**Violation of the presumption of innocence in Congolese law in the city of Lubumbashi .**

**ABSTRACT**

While the Universal Declaration of Human Rights of 1948 maintains in its first article that: “All human beings are born free and equal in dignity and rights.

The Constitution of the Democratic Republic of Congo of February 18, 2006, as revised to date, underlines the presumption of innocence, in its article 17 paragraph 9 in these terms: "Anyone accused of an offense is presumed innocent until his guilt has been established by a final judgment”. The wish of the Congolese constituent is not to consecrate impunity by this principle, but on the other hand he defends that any delinquent who violates a rule of law, be arrested, auditioned while preserving his dignity, until the knowledge of his fate, by the final judgment.

Because does he believe that the recognition of human dignity constitutes the foundation of freedom, justice and peace in the world, in this same perspective, any commission of an offense does not lead ipso facto, the criminal responsibility of its author, given that the causes of justification and impunity are not ignored by the criminal code.

He wants the Congolese citizen to have confidence in the justice of his country, noting that he has not been tortured, violated or mistreated from his arrest, his invitation, his hearing until the pronouncement of the decision of the Tribunal, in all his human dignity.

**Keywords:** Violation, Offense, Presumption of innocence, Congolese law.

**I.INTRODUCTION**

Man is a social animal, according to ARISTOTLE, he is condemned to live in society together with his fellows, but the latter at times acts in an antisocial way, thus disturbing the public order and tranquility so desired and wanted by everyone. world, either through ignorance or selfishness. Faced with such an attitude, the public authorities, having already adopted an arsenal of legal, compulsory, impersonal, general texts which are binding on all, will repress any person who violates one of the provisions of the aforementioned texts; this task is entrusted in the Democratic Republic of Congo to the judiciary.

Indeed, since its accession on March 18, 1996 to the United Nations Convention of December 10, 1984 against torture and other cruel, inhuman and degrading treatment, the Democratic Republic of the Congo had not yet harmonized its legislation with the relevant provisions of the said convention, according to this convention, the Democratic Republic of the Congo has the obligation to establish specific acts of torture or their attempt as an autonomous offense and to apply to its authors, co-authors and accomplices the appropriate penalties. The constitution of the Democratic Republic of Congo in its article 16 prohibits torture and any cruel, inhuman and degrading treatment.

Wishing to comply with the aforementioned convention, the second book of the Congolese penal code has been amended and supplemented, article 48 bis of this code provides: "Is punished any person acting on his order or his instigation, or with his express or tacit consent , who has intentionally inflicted on a person severe pain or suffering, physical or mental, for the purpose of obtaining from him or a third person information or a confession to punish him for an act which he or a third person has committed or is suspected of having committed, to intimidate or put pressure on him or to intimidate or put pressure on a person or for any reason based on any form of discrimination whatsoever, will be punished five to ten years of main penal servitude and a fine of fifty thousand Congolese Francs” .

**I.1. THE PROBLEM**

As part of this reflection, we asked ourselves the following questions:

* Why do judicial police officers and law enforcement officers violate the presumption of innocence?
* What should the Ministry of Justice and the Ministry of National Defense of the Democratic Republic of Congo do jointly in the face of this violation?

**I.2. THE HYPOTHESES**

To answer the question, we made the following hypotheses:

* The law enforcement officers assigned to the various sub-police stations, alongside the Judicial Police officers as well as to the small dungeons, even to the prison violate the presumption of innocence, either, because of his ignorance, or because of their failure in this area or because of bad faith.
* Faced with this observation, the two Ministers of Justice and Defense must, in turn, properly popularize the presumption of innocence for all agents and officers of the judicial police, without forgetting its raison d'être on the subject of human dignity and properly train law enforcement officers assigned to places of preventive detention, finally to do their job well and not violate the presumption of innocence.

It should also be noted that the Congolese authorities have also expressed their will by signing Order No. 002/CAB/MIN/DH/2019 of November 07, 2019 establishing the National Committee for the Prevention of Torture, by the Minister of Rights Humans ( [[1]](#footnote-1)).

Like other countries, Congolese justice is entrusted to the judiciary, it is the third institution alongside the executive and the legislature; this judicial power is exercised in judicial jurisdictions under the court of cassation, in administrative jurisdictions under the council of state and in constitutional jurisdiction under the constitutional court ( [[2]](#footnote-2)).

However, justice is actively sought, despite criticism, justice has a very strong popular image: that of an essential institution on the tripod of institutionalized powers, that also of its equally popular mission in the fight against impunity , that of defending, according to the constitution, individual freedoms and the fundamental rights of citizens, and finally that of supporting society as one of its founding principles ( [[3]](#footnote-3)).

Curiously, this justice is exercised by agents who do not respect the presumption of innocence, one of the sacred principles, relating to access to criminal courts and this, from the moment of suspicion, investigation, arrest, police custody, provisional arrest warrant, at trial, until the final judgment is pronounced.

That said, torture, violence, cruel, inhuman and degrading acts are fine in Congolese justice, in Lubumbashi.

**I.3. HUMAN DIGNITY**

The concept of dignity only came to the fore when traditional human rights centered on the individual, his freedom, privacy and autonomy. The principle of dignity is the first principle on which all the others are based.

It requires safeguarding against all forms of enslavement and degradation and implies that the human person remains master of his body and of himself ( [[4]](#footnote-4)).

Human rights have as their cardinal foundation, human dignity, which is considered as the respect, the consideration that a person deserves. It is intangible and must be respected and protected by the public authorities.

Any violation of human dignity is prohibited whatever the facts ( [[5]](#footnote-5)).

Paul TAVERNIER thinks for his part, that the notion of human dignity occupies a prominent place in the universal declaration of human rights, it is clear that from the first paragraph of the preamble, there is express mention of the inherent dignity to all members of the human family and their equal rights ( [[6]](#footnote-6)).

To LUKOLI Albert to add that human dignity is essential for the establishment of the rule of law, human dignity must be respected. Otherwise, it is a serious violation of human rights ( [[7]](#footnote-7)).

The Charter of Fundamental Rights of the European Union stipulates in Article 1 that human dignity is inviolable, it must be respected and protected, it is not only a fundamental right, but constitutes the very basis of fundamental rights.

Overwhelmingly, dignity is the respect, consideration or consideration that someone or something deserves, the dignity of the human person is the principle according to which, a person should never be treated as an object or as a means, but as an intrinsic entity ( [[8]](#footnote-8)).

Human dignity is the fundamental, unconditional and equal respect due to all human beings for being human, as well as respect for moral integrity ( [[9]](#footnote-9)).

The first obligation that derives from human dignity is to preserve people's lives and ensure their safety; the second is to work for the human development of all people, to recognize a unique personality and participation in the community ( [[10]](#footnote-10)).

As such, dignity has a legal nature, a first principle of the legal system, because the human person is an ultimate horizon of the law, in reality its finality. The principle of dignity thus establishes the primacy of the human being over all other interests.

This principle of dignity makes it possible to legally establish the value of human beings, it indicates how certain people must be treated or not with dignity, to be human, means humanly, a human being neither stronger, like a God, nor less like an animal or as a thing ( [[11]](#footnote-11)).

**I.4. VIOLATION OF THE PRESUMPTION OF INNOCENCE**

The presumption of innocence means that in criminal matters, any person prosecuted is considered innocent of the facts of which he is accused, as long as he has not been declared guilty by a competent court.

This principle is enshrined in international instruments (Universal Declaration of Human Rights of 1940 in Article 11 §1, International Covenant on Civil and Political Rights, etc. ) and by the constitution of our country, the Democratic Republic of Congo, of February 16, 2006 as revised and supplemented by Law No. 11/002 of January 20, 2011 revising certain articles ( [[12]](#footnote-12)).

Article 17 paragraph 9 of this constitution provides that: “ **Any accused person is presumed innocent until his guilt has been legally established by a final judgment** ” ( [[13]](#footnote-13)).

Indeed, the two above-mentioned provisions affirm that a person accused of criminal acts is presumed innocent.

Moreover, this principle does not imply that a person accused of criminal acts is not deprived of his liberty, even when he is deprived of his liberty, during an investigation or preparatory investigation, the presumed perpetrator of the offense continues to enjoy the presumption of innocence.

Some think with Château Briand that it is not killing the innocent as innocent that loses society, it is killing him as guilty ( [[14]](#footnote-14)). To Montesquieu to add that “when the innocence of citizens is not assured, freedom is not either”. Idris SANGWA ILONDA, added in his study, " On the presumption of innocence in Congolese criminal law that: to presume a person innocent, it is therefore to ensure his freedom, a freedom which he could not have, if he knew he was a suspect in the eyes of its judicial system for everything it undertakes" ( [[15]](#footnote-15)).

However, the notion of freedom being inherent in the life of a person, it remains attached to that of criminal responsibility, understood as "The obligation to answer for one's criminal acts by undergoing a criminal sanction, under the conditions and according to the forms provided for by law” ( [[16]](#footnote-16)).

Although the criminal responsibility of the agent constitutes the condition allowing the implementation of criminal law, this does not mean, insofar as the mere fact of an offense has been committed, automatically engages the responsibility of its author ( [[17]](#footnote-17)) .

Isidore MFUAMBA MULAMBA and MUKEBA Julienne, dealing with the issue of the rule of law, clearly explained that this notion has generated crises in the Democratic Republic of Congo, sometimes not only between politicians, but unfortunately against those called upon to say and/or challenge the law, while the justice sector is an essential pillar of democracy and the rule of law ( [[18]](#footnote-18)).

However, the connotation in the Democratic Republic of Congo of the rule of law is on the one hand, distorted more and more political than legal and on the other, it has turned out to be a bloodthirsty dagger which makes the young woman sting. Congolese democracy and which risks exterminating all the major political and judicial figures who are moving in the fight against anti-values, impunity, bad governance, social insecurity.

The cases of figures concerning violation of the presumption of innocence are in sandy quantity, in the Democratic Republic of Congo, in Haut-Katanga more particularly in Lubumbashi, it is enough only that someone is suspected or cited in a criminal case for to be stoned, handcuffed, tortured, beaten, undressed, stripped of his telephone, his belt, his shoes and this in an inhuman way.

**I.4.a. The judicial police**

This body is the secular arm of the Public Prosecutor's Office, a body of State agents responsible for noting breaches of the law, gathering evidence of the commission of these offenses and searching for the presumed perpetrators, with a view to their presentation to the public prosecutor ( [[19]](#footnote-19)).

The judicial police officers appointed by the ministry having justice in its attributions, violate the presumption of innocence, during police custody, they administer lashes to the presumed offenders, on the grounds that the latter tell them the truth.

The attitude displayed by these judicial police officers refers to individuals who are supposed to have already been convicted, forgetting that they are only authorized to act within forty-eight hours, and after which to send the suspect to the Public Prosecutor's Office.

What is sickening is when these judicial police officers even make the suspects work hard, as if they have already been sentenced to hard labor.

**I.4.b. Crown**

The officers of the Public Prosecutor's Office are part of the judiciary, that being the Public Prosecutor's Office is the part that represents society in criminal proceedings. The prosecution is seized for offenses (criminal) by:

* Complaint - denunciation and by referral.

Currently, each common law jurisdiction is attached to a certain number of standing magistrates (from the Public Prosecutor's Office) who deal with cases from judicial police officers or those opened in their office; and this for five days or for a period of five days; by a provisional arrest warrant ( [[20]](#footnote-20)). Curiously, during this time the accused is mistreated, deceived in the water, placed in the same conditions as the condemned, either so that he tells the truth about criminal facts that he does not know and that under the passivity of the Public minister.

**II. METHODOLOGY**

This reflection led us to use:

* To the exegetical method, in the understanding of the texts of the laws and especially of the constitution of the Democratic Republic of Congo of February 18, 2006 in its article 17al 9 with the aim of explaining the will of the constituent, hidden behind the presumption of innocence ;
* To the historical method by constituting the history of the presumption of innocence, of other international legal instruments, to support it scientifically, while examining its content, if it is credible for the proper administration of justice in a State of law;
* To the analytical method by collecting data relating to the violation of the presumption of innocence, from the suspicion to the arrest (temporary deprivation of liberty), superabundantly by popularizing this principle on the one hand and on the other , the questioning of the population to stop committing the offenses, lest they see their dignity violated by some of the ignorant police officers ( [[21]](#footnote-21)).

**III. THE RESULTS**

The investigations carried out in the city of Lubumbashi, since January 2021, until today on the violation of the presumption of innocence, have provided us with the results below:

* Of the ten cases of traffic violations committed by bus or taxi drivers, eight of them are tortured, assaulted, beaten by road traffic police, even before the final decision is taken by the commander-in-chief, which ends up fixing the almonds to the already humiliated drivers;
* Of the fifteen cases of simple suspicions recorded on the theft, half of these suspects are molested, burned alive, beaten to death, by law enforcement officers, when, at the end, justice acquits them following the lack of evidence, after they are filmed and presented to society as outlaws.
* From the examination of ten reports of the suspects' hearings drawn up by the judicial police officers sent to the prosecution, seven contain other allegations against the suspects at the time when they were obtained by torture and intimidation.
* Curiously, many of the suspects in the city have seen their criminal records tainted with acts that they have never committed, among them, some - some encountered, have been released by the prosecution, following the filing without follow-up of their files or for inappropriateness of prosecution.

**IV. Discussion**

Great is our astonishment to note that, during the prejurisdictional phase than during the jurisdictional one, it is in the first phase that there is more violation of the presumption of innocence, yet, even in the case of flagrante delicto, we are not still guilty before the law; serious thing, even the culprit is not deprived of enjoying his human dignity. Let us note that, under other skies and even in my country, the DRC, the presumption of innocence had remained totally absent from the Congolese judicial system, not only that there was no trace, but above all the very idea of conferring to the individual a right to be presumed innocent was contrary to the rules governing the criminal trial, according to some.

It is no secret that the sanctioning power depends on the existence of a justification for the offence; but then in the presence of circumstances specific to the author of the facts or external to him leading to the recognition of his criminal irresponsibility.

These circumstances are causes of criminal irresponsibility which result in a beneficial situation for the person prosecuted insofar as his responsibility will not be retained; The question then arises of the burden of proof of a cause of criminal irresponsibility. and provide proof. This mechanism of the burden of proof unfavorable to the accused or the defendant concerns all the causes of criminal irresponsibility, whether objective causes or justifying facts, or subjective causes or causes of non-imputability ( [[22]](#footnote-22)).

Consequently, when one is unaware of the cause of criminal irresponsibility and one strives to violate the law, to undermine the presumption of innocence, one is even exposed to criminal sanctions.

Thus: "Any statement that makes a person feel guilty, any suggestion of this guilt is defamation", the victim therefore has the right to sue or not, the author of the remarks that infringe his person ( [[23]](#footnote-23)) .

**V. CONCLUSION**

The culture of respect for standards is not internalized in the head of the Congolese, the presumption of innocence is flouted by the agents, the judiciary, when it is constitutional; without the Minister of Justice and Keeper of the Seals looking into it: notwithstanding all the publications relating thereto.

While the emergence of a rule of law in the Democratic Republic of Congo has been one of the main themes of all forms of peace and reconciliation that have marked the history of our country, since the sovereign national conference in the early 1990s, until the inter-Congolese dialogue in Sun City in South Africa in 2002.

Professor Jacques NDJOLI stigmatized for his part that, “Respect for the laws must be a culture. The constitution is not a book, but a state of mind that should be taught from kindergarten to Congolese.

This constitutional principle imposes itself on everyone, even on the agents of justice who must know that, the suspect does not become less human during the commission of an offense or a suspicion, necessarily he does not lose either his human dignity, recognizing it will in no way affect the effectiveness of the processing of his file, from the investigation, his hearing, the instruction of his file, until the pronouncement of his judgment.

All the Congolese who will learn this news, will restore confidence in our justice, yet very criticized on a daily basis.

**VI. BIBLIOGRAPHY**

The Universal Declaration of Human Rights of 1948, art. 1

The constitution of the Democratic Republic of Congo, of 16 Feb. 2006, as revised, art. 17 paragraph 9

Law No. 11/008 of July 9, 2011, criminalizing torture

Ministerial decree of 2019, Léganet CD

Marcel YABILI, full annotated and commented legal text, Kinshasa, July 2013

Organic Law No. 13/011-B of April 11, 2013 on the organization, functioning and jurisdiction of the courts of the judiciary

Humanitarian without borders, periodical of ADDIH, for education in rights and men, the dissemination of humanitarian law and the promotion of the culture of peace editions and year and page ???

Humanitarian Without Borders , op cit .

Universal Declaration of Human Rights of 1949, foundation of the rule of law, in Rule of law and human rights, l'Harmattan

https: [www.addihac.org](http://www.addihac.org) .

https: [www.touple.org](http://www.touple.org)

https: [www.grainesdepaix.org](http://www.grainesdepaix.org)

https: [www.cain.info.revue.inter](http://www.cain.info.revue.inter)

https: [www.cabinet.ati.com.dignity](http://www.cabinet.ati.com.dignité)

NGOTO NGOIE NGALINGI; The essence of Congolese criminal law. University Press. 2018, p.138

The Constitution of the DRC, op cit . (2)

Château Briand, Memory of another tomb

Montesquieu, On the Spirit of the Laws (1), Tome I, livre XIII, chap. II. p.197

Idris SANGWA ILONDA, on the presumption of innocence in Congolese criminal law, UNILU, Public Law, 2016 (TFC) Page ???

Glossary of legal terms. D. 2007, p.577 in the term criminal responsibility

Marine POUIT, Attacks on her presumption of innocence

Isidore MFUAMBA MULAMBA and MUKEBA

A. MAURIN et Al, judicial institution, 9th edition, Sirey 2013, p.155, code of criminal procedure, art. 2 and 3

Mathieu NKONGOLO TSHILENGU, Congolese Judicial Law – the role of courts and tribunals in the restoration of a violated or disputed right, Edition, documentary and study service of the Ministry of Justice and Keeper of the Seals, Kinshasa, 2003, p. 59

Pinto R. Grawitz M. 1965, *Social Science Methods* pp. 137-138

Y. MAYAUD, op cit , p.428

Erick SUNGU, presumption of innocence, a principle flouted in the DRC 2003 page ???

1. Ministerial decree of 2019, Léganet CD [↑](#footnote-ref-1)
2. Marcel YABILI, annotated and commented full text of the law, Kinshasa, July 2013, Organic Law n°13/011-B of April 11, 2013 on the organization, functioning and competence of the courts of the judicial order [↑](#footnote-ref-2)
3. Humanitaire sans frontières, periodical of ADDIH, for education in rights and human rights, the dissemination of humanitarian law and the promotion of a culture of peace [↑](#footnote-ref-3)
4. Humanitarian Without Borders , op cit . [↑](#footnote-ref-4)
5. Universal Declaration of Human Rights of 1949, foundation of the rule of law, in Rule of law and human rights, l'Harmattan [↑](#footnote-ref-5)
6. https: [www.addihac.org](http://www.addihac.org) .dignity [↑](#footnote-ref-6)
7. https: [www.touple.org](http://www.touple.org) [↑](#footnote-ref-7)
8. https: [www.grainesdepaix.org](http://www.grainesdepaix.org) [↑](#footnote-ref-8)
9. https: [www.cain.info.revue.inter](http://www.cain.info.revue.inter) [↑](#footnote-ref-9)
10. https: [www.cabinet.ati.com.dignity](http://www.cabinet.ati.com.dignité) [↑](#footnote-ref-10)
11. NGOTO NGOIE NGALINGI; The essence of Congolese criminal law. University Press. 2018, p.138 [↑](#footnote-ref-11)
12. The Constitution of the DRC, op cit . (2) [↑](#footnote-ref-12)
13. Château Briand , Memory of another tomb [↑](#footnote-ref-13)
14. Montesquieu, On the Spirit of the Laws (1), Tome I, livre XIII, chap. II. p.197 [↑](#footnote-ref-14)
15. Idris SANGWA ILONDA, on the presumption of innocence in Congolese criminal law, UNILU, Public Law, 2016 (TFC) [↑](#footnote-ref-15)
16. Glossary of legal terms. D. 2007, p.577 in the term criminal liability [↑](#footnote-ref-16)
17. Marine POUIT, Attacks on her presumption of innocence [↑](#footnote-ref-17)
18. Isidore MFUAMBA MULAMBA and MUKEBA [↑](#footnote-ref-18)
19. A. MAURIN et Al, judicial institution, 9th edition, Sirey 2013, p.155, code of criminal procedure, art. 2 and 3 [↑](#footnote-ref-19)
20. Mathieu NKONGOLO TSHILENGU, Congolese Judicial Law – the role of courts and tribunals in the restoration of a violated or disputed right, Edition, documentary and study service of the Ministry of Justice and Keeper of the Seals, Kinshasa, 2003, p. 59 [↑](#footnote-ref-20)
21. Pinto R. Grawitz M. 1965, Social Science Methods pp. 137-138 [↑](#footnote-ref-21)
22. Y. MAYAUD, op cit , p.428 [↑](#footnote-ref-22)
23. Erick SUNGU, presumption of innocence, a principle flouted in the DRC [↑](#footnote-ref-23)