

African Court on Human and Peoples' Rights

In the Matter of

Safinaz Ben Ali and Lamia Eljendoubi v. Republic of Tunisia

Application No.009/2023

Ruling of 3 September 2024

Declaration by Judge Bensaoula Chafika

1. I disagree with the majority of the Bench on point (v) of the operative part of the Ruling that is the subject of this Declaration. I am not satisfied with the Court's reasoning regarding the dismissal of the Applicants' request for "their release".
2. In fact, it emerges from the Application filed on 25 September 2023 that the Applicants prayed for the following provisional measures:
 - immediate release, and
 - processing, without delay, of requests for release filed before judicial authorities.
3. However, it emerges from paragraph 63 of the Ruling that is the subject of this Declaration that the Court dismissed the Applicants' request for the simple reason that it declared the Application inadmissible on the merits and that their application for provisional release was pending before the national courts.
4. In paragraph 64, the Court declared that, as the Application was inadmissible on the merits due to non-exhaustion of local remedies, it was not necessary to order provisional measures, particularly as the Applicants did not provide evidence of circumstances that would warrant granting their request.
5. In my opinion, a request for provisional measures, even when filed alongside an application on the merits, must be adjudicated within a reasonable time, prior to

a decision on the merits, in accordance with Article 27(2) of the Protocol. Failure to do so would undermine the purpose of the request for provisional measures once a decision on the merits has been rendered.

6. Additionally, a request for provisional measures must either be dismissed as unfounded or as being related to the merits of the case, or accepted, with the requested measures being granted either fully or partially.
7. In paragraphs 63 and 64 of the Ruling, the Court contradicted itself as to the reasoning behind “Declares that there are no grounds for ordering the provisional measures requested”.
8. Indeed, it considered a number of elements which, put together, do not justify the judgment handed down:
 - that the application on the merits was declared inadmissible.
 - that the Applicants' trial was ongoing in domestic courts.
 - that refusal by the competent authorities of the Respondent State to release them is a matter pending before domestic courts.
 - and, above all, that the Applicants did not provide evidence of circumstances that would warrant granting their request, hence its conclusion.
9. I am convinced that the Court should have simply dismissed or granted the request based on the elements outlined in Article 27(2) of the Protocol, since the inadmissibility of the application on the merits is not a fundamental ground!

Judge Bensaoula Chafika

Done at Arusha this Third Day of September in the Year Two Thousand and Twenty-Four, the French version being authoritative.

