prays the Court to order the Respondent State to:

- i. Put on hold the decision of the Ministry of Foreign Affairs filed with the African Union Commission on the withdrawal of the Declaration of the Court's jurisdiction under Article 34(6) of the Protocol pending a decision on the merits of the case is rendered.
- ii. If the court deems it necessary not to make an order, to suspend the withdrawal of the Declaration of jurisdiction, order the entry into force of the withdrawal from 8 March 2026, by any other means the court deems appropriate.

17. In substantiating the first request, the Applicant argues that the Respondent State's withdrawal of the Declaration would result in Tunisians being deprived of their right to access justice, which is serious and dangerous reality in light of the continuing human rights violations in Tunisia as well as the Respondent State's failure to comply with the Court's previous rulings and orders.

18. The Applicant alleges that it is certain that the entry into force of the withdrawal of the Declaration on 8 March 2026 would deny Tunisians the means of litigation guaranteed under Articles 7 of the Charter and 14 of ICCPR. He emphasises that this is especially the case because of the absence of domestic remedies and continued violations under Tunisia's current decrees, some of which this Court ordered to be revoked.⁸

19. The Applicant avers that the extreme gravity and urgency of the matter is documented in international reports submitted to international bodies,

⁸ *Belgeith v. Tunisia*, *supra*, in which the Court ordered the Respondent State to revoke those measures and return to constitutional democracy, and to establish a constitutional court. The Court also based the decision to suspend the implementation of Decree No. 35-2022 on the situation of the confirmed and grave danger, damage and urgency in *Hammadi Rahmani and Others v. Republic of Tunisia*, Application No. 08/2024, Ruling of 03 October 2024 (provisional measures). In fact, the same situation still exists, and has even worsened due to the Respondent State's non-compliance with the Court's orders on provisional measures

highlighting the deterioration of the human rights situation in the Respondent State. He further submits that at the domestic level, there are a number of legal instruments in force that have led to the violation of the independence of the judiciary, and of the principle of separation of powers, and supremacy of the constitution.

20. It is also the Applicant's contention that the decision to withdraw the Declaration will deprive the Tunisians of the right to be heard before this Court after the expiry of a one-year period. According to the Applicant, with the elapsing of the deadline before the determination of the main Application in the present matter, individuals and non-governmental organisations will no longer have the right to seize this Court, which constitutes irreparable harm to them.
21. The Applicant also alleges that the situation of extreme gravity and urgency justifies the issuance of provisional measures and that rejecting the request would be tantamount to not providing assistance to those who are in danger.
22. He reiterates that this Court is the last resort for Tunisians, specifically with regard to the serious violations of the Tunisian Constitution and other laws that affect the independence of the judiciary, as there is no other competent body to consider such violations.
23. With regard to the second request for provisional measures, the Applicant prays the Court, should it not grant an order for provisional measures, to suspend the decision to withdraw the Declaration and to delay the entry into force of the withdrawal to any other time as it may deem fit.

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24. The Respondent State did not file any submissions.

25. Pursuant to Article 27(2) of the Protocol, 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.
26. In light of the above, the Court has the discretion to order provisional measures only in cases of extreme gravity and urgency and in order to prevent irreparable harm to individuals.
27. The Court recalls that urgency, which is consubstantial with extreme gravity, means that “irreparable and imminent risk will be caused before it renders its final judgment.”⁹ The Court further recalls that the risk referred to must be real, which excludes the purely hypothetical risk and justifies the need to remedy it in the immediate future.¹⁰
28. With respect to irreparable harm, the Court considers that there must be a “reasonable probability of occurrence” having regard to the context and the Applicant’s personal situation.¹¹
29. In light of the above, the Court can order provisional measures only if the requirements of extreme gravity, urgency and irreparable harm to persons are met.
30. The Court emphasizes, however, that it is only required to ascertain the existence of these basic conditions if it is established that the measures sought do not prejudice the merits of the main application.¹²

⁹ *Sébastien Ajavon v. Republic of Benin* (provisional measures) (17 April 2020) 4 AfCLR 123, § 61.

¹⁰ *Ibid*, § 62.

¹¹ *Ibid*, § 63.

¹² *Elie Sandwidi and Another v. Burkina Faso and 3 Others* (provisional measures) (25 September 2020) 4 AfCLR 203, § 65.

31. The Court recalls that the merits of an application are prejudged by a request for provisional measures when the measures sought are identical to those requested in the main application or if they seek to achieve the same result, or if the request for provisional measures addresses matters which the Court necessarily must decide when considering the merits of the Application.¹³
32. In the instant case, the Court notes that the Applicant seeks provisional measures aiming at ordering the Respondent State to put on hold the decision to withdraw the Declaration, pending the Court's ruling on the merits of the main Application. The Applicant alternatively prays that should the Court deem it necessary not to order the suspension of the withdrawal of the Declaration, it should order the delay of entry into force of the withdrawal from 8 March 2026 to any other date that it finds appropriate.
33. The Court also notes that in the main Application, the Applicant prays the Court, among others, to suspend or extend the date of entry into force of the withdrawal of the Declaration and find that it violates human rights.
34. The Court finds that it cannot examine the provisional measures requested without discussing the merits of the main Application. As such, granting the measures requested would amount to prejudging the merits of the main Application. In the circumstances, the Court cannot order the provisional measures requested by the Applicant.
35. The Court, therefore, dismisses the Applicant's request for provisional measures.
36. For the avoidance of doubt, the Court reiterates that this Ruling is interlocutory in nature and shall not be taken to prejudice or determine its eventual findings in respect of its jurisdiction, the admissibility of the Application, or the merits thereof.

¹³ *Ibid*, § 66; *Jean de Dieu Ndagijimana v. United Republic of Tanzania* (provisional measures) (26 September 2019) 3 AfCLR 522, § 25.

VI. OPERATIVE PART

37. For these reasons:

THE COURT,

Unanimously,

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

Signed:

Blaise TCHIKAYA, President;



and Robert ENO, Registrar



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

