



OBSERVATOIRE SUR L'UNION AFRICAINE N. 4/2025

1. THE WITHDRAWAL OF TUNISIA'S DECLARATION UNDER ARTICLE 34(6) OF THE PROTOCOL ESTABLISHING THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS: THE CASE-LAW BEHIND THE DECISION AND ITS IMPACT ON THE PROTECTION OF HUMAN RIGHTS AND DEMOCRACY

1. *Introduction: from Jasmine Revolution to Democratic Backsliding*

On 7 March 2025, the Tunisian government notified the African Court on Human and Peoples' Rights of [its decision](#) to withdraw the declaration under Article 34(6) of the [1998 Protocol](#) to the Charter establishing the Court, thereby revoking individuals' and NGOs' direct access to the Court.

This decision cannot be understood without reference to Tunisia's recent political history. Once regarded as the most promising example of democratic transition in the wake of the 2011 Arab Spring, [Tunisia had adopted a progressive Constitution in 2014](#) and was praised for consolidating pluralism, judicial independence and protection of fundamental freedoms. However, the process of democratic transition was abruptly interrupted in July 2021, as [President Kais Saïed invoked Article 80 of the Constitution](#) to dismiss the government of Hichem Mechichi ([Presidential Decree No. 2021-69](#)) and suspend the Parliament ([Presidential Decree No. 2021-80](#)). Initially presented as a temporary measure to overcome political paralysis, this state of exception progressively turned into a concentration of legislative, executive and judicial powers in the presidency (see, in general, [FIDH, 2025](#)).

In the months that followed, a series of emergency decrees dismantled the institutional architecture created after 2011. [Presidential Decree No. 2021-117](#) of 22 September 2021 granted the President full legislative authority, eliminating parliamentary oversight and revoking legal immunity of members of the House of People's Representatives ([HRW, 2021](#)). Further decrees restricted political participation, curtailed basic freedoms, and undermined judicial independence through the [dissolution of the High Judicial Council](#). This transformation was reinforced by the adoption of a new [Constitution in 2022](#), approved through a [controversial referendum](#), which entrenched a hyper-presidential system with minimal checks and balances.

In this context, the African Court became a crucial forum for contesting the legality of the President's acts and for reaffirming constitutional democracy. Through a series of landmark rulings between 2021 and 2024, the Court declared illegitimate several emergency decrees, ordered the restoration of judicial independence, and urged Tunisia to return to a democratic order. Rather than complying, the Tunisian authorities reacted by rejecting the

judgments and denouncing the Court's alleged interference in domestic affairs. The withdrawal of the Article 34 declaration must therefore be read as a direct response to the Court's jurisprudence and as part of a broader strategy aimed at insulating the regime from external accountability.

The aim of this contribution is to briefly examine Tunisia's withdrawal from a legal perspective. First, the scope of Article 34(6) and its interpretation will be outlined, taking into consideration the precedents of other African States that have opted for its revocation. Second, the analysis will turn to the recent case law of the African Court concerning Tunisia, showing how the Court's jurisprudence challenged the presidential concentration of powers and thus brought to the political decision to withdraw Article 34(6) declaration. Finally, the article will assess the way forward, considering the temporal effects of the withdrawal, the possible role of the African Commission, and the implications for the overall effectiveness of human rights litigation in Africa.

2. The African Court's Jurisdiction under Article 34(6): Legal Scope and the Growing Trend in State Withdrawals

The African Court on Human and Peoples' Rights derives its jurisdiction from the [1998 Protocol to the African Charter on Human and Peoples' Rights](#) (see, in general, F. VILJOEN, *International Human Rights Law in Africa*, 2nd edition, Oxford, 2012, p. 410-466). The Protocol, which entered into force in 2004, grants the Court authority to adjudicate disputes concerning the interpretation and application of the African Charter and any other human rights instruments ratified by the States concerned (Article 7). Within this framework, Article 34(6) plays a pivotal role: it enables individuals and non-governmental organizations with observer status before the African Commission on Human and Peoples' Rights to file cases directly before the Court, provided that the respondent State has lodged a unilateral declaration accepting such competence.

Article 34(6) has been central in enhancing the Court's effectiveness. While the African Commission remains an essential monitoring body, its quasi-judicial character and non-binding recommendations have long been criticized for their limited impact. By contrast, the Court issues binding judgments and can order specific remedies, including legislative repeal, institutional reforms, and monetary reparations. Direct access under Article 34(6) thus enhances the enforceability of human rights norms at the regional level, by transforming individuals from passive beneficiaries into active litigants before a supranational tribunal and by enabling NGOs to act as crucial agents of accountability, directly filing and participating in human rights litigation.

Yet, the optional nature of the declaration has been a structural weakness: of the [34 States that have ratified the Protocol](#), only [12 have deposited their unilateral declaration under Article 34\(6\)](#) and the trend in recent years has been steady.

Tunisia, after ratifying the Protocol in 2017, [deposited its Article 34\(6\) declaration](#) the same year. By granting individuals and NGOs direct standing, Tunisia aligned itself with a progressive minority of States willing to submit to external scrutiny of their domestic legal and political order. However, on 7 March 2025, the Tunisian authorities formally [notified](#) the African Union of their decision to withdraw the declaration, thereby removing the possibility of direct applications against the State by individuals and NGOs. The decision does not annul Tunisia's ratification of the Protocol itself, but it drastically reduces the accessibility of the Court.

The legal permissibility of such a withdrawal has been subject to debate, given that Article 34(6) does not expressly regulate denunciation. The Court, however, has confirmed that States retain the sovereign prerogative to revoke their optional declarations, provided that such revocation is not retroactive. In its [landmark ruling in *Ingabire Victoire Umuboya v. Rwanda*](#), the Court clarified that, although a State is always entitled to withdraw its declaration pursuant to Article 34(6), pending cases remain unaffected and that the withdrawal becomes effective only after the lapse of a one-year period following notification. Accordingly, in Tunisia's case, the revocation will take effect in March 2026. Until then, individuals and NGOs retain the right to file new cases, and the Court retains jurisdiction over those already lodged.

Tunisia's decision is not an isolated occurrence: it mirrors a broader pattern of disengagement by African States from the Court's individual jurisdiction.

[Rwanda](#) was the first to withdraw its declaration in 2016, following the Court's interventions in politically sensitive criminal proceedings (O. WINDRIDGE, *Assessing Rwexit: the impact and implications of Rwanda's withdrawal of its article 34(6) declaration before the African Court on Human and Peoples' Rights*, in *African Human Rights Yearbook*, 2018, pp. 243-258). [Tanzania](#), the most frequent respondent before the Court, did the same in 2019 after a series of rulings that condemned electoral restrictions and systemic due process violations (V. MTAVANGU & A. MBILINYI, *Tanzania's Withdrawal from the African Court and its Effects in Safeguarding of Human and Peoples' Rights*, in *Journal of Contemporary African Legal Studies*, 2023, pp. 19-36). [Benin](#) and [Côte d'Ivoire](#) followed in 2020, both in reaction to adverse judgments that struck at the heart of [controversial constitutional reforms and electoral disputes](#). In each instance, governments framed their withdrawal as a means to defend national sovereignty against what they perceived as judicial overreach. The pattern, however, reveals a more profound dynamic: the Court has increasingly become a venue where opposition parties, civil society actors, and marginalized individuals contest authoritarian backsliding, and States have responded by closing that avenue (on this matter, see G. GADISA, *State parties' withdrawal of direct access to African Court of Human and Peoples Rights: the need to reinvigorate complementarity*, in *Oromia Law Journal*, 2023, p. 141-165.).

The cumulative effect of these withdrawals is alarming. With Tunisia's exit, the number of States that continue to recognize NGOs' and individual access under Article 34(6) is reduced to a tiny minority, including Burkina Faso, Malawi, Mali, Ghana, Gambia, Niger, and Guinea Bissau. This contraction not only undermines the Court's accessibility but also raises fundamental questions about its legitimacy and effectiveness. If the trend continues, the African Court risks being reduced to a forum accessible only to States and the African Commission, thereby diminishing its potential as a protector of individual rights.

This concern is further amplified by the [Court's practice](#) to date. Virtually all of the 357 contentious cases received by the Court, as of September 2025, have been submitted by individuals (331 applications, accounting for 93%) and NGOs (22 applications, 6%). By contrast, States have initiated only a single case and the African Commission just three. In the absence of direct access granted by declarations made pursuant Article 34(6), the Court would therefore be deprived of the very cases that have constituted the overwhelming case-load of its jurisprudence. The revocation of Article 34(6) declarations, in this light, effectively amount to a decision by the States to exempt themselves almost entirely from the Court's jurisdiction, while formally remaining parties to the 1998 Protocol. The Tunisian withdrawal, therefore, not only narrows access but also accelerates the erosion of the Court's *raison d'être* as an effective guardian of rights.

3. *The Case-Law Behind Tunisia's Decision to Withdraw Article 34(6) Declaration*

As in the cases of Rwanda, Tanzania, Benin and Côte d'Ivoire, the withdrawal of Tunisia's declaration under Article 34(6) followed a series of adverse rulings striking at the institutional concentration of power. In fact, some of the most significant recent judgments of the African Court directly targeted measures adopted by Tunisian authorities during the state of emergency, questioning both the legality of presidential decrees and the erosion of judicial independence. It is precisely these rulings – perceived by the executive as intrusions into domestic sovereignty – that provided the background to Tunisia's decision to disengage from the Court's jurisdiction on applications issued by individuals and NGOs. An examination of this case law is thus essential to fully appreciate the reasons of the withdrawal and to assess its consequences for human rights protection in Tunisia.

3.1. *Application 017/2021 – Brahim Ben Mohamed Ben Brahim Belgeith v. Republic of Tunisia*

The applicant, Brahim Ben Mohamed Ben Brahim Belgeith, challenged a series of presidential decrees enacted under the so-called “état d'exception,” arguing that they undermined the democratic order and violated the right of Tunisian citizens to participate freely in the government of their country. In particular, it was argued that Tunisia had violated the right of the people to self-determination within the meaning of Article 20(1) of the [African Charter on Human and Peoples' Rights](#), Article 1(1) of the [ICESCR](#) and the [ICCPR](#) and Article 21(3) of the [UDHR](#); the right to participate in the conduct of public affairs guaranteed by Article 13(1) of the Charter and Article 25(a) of the ICCPR; the right to develop democratic values and human rights as established by the [African Charter on Democracy, Elections and Governance](#) (although Tunisia is one of the seven States that signed but did not ratify the Charter); the right to have the guarantees of human rights protected by Article 1 of the Charter; and the right of access to justice under Article 7(1)(a) of the Charter, Article 8 of the UDHR and Articles 2(3) and 14 of the ICCPR.

In its [judgment of 22 September 2022](#), after finding that it had material, personal, temporal and territorial jurisdiction to consider the application, the Court found that Presidential Decree No. 2021-117 was incompatible with the right to have one's cause heard, as per Article 7 of the Charter. This legal act, by which President Saïed concentrated legislative and executive powers in his hands, established, in fact, that decrees issued by the President of the Republic were not subject to appeal. Furthermore, since the Constitutional Court, at the time the application was filed, had not been operationalised, there was no judicial body or other authority in the State able to consider constitutional disputes relating to the powers of the President. According to the Court, «[t]he absence of the Constitutional Court thus created a vacuum in the Respondent State's judicial system in relation to resolution of constitutional disputes, particularly, those questioning the constitutionality of decrees issued by the President. As a result, it is evident that the Applicant was not able to challenge the constitutionality of the Presidential decrees. This in effect left him with no legal avenue to seek a remedy for his grievances and deprived him of his right to be heard» (para. 101).

At the same time, the Court found that Tunisia violated Article 13 of the African Charter on Human and Peoples' Rights, whose paragraph 1 guarantees every citizen «the

right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law». By *de facto* suspending the Constitution of 2014, dismissing the government, dissolving the Parliament, and ruling by decree, the so-called “exceptional measures” «disproportionately disrupted the work of the government including that of elected institutions such as the House of People’s Representatives» (para. 117). The Court also found that «the Respondent State was under an obligation to consider other least restrictive measures to deal with the said dispute prior to taking such drastic measures as the suspension of the powers of Parliament, and limiting the immunity of its members, who were freely elected by citizens in the exercise of their right to participate in the affairs of their government. The Respondent State’s failure to do so made the adopted measures not only disproportionate in relation to the stated goals but also with the Respondent State’s own Constitutional dispensation» (para. 118).

As a consequence, the Court ordered Tunisia to repeal Presidential Decree No. 2021-117, which included Decrees No. 69, 80, 109, 137, and 138 of 2021, and «to return to constitutional democracy within two (2) years from the date of notification» (para. 147). Additionally, the Court ordered Tunisia to establish an independent Constitutional Court and remove all legal impediments thereto within the same timeframe. In this regard, it is worth emphasizing that this decision represents a rare example of an international Court directly mandating the restoration of constitutional democracy in a State, including by ordering the establishment and operationalisation of a domestic constitutional body.

3.2. *Application 004/2023 – Moahd Kheriji Ghannouchi & Others v. Republic of Tunisia*

The second major case (still pending) concerns the detention of political leaders and opposition figures following the July 2021 *coup d’état* (see, on the matter, [HRW, 2025](#)). Among the applicants was Moahd Kheriji Ghannouchi, the son of Rached Ghannouchi – the leader of Ennahda Party, the largest party in 2019 parliamentary elections – along with relatives of other politicians, who were detainees in relation to several alleged criminal offences, and Ridha Bouzayene, who died during the demonstrations of 14 January 2022.

The applicants argued that Tunisia was violating Articles 1, 2, 4, 5, 6, 7, 9, 10, 11, 13, 16 and 26 of the African Charter and issued a request for provisional measures, under Article 27(2) of the Protocol, which provides that «[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary». In particular, in their request for interim measures the applicants demanded that the detainees be granted unimpeded access to their lawyers and to doctors and that the legal and factual grounds of their detention and prosecution be disclosed. Furthermore, considering that their arrests and detention had not been undertaken in conformity with international human rights obligations, they requested the release of their relatives from detention.

In its [ruling of August 2023](#), the African Court granted provisional measures, emphasizing that Tunisia was under an obligation to protect the detainees’ health and due process rights, while criminal proceedings were pending. In particular, the Court noted that the father of one applicant was a man of over 80 years of age and he was sentenced to imprisonment *in absentia*. It also found that applicants’ relatives had been imprisoned without a judicial ruling and that no information was available on the procedures followed against them. Therefore, the Court stated that «the condition of imminent danger and urgency [were] satisfied given that the procedures followed in the arrest and imprisonment of the Applicants’

relatives [were] not clear especially in terms of clarifying the charges that they are answering» (para. 47).

At the same time, however, the Court observed that it could not order the release of the applicants' relatives at that stage, since this decision would pre-empt its determination on the merits (still pending).

On this basis, the Court ordered Tunisia to take all measures to allow the detainees and their families to have access to and communicate with lawyers and doctors of their choice. Furthermore, it ordered the State to furnish the detainees, their lawyers and families with adequate information and facts relating to the legal and factual basis for their detention.

3.3. *Application 016/2021 – Samia Zorgati v. Republic of Tunisia*

The application lodged by Samia Zorgati originated in the transitional period that followed the overthrow of President Ben Ali in January 2011. Despite having sworn to uphold the 1959 Constitution, the interim successor, Fouad Mebazaa, soon suspended it, enacting [Decree-Law No. 2011-14](#) on 23 March 2011 to establish a temporary reorganization of public powers in Tunisia. This provisional arrangement paved the way for the drafting and promulgation of a new Constitution in January 2014, which was adopted without popular consultation or referendum.

The applicant contended that this process of constitutional replacement, carried out without direct participation of the Tunisian people, generated widespread discontent and social unrest. According to her account, the exclusion of citizens from the constitutional process resulted in a climate of instability characterized by the collapse of the rule of law, institutional disintegration, recurrent political crises, and even episodes of violence within the political class itself, coupled with a broader rise in criminality.

On this basis, she alleged violations of fundamental rights guaranteed under the African Charter: specifically, the right of peoples to self-determination under Article 20 and the obligation of the State to ensure judicial independence and to establish institutions for the protection of human rights under Article 26.

In its [decision of 13 November 2024](#), the Court partially agreed with the applicant's submissions.

On the one hand, in fact, the Court rejected the applicant's contention regarding the violation of Article 20. It acknowledged that self-determination implies a participatory dimension in the adoption of a constitution, yet found that the 2014 Constitution had been elaborated by a Constituent Assembly elected by universal suffrage, thereby legitimately exercising the sovereign will of the people. As the Court put it, «the adoption and promulgation of the 27 January 2014 Constitution without recourse to a referendum did not violate the people's right to self-determination, so that its validity is not impaired» (para. 115).

On the other hand, the Court upheld the claim under Article 26, which provides that «States parties [...] shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the [...] Charter». The Court found that the failure to establish the Constitutional Court as well as the abolition of the High Judicial Council by [Presidential Decree-Law No. 2022-11 of 12 February 2022](#) amounted to violations of Article 26 of the Charter. The latter decree, actually, empowered the President to intervene in the promotion, discipline and dismissal of judges, in violation of the obligation to guarantee the independence of the judiciary. According to the Court,

«neither the executive nor the legislature may interfere, directly or indirectly, in the judiciary's decision-making powers, including the power to manage the careers of magistrates, who are the embodiment of the judiciary» (para. 88).

Significantly, this reasoning went beyond the applicant's initial framing of the case, as the Court explicitly found that Tunisia had also violated the principle of the independence of the legislature from the executive, in relation to the application of [Presidential Decree No. 2022-309 of 30 March 2022](#), which dissolved the House of People's Representatives. It emphasized that «separation of powers is of capital importance in a democratic society, since it ensures balance of power between the executive and the legislature as well as their proper functioning» (para. 99). The Court also recalled that «separation of powers requires that the three pillars of the State exercise their powers independently. The executive branch must be seen to be separate from the judiciary, and parliament» (para. 105).

Turning to reparations, the Court declared moot the applicant's request to nullify the 2014 Constitution, as well as her demand to re-establish the Assembly elected in 2009, in light of subsequent constitutional and electoral developments. However, it issued two significant orders: first, it reiterated Tunisia's obligation to operationalize the Constitutional Court within six months from the notification of the judgment, thereby addressing the structural vacuum that had persisted since the adoption of the 2014 Constitution; second, it ordered the repeal of Decree-Law No. 2022-11 and the reinstatement of the High Judicial Council within the same six-month timeframe. These remedies imposed concrete institutional reforms aimed at restoring the balance of powers and safeguarding judicial independence in Tunisia.

3.4. *Application 008/2024 – Hammadi Rahmani & Others v. Republic of Tunisia*

The *Hammadi Rahmani & Others* case (still pending) represents a further example of the African Court's engagement with Tunisia's measures affecting judicial independence and the separation of powers.

The applicants, former judicial officers, challenged [Decree-Law No. 2022-35 of 1 June 2022](#), which allowed the President to summarily dismiss judges, and [Presidential Decree No. 2022-516 of 1 June 2022](#), which had concretely removed 57 magistrates – including the applicants – from office, allegedly for being involved in corruption and obstructing hearings of terrorism cases.

They argued that these measures threatened the right to participate freely in the governance of their country as protected by Article 13(1) of the Charter and Article 25 of the ICCPR; the right to a fair trial, which requires respect for the independence of the judiciary as an institution and of individual judges, security of tenure, the principle of the separation of powers, and respect for legal safeguards for litigants and judges, in accordance with Articles 1, 7 and 26 of the Charter and Articles 3(2) and 14 of the ICCPR; and the right to work and to hold public office under Article 15 of the Charter, Article 25(c) of the ICCPR and Article 7 of the ICESCR, as well as the right to equality and non-discrimination in accordance with the provisions of Article 3 of the Charter and Articles 2 and 4 of the ICCPR.

In its [decision on the provisional measures](#) of 3 October 2024, the Court ordered the suspension of both decrees, reaffirming its previous findings in *Zorgati*.

The Court, emphasizing that «principle of separation of powers requires that the executive branch of government refrains from interfering unduly in the operation of the judiciary» (para. 34), noted that the provisions of the Decree-Law No. 2022-35 posed «an

actual risk of the executive branch of government interfering with the operation of the judiciary. Such risk in turn pose[d] a threat to the independence of judicial officers and of the judiciary as a whole» (*ibid.*).

By ordering the provisional suspension of the contested decrees, while the main application is still pending, the Court reiterated that emergency powers cannot serve as a justification for dismantling institutional safeguards or for subordinating the judiciary to the executive branch.

4. *Conclusions and Way Forward*

Tunisia's withdrawal of its Article 34(6) declaration represents a turning point in the relationship between the State and the African human rights system, following the path of Rwanda, Tanzania, Benin and Côte d'Ivoire. This move deprives citizens and civil society of an international forum of last resort at a moment of acute democratic backsliding, as denounced by several civil society organizations (such as [CFJ](#), [ICJ](#), [ACC](#), and [others](#)). More broadly, the multiplication of withdrawals signals a systemic fragility: if the trend continues, the Court risks being reduced to a forum accessible only to States and the African Commission, becoming increasingly marginal in the protection of individual rights.

At the same time, the case-law concerning the presidential centralization of powers in Tunisia illustrates both the strength and the vulnerability of the African Court: the repeated interventions of the Court related to the principles of separation of powers and judicial independence, clearly articulating violations and prescribed remedies, reflect a jurisprudence that is increasingly assertive in defending the core principles of constitutional democracy in the continent; yet the pattern of non-compliance reveals its vulnerability in the absence of effective enforcement mechanisms when confronted with resolute resistance of the States (see G. GADISA TUFA, *The African Court on Human and Peoples' Rights: assessing its effectiveness*, in *African Human Rights Yearbook*, 2024, p. 206-229).

However, further considerations can be made regarding the immediate and longer-term implications of Tunisia's withdrawal.

First, the limitation of Court's jurisdiction will take effect only on 7 March 2026: until that date individuals and NGOs retain the possibility of submitting applications directly to the Court. This transitional period thus represents a final window to seek judicial remedies at the regional level, creating a last meaningful opportunity for civil society actors (similarly, [N. DE SILVA & M. AMADI, 2025](#)).

Second, in light of growing number of withdrawals of Article 34(6) declarations, the African Commission could retain a central role in human rights litigation, reaffirming its complementarity with the African Court, as set out in Article 2 of the African Court Protocol. Even if individual applications will no longer be accepted, the Commission can continue to refer matters to the Court as per Article 5(1)(a) of the Protocol. This mechanism, regulated by Articles 130 and 133 of the [Rules of Procedure of the Commission](#), can preserve a judicial avenue for serious or systemic violations of human rights. Although, as above mentioned, the Commission has so far been reluctant to make use of its referral power (see F. VILJOEN, *Understanding and Overcoming Challenges in Accessing the African Court on Human and People's Rights*, in *International and Comparative Law Quarterly*, 2018, p. 63-98), the current context can represent an opportunity to revitalize its role and make an increasing use of this competence, thereby ensuring that human rights violations may still reach the Court's scrutiny, even in the absence

of direct access.

In conclusion, the combination of the Court's assertive jurisprudence, the political resistance of the Tunisian State, and the upcoming revocation of Article 34(6) jurisdiction delineates a complex and uncertain landscape. Moving forward, scholars and practitioners may need to explore innovative strategies to bridge the gap between formal rulings of the Court and actual implementation, including strengthening the role of the Commission, promoting civil society engagement, exploring the potential role of sub-regional International Organizations, and fostering regional and international pressure to ensure compliance.

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