

Foreword

The seven articles in this volume cover issues related to both administration of justice and international criminal law. The first six articles were prepared as part of the tenth seminar on the Rule of Law in the Democratic Republic of Congo organized by the Konrad Adenauer Stiftung.

The Congolese judicial system is studied in this volume through the Office of the Public Prosecutor, the right to recuse a judge in civil matters and the administration of evidence. The Office of the Public Prosecutor is covered by two articles. The article by Symphorien Kapinga K. Nkashama portrays the Office of the Public Prosecutor as a player in the justice system in the DRC. The author argues that this institution is ubiquitous in the Congolese judicial system, especially since there is an office of the Public Prosecutor attached to each court. At the same time, the office acts as an investigating judge and prosecuting body in criminal litigation, and gives reasoned opinions on any legal question submitted to the judge in other matters. However, the floating status of the Office of the Prosecutor between the Judiciary and the secular arm of the Government in judicial matters and placed under the authority of the Minister of Justice, makes the judicial officers in the Office of the Prosecutor very vulnerable to political influence.

The article by Yannick Miteo Ngombo discusses the Office of the Public Prosecutor at the Constitutional Court. After analyzing the powers of this Office, the author demonstrates that this institution is only a flourish in the Congolese judicial system insofar as, in his opinion, its powers can be exercised by both the Court itself and the body of Referendum Advisers. Thus, the author is in favor of abolishing this office of the public prosecutor.

Clément Shamashanga Munga in his article discusses the legal framework and issues surrounding the disqualification of a judge in civil proceedings. Following the analysis of this legal framework, the author notes that the majority of the texts restate the grounds for the recusal without addressing the reasons that give rise to the recusal. This weakness on the part of the legislator does not seem to guarantee the impartiality of the judge, who is considered to be the first requirement of the judicial function. In addition, he reveals that judges' applications for recusal rarely give rise to a decision before the courts and tribunals; in his view, this is due to the fact that the judges in question automatically withdraw without waiting for the outcome of the proceedings and to the fact that the parties to the proceedings do not respect the procedure. It must also be added that it is difficult for the latter to prove bias on the part of the recused judge.

The article by Ruth Malunga N'Landu deals with evidence in the face of requirements of the principle of procedure in the Congolese civil law. While delimiting the content of this principle, the author believes that this function is presented in contrast to that of the judge. The parties to the trial provide the facts and the judge may not rule beyond what is presented to him by the parties in the civil proceedings, nor distort the facts of the case. However,

the judicial practice observed proves the opposite when the judge is faced with individuals with different social or economic strata.

Jack's Mbombaka Bokoso agrees in the same sense through the recordings considered as evidence in Congolese and French comparative law. According to the author, recordings and videos are considered indisputable evidence under the French law. But the Congolese law does not yet give it the same importance. He believes that this category of evidence should not be further marginalized in the era of globalization and new information and communication technologies. The author argues for an amendment of the Congolese Criminal Procedure Code so that the modalities for the use of this type of evidence are included in it.

Joseph Kaciunga Mbenga's article deals with sanctions and their mitigation in the Congolese criminal law. He argues that there is a complementarity between the maintenance of public order and the rehabilitation of criminals in the State. In order to maintain social order, the State uses the enforcement of sentences that are governed by the principle of legality. For the rehabilitation of criminals, humanization mechanisms have been established, including mitigating circumstances. In Congolese positive law, the mitigating circumstances amount to the softening of the principle of legality and not its violation. According to the author, by affirming the judge's freedom to assess the constituent elements on which to base the retention of mitigating excuses, the legislature should, however, limit its power to set the rate of the sentence, by indicating the minimum below which the judge may not go.

Eugene Bakama Bope and Bahati Mujinya discuss a State's obligation to cooperate with the International Criminal Court, following the example of the decision by a South Africa court in the Omar Al Bashir case. They consider both legal and political arguments and conclude with a call for the proper functioning of the Court to guarantee legal protection the victims.

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