

Separate Opinion of Judge Rafaâ Ben Achour

1. I fully agree with the operative part of the Order on the request for provisional measures in Application No. 047/2020 *Adama Diarra dit Vieux Blen v. the Republic of Mali*, where the Court “[F]inds that the request for provisional measures is moot”.
2. However, I do not agree with the “classic” method adopted by the Court, in particular in relation to the discussion on *prima facie* jurisdiction, which is an indispensable preliminary to any order issued by the Court when it is called upon to rule on a request for provisional measures.
3. In present case, the Court does not rule on the request, as it neither orders provisional measures nor dismisses the request for lack of urgency and likelihood of irreparable harm. In the instant case, the Court limited itself to making a finding and issuing a strictly declaratory order.
4. In his request for provisional measures, the Applicant prayed the Court to order his release.
5. However, upon examination of the request, the Court found that following the additional information requested on 2 March 2021 by the Registry on the outcome of the hearing of the Bamako Court of Appeal held on 25 February 2021 subsequent to the appeal against the decision to release the Applicant, the Registry on 11 March 2021 received the response of the Applicant’s lawyer confirming that the Applicant had been released. Hence the Court “[F]inds that the request for provisional measures is moot”.
6. In light of this new particular, which renders the request for provisional measures (the Applicant’s release) moot, the Court no longer needed to rule on its jurisdiction, even *prima facie*.
7. In its order, the Court should have simply narrated the facts and declared that the request was moot, without going any further. Dealing with *prima facie* jurisdiction only to declare that the request is moot has no basis in law or in logic.

Judge Rafaâ Ben Achour

