


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

THE MATTER OF

ALI BEN HASSEN BEN YUCEF BEN ABDLHAFID

V.

REPUBLIC OF TUNISIA

APPLICATION NO. 033/2018

RULING

25 JUNE 2021



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**The Court composed of:** Imani D. ABOUD, President, Blaise TCHIKAYA, Vice-President, Ben KIOKO, Suzanne MENGUE, M-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSOUOLA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO – Judges; and Robert ENO, Registrar.

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 9(2) of the Rules of Court (hereinafter referred to as "the Rules"),<sup>1</sup> Justice Rafaâ BEN ACHOUR, member of the Court, a national of Tunisia; did not hear the Application.

In the Matter of:

Ali ben Hassen ben Youcef ben Abdlhafid

Represented by Advocate Mohamed Ali Abbès, an Advocate at the Court of Cassation of Tunisia.

Versus

REPUBLIC OF TUNISIA

Represented by Mr. Eshadly Alrahmani, the General Director of State Litigation

After deliberation,

*renders the following Ruling:*

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<sup>1</sup> Formerly Rule 8(2), Rules of Court of 2010.

## **I. THE PARTIES**

1. Mr. Ali ben Hassen ben Youcef ben Abdelhafid (hereinafter referred to as “the Applicant”) is a Tunisian national. He challenges the Respondent State’s non-compliance with its Constitutional Procedure.
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 to the African Charter on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as “the Protocol”) on 21 August 2007. It deposited, on 16 April 2017, the Declaration under Article 34(6) of the Protocol through which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations.

## **II. SUBJECT OF THE APPLICATION**

### **A. Facts of the matter**

3. It emerges from the Application before the Court that, on 11 April 2017, the Assembly of the People’s Representatives passed Organic Law No. 2017-19 of 18 April 2017, amending and supplementing Organic Law No. 2016-34 of 28 April 2016, on the Supreme Judicial Council.
4. Subsequently, a group of Tunisian parliamentarians petitioned the interim body in charge of ensuring the constitutionality of draft laws, against the above-mentioned Organic Law, on the ground of unconstitutionality. The said body owing to lack of quorum, rendered a decision on 11 April 2017, in which, it referred the impugned Organic Law to the President of the Respondent State to decide on its constitutionality.
5. The President of the Republic however promulgated the said law, despite the fact that it was challenged before the interim body in charge of ensuring the

constitutionality of draft laws, without referring it back to the Assembly of the People's Representatives, which allegedly constitutes a violation of the Constitution.

6. On 25 April 2017, the Speaker of the Assembly of the People's Representatives convened the Supreme Judicial Council to sit on 28 April 2017.
7. On 26 April 2017, the Applicant filed a first case before the Administrative Court, requesting the stay of execution of the Speaker's decision, on the ground that it violated the provisions of Article 109 of the Respondent State's Constitution that prohibits interference with the judiciary. The case was registered as No. 4101086.
8. On 12 July 2017, the Administrative Court rendered its decision on the first case, dismissing the application, on the ground that it was inconsistent with Articles 6 and Chapter 39 of the Administrative Court Law. The Court concluded that the Applicant failed to show a personal and direct interest and to demonstrate how his status was affected by the decision for which he was seeking the stay of execution. The Administrative Court found that the Applicant lacked *locus standi* to request the stay of execution of the decision of the Assembly of the People's Representatives convening the Supreme Judicial Council on 28 April 2017.
9. On April 26 2017, the Applicant filed a second case challenging the decision of the President of the Assembly of People's Representatives before the Administrative Court, on the ground that it was illegal and unconstitutional, and requested the said Court to annul it due to the flagrant violation of the Constitution. The case was registered as No. 152015 but had not been decided by the date of filing the instant Application.
10. Finally, the Applicant alleges that Justice Rafaâ BEN ACHOUR, member of this Court and a national of Tunisia, who was elected as a Judge of the African Court on Human and Peoples' Rights in June 2014, was, in his capacity as an active member of the "Nidaa Tounis" movement, simultaneously appointed

presidential advisor by the then Tunisian President, H.E. Mohamed Baji Qaid Essebsi, by a presidential decree published on 16 January 2014 . which constitutes an incompatibility.

## **B. Alleged violations:**

11. The Applicant alleges the violations of his rights by the Respondent State as follows:

- i. His right to the enjoyment of the rights and freedoms recognised and guaranteed by the Charter without discrimination under Article 2 of the Charter.
- ii. His right to equality before the law and equal protection of the law as enshrined in Article 3 of the Charter.
- iii. His right to have his cause heard as enshrined in Article 7 of the Charter and Article 14 of the International Covenant on Civil and Political Rights.
- iv. His right to participate freely in the government of his country as enshrined in Article 13 of the Charter.

## **III. SUMMARY OF THE PROCEDURE BEFORE THE COURT**

12. The Registry received the above-mentioned Application on 12 October 2018 and on 20 December 2018<sup>2</sup>, duly served it on the Respondent State, giving it a time limit of sixty (60) days to submit its response. The Application was also notified to the entities listed in Rule 42(4) of the Rules of Court on 20 December 2018.

13. On 22 March 2019, the Court granted the Respondent State an extension of thirty (30) days to file its Response, but it failed to do so.

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<sup>2</sup> Rule 35(3) of the former Rules of 2 June 2010.

14. On 4 April 2019, the Respondent State requested for additional time to file its Response which was granted by the Court on 9 April 2019, giving it an extension of thirty (30) days.
15. On 10 May 2019, the Registry received the Response from the Respondent State and served it on the Applicant on the same day, giving him thirty (30) days to file a Reply . The Applicant failed to comply in spite of reminders sent to him on 18 June 2019 and 28 August 2019 respectively.
16. Pleadings were closed on 15 January 2020 and the Parties were duly notified.

#### **IV. PRAYERS OF THE PARTIES**

17. The Applicant prays the Court to:
  - i. Remove the Tunisian judge, Justice Rafaâ BEN ACHOUR from the African Court on Human and Peoples' Rights for lack of impartiality.
  - ii. Order the State of Tunisia, through the tenth chamber of the First Instance of the Tunisian Administrative Court, which has been seized of the case but is yet to render a ruling, to render a decision with the immediate effect by cancelling the decision of the Speaker of the Assembly of the People's Representatives convening the Supreme Judicial Council to sit on 28 April 2017.
  - iii. To order the Respondent State, to pay him One Million (1,000,000) Tunisian dinars for the moral prejudice suffered and to award him the sum of One Million (1,000,000) Tunisian dinars as reparation for the denial of his right to have his cause heard before an independent court and the failure to accord him equal treatment.
  - iv. Order the Respondent State to pay One Hundred Thousand (100,000) Tunisian dinars, for litigation fees, attorney's fees, transport and living expenses and to bear all costs in respect of this Application.
18. On its part, the Respondent State prays the Court to find that the Application is "inadmissible and without merit and is accordingly dismissed".

## **V. JURISDICTION**

19. The Court notes that Article 3 of the Protocol provides as follows:

1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instruments ratified by the State concerned.
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

20. The Court further notes that under Rule 49(1) of the Rules,<sup>3</sup> “[t]he Court shall conduct a preliminary examination of its jurisdiction and the admissibility of an application in accordance with the Charter, the Protocol and these Rules”. Based on the above-mentioned provisions, the Court must, in every application, conduct a preliminary assessment of its jurisdiction and rule on any objections to its jurisdiction.

21. In the instant case, the Respondent State raises an objection to the material jurisdiction of the Court, insofar as the Applicant is praying the Court to remove Justice Rafaâ BEN ACHOUR as judge from the African Court of Human and Peoples' Rights.

### **A. Objection based on material jurisdiction**

22. In its submission, the Respondent State contends that the appointment of Justice Rafaâ BEN ACHOUR as a member of the African Court on Human and Peoples' Rights cannot be considered a violation of human rights and therefore does not fall within the Court's material jurisdiction.

23. The Applicant did not respond to this objection.

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<sup>3</sup> Formerly Rule 39 (1) of the Rules of Court of 2 June 2010.



24. The Court holds that this request does not fall within its jurisdiction as stipulated in Article 3 of the Protocol, but rather falls within its administrative jurisdiction of Article 19 of the Protocol<sup>4</sup> and Rule 8 of the Rules.<sup>5</sup>
25. The Court further notes the fact that in 2014, after the decree appointing Justice Rafaâ BEN ACHOUR as a Presidential Advisor, the Court applied the provisions of the two above-mentioned articles, which led to the issuance of Presidential Decree No. 66 of 2015, dated 31 March 2015, accepting the resignation of Mr. Rafaâ BEN ACHOUR as Advisor to the President of the Republic, effective 1 April 2015. As the matter has already been settled by the Court,, the request is therefore moot.
26. Apart from the fact that this an administrative matter andthe Court having considered the objection and declared it moot, it nevertheless still has to examine the other aspects of jurisdiction.

## **B. Other aspects of jurisdiction**

27. The Court notes that the Respondent State did not raise any objection to its personal, temporal or territorial jurisdiction and that nothing on record indicates that the Court lacks this jurisdiction. Accordingly, the Court finds that it has:

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<sup>4</sup> Article 19 of the Protocol states:

1. A judge shall not be suspended or removed from office unless, by the unanimous decision of other judges of the Court, the judge concerned has been found to be no longer fulfilling the required conditions to be a judge of the Court.
2. Such a decision of the Court shall become final unless it is set aside by the Assembly at its next session.

<sup>5</sup> Article 8 of the Rules states:

1. Where the application of Article 19(1) of the Protocol is under consideration, the President or, if the circumstances so require, the Vice-President, shall inform the concerned Judge, by a written statement, of the grounds thereof and any relevant evidence.
2. The concerned Judge shall, subsequently, at a closed sitting of the Court specially convened for the purpose, be afforded an opportunity of making a statement, of furnishing any information or explanations he/she wishes to give, and of supplying answers, orally or in writing, to any questions put to him/her.
3. At a further closed sitting, at which the Judge concerned shall not be present, the matter shall be considered, each Judge shall state his/her opinion and, if required, a vote shall be taken.
4. Any decision to suspend or remove a Judge shall be communicated to the Chairperson of the AU Commission.

- i) Personal jurisdiction, insofar as the Respondent State is a party to Charter, the Protocol and has deposited the Declaration provided for in Article 34 (6) of the Protocol, which enabled the Applicant to seize this Court pursuant to Article 5 (3) of the Protocol.
- ii) Material jurisdiction, insofar as the Applicant alleges the violation of Articles 2, 3, 7 and 13 of the Charter and Article 14 of the International Covenant on Civil and Political Rights, these two instruments having been ratified by the Respondent State<sup>6</sup> such that the Court has jurisdiction to interpret and apply them as provided for in Article 3 of the Protocol.
- iii) Temporal jurisdiction, insofar as the alleged violations were committed, in respect of the Respondent State, after the entry into force of the Charter and the Protocol to which the Respondent State is a party.
- iv) Territorial jurisdiction, insofar as the facts of the case and the violations alleged took place on the territory of the Respondent State.

28. In light of the foregoing, the Court finds that it has personal, material, temporal and territorial jurisdiction to hear the Application.

## **VI. ADMISSIBILITY**

29. The Court will examine, on the one hand, the preliminary objections of the Respondent State of inadmissibility not provided for by Article 56 of the Charter and, on the other hand, the conditions of admissibility provided for by Article 56 of the Charter.

### **A. Preliminary objections on inadmissibility not provided for by Article 56 of the Charter**

30. The Respondent State raises preliminary objections on two grounds: i) that the Applicant has no interest in filing the Application, ii) the subject of the Application infringes on the Respondent State's national sovereignty.

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<sup>6</sup> The Respondent State became a party to the International Covenant on Civil and Political Rights on 23 March 1976.

**i. Objection based on lack of personal interest to file proceedings**

31. The Respondent State raises a preliminary objection on the ground that the Applicant has no interest in filing the Application, and is an unemployed Tunisian citizen as he stated at the beginning of his Application.
32. The Respondent State asserts that the functions of the Supreme Judicial Council include the appointment, promotion and transfer of judges. It determines the needs of the Courts in terms of filling vacancies for judges, considering applications for transfers, monitoring the career of judges. In brief, it is responsible for everything related to judicial appointments, promotion of judges, resignations and considering the disciplinary measures to be taken against them.
33. The Respondent State avers that in the instant case, the Applicant has no connection with the internal affairs of the judges and their careers, be it in terms of appointment, transfer or disciplinary actions. It is therefore evident that he has no personal and direct interest in the functions of the Supreme Judicial Council. The Respondent State further submits that the Applicant has failed to prove any right to be granted, protected or restored or even that there is a reparation to be awarded for its violation.
34. The Respondent State contends that the allegation of the unconstitutionality of the law on the creation of the Supreme Judicial Council raised by an unemployed Tunisian citizen, who has no connection with the career of judges, nor to the tasks assigned to the Supreme Judicial Council with regard to the appointment, transfer and discipline of judges, is an arbitrary use of the right to bring proceedings before this Court. The Application is neither based on direct or immediate personal right nor on a legal status that has been violated. The Respondent State further contends that the Applicant did not adduce any evidence of the prejudice suffered, nor did he provide any justification for bringing proceedings before this Court.

35. Finally, the Respondent State contends that the Applicant's allegation that the law on the Supreme Judicial Council violates his right to an independent judiciary within the Tunisian State, is baseless and, moreover, has no legal ground for several reasons, including:
- i) The independence of the judicial authority in Tunisia is regulated by the Constitution, in particular Articles 102 and 103.
  - ii) The independence of the judiciary is guaranteed by virtue of the Organic Law of the Judiciary No. 69 of 14 July 1967, which sets out the rights and duties of judges in Chapter two, Articles 14 to 24.
  - iii) The independence of the judiciary is guaranteed by the Tunisian code of civil and commercial procedure. The principle of the impartiality of judges was enshrined by the lawmakers in Article 12 of the Constitution, while the recusal of magistrates is regulated in Chapter six, Articles 248 to 250.
36. The Applicant did not respond to the submissions of the Respondent State.

\* \* \*

37. The Court notes that Article 5 (3) of the Protocol Provides, "[t]he Court may entitle relevant non-governmental organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it", in accordance with Article 34(6) of this Protocol."<sup>7</sup>
38. The Court notes that these provisions do not require individuals or NGOs to demonstrate personal interest in order to initiate proceedings before this Court. The only requirement is that the Respondent State, in addition to being a party to the Charter and the Protocol, must have deposited the Declaration allowing individuals and NGOs to file Applications before this Court. This requirement takes into account the practical difficulties that victims of human rights violations may face in bringing their cases to the Court. Thus, anyone can file Applications

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<sup>7</sup> African Commission on Human and Peoples' Rights, Communication No. 25/89, 47/90, 56/91, and 100/93, *Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Jehovah Witnesses v. DRC (WTOAT) v. DRC*.

before the Court without the need to demonstrate a direct individual interest in the case.

39. Moreover, in the instant case, the Court notes that the Applicant alleges that the Speaker of the Assembly of the People's Representatives convened the Supreme Judicial Council to sit on 28 April 2017, in violation of the Constitution of the Respondent State.
40. The Court further notes that these allegations are the basis for the Application since the impugned legal instrument concerns all citizens of the country, as they have a direct or indirect impact on their individual rights. The law also has a bearing on the security and well-being of their community and their country. Given that the Applicant is a citizen of the Respondent State and that respect for the Constitution is a collective responsibility, as the violation of its provisions can impact the right to participate in the political affairs of the country, it is obvious that the Applicant has a direct interest in the instant case. Accordingly, the Court dismisses the Respondent State's objection regarding the Applicant's lack of personal interest in bringing proceedings.

**ii. Objection based on the fact that the Application infringes on national sovereignty**

41. The Respondent State also raises an objection to the admissibility of the Application on the ground that it infringes on its national sovereignty. It further avers that international relations are based on the "principle of sovereignty", whereby the State has full authority over its territory and exercises supreme power over its institutions and in the choice of its political, legal, economic and social options as well as in managing its foreign relations without being subject to any other higher authority.
42. The Respondent State submits that Article 2 (7) of the United Nations Charter enshrines the "principle of non-interference," which is one of the cardinal principles in public international law on which the work of international bodies

and courts is based. The principle of non-interference is considered the core of the State's internal authority to protect its independence and sovereignty, as long as it does not take actions that are likely to threaten international peace and security, or result in aggression against another State.

43. The Respondent State further avers that State sovereignty manifests in the exercise of three powers: the legislative, the executive and the judiciary. The judiciary represents an aspect of State sovereignty and is considered the core of its internal authority. The Respondent State thus contends that the Court can therefore not render a decision that violates the sovereignty of a State Party to the Protocol.

44. The Applicant did not respond to the submissions of the Respondent State.

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45. The Court recalls Article 1 of the Charter, which states:

“The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.”

46. The Court notes that, by acceding to international treaties and conventions, State Parties establish international jurisdiction on human rights protection, and are therefore subject to oversight by the international mechanisms created by the United Nations and to other mechanisms for the protection of human rights. These mechanisms seek to guarantee better protection for these rights and to uphold human dignity. This is a noble goal that is neither contrary to, nor contradict, the sovereignty of States. It therefore does not constitute a violation of State sovereignty.

47. The Court further notes that it is established in international jurisprudence that the sovereignty of the State is subject, in contemporary international relations, to stringent restrictions, among which is the voluntary commitment by the State

to implement certain international obligations upon becoming a party to a bilateral or multilateral treaty. In this regard, the Court refers to the decision of the Permanent Court of International Justice in 1923 according to which “the Court declines to see in the conclusion of any treaty by which a State undertakes to perform or refrain from performing a particular act, an abandonment of its sovereignty; on the contrary, the right of entering into international engagements is an attribute of State sovereignty.”<sup>8</sup>

48. The Respondent State is party to the Charter and the Protocol and it has deposited the Declaration allowing individuals to bring applications to the Court as stated in paragraph 2 of this judgment, which is consistent with its commitment as a ratifying State to the Charter and does not infringe on its national sovereignty. Furthermore, the Respondent State has not stated how bringing this case before the Court constitutes an infringement of its national sovereignty.

49. **Accordingly, the Court dismisses this objection.**

## **B. Admissibility conditions provided for under Article 56 of the Charter**

50. Rule 50(1) of the Rules<sup>9</sup> provides: “The Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6 (2) of the Protocol and these Rules”.

51. Rule 50 (2) of the Rules, which restates the provisions of Article 56 of the Charter, provides as follows: Applications filed before the Court shall comply with all of the following conditions:

- a) Indicate their authors even if the latter request anonymity;
- b) Are compatible with the Constitutive Act of the African Union and with the Charter;
- c) Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;

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<sup>8</sup> *S.S. Wimbledon*, PCIJ Series A. No.1, p. 25 (1923).

<sup>9</sup> Formerly Rule 40 of the Rules of Court of 2 June 2010.

- d) Are not based exclusively on news disseminated through the mass media;
- e) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
- f) Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and
- g) Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of African Union or the provisions of the Charter.

52. The Respondent State submits that the Application does not comply with Article 50 (2) (e) on admissibility requirements, regarding the exhaustion of local remedies.

**i. Objection based on non- exhaustion of local remedies**

53. The Respondent State contends that the Application does not meet the admissibility requirements stipulated in Article 56 of the Charter as the Applicant has not exhausted local remedies.

54. The Respondent State submits that one cannot bring proceedings before this Court without prior recourse to competent domestic courts to settle the matter or to protect the right allegedly violated. According to the Respondent State, it is also required that a final decision be made within reasonable time by these competent courts. The Applicant can only bring proceedings before this Court if he is not satisfied with the decision of a domestic court and has no other means to cure what he deems a violation of his right.

55. The Respondent State further contends that the Application will not meet the admissibility requirements as long as local remedies have not been exhausted, or if the matter is still pending, or if the Applicant has not gone through all the stages of the procedure, and the matter has not been disposed of in a final judgment that is not subject to appeal.



56. The Respondent State contends that the Applicant has appealed the decision of the Speaker of Assembly of the Peoples' Representatives before the competent domestic court, namely the Administrative Court, and that the case was still pending at the time of filing of this Application. The Respondent State argues that the stages of litigation have not been completed and no judicial ruling has been rendered yet on the matter. The Respondent State further contends that the instant Application before this Court therefore does not meet the admissibility requirement because its subject matter is still pending in Tunisian courts.

57. The Applicant did not respond to the Respondent State's objection.

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58. The Court notes that pursuant to Article 56(5) of the Charter and Rule 50(2)(e) of the Rules, in order for an application to be admissible, local remedies must have been exhausted, unless the remedies are unavailable, ineffective, insufficient or unless the procedure to pursue them is unduly prolonged.

59. The Court notes that the requirement to exhaust local remedies before bringing proceedings before an international human rights Court is an internationally recognised and accepted rule.<sup>10</sup>

60. Furthermore, the local remedies that must be exhausted are judicial remedies, which must be available, or can be accessed without hindrance by the Applicant<sup>11</sup>, they must effective and satisfactory, which means they are “able to satisfy the Applicant” or able to cure the situation in dispute.<sup>12</sup>

61. The Court notes that the requirement to exhaust local remedies is assessed , in principle, from the date of filing the Application before it.<sup>13</sup>

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<sup>10</sup> *Diakité v. Mali*, (admissibility and jurisdiction) (28 September 2017), 2 AfCLR 122 § 41; Lohé Issa Konaté v. Burkina Faso, (merits) (5 December 2014), 1 AfCLR 324 § 41.

<sup>11</sup> *Ibid*, § 96

<sup>12</sup> *Ibid*, § 108

<sup>13</sup> ECHR *Bauman v. France*, No. 3359/96, 22 May 2001, §47.

62. The Court further notes that compliance with this requirement presupposes not only exhaustion of local remedies by the Applicant but also knowledge of the outcome.
63. The Court notes that in the instant case, the Applicant filed two cases before domestic courts:
- i. The first was filed before the Administrative Court on 26 April 2017, seeking the stay of execution of the decision of the said court. On 12 July 2017, the Administrative Court rendered its decision, dismissing the Applicant's appeal. It was a final judgment not subject to appeal under Article 41 of Tunisian Law No. 72-40 of 1972 of 1 June 1972, amended by Organic Law No. 39 of 1996 of 3 June 1996, on the organization of the Administrative Court. The case was decided by a domestic judge within the timeline stipulated in Article 40 of the said law.<sup>14</sup>
  - ii. The second case filed by the Applicant on the same date, 26 April 2017, was for abuse of power. The case was listed under No. 152015, and had not yet been decided, by the date of filing the instant Application before this Court, that is, 12 October 2018, being a period of one (1) year, four (4) months and fifteen (15) days after it was filed.
64. The Court finds that without awaiting the decision of the case in domestic courts in the second case regarding abuse of power, the Applicant filed his Application before this Court against the Respondent State. The Court notes that the Respondent State's legislation does not specify a time limit for the domestic judge to decide on the case of abuse of power.
65. As a matter of fact, on 12 October 2018, the date of filing the instant Application before this Court, the proceedings for exhausting local remedies were still pending before the Administrative Court of the Respondent State.

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<sup>14</sup> Chapter 40 (new) - "The first president decides on the demands submitted to him within a period not exceeding one month by a reasoned decision and without prior verbal pleading .....".

66. Although the domestic legal framework does not provide for the timeline for a judge to consider the case on the abuse of power, the Court considers that the time limit of one (1) year, four (4) months and fifteen (15) days from which the Application was filed before this Court is reasonable and that the proceedings in respect of local remedies were not been unduly prolonged, within the meaning of Rule 50 (2) (e) of the Rules. There was therefore no ground for the Applicant to file his Application prior to the Administrative Court's decision, against which he had the right to appeal after the verdict.<sup>15</sup>

67. Accordingly, this Court finds that the Applicant filed the Application while the local proceedings were still pending and, therefore local remedies had not yet been exhausted.

**ii. Other conditions of admissibility**

68. The Court reiterates that the conditions of admissibility stipulated in Articles 56 of the Charter and Rule 50 (2) of the Rules are cumulative, so that if one of the conditions is not met, the Application is not admissible.<sup>16</sup>

69. Accordingly, without having to consider the other conditions stipulated in Article 56 of the Charter and Rule 50(2) of the Rules, the Court finds the Application inadmissible.

**VII. COSTS**

70. The Applicant prayed the Court to order the Respondent State to:

Pay a total of One hundred thousand Tunisian Dinars (TND100, 000) as costs of the proceedings, Advocate's fees, travel and living expenses, and the expenses incurred.

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<sup>15</sup> Article 60 (new) - The appeal must be submitted within a period not exceeding one month from the date of notification of the judgment made according to the provision in Article 58 of this law.

<sup>16</sup> *Jean Claude Roger Gombert v. Republic of Côte d'Ivoire* (jurisdiction and admissibility) (22 March 2018), 2 RJCA 280 § 61; *Dexter Eddie Johnson v. Republic of Ghana*, AfCHPR, Application No. 016/2017, Ruling of 28 March 2019, (Jurisdiction and admissibility) § 57.

71. The Respondent State did not make any prayer in this regard.

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72. Rule 32 (2) of the Rules provides: “Unless otherwise decided by the Court, each party shall bear its own costs, if any.”<sup>17</sup>

73. In the instant case, the Court considers that there is no reason to depart from the principle laid down in that provision. Consequently, each party shall bear its own costs of the proceedings.

## **VIII. OPERATIVE PART**

74. For these reasons,

THE COURT

*Unanimously,*

*On Jurisdiction*

- i. *Dismisses* the objection based on lack of material jurisdiction.
- ii. *Declares* that it has jurisdiction.

*On Admissibility*

- iii. *Finds that the Applicant did not exhaust local remedies.*
- iv. *Declares the Application inadmissible.*

*On Costs*

- v. *Orders that each party shall bear its own costs.*

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<sup>17</sup> Rule 30 (2) of the former Rules of 2010.

**Signed:**

Imani D. ABOUD, President;



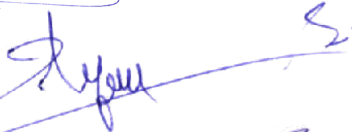
Blaise TCHIKAYA, Vice-President;



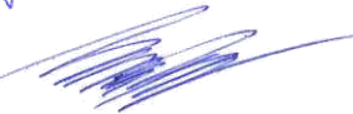
Ben KIOKO, Judge;



Suzanne MENGUE, Judge;



M-Thérèse MUKAMULISA, Judge;



Tujilane R. CHIZUMILA, Judge;




Chafika BENSAOULA, Judge;



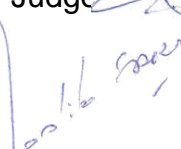
Stella I. ANUKAM, Judge;



Dumisa B. NTSEBEZA, Judge



Modibo SACKO, Judge



and Robert ENO, Registrar.



Done in Arusha, this Twenty-fifth Day of June in the Year Two Thousand and Twenty-One, in Arabic, English and French, the Arabic version being authoritative.

