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Democratic Republic of the Congo

DRC/32 - Pierre Jacques Chalupa

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 149th session (Geneva, 15-25 January 2016)

The Committee,

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 adopted by the IPU Governing Council at its 194th session (March 2014),

Referring to the letters from the Speaker of the National Assembly of 8 October and 21 December 2015 and 11 January 2016 and the information provided by the complainants,

Also referring to the report of the mission conducted to the DRC from 10 to 14 June 2013 (CL/193/11b)-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,

Further 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,

Recalling lastly that the issue of the forfeiture of his nationality was not considered to be covered by the presidential pardon and 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; and that the following facts were provided in the file on this issue:

- 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 DRC 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";

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- 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 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 DRC Constitution;
- Mr. Chalupa was elected to the Parliament of the DRC and has uncontested ties to the DRC (birthplace, residence, marriage with a DRC national, etc.), recognition of his nationality should pose no legal difficulties, especially since it was never ever contested before he joined the political opposition at the last legislative elections;
- 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; the Congolese administration has yet to complete that procedure; although no remedy is provided for in the event of a refusal to grant nationality or in the absence of a response to an earlier application, the competent authorities are under an obligation to process Mr. Chalupa's application because, under article 50 of the nationality law, any applications filed in a regular manner prior to the law's entry into force remain valid; Mr. Chalupa's application for citizenship lodged in 1992 is therefore still pending with the Congolese authorities, which have 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 130th IPU Assembly (March 2014), the delegation of the DRC affirmed 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;
- Article 2 of the 2004 nationality law provides that the law applies "subject to the application of international conventions and principles of law recognized with regard to nationality",

Considering that, according to the complainants, Mr. Chalupa has repeatedly taken steps since 2013 to secure the return of his passport, but without success,

Considering that the Congolese authorities have claimed that it was Mr. Chalupa's responsibility to begin a citizenship application procedure, pursuant to the law; that the nationality law and its implementing regulations did not provide for any specific procedure for the recognition or establishment of proof of Congolese nationality in the case cited by Mr. Chalupa – which differs from an application for citizenship – and that the information requested from the Congolese authorities in January 2014 on the procedure applicable to this case have not been sent to date,

Considering that, according to the complainants, Mr. Chalupa suffers from serious health problems, which worsened while he was in detention and have not been adequately treated since his release because of a lack of specialized medical services available in the DRC; that, in November 2015, doctors stated that, in view of the time elapsed since the onset of symptoms, the advanced stage of Mr. Chalupa's illness was life threatening, and recommended an urgent transfer abroad for

specialized treatment; that Mr. Chalupa is unable to travel abroad for treatment because his passport has been confiscated; and that the issue of nationality has not been resolved by the Congolese authorities,

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; 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 by the IPU, the Parliament of South Africa and the United Nations High Commissioner Refugees (UNHCR),

1. *Notes with concern* the deterioration in Mr. Chalupa’s health; and *deplores* that he is unable to travel abroad to receive proper medical care; *urges* the authorities to take, for humanitarian reasons, the necessary steps to issue him with travel documents urgently to enable him to travel abroad for medical purposes and then return to the DRC;
2. *Deeply regrets* that no progress has been made on the issue of Mr. Chalupa’s nationality since 2013; and *urges* the competent authorities to expedite recognition of his Congolese nationality, in view of the provisions of articles 9(2) and 2 of the nationality law, Mr. Chalupa’s undeniable long-standing ties with the DRC, and the procedures and steps he has undertaken in this regard; *wishes to be kept informed* by the authorities and the complainant;
3. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the Minister of Justice and to any third party likely to be in a position to provide relevant information;
4. *Decides* to continue examining the case.