

The Nature of Insults on Social Networks (Facebook, Twitter, MSN ...) and their Repression in Congolese Law in Force

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Abstract: *Today, the world aspires to become, or is already, a global village. This, however, goes through several factors: roads, means of transport (plane, modern train or TGV, boat ...), communication tools (cellular telephony, internet, social networks) ... these last tools do not present only advantages but certain disadvantages are obvious in that they become a place, better, a space, where crimes of different orders are committed. Through social networks, you can become friends with a person, just as one can be the victim of a defamatory act under Congolese legislation in force. It is for this reason that we began to cogitate on the abusive or invective remarks that some of those who have account on Facebook and other social networks can hold vis-à-vis third parties, their characters (public or private), the penalty that will be imposed on these insults, depending on whether they are public or private, the jurisdiction competent to hear the dispute as well as the methods of prosecution against the perpetrators who, moreover, have a digital identity which may be true or false. To achieve this, it goes without saying that the training of judges on the computer tool is essential and essential.*

Keywords: Character, Insults, Social networks, Repression, Congolese law

1. Introduction

Responding to or conforming to the demands of the wind of globalization, the Democratic Republic of Congo breathes, through its new information and communication technology, the air of certain social facts engendered by what we call "social networks". (Facebook, Twitter, MSN and many others) that facilitate, according to some, the reunion of old knowledge, and for others, constitute a space where we create friendly and / or loving relationships, a space where we can easily and freely publish his thoughts, his critical reflection on this or that event, his photos, his passions and we pass the best.

Alas, he is more of a Congolese who strives, with recklessness and sometimes vehemently, have found, to defame certain people in view of their social position including certain political, administrative and religious authorities on the one hand and the other, academic authorities, teachers or even students. This is the case, on Facebook, of an account called "truth of mivuka" maintained by one or more students from Likasi University who requested anonymity, which publishes photos of some teachers falling into the lap of their photography, which become the subject of comments of all kinds and even words expressing contempt and contempt, thus affecting even their private and even intimate life.

As such, it is imperative to know the responsibility incurred in case of insults on social networks, whether they are public or private, and to date, if in the Democratic Republic of Congo, they are punishable.

This reflection will have the merit of being articulated around two chapters, the first of which will deal with generalities on the insults, and the second, of the character of the said insults and their repression.

Any beginning scientific work, in its drafting, by an introduction and concluding with a conclusion, this one will not escape this requirement.

2. General information about insults

The term insult being polysemy, it is of good quality, precision obliges, to define it in all its meanings. These are words that hurt in a serious and conscious way: insult; that is to say, an outrageous or contemptuous expression which does not contain the imputation of any specific fact, constituting a crime, if it is public, and has not been preceded by provocation.

They are also outrageous expressions in terms of contempt or invective that do not contain a specific fact imputed to an individual. The term insult also refers to the offense that is addressed to a natural person for the purpose of deliberately wounding him, seeking to attain him in his honor and dignity.

Note also, under the pen of Rémycabrillac, that it is an offense or offense incriminating the use of an outrageous expression or contempt, without containing imputation of a specific fact.

It should be noted that in French civil law (art 242 Civil Code), between spouses, the insult which is no longer a specific cause of divorce, may constitute an opening to divorce for misconduct, as a serious or renewed duties and obligations of marriage, thus making the maintenance of the common life intolerable. The Congolese law, very generic, does not specify in detail the causes of divorce but is content to globalize them by giving them a single denomination: "irremediable causes of the marital union."

The insult being erected as an offense under Congolese law, it is however confused with defamation or imputation harmful.

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• **Distinction between insult and defamation**

More often than not, these two prejudices are alike, and sometimes they are confused in their commission. At first glance, one may be tempted to say that this is the same offense, far from it.

As the issue of a personal fact is common to defamation and insult, the latter differs from the first by the vagueness of the facts.

In terms of insult and defamation, the qualification is the responsibility of the judges who must, during the investigation, establish a distinction between the said prejudices in that the insult, for example must be established either in consideration of the charity of the terms used or of their derogatory aspect, even without coarseness, or of the peculiar quality of the person being insulted. The personal characteristics of the victim, who are indifferent in the matter of defamation, are predominant to qualify an insult as it is true, in the Democratic Republic of the Congo, that one does not address a ministry as a tramp.

The insult differs doubly from defamation. On the one hand, it does not presuppose the attribution of a precise fact, and cannot even be raised unless its expression is distinct from that of a defamatory fact. On the other hand, it is irrelevant to note, as far as it is concerned, that the expression undermines consideration or honor, which is directly implied by the facts.

While the insult is a malicious qualification more or less vague likely to undermine the honor of a person or to expose it to public contempt, the Court of Appeal Bandundu it hears the imputation damageable as the fact of putting to the account of a specific person, living or deceased, a precise fact, true or false, of a nature to attack the honor of this person or to expose him to public contempt.

While the injury may be public or simple (private), the harmful charge involves publicity, which means that in the absence of publicity, there is no offense of defamation.

The first is punishable from eight days to two months of principal penal servitude and a fine or one of those penalties only, but the second is punishable by eight days to a year and a fine.

In common, it is essential to remember that both prejudices require publicity (not totally for insult) as well as victims who are natural and non-legal persons.

For their existence, the said offenses respectively require the gathering of some elements, the first of which (insult), an act of insult and a mental element, and the second (defamation), a material act of imputation, a precise fact, prejudice and a moral element that is summarized in the intention to harm.

• **Jurisdiction**

In determining the jurisdiction - material - of a Tribunal, it goes without saying that punishment is a determinant or a major clue. It seems appropriate, if not necessary, to recall that the prosecution of insults is not subordinate to the

complaint of the victim as is the case of grivellery, adultery...

The Congolese legislator punishes from a penal servitude from eight days to two months and a fine or one of those penalties only the author of offensive words held publicly. This amounts to deducing, on the basis of the legal provisions of Ordinance-Law No. 82-020 of 31 March 1982 on the Code of Organization and Jurisdiction, as supplemented by Ordinance-Law No. 83/009 of March 29, 1983, amended and completed the Organic Law N ° 13/011-B on the organization, functioning and jurisdiction of the courts of the judicial order (art. 85), that the Court of Peace is competent except in the springs or cities of the country in which it is not yet effective, that jurisdiction is vested in the High Court which thus becomes competent.

The reproach that we can, at this stage, make against the Congolese Government, is that there are several laws establishing, organization and functioning of several jurisdictions including the Courts of Peace, Commerce, Labor which are not yet effective, since 2002. We do not forget here, the outbreak of the Supreme Court of Justice in three jurisdictional orders (Constitutional Court, Court of Cassation and Council of State) as proclaimed by the constitution promulgated the 18/02/2006 as revised the 26/01/2011, what lethargy! Is it worth it to create others as some parliamentarians suggest? Inopportune to date. The best thing would be, above all, in our view, to make the installation of the said courts effective if only for the proper functioning of Justice in the Democratic Republic of Congo, one of the attributes of the sovereignty of a State and a significant factor development of this der.

Like certain offenses, the offense of insult is prescribed, in French law, three months from the date of the first act of publication of abusive language and one year if the insult was committed against a person or group of persons because of their origin or belonging to or not belonging to an ethnic group, a nation, a race, a particular religion or to a person or group of persons on the grounds of their sex or sexual orientation or their disability.

In Congolese law, the prescription is regulated by Article 24 of the Penal Code Book I in that it provides, in its first paragraph that public action resulting from an offense will be prescribed after one year if the maximum of applicable main penal servitude does not exceed one year.

It is worth remembering that the prescription can be interrupted following certain causes that are:

- The acts of instruction: these are intended to search and gather the evidence of the offense including: the minutes of hearing and report, the procedural documents such as the mandate to appear, to bring, excluding the summons.
- The acts of prosecution: are those put before the trial court, either by the prosecuting party, or by the judges and are directed against the defendant, made at the request of the public prosecutor's office to rule on the merits of the accused's appeal, the complaints necessary to the prosecution (case of adultery), except for the call of the defendant.

It is also nice to note that the person sentenced for insult will also have his sentence no longer enforced in the event that he has withdrawn for two years from execution.

Our reflection being focused on the nature of the insults uttered or better held (published) against a physical person on one of the social networks, it seems to us to be able to note by noting that this prevention is more related, in the case under analysis, to press offenses which are more sui generis offenses, committed by means of print or audiovisual press.

We believe, in our humble opinion, that the objective pursued by the legislator is to bring the users of the press to respect the law of the country, the public order which, unfortunately, is very fluctuating, the rights of others as well as good morals. Is that, when an individual gives himself the leisure either to publish - without prior permission - the image of a third party on Facebook for example, or to comment as it means, preserves he the right to the image of the other? By commenting, he can throw a disgrace on the person whose image is published, or insult him then on a space where the public has easy access, he respects the law, the Congolese public order or the morality?

That is why it is necessary, if not useful, to analyze the character, the species or the type of these insults and how they are repressed in Congolese law in force.

Character and repression

As said above, insult is a malicious qualification more or less vague likely to affect the honor of a person or to expose it to public contempt, it is consumed by the mere offending a person by offensive expressions, even imprecise, outrageous, contemptuous or invective. The legislator provides for two forms of insult: simple insult on the one hand and public insult on the other.

• The simple injury

Different from public insult, the offense of simple insult concerns insults made directly from individual to individual, without witnesses.

It is in principle that in Congolese criminal law, the evidence is free; that is, one can prove by any means of law unlike in civil law where it is hierarchical.

However, the absence of witnesses makes the continuation of this category of insult difficult to practice except in the case of insults in writing.

In the opposite case, according to the finding made, and since the courts are quite often stubborn to the problem of the administration of the evidence, to the denial of the facts by the defendant and for lack of evidence that can charge him, the court has always acquitted the benefit of the doubt because it is in principle that doubt benefits the accused.

This prevention is provided for and repressed by Article 77 of the Penal Code, which provides that a principal penal servitude of eight days and a fine of up to two hundred Congolese francs or a fine of up to of such punishment only, the person who has directed against a person insults other

than those provided for in the preceding provisions of this section.

For its realization, the offense of simple insult, besides the quality of the insulted person, requires the union of constituent elements that are the material act of insults and the moral element.

• The material act of insults

This deception presupposes an offensive expression, an intention to harm. It is consumed by the mere fact of offending a person by offensive, outrageous ... The determination, the better the precision of the insult is not appropriate. A more or less vague expression is sufficient for the offense to be withheld. We note with BONY CIZUNGU that it is not required that the expression undermines the honor or the consideration of the victim; so to treat someone as a bandit, a wizard, a thug ... It's already an insult.

• Category of the person being abused

This offense requires the person being abused because it must accurately target a specific person or group of persons to the exclusion of the corporation. Thus, when vague and imprecise attacks are directed against the communities, this does not constitute the crime of insults.

It is taught that it is not necessary for the victim to be nominally or by name, that is to say a specific person even if the name is not specified. But on Facebook, an individual can display or publish on his wall, called newspaper, his thought or his image, and makes a lot of objective comments as subjective or even insults. Just his picture is enough, even if his name is not displayed or indicated, to be a victim. At this stage of analysis, it can be said that the material element of this prevention is established because it can be achieved even by telephone.

• The moral element

The animus injuriandi (the intention to harm) must meet the leader of the author who uttered discursive remarks or who published them.

The prevention of which analysis supposes that, morally, the offender has, well in place, his conscience reproaching him that he posits an act of nature to offend or to hurt.

It is plausible, it seems to me, to note that even discourse remarks, made by joking, as is the case in certain tribes (Hemba - Rega, Luba of Katanga - Tabwa) cannot be considered insults because it is difficult to prove the guilty intention.

Nevertheless, the latter (culpable intent) is always presumed when the author does not give a proof corroborating his good faith. It is, in this same order of judgment, taught by the case law that this presumption is in bad faith.

It is also taught, *lacto sensu* that the presumption is one of the modes of proof valid in law when the facts are concordant and precise. However, it may happen that the author has done this act in the context of amusement given their relationship or with the victim, why should we presumably burden the author with bad faith? We believe,

for our part, that this jurisprudence does not have its weight of gold in Congolese special criminal law because it is good to analyze also the outline as well as the circumstances of the commission of the said package including the environment.

It should also be remembered that the lack of publicity distinguishes public insult from the simple insult that is established as soon as it has been perpetrated without its being public and in the absence of witnesses.

Article 77 of the Congolese penal code punishes insult (simple) by telephone.

As the technology of cellular devices has evolved, dichotomous from that of landline telephones formerly sold by SOGETEL (the general telecommunication society), it is possible for more than one individual to hear the insults uttered to a person (victim) in various ways, particularly under speaker, webcam mode ... Is it still worthwhile, to date, to apply or interpret Article 77 in this way while modernity or globalization have been revolutionized? It is desirable to review this legal provision to see it applied without any failure to promote the repression of anti-social acts.

Contrary to a certain category of offense, such as adultery, grivellerie, the prosecution for the head of simple insults are not subordinated to the filing of a preliminary complaint and is punished with a penalty of eight days and one fine or one of these penalties only.

• **Public insult**

Sanctioned by article 75 of the Congolese penal code book second, the insult is public when it is uttered publicly, or in public, that is to say aloud and in the presence of the witnesses.

Requiring some preconditions, public insult will only (shamefully) be established if it is perpetrated publicly and against individuals; as its name indicates, there are no public insults punishable without publicity which depends either on the nature of the place where the insults are uttered or held, or on the composition of the group receiving the writings or auditors of these remarks insulting.

It can be conceived in several phases including:

- For offensive words: if they are uttered aloud so that they can be heard in public places in the presence of the victim and others. It is in this sense that it has been held that the insults must be heard by one person (at least) present on the premises and by the victim himself.

It is essential at this stage to note that public places have a three-fold meaning: at the public place by nature (Market) is added the public places by destination (hotels, cafe, church, office, etc.) which are, to some moments, open to all, and public places by accident, private in principle, but which can occasionally become public (private home invaded by protesters). In the latter two cases, advertising is an element of fact which must expressly be found in the conviction.

With regard to the public meeting, it is also understood that some meetings are public by nature. This is the case of meetings of public bodies or companies. For the other cases, a meeting is or is not public, according to whether the number and the quality of its assistants are or not determined. A meeting which can only be attended by members of a group is not public, regardless of the number of members. It becomes so, on the contrary, as soon as foreigners have been able to hear the words uttered, no matter how many of these strangers.

It may be recalled that, in order for remarks made in public places or meetings to be made public, the utterances must have been uttered. But the case law also considers as having been uttered, the remarks which, although held on the tone of the conversation, were pronounced so as to be heard by third parties beyond the direct interlocutor.

- For offensive writings: if they are offered for sale, distributed or sold by any other modern means of dissemination.

As regards persons who may be victims of insults, it seems appropriate to recall that this concerns only natural persons as opposed to legal persons and constituted bodies.

From all points of view, we note that in the event of insults uttered or better published on the social networks by one individual towards another, who thus becomes a victim, this one is possible of the pursuits because his responsibility is engaged which can be either a penal sanction in the conditions and in the forms prescribed by the law that is to say the obligation to answer for its criminal acts while undergoing a corresponding penalty fixed by the law; tort, an obligation to make reparation for damage caused voluntarily to another person outside any contractual relationship.

One would, at first sight, be tempted to affirm that the insults uttered in writing on the social networks and taking for instance Facebook, are private because made of individual to individual, without witnesses, on everything when it is those made on a private page (in the mail) or on the wall (newspaper).

This has even been corroborated by French jurisprudence that admits that insults on a private Facebook page cannot be equated with public, but private insults.

However, those held or published on the wall or newspaper of a quidam, fall into the lap of public insults since all friends of the latter (victim) or friends of his friends, in short, the public has easy access to this space which is a public place par excellence, and has the total faculty to visualize said abusive writings.

Public insults are punishable under Congolese criminal law under Article 75 of the Penal Code, second book, from eight days to two months of principal penal servitude and a fine not exceeding five hundred francs or one of these sentences only.

To date, it is worth noting that in the Democratic Republic of Congo, in the province of Katanga and more specifically

in the city of Likasi, these are not yet subject to prosecution; is it because there is no plaintiff? no, it is estimated that an officer of the public prosecutor's office can seize this office ex officio, not only because the seizure of office is one of the modes of seizure of the parquet floor, but also, this der constitutionally has the mission to search for the offenses, to identify the perpetrators and to prosecute them after having gathered the necessary or indispensable proofs to the setting in movement of the public action.

We can say that this is part of the black figure of crime (sets of offenses that are committed but are not brought to the attention of the prosecuting authority and thus remain unpunished).

Since today's criminal phenomenon takes on other dimensions that are distinct from those of the classic ones, the case of cybercrime for example, it seems to us indispensable if not urgent, that the authority of prosecution, judge of the instruction under other skies, in this case the Public Prosecutor's Office, formerly called the "Shepherd Dog" of the State, extends its field of research of the offenses that can be committed on the space, better designated under the term network social, and thus, far from being a panacea, it will stifle if not reduce, anyhow, the rate of crime in the Democratic Republic of Congo, in the province of Katanga and more specifically in the city of Likasi.

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