

## Provisional measures

The Court may on its own accord adopt provisional measures in accordance with article 27(2) of the Protocol and rule 51(1) of the Rules of the Court, ‘in cases extreme gravity and urgency and when necessary to avoid irreparable harm to persons’ and which the court deems to be necessary to be in the interest of the parties or justice. (*African Commission on Human and Peoples’ Rights v Great Socialist People’s Libyan Arab Jamahiriya (Order for Provisional Measures)* para 10; *African Commission on Human and Peoples’ Rights v The Republic of Kenya*, application 006/2012, order of provisional measures, 15 March 2013, paras 11, 20 & 22; *General Kayumba Nyamwasa & Six Others v Republic of Rwanda*, application 016/2015. Order on the Request of interim measures, 24 March 2017 para 33).

Where there is a request for provisional measures, ‘the Court need not satisfy itself that it has jurisdiction on the merits of the case.’ It is only required to satisfy itself, *prima facie*, that it has jurisdiction (*African Commission on Human and Peoples’ Rights v The Republic of Kenya*, application 006/2012, order of provisional measures, 15 March 2013, para 15; *Evodius Ruechura v Tanzania* para 7; *Lohé Issa Konaté v Burkina Faso*, application 004/2013, order of provisional measures, 4 October 2013, para 13). In *Konaté v Burkina Faso* (para 15) the Court held that it had *prima facie* jurisdiction because the respondent state had ratified the African Charter, the Protocol and made the article 34(6) declaration. In *Evodius Ruechura v Tanzania* para 10, the Court found that it had *prima facie* jurisdiction following allegations of violations of the African Charter and the ICCPR.

The Court may in similar terms order provisional orders at the request of either of the parties (*Konaté v Burkina Faso, Order of provisional measures* paras 17&18). In *African Commission v Libya*, the Court considered the imminent risk to the loss of human as a situation of extreme gravity and a risk to irreparable harm. Similarly, in *Konaté v Burkina Faso*, the Court considered the deterioration of the applicant’s health as irreparable harm for which it ordered provisional measures in the form of adequate healthcare for the applicant.

In *Evodius Ruechura v Tanzania*, the fact that the applicant was on death row was considered a risk of irreparable harm and extreme gravity to the Applicant such that the Court may issue *proprio motu* provisional orders to preserve the *status quo* pending the determination of the main application. (See article 27(2) of the Protocol and rule 51(1) of the Rules)

The Court has held that it cannot grant a provisional measure which would adversely affect the consideration of the substantive case. (*Konaté v Burkina Faso, Order of provisional measures* para 19). In *Konaté* the applicant had been sentenced to one year imprisonment and a cash fine for libel. The applicant submitted that his sentence was in breach of his right to freedom of expression and prayed the Court to among others declare that his sentence was a violation of his right to freedom of expression. The applicant also requested for provisional measures requiring the respondent state to release him immediately or in alternative provide him with adequate medical care. The court held that it could not grant the first provisional measure requested because it directly corresponds with one of the substantive reliefs sort and would thus adversely affect the consideration of the substantive case (paras 19 & 20).

The Court will decline the grant provisional measures where the object of the request has been overtaken by events (*General Kayumba Nyamwasa & Six Others v Republic of Rwanda*, application 016/2015, Order on the Request of interim measures, 24 March 2017, paras 34 & 35).