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## Democratic Republic of the Congo

### DRC/32 - Pierre Jacques Chalupa

***Decision adopted unanimously by the IPU Governing Council at its 199<sup>th</sup> session (Geneva, 27 October 2016)***

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Pierre Jacques Chalupa, a former member of the National Assembly of the Democratic Republic of the Congo (DRC), and to the decision it adopted at its 198<sup>th</sup> session (March 2016),

*Referring* to letters from the Speaker of the National Assembly of 21 April, 3, 13 and 19 October 2016 and information provided by the complainants,

*Referring also* to the report on the mission conducted to the DRC from 10 to 14 June 2013 (CL/193/11(b)-R.2),

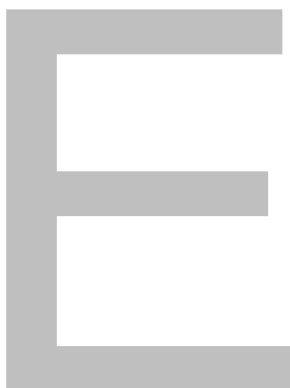
*Recalling* that Mr. Chalupa, a former member of the majority who joined the opposition at the 2011 elections, was: (i) arrested on 2 February 2012 by soldiers from the President's military guard, after having been given a bogus appointment by telephone, just as the strongly contested election results were being proclaimed; (ii) accused of having fraudulently obtained Congolese nationality and charged with forgery and the use of falsified documents; (iii) remanded in custody and then sentenced to three years in prison and deprived of his Congolese nationality,

*Recalling* that it had observed that the judicial proceedings were marred by flaws; that many of the items in the file tended to indicate that the case was political in nature and that it could not rule out that the judicial proceedings initiated against Mr. Chalupa were intended to neutralize him politically as a result of his having joined the political opposition,

*Recalling* that Mr. Chalupa was released on 22 November 2013, having served over half of his sentence, following the adoption of a presidential pardon order by the Head of State as part of measures taken to ease political tensions after national consultations in October 2013,

*Further recalling* that Mr. Chalupa suffers from serious health problems, which worsened while he was in detention; that he failed to receive appropriate treatment while in detention or after his release for want of specialist services in the DRC; that in November 2015, doctors stated that, given the time lapse since the appearance of the first symptoms, the advanced stage of the illness is life threatening for Mr. Chalupa and recommended an urgent transfer abroad for specialist treatment; that Mr. Chalupa was unable to travel abroad for treatment because his passport had been confiscated; and that the question of his nationality had not been settled by the Congolese authorities,

*Recalling* lastly that no progress has been made towards recognition of Mr. Chalupa's Congolese nationality since 2013, even though the latter has no other nationality and is therefore a stateless person; that the issue of the forfeiture of his nationality was not considered to be covered by the presidential pardon process; and that the following facts were provided in the file on this issue:



- Mr. Chalupa's nationality was never contested before he joined the opposition during the 2011 elections;
- Mr. Chalupa was elected a member of parliament of the DRC and undeniably has long ties with that country (place of birth, residence, married to a Congolese national, etc.);
- Mr. Chalupa considers that he is Congolese because he was born in the DRC and was unable to obtain Portuguese nationality through his father because of Portuguese nationality law; such cases are covered by article 9(2) of the 2004 nationality law, which stipulates that "... children born in the Democratic Republic of the Congo to foreign parents who cannot transmit their nationality to the child because their State of origin recognizes only *jus soli* or does not allow natural parents to transmit nationality";
- Portugal's Basic Law No. 2/2006 on nationality recognizes only *jus soli*; article 1(c) provides that, in exceptional cases, "children with one Portuguese parent, if they are born abroad and provided that they declare their wish to be Portuguese or register the birth with the Portuguese civil register" may request Portuguese nationality; according to Mr. Chalupa, his parents did not register his birth at the consulate and he never wrote to the Portuguese authorities declaring that he intended to acquire Portuguese nationality, as the Portuguese authorities have officially confirmed; Mr. Chalupa therefore does not have Portuguese nationality and explicitly renounced the possibility of acquiring it in 1992 in order to obtain recognition of his Congolese nationality at birth, which is unique and exclusive under article 10 of the Constitution of the DRC;
- Mr. Chalupa applied for nationality in 1992; according to the Minister of Justice, the attestation of nationality issued to Mr. Chalupa in 2001 (and deemed a forgery by the Congolese courts during the above-mentioned judicial proceedings) did not confer citizenship on him; the procedure for obtaining nationality requires a decree from the Council of Ministers to be successful and the application for citizenship was therefore still pending with the Congolese authorities, which had failed to complete the procedure;
- In its appeal ruling of 23 January 2013, the Supreme Court found that Mr. Chalupa was born in Burundi and not in the DRC, even though neither the court of first-instance ruling nor the parties had challenged his birthplace; the Court held that nothing in his birth certificate indicated that his parents had Congolese nationality and that he had made several applications for citizenship, but had yet to obtain Congolese nationality;
- During the hearing organized at the 130<sup>th</sup> IPU Assembly (March 2014), the delegation of the DRC stated the following: Mr. Chalupa was not a Congolese citizen by birth because his parents were not Congolese; Congolese law did not recognize *jus soli*, only *jus sanguine*; Mr. Chalupa therefore had only one option, namely to request Congolese nationality by applying for citizenship; it would appear, but had not been confirmed, that Mr. Chalupa's dual citizenship was the cause of the current situation; in view of the principle of the separation of powers, parliament could not intervene in a matter that came under the jurisdiction of the executive; the Congolese authorities have repeatedly stated that it was up to Mr. Chalupa to initiate a citizenship application procedure according to the law;
- The nationality law and its implementing decrees do not provide for a specific procedure for recognizing or establishing proof of Congolese nationality at birth in the case cited by Mr. Chalupa – which is different from an application for naturalization; the clarifications sought since January 2014 from the Congolese authorities regarding the procedure applicable to this case have not been provided as yet,

*Considering* the following new information supplied by the parties:

- Following the Speaker of the National Assembly's intervention, the authorities granted a passport to Mr. Chalupa in late April 2016, for humanitarian reasons, to allow him to seek treatment abroad; this passport, which is valid until 2021, states that Mr. Chalupa has Congolese nationality; Mr. Chalupa was thus able to begin chemotherapy overseas;
- In August 2016, Mr. Chalupa was informed of the adoption by the Council of Ministers of Decree No. 16/026 of 22 July 2016; this decree rejects Mr. Chalupa's application to obtain citizenship by naturalization on the grounds that "the applicant has provided no proof of having rendered outstanding services to the Democratic Republic of Congo, and

granting him naturalization would not be of interest, as it would not have a visible impact (...)” and that “on the contrary, his behaviour and conduct are a sign of lack of respect for the institutions”, without giving further clarification; the decree does not specify the date or the reference number for the application for naturalization;

- The complainant stated that Mr. Chalupa feared that the passport could be confiscated on the basis of this decree,
- The Speaker of the National Assembly sought clarification from the Minister of Justice on the potential possibilities for appeal against the decree of 22 July and concerning Mr. Chalupa’s fears about confiscation,

*Recalling* the following: the right to nationality is set out in many international instruments, notably article 24(3) of the International Covenant on Civil and Political Rights and article 5(d)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, both of which the DRC has ratified; United Nations Human Rights Council resolution 20/5 of 16 July 2012, on human rights and arbitrary deprivation of nationality, calls on “States to observe minimum procedural standards in order to ensure that decisions concerning the acquisition, deprivation or change of nationality do not contain any element of arbitrariness”, “[r]eaffirms that the right to a nationality of every human person is a fundamental human right” and “[r]eiterates that arbitrary deprivation of nationality, especially on discriminatory grounds such as political or other opinion (...) is a violation of human rights and fundamental freedoms”,

*Bearing in mind* the recommendations adopted in November 2015 at the conclusion of a world conference on the right to nationality in order to address statelessness, organized jointly by the IPU, the Parliament of South Africa and the United Nations High Commissioner for Refugees (UNHCR),

*Taking into account* that article 2 of the 2004 law on nationality stipulates that the law applies “subject to the application of the international treaties and principles of law recognized with regard to nationality” and that article 12 of the DRC Constitution provides that all Congolese are equal before the law and have the right to equal protection,

1. *Notes with satisfaction* that a passport has been issued to Mr. Chalupa for humanitarian reasons, which has enabled him to begin appropriate medical treatment, and *thanks* the Speaker of the National Assembly for his intervention; *wishes* to receive confirmation as soon as possible that this passport remains valid and that Mr. Chalupa can continue his medical treatment abroad without fear;
2. *Deeply regrets* that the issuance of the passport has not also led to the settlement of the question of Mr. Chalupa’s nationality once and for all; *again urges* the relevant authorities to recognize Mr. Chalupa’s nationality as soon as possible, in accordance with articles 2 and 9(2) of the law on nationality;
3. *Once again emphasizes* that Mr. Chalupa’s nationality had never been contested before he joined the opposition and that he has undeniable ties with the DRC, particularly as a former member of parliament; *recalls* that it considers that Mr. Chalupa was wrongfully deprived of his nationality and left stateless by the Congolese authorities after a conviction for forgery and the use of falsified documents, following a trial marred by serious flaws and in the absence of any form of appeal;
4. *Is, as a result, dismayed and deeply disturbed* by the Council of Minister’s decree and the reasons behind it; *wishes* to receive further clarifications on the decree, including whether it was issued in response to the application for naturalization filed in 1992 and whether there are any forms of appeals process against this decree;
5. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the Minister of Justice and any third party likely to be in a position to supply relevant information;
6. *Requests* the Committee to continue examining this case and to report back to it in due course.