


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		

Application No. 002/2023

Bishr Bin Said Al-Shabi,
Mohamed Ali Bin Youssef Bin Saleh,
and Bakkar Bin Al-Hashimi Azzouz
 (Applicants)

v.

The Republic of Tunisia
 (Respondent State)

Summary Of The Application

I. The Parties

1. The Applicants Bishr bin Said Al-Shabi, Mohamed Ali bin Youssef bin Saleh, and Azzouz bin Al-Hashimi Bakkar, (the Applicants), are citizens of the Republic of Tunisia, represented by Counsel Ibrahim bin Mohamed Belghaith. In the application lodged with the Court against the Republic of Tunisia, (hereinafter referred to as the Respondent State), they allege violations of human rights following the issuance of Presidential Decrees and Orders and the adoption of a new Constitution in 2021 and 2022.

II. Subject of The Application

A. Facts of the Matter

2. The Applicants contest the issuance of a series of presidential orders and decrees based on Article 80 of the Constitution by the President of the Respondent State.
3. The Applicants allege that, under the pretext of those decrees, the President of the Respondent State usurped all powers, dissolved the Parliament (which is constitutionally mandated to oversee draft laws and oversee the government's actions), and suspended other constitutional institutions, contrary to the provisions of the constitution. They also highlighted that, although the President affirmed that he acted within the scope of the Constitution, but he organized, through the Minister of Communication Technologies, what he called an "electronic consultation,". It was a form of questions drafted by himself, in which only a limited number of citizens participated. From those participants, a majority expressed willingness to amend the 2014 Constitution. The Applicants further allege that the President seized control of the Electoral Commission by dismissing its members — an act beyond his competence — and replacing them with individuals loyal to him.

4. They also assert that the President unilaterally amended organic and ordinary electoral laws through presidential decrees, although electoral laws cannot be amended by such means under the Constitution. All these amendments aimed at concentrating power in the presidency, ensuring impunity, undermining the independence of the Electoral Commission and its members, restricting citizens' participation in public affairs, violating the duty of the State to guarantee equality, and preventing free and fair elections. The Applicants submit that the President presented for referendum a draft Constitution that lacked legitimacy, legality, and compliance with participatory constitutional principles, as well as disregarded deadlines and institutional requirements. He even modified his draft after the referendum campaign had already begun.
5. They point out that the President failed to set any minimum thresholds for participation, approval, or a legal mechanism in case of rejection, which resulted in a referendum with only about one-quarter voter turnout, yet a new Constitution was declared adopted.
6. The Applicants further recall that, despite this Court's ruling of 22 September 2022 in Application No. 017/2021, which ordered the Respondent State to annul the presidential decrees and orders, reinstate constitutional democracy, and establish a Constitutional Court, the Respondent State — in practice, the President — continued to act simultaneously as both party and judge, amending electoral laws by decrees inferior in rank to the laws they purported to amend.
7. They add that the President unilaterally and arbitrarily changed the electoral system, re-characterizing legislative elections to serve his project of marginalizing all other branches of government, concentrating all authority in the presidency, and even arrogating to himself powers over the judiciary, including the prerogative of dismissing judges without disciplinary procedures.
8. The Application was filed with the Registry of the Court on 25 January 2023.

B. Alleged Violations

9. The Applicants allege that the Respondent State violated the following provisions of the African Charter on Human and Peoples' Rights:
 - i. Article 1 — the duty to recognize human rights and freedoms and adopt measures to give effect to them;
 - ii. Article 2 — the right to non-discrimination;
 - iii. Article 7 — the right to have one's cause heard;
 - iv. Article 13(1) — the right to participate freely in the government of one's country;
 - v. Article 20(1) — the right to self-determination and to freely pursue economic development.

III. PRAYERS OF THE APPLICANTS

10. The Applicants pray the Court to:
 - a) Declare that it has jurisdiction to hear the application;
 - b) Rule that the application meets the admissibility requirement as the Applicants seized this Court after it becomes impossible for them to pursue judicial proceedings in the Respondent State.
 - c) Consider the merits of the application and rule on the following:
 - I. Order the Respondent State to repeal all legal instruments issued in violation of the constitution and organic laws, namely the presidential decrees: Nos. 22/2022, 30/2022, 32/2022, 34/2022, 55/2022, and presidential orders Nos. 459/2022, 506/2022, 578/2022, 607/2022, 691 /2022, 710/2022 and 928/2022 and all decisions and procedures of the Illegitimate Electoral Commission. Accordingly, all the results of what it had supervised, whether the referendum or the legislative elections, to be annulled, on the ground that they represent violations of the right

to participate in the management of the affairs of the country, the right to access the judiciary, the right to human rights guarantees, the right to respect the decisions of the courts, and the right to self-determination.

- II. Compel the Respondent State to respect the periodicity of the legislative elections and to publish the decision to be issued by this Court in this matter in the official gazette of the Respondent State;
- III. Reserve the Applicants' right to reparation, as they have suffered damages, but do not make any requests for pecuniary reparations;
- IV. Reserve the Applicants' right to reparation for moral and psychological damages suffered as victims of such violations;
- V. As a guarantee of non-repetition, the Applicants pray the Court to compel the Respondent State to:
 - a. Adopt the necessary legislative and regulatory measures to ensure the independence of the Electoral Commission and to guarantee non-intervention by the President of the Republic in performing its functions as stated in the Constitution and the law.
 - b. Adopt the necessary legislative and regulatory measures to educate the people, especially the youth on the rule of law, state institutions, separation of power and the independence of the judiciary;
 - c. Provide effective procedural avenues and solutions to address violations of the Constitution and challenging presidential decrees and orders, pending the operationalization of the Constitutional Court;

- d. To publish the judgment to be issued by this Court in the Official (Gazette) website of the Respondent State within two weeks from the date of its notification thereof.
- VI. Order the Respondent State to report to the Court on the measures it has taken to implement the decision and the stages of initiating the implementation of the guarantees of non-repetition within a time limit set by the Court.