

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

NOUREDDINE BHIRI

V.

REPUBLIC OF TUNISIA

APPLICATION No. 004/2026

RULING

(PROVISIONAL MEASURES)

1 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:

Noureddine BHIRI

Represented by

Advocate Brahim Mohamed BELGHITH

Versus

REPUBLIC OF TUNISIA

Not represented

After deliberation,

Issues this Ruling:

I. THE PARTIES

1. Nouredine Bhiri (hereinafter referred to as “the Applicant”) is a Tunisian lawyer and politician who previously served as Minister of Justice from 2011 to 2013, and as head of the parliamentary bloc of the Ennahda Movement political party from 2019 to 2024. At the time of filing the Application, he was serving a ten-year prison sentence at the Borj El Amri civil prison, Manouba Governorate, for the offence of attempting to overthrow the government. He alleges the violation of his rights in the context of different criminal proceedings against him in his country.
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. The Respondent State also deposited, on 16 April 2017, the Declaration provided for in Article 34(6) of the Protocol, by virtue of which it accepts the Court’s jurisdiction to receive applications from individuals and Non-Governmental Organizations 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 the instrument of withdrawal of the said Declaration. The Court has ruled that the withdrawal of the Declaration has no effect on pending cases or new cases filed before it before the withdrawal comes into effect one year after the deposit of the instrument thereof, in this case, on 8 March 2026.¹

¹ *Moahd Kheriji Ghannouchi & Others v. Republic of Tunisia*, AfCHPR, Application No. 004/2023, Decision of 17 March 2025 (Ruling on the Request for Revocation of the Order 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 he has been detained since 31 December 2021, that he was subjected to torture and ill-treatment and that his medical condition is severely deteriorating.
4. The Applicant faced criminal charges primarily within two distinct proceedings. The first case arose from the publication of a social media post by the Applicant. He was committed for trial before Tunis Court of First Instance, on charges of committing acts of violence with the intent to overthrow the government, in violation of article 72 of the Penal Code.² On 18 October 2024, he was convicted of these charges and sentenced to ten years' imprisonment. This judgment was subsequently upheld by the Tunis Court of Appeal on 6 March 2025.
5. In the second case, before the Judicial Counter-Terrorism Unit of Tunis, the Applicant was charged with issuing Tunisian nationality and travel documents to a Syrian national during his tenure as Minister of Justice. An investigation was opened in July 2021 on the basis that the individual was a classified terrorist; however, the National Counter-Terrorism Committee confirmed in February 2022 that the person had been removed from the UN Sanctions List in 2009 and was not on the National List.
6. The Applicant contends that the Examining Magistrate, in the 10 January 2025 decision to close the investigation and to refer the matter, misrepresented this evidence in order to maintain the impression that he was issuing documents to a terrorist. This decision was upheld by the Indictment Chamber and the Court of Cassation, which dismissed the appeal on 20 October 2025. Consequently, the Applicant filed criminal

² Tunisian Penal Code, article 72 "The perpetrator of an attack aimed at changing the form of government, inciting individuals to take up arms against each other, or provoking disorder, murder, or pillage on Tunisian territory shall be punished by death."

complaints against the judicial officers involved for alleged fraud and distortion of records. However, the Applicant alleges that the Public Prosecutor's Office of the Tunis Court of First Instance has to date failed to provide either an acknowledgment of receipt or a case number for these complaints, or provide any information on the progress of their processing. This failure, the Applicant argues, risks undermining his right of appeal.

B. Alleged violations

7. In the main Application, the Applicant alleges the following violations:

- i. The right to equal protection of the law, protected under Article 3(2) of the Charter;
- ii. The right to physical and moral integrity, in accordance with Article 4 of the Charter and Articles 7 and 10(1) of the International Covenant on Civil and Political Rights (hereinafter referred to as "the ICCPR");
- iii. The right to liberty, in accordance with Article 6 of the Charter and Article 9 of the ICCPR;
- iv. The right to a fair trial, in accordance with Article 7(1)(a), (c), (d) and 7(2) of the Charter, and Articles 2(a) and (b), 6(2), 14 and 15 of the ICCPR;
- v. The right to life, protected under Article 4 of the Charter and Article 6(2) of the ICCPR;
- vi. The right to freedom of opinion, within the meaning of Article 9(2) of the Charter and Article 19 of the ICCPR;
- vii. The right to non-discrimination, within the meaning of Article 2 of the Charter and Articles 2(1) and 26 of the ICCPR;
- viii. The right to the enjoyment of the rights and freedoms recognized in the Charter, in accordance with Article 1 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. On 16 February 2026, the Applicant filed the main Application together with a request for provisional measures.

9. The Application was served on the Respondent State on 7 April 2026 for its Response within 45 days to the request on provisional measures and within 90 days to the main Application. Upon expiry of the specified time limit, the Respondent State had not responded to the request for provisional measures.

IV. PRIMA FACIE JURISDICTION

10. 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.

11. Under Rule 49(1) of the Rules “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.³
12. In the instant case, the Applicant alleges the violation of rights protected under the Charter and the ICCPR,⁴ which are instruments that the Respondent State has ratified.
13. The Court notes, as stated in paragraph 2 of this Ruling, that the Respondent State became a party to the Charter on 16 March 1983, the Protocol on 21 August 2007, and on 16 April 2017, deposited the Declaration. However, on 7 March 2025, the Respondent State deposited with the Chairperson of the African Union Commission an instrument withdrawing its Declaration made under Article 34(6) of the Protocol. The Court further recalls that it has held that the withdrawal of a Declaration does

³ *Ghannouchi & Others v. Tunisia*, *ibid*, §§ 12 and 13.

⁴ The Respondent State became a Party to the ICCPR on 18 March 1969.

not have any retroactive effect and it also has no bearing on pending or new cases filed prior to the date that the withdrawal takes effect.⁵ Since any such withdrawal of the Declaration takes effect 12 months after the notice of withdrawal is deposited, the effective date for the Respondent State's withdrawal was 8 March 2026.⁶ This Application, having been filed before the Respondent State's withdrawal of its Declaration entered into effect, is thus not affected by it.

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

V. PROVISIONAL MEASURES REQUESTED

15. In his request for provisional measures, the Applicant prays the Court to:

- i. Ensure that the Applicant is provided with serious and adequate medical care, should he not be released, in light of objective considerations relating to the cases pending against him, and ensuring that his family is granted access to all details concerning the medical monitoring and treatment provided to him.
- ii. Order the Respondent State to ensure the Applicant's access to justice by giving due and serious consideration to the complaints filed against Judges Mehrzia Nouioui, Fathi Boukhris, and Kawther El Yazidi, as well as any other persons whose involvement may be established through investigation; to provide the Applicant with proof of receipt of his complaints, including their registration numbers and dates of filing; and to ensure the non-discriminatory application of the law to judges, irrespective of their alignment with the political authorities.

*

⁵ *Ibid.*

⁶ *Ibid.*

16. With respect to the initial provisional measures sought, namely access to adequate medical care, the Applicant avers that urgency and extreme gravity are established insofar as his health condition has deteriorated since his arrest. He alleges that he was subjected to torture and ill-treatment to such an extent that the prison administration initially refused to admit him before he underwent a medical examination.
17. The Applicant further asserts that although poor medical care is a general feature of Tunisian prisons,⁷ the risk of harm being caused before the Court renders its decision on the merits is significantly greater in his case, given that he is sixty-seven years old and suffers from several chronic illnesses, including diabetes. This is documented in the most recent medical report which was obtained by his family on 7 March 2022, following a hunger strike he undertook in protest against his abduction and arbitrary detention.
18. The Applicant also submits that “in light of his visibly deteriorating and critical health condition” and “in the absence of serious medical care adapted to his age, his physical and mental health can only deteriorate further”. In addition, he contends that under such conditions, continued detention would expose him to additional diseases, and lead to further deterioration of his health, which may ultimately result in death should the policy of medical neglect within the prison persist.
19. The Applicant further argues that his family, his lawyers and his attending physicians do not have access to information regarding the medical follow-up and treatment he is supposed to be receiving, which prevents them from verifying whether such care is being provided and whether it is appropriate for his state of health.
20. With regard to irreparable harm, the Applicant asserts that the medical negligence to which he has been subjected since his imprisonment, combined with the fact that his family is not kept informed of his state of

⁷ *Noureddine Bhiri v. Republic of Tunisia*, Application n° 004/2026, Annexure n° 24, Ligue tunisienne des droits de l'homme, *Follow-up Report 2022-2025 on the situation of prisons in Tunisia*.

health and the medical care he is supposed to be receiving, constitutes a serious and irreparable threat which cannot be remedied and as a result of which he cannot return to the state he was in prior to said harm. This risk, according to the Applicant, goes beyond a serious deterioration in his state of health and includes the possibility of death, which constitutes serious and real harm, particularly in view of the Applicant's medical history and his advanced age.

21. With regard to the second set of provisional measures sought, on accessing justice, the Applicant argues, in the light of the criteria of urgency and extreme gravity, that the Public Prosecutor's Office's deliberate refusal to provide his counsel with proof of receipt of the criminal complaints and their registration numbers constitutes a risk that goes beyond the rights invoked by the Applicant. He adds that every day that passes without him being able to gain access to justice exacerbates the non-pecuniary damage he is suffering and reinforces the feeling that justice is not being done to him, particularly as these grievances have a direct impact on the matters in which his rights have been violated.
22. The Applicant asserts that this case goes beyond his personal circumstances and concerns the exploitation of the judiciary by the executive. In his view, the State has failed to comply with the order issued by this Court in Application No. 008/2024 concerning judicial independence,⁸ and the current authorities have obstructed the proper functioning of the Provisional High Council of the Judiciary, which they themselves established.
23. The Applicant submits that the failure to respect procedural safeguards in the proceedings concerning him forms part of the executive's determination to undermine the independence of the judiciary, as evidenced by the dismissal of judges under Decree No. 516-2022, and the suspension of the application of which was also ordered by this Court. The Applicant maintains

⁸ *Hammadi Rahmani v. Republic of Tunisia*, ACtHPR, Application No. 008/2024, Ruling of 3 October 2024 (provisional measures), § 39.

that, despite this order, the authorities have continued to take retaliatory measures against them, in particular by bringing proceedings without first lifting their judicial immunity, as in the cases brought by judges before this Court, notably in Applications Nos. 003/2023, *Mohamed Aziz Akremi v. the Tunisian Republic*; No. 008/2024, *Hammadi Rahmani and others v. the Tunisian Republic*; and No. 001/2026, *Mourad Messaoudi v. the Republic of Tunisia*.

24. The Applicant also argues that, conversely, the executive branch protects judges who share its political views and interests – such as those cited in the three complaints lodged by the Applicant. The Applicant argues that this situation gives rise to unfair discrimination and jeopardises the rights of all parties to the proceedings, whilst encouraging impunity and the abuse of judicial authority.
25. Finally, he submits that the failure to receive, process or act on complaints from litigants, together with the lack of information on their progress, leads, over time, to the right of appeal of litigants becoming time-barred. This impunity perpetuates the political authorities' stranglehold on the Respondent State's judicial system, which constitutes not only a threat but also a daily violation of the right to a fair trial.

*

26. The Respondent State did not respond to the request for provisional measures.

27. 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.

28. 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.

29. 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.

30. The Court notes that urgency, consubstantial with extreme gravity, means “a real and imminent risk that irreparable harm will be caused before it renders its final judgment”. The risk in question must be real, which excludes a purely hypothetical risk and justifies the need for immediate action.⁹ As regards irreparable harm, the Court considers that the likelihood of its occurrence must be reasonable, having regard to the context and the Applicant’s circumstances.¹⁰

31. 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.¹¹

32. The Court shall first consider, (A) the request for provisional measures relating to access to adequate medical care, before considering, (B) the request for provisional measures relating to access to justice.

⁹ *Houngue Éric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 004/2020, Ruling of 15 August 2022 (provisional measures); *Sebastien Germain Marie Aikoue Ajavon v. Republic of Benin* (provisional measures) (17 April 2020) 4 AfCLR 123, § 61.

¹⁰ *Domingos Simoes Pereira v. Republic of Guinea-Bissau*, ACtHPR, Application no 012/2024, Decision of 26 June 2025 (provisional measures).

¹¹ *Hammadi Rahmani v. Tunisia*, *supra*, § 23.

A. Request for access to adequate medical care

33. The Court notes, from the record, that the Applicant is sixty-seven years old and is in poor health. Given his age and serious medical conditions, the Court considers that there is a plausible risk to his health if, as alleged, he is not provided with adequate access to medical practitioners. This may ultimately cause irreparable harm.
34. The information on record suggests that the condition of imminent danger and urgency are satisfied. The Court, therefore, finds that the danger faced by the Applicant is real and not hypothetical, as it relates to the deterioration of his health. In these circumstances, therefore, the damage that may be suffered by the Applicant may not be remedied by the awarding of reparations.
35. The Court, therefore, grants the Applicant's request for an order directing the Respondent State to take the necessary measures to provide him with adequate medical care, should he not be released, and to ensure that his family is granted appropriate access to information concerning the medical care provided to him.

B. Request for access to justice

36. As regards the second set of provisional measures requested, the Court reiterates its position that it is not required at this stage to examine the merits of the Applicant's allegations that violations have been committed against him, but only to determine whether the particular circumstances of the case warrant ordering the Respondent State to implement provisional measures.¹²

¹² *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin* (provisional measures) (2021) 5 AfCLR 150, § 30; *Adama Diarra alias Vieux Blen v. Republic of Mali* (provisional measures) (2021) 5 AfCLR 124, § 23.

37. The record before the Court confirms that the Applicant has been incarcerated following criminal proceedings launched against him. The validity of reasons and circumstances of his detention, trial and appellate proceedings can only be determined at the merits stage of the proceedings.
38. The Court further finds that the alleged harm constitutes a hypothetical risk of a general nature, insufficient to establish the required threshold of extreme gravity, urgency and irreparable harm.
39. The Court thus dismisses the prayers relating to the access to justice measures requested by the Applicant, as it would lead the Court to prejudge the matter on the merits and considering that the alleged harm is not of such nature that it cannot be addressed through other reparation measures, should the alleged violations be established.
40. For the avoidance of doubt, this Ruling is provisional in nature and does not in any way prejudge the findings of the Court on its jurisdiction, the admissibility of the Application and merits thereof.

VI. OPERATIVE PART

41. For these reasons,

THE COURT,

Unanimously,

- i. *Orders* the Respondent State to take necessary measures to provide the Applicant with adequate medical care, should he not be released, and to ensure that his family is granted appropriate access to information concerning the medical care provided to him;

- ii. *Dismisses* the prayers relating to the access to justice measures requested by the Applicant;.
- iii. *Orders* the Respondent State to report on the measures taken to implement this order within thirty (30) days from the date of its notification.

Signed by:

Blaise TCHIKAYA, President:



And Robert ENO, Registrar.



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

