

# Evaluation of the Constitutionality of Convictions by the Congolese Justice for the Payment of Damages in Foreign Currency

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**Abstract:** *The Democratic Republic of Congo is a Sovereign State, and independent, it has its own way called "Franc", it allows the Congolese to make banking transactions, purchase and exchange of goods and services, generally the succumbed parties condemn by the courts and courts to pay damages in foreign currencies "US Dollars" the constitution of the Democratic Republic of Congo of February 18, 2006 to its article 1 states that "the Democratic Republic of Congo is, in its borders of June 30, 1960. Is State of law, independent, sovereign, united and indivisible, democratic and secular social? Its emblem is the sky flag armed with a yellow star in the upper left corner and crossed a bias of a red band finely framed yellow. Its coat of arms consists of a Leopard's head framed on the left and, on the right, a tip of ivory and a spear, all resting on a stone. His anthem is the "Débout Congolais" It is recommended that any aggrieved person seize the Courts and Tribunals to see these to obtain compensation for the harmful facts suffered by it for the defendant's act. It is important to note that the plaintiffs seize the Courts and Tribunals by seeking compensation for damages suffered by them in US dollars, and the Judges seized of the dispute, accede to this procedure granting to the plaintiffs the damages in foreign currency which is the US dollars in violation of Articles 1 and 170 of the Constitution of the Democratic Republic of Congo.*

**Keywords:** Conviction, Justice, Constitutionality, Damages - Interest, currency

## 1. Introduction

Nature demonstrates to the satisfaction that money is at the center of interest, a nation allows Congolese to make transactions and exchange goods and services, because after having worked, it is necessary to pay the price, and it must be generally valued in currency. this one has a liberating character, since the man is the product of the company where it is called to share with the member of the company, man is obliged to be untied towards certain contractual delegations either those acquilienne as the case and to extinguish all forms of obligation, it is imperative to pay the price. Thus article 258 of the Civil Code Congolese Livre Third states that: "any fact of the man who causes to damage obliges to the one by the fault of which he arrived to repair it". [Article 258 du code civil Congolais IIIème]

This legal provision founds any person left in his rights to seize the courts to obtain conviction of the perpetrator of the harmful events suffered.

However, in practice, it is clear that the Congolese courts accede to the requests of the applicants, condemn the defendants to the payment of damages in US dollars, this obviously raises the issue of the constitutionality of these convictions in the Democratic Republic of Congo, in view of article 170 of the Congolese constitution of February 18, 2006, devotes the Congolese franc as the sole liberating money that this reflection is given as a task of apprehension. [Article 170 de la constitution du 18 février 2006]

Researchers and Legal Practitioners, Sitting Magistrates must above all develop their possible tact to declare the inadmissibility of any actions initiated by the Requesting Parties in violation of the fundamental law of the Democratic Republic of Congo which is the constitution of the claim in court, the obstacles observed in the matter of the postulation of the damages raise certain questions which

are: What to do to make respect the constitution of the Democratic Republic of the Congo to its article 170? How can we remove the confusion of soliciting damages in US dollars by the plaintiffs before the Courts and Tribunals? How to guarantee the value of the Congolese currency in the judiciary? Article 170 is not respected in any case by the economic operators fix price of goods and services in US dollars, and see even judicial operators, by judicial operators, we have on the one hand the Lawyers and the Magistrates, the requesting parties must seize the Courts and Tribunals by formulating their claim in court for damages to the Courts on the requests of their client or by subpoena requesting the allocation of damages. Damages in the Congolese franc which is an integral part of Congolese state sovereignty: "that all legal practitioners what they do dirty the courts and Courts despise the Congolese currency, judges must do at all costs to revalue the Congolese franc each time they are seized to adjudicate compensation for damages suffered by a party in damages The esteem considers that the dollar is a currency to the winning party to be paid for its difficulty on the day of the pronouncement of the decision until the moment of the final execution of the judicial decision for the guarantee which can make the protection of the Congolese currency by the judicial operators, they must make use condemning the parts succumbed in American dollars to its equivalent in Congolese francs to obtain the balance between the two currencies.

## 2. Money as a sovereign function of the State

### 2.1 Definition

The equal instrument of payments may have, depending on the monetary systems, a basis. "Assessment of constitutionality payment of damages in foreign currency".

### Summary:

The Democratic Republic of Congo is a sovereign and independent state, it has its own currency called "Congolese francs" generally, the Congolese courts allocate to the convicts the damages in foreign currency more particularly the American dollars, in violation of the article 1 which states that: "The Democratic Republic of Congo is within its borders of June 30, a State of Law, independent, sovereign, united and indivisible, social, democratic and secular, its emblem is the blue flag on the left and crosses through a red band finely framed yellow. Its motto is justice-peace work, it is our concern in the present metal work or a legal basis, most often by combination of the two often called payment currency.

In a country together means of payment immediately available. Currency account used in the accounts, but which was not materialized in the form of cash owes for the regulations v clauses Ar clause value-Ar, the national currency chosen by the contractors for the performance of the contract.

Constitutionalists call the State's functions the great functions which underlie the very existence of the State and which in principle are not the object of any delegation. They are also called sovereign prerogatives and related to the notion of sovereignty [<sup>1</sup>Gérard cornu vocabulaire juridique 10<sup>ème</sup> éditions mis à jour P.665].

The analysis of the concept of sovereignty usually brings out four regalian functions "regalian function" but liberal economists contest the fourth:

- a) Ensure external security through diplomacy and defense of the territory;
- b) To ensure internal security and the maintenance of public order with, inter alia, police forces;
- c) Define the right and deliver justice;
- d) Define economic and financial sovereignty, notably by issuing money.

This epithet is also associated with the words "function" and "powers" with the same meaning "regal right" means exclusive powers of the Lord that no one else has the right to practice on its territory. In economics, sovereign functions are tasks that the State must not or cannot delegate to private companies, the list of rights or functions sovereign depend on the political system and the opinion of each.

Today, sovereign functions often designate the following functions:

- Ensure external security through diplomacy and defense of the territory,
- Ensure internal security and law and order, including police forces;
- Hold the law and deliver justice;
- Hold monetary sovereignty by issuing money, notably through a central bank

- Hold fiscal sovereignty by voting the state budget, raising taxes and managing public finances.

The state exercises its sovereignty over the monetary instruments in the hands of their owners, by taking from them the legal title and functions of money. It is demonetization, which operates as an expropriation for public utility in the sense that the demonetized instruments will usually be exchanged value for value, but, it is true, during a very short prefix period against instruments of another type monetary in circulation may still be subject to a blockage that is only a temporary withdrawal from the legal court, to a stamping that may be an opportunity to make a profit on the owners. [Jean **Carbonnier** droit civil les biens, P 29, Presse Universitaires de France 108 Boulevard saint Germain paris]

### 2.2 Legal Functions of Monnaie

The three functions that the political economy assigns to the currency when the defines it as intermediary of the exchanges, measurement of the values, and reservoir of the liquidity - are translated by as many legal functions: the currency is means of payment, instrument of evaluation, the property object. Although the fulfillment of these functions is of primary interest to individuals and to individual rights, monetary sovereigns cannot be uninterested in it, and (the principle that money is the thing of the State often comes to influence the general rules of the civil law.

Bonds of money constitute the category of obligation which is practically the most important: it is in money that they must be paid. More precisely, in order to discharge an obligation the object of which is a quantity of ideal monetary units, debtor will transfer to the creditor the ownership of monetary instruments representing a certain number of these units. The same, in principle: it is the effect of the legal tender of monetary instruments but sometimes higher or lower; by the effect of indexing.

### 3. Currency in Congolese Justice

By its Interministerial Order Number 098 / ME / MIN / J and GS / 2017 and Number Cab / MIN / FINANCE / 2017 067 of October 31st, 2017 Bearing Rates, Levies, Levies and Fees to Be Collected at the Initiative of the Minister of Justice;

Review of Interdepartmental Order N 030 / Cab / MIN / Jet DH / 2013 and Number 808 / Cab / MIN / FINANCE / 2013 of May 20, 2013, establishing the duties, taxes and fees to be levied at the initiative of the Ministry justice rates;

Article 1 the rates of duties and fees to be collected at the initiative of the Minister of Justice are fixed in percentage or in American dollars, payable in Congolese francs according to the table in annex.

Inventory of Judicial Decisions Made in US Dollar Pecuniary Conviction by Courts and Tribunals in the DRC

N°1	Jurisdictions	Parties to the trial	File number	Judicial decisions rendered
	Likasi High Court	Seekers Claude Tshiteya KABONGO against Defendant Eric BETTE	RC 7876	<ul style="list-style-type: none"> <li>• The Tribunal ruling publicly on the parties;</li> <li>• Given the Organic Law</li> <li>• Number 13/011 April 2013, on the organization of the courts of the judiciary;</li> <li>• see code 21 of the Code of Civil Procedure;</li> <li>• See Articles 258 and 263 of the Civil Code Congolais Livre Third;</li> <li>• See Article 14 of the Law Number 73-02 of July 20, 1973 as amended and supplemented by Law Number 80-008 of July 18, 1980 on the general regime of property, land and real estate and safety regime;</li> <li>• The Public Ministry in its assent;</li> <li>• Holds admissible and well founded the action set in motion by the plaintiff</li> <li>• Claude TSHITEYA KABONGO;</li> </ul> <p>Consequently</p> <ul style="list-style-type: none"> <li>• Right for right the plaintiffis the sole right holder of the building located on Number 52, Avenue du Parc, downtown district, Likasi commune;</li> <li>• Ordered eviction of the defendant Eric BETTE and all those who live without title or right the aforementioned building;</li> <li>• Condemn the defendant to the payment of Ten Thousand US Dollars at the rate of the day in damages;</li> <li>• Tell the enforceable judgment notwithstanding appeal, except with respect to damages and interest;</li> </ul> <p>Leave the costs of the proceedings against the defendant;</p> <p>So judged and pronounced by the High Court of Likasi, in civil matters in the first degree at its public hearing of this June 24, 2017 to which sat the magistrates Faustin SANGWA LUBANGI, Guelor LUYINDULA and Pascal TSHIYUK YAV respectively president of chamber and judges with the assistance of the Public Prosecutor's Office represented by Magistrate Calliste KIKUNI WA TUTA Substitute of the Public Prosecutor and the assistance of Donatien TSHIBWABWA Registrar of the Headquarters.</p>
N°2	Likasi High Court	National Electricity Company defendant Against Applicant MANJI ZAKIR ANVERALI BHINJI NATHOO And the Forced Intervenor Head of LikasiCadastre Division The Registrar of Real Estate Securities of Likasi	RC 7512	<p>For these reasons</p> <p>The Tribunal ruling contradictorily with regard to all the parties;</p> <p>Given the Organic Law of 11 April 2013 on the Organization, Functioning and Jurisdiction of the Courts of the Judicial Order;</p> <p>Considering the property code;</p> <p>Given the Congolese Civil Code Book Third;</p> <p>The Public Ministry heard;</p> <p>Dot admissible and founded the action moved by the plaintiff MANJI ANVERALI BHINJI NATHOO and declares it founded;</p> <p>Consequently, notes that there has been encroachment resulting from the passage of the high voltage line of the National Electricity Company on its concession;</p> <p>Condamne the latter to pay him as compensation for this fact, to a sum of 25000 USD</p> <p>Holds admissible but unfounded the counterclaim action of the National Electricity Company for the absence of recklessness and the vexatious nature of the action led by the plaintiff;</p> <ul style="list-style-type: none"> <li>•Met the costs of proceedings against the defendant.</li> <li>•Thus judged and pronounced by Likasi High Court in his Public Hearing of 24/05/2016 at which Magistrates were sitting Joseph MBULAYI KALONJI, President of Chamber, Emmanuel BULUNU and Moise KIMBAMI NSUALA, judges, with the assistance of NGOY INABANZA, Officer of the Public Ministry and the assistance of Donatien TSHIBWABWA Registrar.</li> </ul>
N°3	Likasi High Court	Applicant Timothée MUTUNDA Against Respondent KYO MAKYANGA KAPOPO	RC 7533/TGI/Likasi	<p>For these reasons</p> <p>The Tribunal ruling Publicly and adversely with regard to the defendant;</p> <ul style="list-style-type: none"> <li>• Having regard to the organic law on the organization, functioning and jurisdiction of the Court of Justice;</li> <li>• Having regard to the Code of Civil Procedure;</li> <li>• Considering the Civil Code Book Third in its articles 327 and 329;</li> <li>• The Public Minister heard;</li> <li>• Found admissible and well founded the action moved by the plaintiff Timothée MUTUNDA;</li> <li>• Convicts the Defendant Rene NGOY balance of 2.975usd;</li> <li>• Condemns the payment of the sum of 1000usd payable as damages Interest to the above;</li> <li>• Tell the judgment enforceable notwithstanding all remedies without costs;</li> </ul>

				<ul style="list-style-type: none"> <li>Judged and pronounced by the High Court of Likasi, in its public hearing of 14/05/2016, in which sat Magistrates Joseph MAKUNZU MUTULWA, President, DEDIEU BEYA TSHIMUNA and Emmanuel BULUNU LAMBA, judges with the Competition of MWENZE MWEMA Officer of the Public Minister with the assistance of Donatien TSHIBWABWA Headquarters Clerk.</li> </ul>
N°4	Likasi High Court	Applicant Kamwanga Against Defendant Eric MUTOMBO	RC 7569/TGI/ LIKASI	<p>For these reasons</p> <p>The Tribunal, Making a public declaration in opposition to the plaintiff and by default against the defendant;</p> <ul style="list-style-type: none"> <li>Having regard to the organic law on the organization of the courts of the judiciary;</li> <li>Having regard to the Code of Civil Procedure;</li> <li>Considering the Congolese Civil Code Third Book;</li> <li>The Public Minister heard;</li> <li>Receives the action moved by the plaintiff and says it founded;</li> <li>condemns the defendant to the payment of rents due 1260, and damages in the order of 1000usd</li> <li>Sets the costs of proceedings against the defendant;</li> <li>Judged and pronounced by the Court of Likasi, in its public hearing of June 20, 2016 in which the Magistrates De Dieu BEYA, president of chamber, Emmanuel BULUNU, and Moise KIMBAMI judges with the Competition of the Officer NYEMBO WA LOMBE Public Prosecutor and TSHIBWABWA KABAMBA Assistance Headquarters Clerk.</li> </ul>
N 5	Likasi High Court	Applicant Charles RAMAZANI KASOWA Against MUTOMBO KAZADI	RC 7579/TGI/ LIKASI	<p>For these reasons</p> <p>The court ruling publicly and by default against the defendant MUTOMBO KAZADI</p> <p>Considering the organic law N 13/011 / -B of April 11, 3013, Bearing organization, functioning and jurisdiction of the courts of the judicial order;</p> <p>Having regard to the Code of Civil Procedure;</p> <p>Considering the civil code third book in its articles 332 and 258, the Public Ministry heard;</p> <p>Holds admissible and founded the action moved by the plaintiff Charles RAMAZANI KASOWA SOUS RC 7579, and in consequences</p> <p>Condemns the defendant MUTOMBO KAZADI to pay the sum of USD4817 representing the costs of the work done on the rented property;</p> <p>Condemns the defendant to return the sum of 1000 dollars representing the rental guarantee unpaid</p> <p>Further condemns the said defendant to pay the sum of 300 usd for damages Condemns the defendant to court costs;</p> <p>Judged and pronounced by the Likasi High Court in its public hearing of this January 10, 2016 in which sat Mr. MAVUNGU KIMBWENDE President of Chamber, Emmanuel BULUNU and Moise KIMBAMI judge with the assistance of the officer of the Public Minister SHAMPA and the Donatien TSHIBWA BWA KABAMBA Headquarters clerk.</p>

#### 4. The unconstitutionality of conviction in US Dollars

Article 162 of the Constitution of 18 February 2006 states that: the Constitutional Court is the judge of the objection of unconstitutionality raised before or by a court. Anyone may appeal to the Constitutional Court for the unconstitutionality of any legislative or regulatory act. It may, moreover, refer to the Constitutional Court, through the procedure of the objection of unconstitutionality invoked in a case concerning it before a court. The latter suspends its decision and seizes all ceasing cases, the Constitutional Court.

Some institutions found by the same litigants or their counsels believe in the right to ask the heads of the courts seized of the petition of unconstitutionality to divest themselves of the files and transmit them, for disposition in jurisdiction to the constitutional court.

It is obvious that this procedure may arise in any jurisdiction: Courts and tribunals civil or military, Supreme Court of Justice, High Military Court, Court of Cassation or Council of State, except the Constitutional Court.

However, it should be noted that the objection of unconstitutionality as a procedural incident may be raised

either ex officio by the court itself (Article 162 paragraph 1 of the Constitution) or by an accused person (Article 162 Paragraphs 1 and 3 of the Constitution, either by the Public Prosecutor's Office (Article 52 OFCC)

In all three cases, it is the court of substantive jurisdiction that must refer the case to the Constitutional Court and not directly to the litigant or the Public Prosecutor's Office, on pain of inadmissibility.

On the other hand, in the case where the litigant or the Public Prosecutor raises the objection of unconstitutionality before the judge of the substance or ink when it is raised by a court ex officio, in the three cases under - invoked, the jurisdiction the substance of the case is to be decided and seized, all ceasing cases, the Constitutional Court.

With regard to the repeated exceptions in this matter, the Supreme Court of Justice, under R. Const. 310/311 TSR, advocates that this exception be raised once before the judge and in liminglitis and on this occasion the person who intends to use it indicates the legislative or regulatory provisions and the provisions of the constitutions of the Constitution whose violation is invoked so that the referral to the Constitutional Court is stripped of any delay.



In order to make the referral, the court of the substance transmits by a letter to the constitutional court a file of documents containing the necessary elements relating to the exception of unconstitutionality whose decision of sursance by the clerk responsible for the jurisdiction but keeps the criminal record.

There is nothing in the Constitutional Court that requires the transmission of the entire court record of the merits, simply because the procedural scenario is similar to that of all cases that require supersession.

In doing so, you will have done a good administration of justice. [Circulaire N° 001 de la 7/03/2017 portant transmission des dossiers à la cour constitutionnelle pour examen de l'exception d'inconstitutionnalité après surséance]

At present, or the problem of the non-compliance with the Congolese constitution of February 18, 2006 is put on the table of debates, this reflection has given itself as a task to demonstrate that it is violated by rights practitioners in the manner in particular, the judges each time seized of a question submitted by the applicants with regard to the compensation for damages suffered by them, by awarding the damages in US dollars.

The Democratic Republic of the Congo is a sovereign and independent state, it has its currency called the Congolese franc, the only liberating currency throughout the whole of the Democratic Republic of Congo very often, the Courts and Tribunals accede to the requests formulated by the requesting parties by ordering the defendants to pay damages in US dollars in violation of Article 170 of the Constitution, which enshrines the Congolese franc as a discharge monopoly.

The Congolese franc is part of four sovereign functions and confers the sovereignty of the Congolese State, any person who is the author of damaging facts must decline to a decision condemning him to the payment of damages in American dollars, on the other hand, article 162 from the constitution to its open the way to any person at the trial raise the exception of the unconstitutionality for violation of the constitution and to seize the Constitutional Court to rule on the merit of the request introduced by the applicant party to wait this one of in order to declare the inadmissibility of the action in damages - interest for unconstitutionality.

The constitution is the mother law, the law of the laws of the DRC, it organizes the internal and external policy of the State, the decisions rendered by the Courts and Tribunals in condemnation of damages, violate certain provisions of the constitution, and these decisions cannot be against the constitution, in principle they must be in accordance with the spirit and the letter of the supreme law of the Democratic Republic of Congo, as evidenced by the Inter-ministerial Order N 030 / Cab / MIN / Jet DH / 2013 and Number 808 / Cab / MIN / FINANCES / 2013 of 20 May 2013, setting the duties, taxes and fees to be collected at the initiative of the Ministry of Justice, the rates of duty; Article 1 The rates of duties and fees to be collected at the initiative of the Minister of Justice are fixed in percentage or in American

dollars, payable in Congolese francs according to the table in annex.

The Courts and Tribunals have the obligation to accede to the application for damages by allocating to the plaintiff of repair of damaging facts of the defendant in American dollars, but payable in Congolese franc in money having normal court in the Democratic Republic of the Congo.

## References

- [1] Article de la constitution de la République Démocratique du Congo du 18 février 2006.
- [2] Article 258 du code civil congolais IIIème.
- [3] Article 170 de la constitution du 18 février 2006
- [4] l'Arrêté interministériel N 030/Cab /MIN /Jet DH/2013 et Numéro 808/ Cab /MIN /FINANCES/2013 du 20 Mai 2013,
- [5] Gérard cornu vocabulaire juridique 10<sup>ème</sup> éditions mis à jour P.665.
- [6] Jean Carbonnier droit civil les biens, P .29, Presse Universitaires de France 108 Boulevard saint Germain paris
- [7] Circulaire N° 001 de la 7/03/2017 de la Cour suprême de justice portant transmission des dossiers à la cour constitutionnelle pour examen de l'exception d'inconstitutionnalité après surséance.