

## Declaration by Judge Rafaâ Ben Achour

1. Through this declaration made pursuant to Article 28(7) of the Protocol and Rule 70(3) of the Rules, I hereby express my disagreement with the Ruling rejecting the interim measures requested by the Applicants Cheick Mohamed Chérif KONE and Dramane DIARRA, who allege the violation of their rights, following their dismissal from the Magistracy.
2. The two Applicants pray the Court: To:
  - i. Order the stay of the implementation of decisions No.°001/2023-CSM-CD-P of August 29, 2023 on procedural incidents and No.°002/2023-CSM-CD-P of August 29, 2023 on the merits of the case taken by the CSM, removing the first Applicant from the organic framework of the Magistracy.
  - ii. Order the stay of the implementation of decisions No.°001/2023-CSM-CD-P of September 19, 2023 on the procedural incidents and No.°002/2023-CSM-CD-P of September 19, 2023 on the merits of the case taken by the CSM removing the second Applicant from the organic framework of the Magistracy.
  - iii. Order the stay of the implementation of decrees No.°2023-0578/PT-RM of October 03, 2023 and No.°2023-0623/PT-RM of October 16, 2023, issued by the President of the Transition, concerning their dismissal from the Magistracy.
  - iv. Report to the Court, within 15 days upon receipt of the order, on the measures taken to implement it.
3. To buttress their claim, the Applicants contend that “the decisions to strike them off the list and the dismissal decrees in question seriously deprive them of their human dignity, since they have been unjustly deprived of their salary and are now living in precarious conditions, relying solely on family solidarity and goodwill. In their view, this situation is likely to compromise the moral equilibrium of their children who go to school”.
4. Unfortunately, the Court dismissed all these claims and failed to take into account the irreparable consequences that revocation decisions are likely to have for the Applicants, not least of which is their precarious situation.

5. The Court held that a decision to dismiss without suspending their pension rights removes the risk of job insecurity, which is unrealistic, as a pension is a sum paid once the person has reached retirement age, and cannot be compared to a salary. Moreover, pension is calculated in proportion to years of service. In the case of the Applicants, it will be reduced by all the years they would have spent in service up to retirement age.
6. I disagree with another argument raised: when the Court “notes that it is emerges from the case file that the Applicants have appealed to the Administrative Chamber of the Supreme Court of the Respondent State on grounds of ultra vires against their decrees of dismissal. A decision by the Supreme Court upholding this action for misuse of powers will have the same effect as if this Court were to order the measures sought; which would thus lead it to prejudice the main issue and thus deal with the merits of the case”.
7. The argument is astonishing. It is based on a simple assumption: “A decision by the Supreme Court granting this appeal for abuse of power will have the same effect as if this Court were to order the measures requested”. The Court failed to look at the other side of the coin, where the Administrative Chamber could refuse to annul the revocation decrees.
8. In my opinion, the Court could have issued a stay of execution of decrees No.°2023-0578/PT-RM of October 03, 2023 and No.°2023-0623/PT-RM of October 16, 2023, issued by the President of the Transition, concerning their dismissal from the judiciary, pending its ruling on the merits of the case, thus avoiding the occurrence of consequences that will be difficult, if not impossible, to cure later on.



**Judge Rafaâ Ben Achour**