

Belgheith v Tunisia (order) (2022) 6 AfCLR 64

Application 017/2021, *Ibrahim Ben Mohamed Ben Ibrahim Belgheith v United Republic of Tunisia*

Order, 24 March 2022. Done in Arabic, English and French, the Arabic text being authoritative.

Judges: ABOUD, TCHIKAYA, KIOKO, MENGUE, MUKAMULISA, CHIZUMILA, BENSAOULA, ANUKAM, NTSEBEZA and SACKO

Recused under Article 22: BEN ACHOUR

The Applicant, a national of the Respondent State, brought this Application to challenge the promulgation of certain decrees by the President of the Respondent State. The Applicant alleged that the Respondent State violated some of his Charter protected rights by the promulgation of the decrees which abrogated part of the Respondent State's Constitution and resulted in a seizure of power by the President. Along with the Application, the Applicant filed a request for provisional measures seeking an order to end the exceptional measures and restore legitimate rule. The Court ruled that it would address the request for provisional measures along with the merits of the case.

Provisional measures (similarity with merits, 15-16)

I. The Parties

1. Ibrahim Ben Mohamed Ben Ibrahim Belgheith, is a national of the Republic of Tunisia (hereinafter referred to as "the Applicant") and a lawyer. He alleges the violation of his rights guaranteed under Articles 3(1), 7, 13, 20(1) of the Charter following the promulgation by the President of the Republic, of Presidential Decrees No 80 of 29 July 2021, 109 of 24 August 2021, 117 of 22 September 2021 and 137 and 138 of 11 October 2021 on the abrogation of the Constitution.
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 21 October 1986 and to the Protocol on 5 October 2007. It deposited, on 16 April 2017, with the African Union Commission, the Declaration provided for in Article 34(6) of the Protocol by virtue of which it accepts the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations.

II. Subject of the Application

3. The Applicant alleges that, the President of the Respondent State issued the following decrees to abrogate the Constitution and the democratic process and seized power illegally by virtue of:
 - Presidential Decree No 80/2021 of 29 July 2021 suspending all powers of the Assembly of People's Representatives and lifting the parliamentary immunity of its members for a period of one month from 25 July 2021, and providing for a possible extension of the said suspension by virtue of a Presidential Decree in accordance with Article 80 of the Constitution.
 - Presidential Decree No 109 of 24 August 2021 extending the aforementioned exceptional measures suspending the powers of the Assembly of People's Representatives and lifting the parliamentary immunity of its members until further notice.
 - Presidential Decree No 117 of 22 September 2021 on exceptional measures to abrogate the Constitution, with the exception of its preamble, chapters one and two, and all constitutional provisions that are not in accordance with the aforementioned Presidential Decree.
 - Presidential Decrees No 137 and 138 of 11 October 2021, enforcing the latter Decree (117 of 22 September 2021), appointing a Head of Government and members of the Government.

III. Summary of the Procedure before the Court

4. The Application together with the request for provisional measures was received at the Registry on 25 October 2021.
5. On 10 November 2021, the Application together with the request for provisional measures were served on the Respondent State. The Respondent State was requested to file its response to the request for provisional measures within fifteen (15) days and its Response to the Application within ninety (90) days of receipt thereof.
6. The Respondent State did not respond to the request for provisional measures within the time given.
7. On 16 February 2022, the Respondent State responded on the merits of the Application, and this Response was served on the Applicant for a Reply within forty-five (45) days of receipt.

IV. Prayers of the Parties

8. The Applicant prays the Court to declare that, by promulgating the above-mentioned Decrees, the Respondent State violated his

rights as a human being and the following rights of the Tunisian people:

- The right of the people to self-determination guaranteed under Article 20(1) of the Charter;
- The right of citizens to participate freely in the conduct of their country's affairs as guaranteed under Article 13(1) of the Charter;
- Articles 3, 2, 5, 11, 14, and of the African Charter on Democracy, Elections and Good Governance;
- Article 1 of the Charter;
- The right to have one's cause heard guaranteed under Article 7 of the Charter;

9. The Applicant also requests the Court to order the Respondent State to repeal all the Decrees mentioned in paragraph 3 above, to guarantee the human rights mentioned, by ordering the following measures:

- Enactment of laws guaranteeing the supremacy of the Constitution, including expediting the establishment of the Constitutional Court and removal of all legal and political impediments to its establishment;
- Enactment of laws to criminalise the transfer, contribution to, and support of, unconstitutional change of power;
- Enactment of laws that engender a democratic culture among the population, especially among the youth;
- Establishment of effective mechanisms to remedy constitutional violations, pending the establishment of the Constitutional Court, and finally, to order the Respondent State to report on the status of implementation of the stated decision and guarantees of non-repetition.

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

V. Provisional measures requested

11. The Applicant prays the Court to order Respondent State to take the following provisional measures:

An end to the exceptional measures, return to constitutional legitimacy, respect of the provisions of the Constitution as a guarantee of the human rights that have been violated, and restoration of the powers and activities of the legislature.

12. The Applicant considers that the above-mentioned exceptional measures put him and the entire Tunisian people in a grave and perilous situation, and constitutes a reversal of its democratic process and constitution, grave violations of the people's right to self-determination, the right to participate in the management of

the country's affairs and the rights provided for in the Charter, the two international covenants¹ and the African Charter on Democracy, Elections and Governance.

13. The Applicant further submits that, as a result, the constitutional guarantees protected by the instruments that the Court is mandated to apply and respect, have been abrogated, such that it is necessary to order provisional measures within the meaning of Article 27 of the Protocol.
14. The Applicant contends that the capture and continued exercise of power by one person may result in a *fait accompli* that is difficult to surmount over time, thereby creating a state of uncertainty (imminent danger) in addition to creating the required conditions of peril, which have already begun with the international isolation of Tunisia. This is what caused the bankruptcy of the country, the deterioration of its credit rating and the refusal of international financial institutions to deal with illegal authorities, which will lead to a fall in the value of the Tunisian Dinar, higher debt value and the violation of the basic economic and social rights of all Tunisian citizens.

15. The Court notes from the foregoing, that the measures sought are the same as those contained in the merits of the Application and may prejudice the merits of the case. Therefore, the Court will consider these requests in the context of the judgment on the merits of the case.
16. Accordingly, in the interests of proper administration of justice, the Court decides to rule on the request for provisional measures and the merits of the case at the same time, and considers that the situation requires it to expedite the examination of the Application.

1 International Covenant on Civil and Political Rights and International Covenant on Economic Social and Cultural Rights.

VI. Operative part

17. For these reasons,

The Court

Unanimously,

Decides to rule on the request for provisional measures and the merits of the case at the same time.