

Belgheith v Tunisia (provisional measures) (2022) 6 AfCLR 291

Application 002/2022, *Ibrahim Ben Mohamed Ben Ibrahim Belgheith v United Republic of Tunisia*

Order, 23 June 2022. Done in Arabic, English and French, the Arabic text being authoritative.

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

Recused under Article 22: BEN ACHOUR

The Applicant, a citizen of the Respondent State, brought this Application, alleging that certain acts of the Respondent State including the establishment of a provisional supreme judicial council instead of an election supreme judicial council, were a violation of some rights guaranteed in the Charter. The Applicant filed a request for provisional measures along with his main Application. The Court considered the provisional measures sought and held that the measures were the same as those sought in the main Application. The Court therefore held that it would dispose of the entire application on the merits.

Provisional measures (similarity of request with application on the merits, 15-16)

I. The Parties

1. Ibrahim Ben Mohamed Ben Ibrahim Belgheith (hereinafter referred to as “the Applicant”) is a Tunisian national and a lawyer. He alleges violation of his rights under Articles 1, 7, 13(1), 20(1) and 26 of the Charter following the promulgation of Decree-Law No 11/2022 of 12 February 2022 establishing the Provisional Supreme Judicial Council, in place of the Supreme Judicial Council provided for by Law No 2016-34 of 28 April 2016.
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 10 February 2006. The Respondent State also deposited, on 16 April 2017, the Declaration provided for under Article 34(6) of the Protocol (hereinafter referred to as “the Declaration”), by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations.

II. Subject of the Application

3. The Applicant alleges the Decree-Law No 11 of 2022 to establish a new Provisional Supreme Judicial Council in lieu of the elected Supreme Judiciary Council which was regulated by Law No 34 of 2016 of 28 April 2016 violates the right of the people to self-determination, the right to participate in the conduct of public affairs beside the violation of the principles of the rule of law.

III. Summary of the Procedure before the Court

4. The Application, together with the request for provisional measures, were received on 4 April 2022. On 25 April 2022, the Registry acknowledged receipt of the Application and notified the Applicant of its registration.
5. On 23 May 2022, the Application and the request for provisional measures were served on the Respondent State with a request for it to respond to the request for provisional measures within fifteen (15) days, send the names of its representatives within thirty (30) days and to respond to the Application on the merits within ninety (90) days.

IV. Prayers of the Parties

6. The Applicant prays the Court to:
 - i. Declare that it has jurisdiction.
 - ii. Declare the Application admissible.
7. On the merits, the Applicant prays the Court to:
 - i. Find a violation of the right of the people to self-determination within the meaning of Article 20(1) of the Charter and Article 1(1) of the International Covenant on Economic and Social Rights, the International Covenant on Civil and political Rights¹ and Article 21(3) of the Universal Declaration of Human Rights
 - ii. Find a violation of the right to participate in the conduct of the affairs of the country within the meaning of Article 13(1) of the Charter, Article 21(1) of the Universal Declaration of Human Rights and Article 21(5) of the International Covenant on Civil and political Rights.
 - iii. Find a violation of the right to bring a case before the courts enshrined in Articles 1, 7 and 26 of the Charter and Article 14(1) of the International Covenant on Civil and Political Rights, the principle of separation of powers and independence of the judiciary.

1 The Respondent State became a Party to the Covenant on 18 March 1969.

- iv. Order the Respondent State to take all necessary measures to comply with the provisions of the Constitution and the law, including the Organic Law on the Supreme Judicial Council, and to refrain from amending it by a law of lower level or without complying with constitutional and legal obligations.
- 8. With regard to reparation for material prejudice, the Applicant considers that even if they exist, are real and of a continuous nature, but are not personal and direct, the Applicant lacks standing to seek compensation for persons or even the State for that matter. Accordingly, the Applicant does not request reparation for material prejudice for himself. He also does not request reparation for the moral and psychological damages he has suffered personally as a victim of such violations.
- 9. As regards guarantees of non-repetition, the Applicant prays the Court to order the Respondent State to:
 - i. Adopt the necessary legislative and regulatory instruments to ensure the supremacy of the Constitution, including the speedy establishment of the Constitutional Court and the removal of all legislative, regulatory, political and practical impediments hindering it;
 - ii. Adopt the necessary legislative and regulatory instruments to ensure that the President of the Republic does not make further attempts to infringe the independence of the judiciary or to undermine its organization in violation of the Constitution and the law.
 - iii. Respect the independence of the Supreme Judicial Council and facilitate the election of its members under the supervision of the Independent High Electoral Commission, as required by law.
 - iv. Adopt the necessary legislative and regulatory instruments to further inculcate the culture of the rule of law and institutions, the separation of powers and the independence of the judiciary in the population, particularly among young people.
 - v. Provide procedural avenues and effective solutions to remedy violations of the Constitution, pending the establishment of the Constitutional Court.
- 10. The Respondent State did not respond.

V. Provisional measures requested

- 11. As regards provisional measures, the Applicant requests the Court to:
 - Repeal Decree-Law No 11/2022, return to constitutional legitimacy, respect the Constitution as guarantor of human rights that have been violated, restore the powers and activities of the Supreme Judicial Council and its elected legal composition, and to guarantee the election of the Council in accordance with the law and the Constitution.

12. The Applicant considers that the promulgation of the Decree-Law No 11/2022 occasioned serious violations of the right of the people to self-determination, the right to participate in the conduct of the affairs of the country, the rights provided for both in the Charter and in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the principles of the rule of law, separation of powers and independence of the judiciary. It also led to the violation of the Constitution of the Respondent State, which was violated as an expression of the will of the people and as the supreme law in the hierarchy of laws, and to the repeal of Organic Law No 34 of 2016 pertaining to the Supreme Judicial Council by the said Decree-Law.
13. The Applicant further avers that the Decree-Law No 11/2022 approves flagrant intrusions by giving powers to the executive branch, represented by the President of the Republic, who now combines all powers and eliminates all checks on his actions, which poses a serious threat to the Applicant as a citizen and lawyer, the judiciary and people of the Respondent State, as well as the suspension of the democratic process and the Constitution. He further submits that the Constitutional guarantees protected by the instruments whose existence, and the respect of which, the Court commits to ensure, were thus abolished, so that provisional measures are required in accordance with Article 27 of the Protocol.
14. The Respondent State did not respond to the request for provisional measures.

15. The Court notes, from the foregoing, that the provisional measures requested are the same as those contained in the main Application and that adjudicating on these may prejudice the merits of the case.
16. Accordingly, for the purposes of proper administration of justice, the Court decides that it will rule on the request for provisional measures together with the merits of the case.

VI. Operative part

17. For these reasons,

The Court

Unanimously,

Decides that it will rule on the request for provisional measures at the same time as the merits of the case.