



Inter-Parliamentary Union

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Niger

RN/115 - Amadou Hama

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Amadou Hama, former Speaker of the National Assembly of Niger, pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised rules and practices of the Committee), and the decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, January 2015),

Referring to the letter of the Speaker of the National Assembly of 23 March 2015 and the letters of the Secretary General of the National Assembly of 23 April 2015 and 6 October 2015,

Considering the following information on file: on 27 August 2014, the Bureau of the National Assembly of Niger authorized the arrest of Mr. Amadou Hama, at the time the Speaker of the National Assembly, in response to a request made by the Prime Minister on 25 August 2014 in the context of judicial proceedings linked to trafficking in babies; Mr. Amadou Hama fled Niger on 28 August 2014 following the Bureau's decision and is currently abroad; a national arrest warrant was issued for him and he was formally charged on 4 December 2014, along with 30 other people, including his wife; the Niamey Criminal Court opened proceedings in the case on 2 January 2015 and declared that it did not have jurisdiction to try the case on 30 January 2015; the prosecution appealed against this decision; the Court of Appeal delivered its verdict on 13 July 2015; it overturned the decision of the court of first instance and ordered the Criminal Court to rule on the merits of the case; Mr. Amadou Hama has appealed against the decision and the trial on the merits can only be held after the Supreme Court has issued its ruling,

Considering that Mr. Amadou's wife benefits from the assistance of a lawyer, that Mr. Amadou Hama will be tried in absentia and will be unable to be represented by a lawyer in his absence from Niger but that, should he be convicted in absentia, he can oppose the verdict and ask for a retrial in his presence pursuant to the Code of Criminal Procedure,

Considering that, pursuant to the referral order of the examining magistrate dated 4 December 2014, all the persons charged are being prosecuted for "child substitution" (and aiding and abetting child substitution), forgery and use of forged documents, and criminal conspiracy, which are punishable by up to 10 years in prison and revocation of civic and political rights; that Mr. Amadou Hama's wife, along with other women, is accused of faking their pregnancies and purchasing newborn babies in Nigeria through a Nigerian woman healer involved in a sub-regional baby-trafficking network, and of obtaining false birth certificates on their return to Niger; that Mr. Amadou Hama is accused of complicity for allegedly having known of his wife's conduct and having had false birth certificates issued,

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Bearing in mind the complainant's allegations that the procedure followed by the National Assembly to authorize Mr. Amadou Hama's arrest took no account of his parliamentary immunity and rights of defence, that there is no evidence to back up the charges against him and that he is the victim of a campaign of political and legal harassment,

- **As concerns parliamentary immunity and the procedure followed by the National Assembly to authorize the arrest**

Considering that, according to the complainant, Mr. Amadou Hama's parliamentary immunity and rights of defence were disregarded, as follows:

- Mr. Amadou Hama was heard by neither the Bureau, of which he was the President at the time, nor a committee of the National Assembly; the file containing the charges against him was not made available to him and the requests filed by the judicial and executive authorities provided scant particulars in this respect;
- The presumption of innocence was violated, given that Mr. Amadou Hama's arrest was requested without him first being asked for his version of events and without considering such alternatives as his voluntary appearance or release on bail, and even though the procedure did not have the prior authorization of the National Assembly;
- The Prime Minister's request did not contain sufficient information to enable the Bureau to deliberate on the request and to assess whether the prosecution was serious and not an abuse of process, in compliance with the jurisprudence of the Constitutional Court required; namely, the information provided did not include information regarding the acts of which Mr. Amadou Hama is accused, the circumstances in which they occurred, the degree to which he was implicated, the criminal qualification of the acts and the measures requested, in particular, any deprivation of freedom; the Bureau did not ask for the missing information and reached a decision on the request within 48 hours, without waiting for the Constitutional Court to rule on Mr. Amadou Hama's application for interpretation of the constitutional provisions regarding parliamentary immunity;
- The executive authorities waited until the National Assembly was no longer in session to introduce the request, in order to ensure that it would be handled exclusively by the Bureau and not put to a vote in plenary, where it would require a qualified majority (according to the complainant, the vote would have gone against the Government); the initial request from the judicial authorities is dated 16 July 2014, and the matter should therefore, according to the complainant, have been placed on the agenda of the extraordinary session of parliament held from 5 to 19 August 2014;
- The proceedings against Mr. Amadou Hama had not been authorized before his arrest was requested, and this constitutes disregard for his parliamentary immunity; according to article 88(4) of the Constitution, when parliament is not in session, the Bureau may authorize the arrest of a parliamentarian but does not have jurisdiction to authorize judicial proceedings; consequently, in order for the Bureau to authorize an arrest when parliament is not in session, the judicial proceedings against the parliamentarian concerned must first have been authorized by the National Assembly meeting in plenary during the session, with due regard for the procedure for lifting parliamentary immunity, and this was not done in the present case;
- The National Assembly Standing Orders do not stipulate the practical modalities to be followed by the Bureau when authorizing an arrest; they contain no provisions on the Bureau's decision-making process or on the guarantees relating to the rights of defence;
- The Bureau's decision was not valid because the Bureau's composition at the time it made the decision did not conform to the Constitution; the decision was made only by the members of the Bureau from the majority, in the absence of those from the opposition; furthermore, on the date the decision was made, the Bureau's composition continued to infringe article 89(1) of the Constitution, which provides that "[t]he composition of the Bureau must reflect the political configuration of the National Assembly"; this was confirmed by the Constitutional Court,

Considering also that, according to the parliamentary authorities, the procedure followed by the National Assembly was in conformity with the Constitution and did not disregard Mr. Amadou Hama's parliamentary immunity, in particular in view of the following:

- Contrary to what he alleged, Mr. Amadou Hama knew what the facts and evidence underlying the charges against him were (the authorities did not indicate how this information had been provided to him);
 - The Bureau offered Mr. Amadou Hama the possibility to defend himself before authorizing his arrest, but Mr. Amadou Hama instead engaged in the following stalling tactics: (i) he did not convene a meeting of the Bureau on 26 August 2014 in response to the government request, even though seven members of the Bureau had requested such a meeting in writing; (ii) he had preferred to reply to the Prime Minister in person (asking for additional information) on the same date, without first consulting the Bureau; (iii) he had filed a petition with the Constitutional Court, asking it to interpret the constitutional provisions on parliamentary immunity with a view to contesting the Bureau's jurisdiction in that regard;
 - The National Assembly could not refuse to respond to the Government's request without valid grounds; the request having been made while it was not in session, the National Assembly had no choice in terms of procedure and had simply applied article 88(4) of the Constitution, which empowers the Bureau to act in such cases;
 - Although neither the Constitution nor the National Assembly Standing Orders stipulate a specific procedure to be followed by the Bureau when it authorizes the arrest of a member of parliament, the members of the Bureau verified that the Government's request was honest and sincere and considered that the proceedings were neither an abuse of process nor vexatious; the members of the Bureau reached that conclusion because the procedure did not target Mr. Amadou Hama alone and he was the only suspect still at large on the day of the Bureau meeting; the minutes of the meeting of the Bureau of 27 August 2014, forwarded by the authorities, say that "the matter was extensively discussed and considered in depth", but without further details;
 - In its decisions of 4 and 9 September 2014, the Constitutional Court held that, when parliament was not in session, members of parliament benefit from a lower level of protection from criminal or vexatious proceedings instigated against them on matters unrelated to the exercise of their mandate; it held that a member of parliament could be prosecuted without authorization at such times, and that only the arrest of a member of parliament required prior authorization when parliament was not in session, such authorization falling under the jurisdiction of the Bureau;
 - In the same decisions, the Court also stated that the National Assembly must assess the "serious, honest and sincere" character of legal proceedings instituted against a member of parliament when parliament was in session, but that determining the grounds for the arrest of a member of parliament when parliament was not in session was the sole responsibility of the Bureau; it did not consider that it was empowered to determine the lawfulness of the legal proceedings, and said that the procedure for lifting parliamentary immunity did not apply when it came to authorizing the arrest of a member of parliament when parliament was not in session, and that such authorization was equivalent in effect to lifting immunity;
 - With regard to the conformity of the composition of the Bureau with the Constitution, the Constitutional Court ruled that a Bureau made up of 11 members did not reflect the configuration of the National Assembly and was not in conformity with the Constitution, but that the current composition of the Bureau of the National Assembly was the result of the decision made by the chairpersons of parliamentary groups to withdraw the applications submitted for the vacant posts and thereby to provisionally waive their right to occupy the two seats to which they were entitled under article 89(1) of the Constitution; the Court therefore held that the other elected members of the Bureau had to ensure that the National Assembly functioned properly for as long as the vacancies remained unfilled,
- **As concerns the charges and respect for due-process guarantees in the judicial proceedings**

Considering that, according to the complainant: the charges are groundless and pure fabrications; they are further examples of the many acts of political and legal harassment directed against

Mr. Amadou Hama, his relations and his party's leaders and activists since August 2013; the aim of the harassment is to remove Mr. Amadou Hama, an opposition leader, from the post of Speaker of the National Assembly and to prevent him from standing in the 2016 presidential elections; Mr. Amadou Hama therefore preferred to leave Niger and shield himself from political exploitation by Niger's justice system,

Considering also that, according to the complainant, Mr. Amadou Hama's wife had finally managed to become pregnant thanks to the help of a Nigerian doctor who had been recommended by the second wife of the Head of State, and her pregnancy was known to the Head of State himself, who had offered her gifts, in keeping with the traditions of Niger; his wife's pregnancy was kept under observation in Nigeria, to which she travelled several times before giving birth on 1 September 2012; a baptism was organized in Niamey to celebrate the children's birth, and the Head of State himself had attended; all the documents attesting to the pregnancy and to the medical examinations performed in Nigeria had been placed in the file, at the request of the magistrate; the complainant does not consider that he can speak to the veracity of the charges against the other defendants in the case, but he does consider that Mr. Amadou Hama and his wife have been shown no evidence of a link between them and any baby-trafficking network or the alleged "baby factory" or "clinic" run by the Nigerian healer,

Taking into account that, according to the parliamentary authorities, the judicial proceedings were conducted in total independence and in compliance with the Constitution and the laws of Niger; they came in the wake of a judicial investigation of several months that had established that the purchase of newborn babies in Nigeria had become a widespread practice in Niger, particularly among affluent couples experiencing difficulties having children, and that this practice was part of a sub-regional human trafficking network; the judicial investigation had collected a substantial amount of evidence of child-trafficking and of the involvement of several high-profile citizens of Niger, including Mr. Amadou Hama and his wife, in particular through inquiries conducted in Nigeria and Benin in cooperation with the judicial authorities of those countries,

Taking into consideration that, in the referral order of 4 December 2014, the examining magistrate concluded that "all the wives simulated pregnancy, knowing full well that they were sterile or could not have children, and bought babies at an exorbitant price", that his conclusions are based, not on conclusive evidence, but rather on deductions made from a web of evidence establishing, according to him, that all the families implicated followed the same approach, and that all the women implicated denied having faked their pregnancy and having bought children and said they had delivered their own children,

Considering also that, according to the above-mentioned referral order, Mr. Amadou Hama's wife did not acknowledge the facts that were alleged against her; she stated that she had given birth to twins on 1 September 2012 following a traditional medicine treatment in Nigeria; several persons having accompanied her to Nigeria (including her gynaecologist) seem to confirm her version of the facts and were reportedly also charged with being accomplices; two of these persons had reportedly fled before being thoroughly interrogated by the investigators; according to the examining magistrate, she furthermore refused to give the name of the clinics and physicians who had attended to her during her pregnancy and to produce an ultrasound; she also admitted to having taken her children to a clinic in Cotonou whose name she had reportedly forgotten, only to retract her statement later; for these reasons, the examining magistrate concluded that these elements were not "such as to rule out the idea that she had given birth as other women" with the assistance of the Nigerian traditional healer and made a stronger case for her conviction and guilt,

Considering that, in his letter of 23 March 2015, the Speaker of the National Assembly reaffirmed that the National Assembly believed that a DNA test was an irrefutable means of ascertaining the parentage of children, and stated that the Niger authorities had accepted the IPU offer of assistance to identify and facilitate the intervention of an independent expert to carry out the DNA test on Mr. Amadou Hama's wife,

Considering that, according the complainant, Mr. Amadou Hama's wife had offered to undergo a DNA test before his arrest to clarify the situation but, as the judge refused, she considered herself to be presumed guilty and subsequently refused to have a DNA test for fear that the results would be falsified; Mr. Amadou Hama refused, on the advice of his lawyers, to have himself or his wife undergo a DNA test, even one organized by an independent expert thanks to IPU facilitation, because he considers that the presumption of innocence must be upheld, that it is up to the prosecution service to furnish evidence, and that agreeing to take the test would set a dangerous precedent in the future,

Taking into consideration also that the parliamentary authorities have consistently stated that the case was not political in nature, that they acknowledged that Niger, and the National Assembly, were experiencing a period of political tension, but that the tension in question was due not to the "imported babies" case, but rather to: (i) the fact that Mr. Amadou Hama had left the majority and joined the opposition while continuing to occupy the post of Speaker of the National Assembly, and above all had conducted himself, not as a Speaker "above it all" but rather as an opposition leader; and (ii) a dispute relating to the renewal of the National Assembly Bureau in 2014, on which the Constitutional Court had ruled,

Bearing in mind the applicable constitutional, legislative and regulatory framework, in particular articles 88 and 89 of the Constitution of Niger, articles 9 to 13 of the law on the status of parliamentarian, articles 14 and 15 of the law on the status of the opposition, and Orders 49 to 55 of the National Assembly Standing Orders,

Taking into account that, in his letter of 23 March 2015, the Speaker of the National Assembly stated that the National Assembly undertook to review its basic texts to ensure better protection for parliamentarians,

Considering that Mr. Assane Dioma Ndiaye was mandated to observe the appeal proceedings and travelled to Niamey from 26 to 29 April 2015; even though the hearing was postponed at the last minute, he met with all parties and concluded in his mission report that the judicial proceedings appeared overall to have been conducted properly thus far; he noted that there were opposing views on the case and that, even if there was a legitimate suspicion of score settling, a number of concrete facts had nonetheless emerged that could be considered as grounds for prosecution; he recommended that the Committee again mandate an observer to monitor follow-up proceedings,

1. *Thanks* the authorities for their the cooperation and the documents forwarded;
2. *Also thanks* the trial observer for his mission report and takes note of his conclusions;
3. *Notes with concern* that parliamentary procedure has not been conducted with respect for the rights of defence of Mr. Amadou Hama and *recalls* that the *raison d'être* of parliamentary immunity, in particular parliamentary inviolability, is to ensure that parliament functions smoothly and in complete independence, shielding its members from frivolous accusations, and that, consequently, lifting a member's immunity is a serious measure that must be taken in conformity with the applicable constitutional, legislative and regulatory provisions and with absolute respect for the rights of defence of the parliamentarian concerned;
4. *Notes with concern* that, unlike the procedure for lifting immunity, the procedure for authorizing the arrest of a member of parliament by the Bureau while in recess is currently governed by no legal provisions; and *considers* that this legal vacuum is not conducive to ensuring due process; *therefore notes with interest* the Speaker of the National Assembly's commitment to amending its Standing Orders as soon as possible, with a view to establishing an appropriate framework for the procedure, in particular by incorporating all guarantees relating to the rights of defence; and *wishes* to be kept informed of progress achieved to that effect;
5. *Observes* that the judicial proceedings are ongoing; *agrees with* the trial observer's conclusion that the judicial proceedings appeared overall to have been conducted properly thus far; *takes note* of the Niamey Court of Appeal's decision of 13 July 2015; and *expresses the wish* to send an observer again when the trial on the merits begins;
6. *Notes the wish* of the complainant that the presumption of innocence should be upheld; and *considers* that it is up to the Prosecutor at this stage to furnish evidence against Mr. Amadou Hama and his wife; *hopes* that the trial on the merits will clarify the evidence collected by the prosecution service against them;

7. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainant and any third party likely to be able to provide relevant information and to take any necessary steps to organize a trial observer's mission in due course;
8. *Requests* the Committee to continue examining this case and to report back to it in due course.