



Inter-Parliamentary Union

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Madagascar

**Decision adopted unanimously by the IPU Governing Council at its 213th session
(Geneva, 27 March 2024)**



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MDG-17 – Fetra R. Razafitsimialona

Alleged human rights violations

- ✓ Threats, acts of intimidation
- ✓ Arbitrary arrest and detention
- ✓ Excessive delays in proceedings
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Violation of freedom of movement
- ✓ Failure to respect parliamentary immunity

A. Summary of the case

On 8 November 2023, during a demonstration by a group of 10 presidential candidates, member of parliament Fetra R. Razafitsimialona was arrested for taking part in an unauthorized demonstration held to protest against the lack of transparency of the presidential election. According to the complainants, the presidential election was considered fraudulent in view of the measures taken by the incumbent government, including the excessive use of force to break up the demonstrators. In addition, seven months before the official start of the presidential election, the Minister of the Interior had reportedly announced a ban on political demonstrations in public places.

Case MDG-17

Madagascar: Parliament affiliated to the IPU

Victim: An opposition member of parliament

Qualified complainants: Section I.(1) (a) of the Committee Procedure (Annex I)

Submission of complaint(s): November 2023

Recent IPU decision(s): ---

IPU mission(s): ---

Recent Committee hearing(s): ---

Recent follow-up:

- Communication from the authorities: Letter from the Speaker of the National Assembly (March 2024)
- Communication from the complainants: November 2023
- Communications to the authorities: Letters to the Speaker of the National Assembly: (March 2024)
- Communication to the complainants: March 2024

The complainants claim that the member of parliament was detained on the premises of the Criminal Investigation Unit of Fiadanana and that his appearance before the Public Prosecutor's Office was extended by 48 hours for no valid reason. He was subsequently charged with inciting the population to take part in unauthorized demonstrations and was briefly remanded in custody before being released on 17 November 2023 under judicial supervision.

Mr. Razafitsimialona was supposed to be tried on 19 December 2023 but the decision was postponed to 30 January, then 6 February and then again to 12 March 2024. The complainants stated that the court had referred the case to the High Constitutional Court because of the objection of unconstitutionality raised by the parliamentarian's lawyers, who claimed that Mr. Razafitsimialona had been arrested, detained and charged in violation of his constitutional right to parliamentary immunity as guaranteed under article 73 of the Constitution of Madagascar.

The complainants state that the accusations made against Mr. Razafitsimialona violate his right to freedom of expression and assembly. Further, they allege that the proceedings were brought against him because he had peacefully expressed his opposition to the conditions in which the presidential election was held.

In their letter of 18 March 2024, the parliamentary authorities stated that the National Assembly had taken a number of measures to protect Mr. Razafitsimialona's rights. Indeed, after a meeting with the members of the Standing Bureau, the Assembly had decided to send a letter to the Minister of Justice on 6 December 2023 to ask that Mr. Razafitsimialona's parliamentary immunity be respected, recalling the relevant constitutional provisions during the parliamentary session. In their letter to the Minister of Justice, the parliamentary authorities recalled that, in line with the provisions of article 73, paragraph 2, of the Constitution and article 112 of the National Assembly's Rules of Procedure, any proceedings brought against parliamentarians during a parliamentary session required their parliamentary immunity to be lifted. The parliamentary authorities recalled that the request to lift parliamentary immunity should be made in writing, by the Minister of Justice, to the Standing Bureau of the National Assembly, which was not done.

The parliamentary authorities added that some members of parliament had heckled the Minister of Justice when she visited the National Assembly during its recent extraordinary sitting in February 2024. The Speaker of the Assembly said in her letter that she had received no official, satisfactory response to date.

Further, the parliamentary authorities said in their letter of 18 March 2024 that the objection of unconstitutionality raised by Mr. Razafitsimialona's lawyers had been deemed inadmissible by the High Constitutional Court in its decision of 22 February 2024, a copy of which was forwarded to the Committee by the National Assembly. In its decision, the High Constitutional Court considered that the objection of unconstitutionality formulated by Mr. Razafitsimialona, seeking to interpret article 73 of the Constitution on parliamentary immunity and *flagrante delicto*, could be likened to a request for an opinion for the purposes of interpretation of a constitutional provision. However, under article 119 of the Constitution, that privilege was reserved exclusively for heads of institutions and for all decentralized local government bodies. The High Constitutional Court thus considered that the parliamentarian's referral of the case to the court could not be considered to be an objection of unconstitutionality within the meaning of article 118¹ of the Constitution, and that it should therefore be declared inadmissible.

The decision of the Antananarivo Court on Mr. Razafitsimialona's case will be handed down on 9 April 2024.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. Notes that the complaint concerning the situation of Mr. Fetra R. Razafitsimialona is admissible, considering that the complaint: (i) was submitted in due form by qualified complainants under section I.1(a) of the Procedure for the examination and treatment of complaints (Annex I of the

¹ Article 118, paragraph 1, of the Constitution of Madagascar: "A Head of Institution or one quarter of the members of one of the Parliamentary Assemblies or the bodies of the decentralized local government or the High Council for the Defence of Democracy and the Rule of Law may refer to the Constitutional Court, for review of constitutionality, any legislative or regulatory text as well as all matters falling within its jurisdiction".

revised Rules and Practices of the Committee on the Human Rights of Parliamentarians); (ii) concerns an incumbent member of the National Assembly at the time of the alleged facts; and (iii) concerns allegations of threats and acts of intimidation, arbitrary arrest and detention, excessive duration of proceedings, violation of freedom of opinion and expression, violation of freedom of assembly and association, violation of freedom of movement and violation of parliamentary immunity, allegations which fall under the Committee's mandate;

2. *Thanks* the parliamentary authorities for their letter of 18 March 2024; *welcomes* the measures taken by the National Assembly to protect Mr. Razafitsimialona's rights, including his right to parliamentary immunity; and *wishes* to be kept informed of any response received from the Minister of Justice;
3. *Regrets* that Mr. Razafitsimialona has been tried for carrying out his parliamentary mandate by participating in a demonstration held to denounce the decisions taken by the incumbent government the day before the presidential election; *expresses its concern* at the decision of the Minister of the Interior to ban political demonstrations in public places; and *considers* that this decision constitutes a serious violation of the civil and political rights of Malagasy citizens;
4. *Calls on* the judicial authorities to drop the charges against Mr. Razafitsimialona; and *hopes* that the decision to be handed down on 9 April 2024 by Antananarivo Court will clear the parliamentarian of the charges against him, since they appear to be based merely on the peaceful exercise of his rights to freedom of expression, association and assembly, which are guaranteed under the International Covenant on Civil and Political Rights, to which Madagascar has acceded;
5. *Notes* the decision of the High Constitutional Court dismissing the objection of unconstitutionality raised by Mr. Razafitsimialona; *stresses*, nevertheless, that parliamentary immunity constitutes one of the most fundamental rights of the representatives of the people, the aim of which is to guarantee their right to freedom of opinion and expression and protect them from politically motivated judicial proceedings; and *encourages* the Malagasy authorities to take all necessary measures to improve the protection of the rights of all parliamentarians, including the right to freedom of opinion and expression;
6. *Requests* the Secretary General to convey this decision to the Speaker of the Parliament of Madagascar, the complainants and any third party likely to be in a position to supply relevant information;
7. *Requests* the Committee to continue examining the case and to report back to it in due course.