THE PROCEDURE OF TERRORISM ACTS IN CAMEROON: AN ANALYSIS OF THE CAMEROONIAN LAW ON THE FIGHT AGAINST TERRORISM

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INTRODUCTION

If there is more criminogenic behavior in the world, it is terrorism. The weight of the cruelty it entails is measured not only by the large number of its victims but also, and above all, by the multiplicity of fundamental rights and freedoms it violates. Previously, it was the prerogative of American, European and Islamic countries. But for a few decades, it has been present in Africa and particularly in Cameroon. Indeed, Cameroon, which was recognized a few years ago for its legendary peace, knows more and more the throes of this crime through the Islamic sect " Boko haram ".

In 2014, Cameroon adopted Act N°. 2014/028 of 23 December 2014 on the suppression of acts of terrorism. This law thus solved two problems. On the one hand, it filled a legal vacuum in Cameroonian legislation that until that date did not have a law on the matter. On the other hand, this law was a testimony of Cameroon's respect for international commitments alongside other states in the fight against terrorism[i].

In addition to listing the acts that it describes as terrorist; the Act also provides details on the procedure to be followed in the event of a terrorist offence. This procedure differs from ordinary law. Without dwelling on the characterization of acts as terrorist, it is difficult to avoid questioning the procedural contribution of this law, which has implications for fundamental rights and freedoms. This question calls for a decision on the aspects of the terrorism procedure and their impact on fundamental rights and freedoms.

The evocation of repression always covers risks of infringement of individual freedoms and rights. It is therefore up to any state governed by the rule of law to organize criminal proceedings around the protection of these rights. It is in this sense that Cameroon has enshrined the fundamental principles governing the criminal trial[ii], the consolidation of which can be put to the test in crisis legislation such as that of terrorism[iii].

In order to tie in to the criminal phenomenon in order to better combat it, we observe in the Cameroonian law of 2014 procedural differences compared to the common law of Criminal Procedure. These differences are reflected in particularities not only before the trial (I) but also during the trial (II) of a terrorism offence.

PRE-TRIAL PROCEEDINGS

The peculiarities of the suppression of terrorism before the trial relate to the preparatory acts of the trial. It is therefore the prosecution, the means of investigation, the investigation... several of these acts strongly derogate from the common law of Criminal Procedure.

In this sense we will first look at the investigation phase (A), then we will dwell on the investigation phase (B).

A- The special features of the survey phase

According to Article 1 (3) of the Cameroonian law on combating terrorism, the offences provided for in that law fall under the exclusive jurisdiction of the military courts. That is why we will always make inroads into the code of military justice[iv]. This jurisdiction of the military court begins with the investigation. The code of military justice gives us the composition of the military court at the investigative level[v]. At this level, this tribunal is composed of a Government Commissioner, one or more substitutes for the government commissioner, one or more clerks.

The investigation of a terrorism offence is therefore the responsibility of the Government Commissioner (1). However, there are failures at this stage of the procedure (2).

1- The diligence of the investigation by the Government Commissioner

When a terrorist offence is committed, the Government Commissioner visits the place where the offence was committed in order to make all possible investigations into the discovery of the truth concerning the perpetrators of the offence. Once the culprit (s) is (are) arrested, they are taken into custody. The latter has a period of fifteen (15) days renewable several times on authorization of the Government Commissioner. Even if this time limit gives cause for reflection, it is thought that it is not by chance that the legislator has provided for it. In our opinion, these several renewable fortnights allow the Government Commissioner to gather sufficient evidence to better appeal to the trial court since the investigating judge is absent in terrorism cases. There is a better understanding of the work of the Government Commissioner in the process of referring the matter to the competent court, but it is also necessary to know the consequences of the specialization of litigation before the military court.

Referral to the military court shall include arrangements. The latter are set out in article 2 of the 2014 law "referral to the competent court" in the following terms: "for the application of this law, the military court shall be referred by order of direct judgment of the Government Commissioner ". This provision raises two questions to which the legislator has given no answer: is the investigating judge[vi] operational in terrorism cases? From police custody to trial, what is the nature of the act of detention of the accused? In order to answer these questions, the practice has recognized the investigation into terrorism and at the same time instituted a warrant for pretrial detention, all of which, moreover, requires regularization on the part of the legislator.

Proceedings before the military court are therefore initiated by the minister responsible for military justice, who issues either an order for direct trial if he considers that the case is ready for trial, or an order to inform if he considers that the case requires judicial investigation. Judicial information is mandatory in criminal matters[vii]. On prescription of the president of the Republic, the minister in charge of military justice may, at any time before the judgement is pronounced, arrest any criminal proceedings before the military court. This judgment shall not prevent the resumption of proceedings where necessary. Prior to the initiation of the action by the Ministry of military justice and when persons alleged to have committed a crime or a flagrante delicto have been brought before it and if there is serious and consistent evidence against them, the government commissioner may order their custody, which may not exceed ten (10) days pending the order of prosecution issued by the minister of military justice. This

period may exceptionally be extended for a period of ten (10) days upon authorization by the minister of military justice. The suspects are being held in a remand centre. The custody provided for in this paragraph shall be taken into account in the case of prosecution followed by a sentence of deprivation of Liberty. Once the public action is initiated, it is exercised by the government commissioner, who has the same prerogatives as the public prosecutor. The Government Commissioner acts under the authority of the minister for military justice, to whom he is subordinate[viii].

The Government Commissioner May, on written prescription from the minister in charge of Military justice, request in writing and orally, the cessation of criminal proceedings at any stage of the proceedings and before a decision on the merits, where such proceedings are likely to jeopardize the Social Interest or public peace. In the case provided for in article 12, paragraph (3) of this act[ix], the investigating judge or the trial court finds the removal action on the public and gives hand-held warrants issued against the beneficiary of the judgment of the prosecution. The investigating judge or court shall continue the investigation or examination of the case on the civil action. The stay of proceedings shall not prevent the resumption of proceedings where they prove necessary or where new elements arise[x].

As for the specialization of litigation before the military court, it poses at least two major problems in connection with the requirements of a fair trial. In addition to the difficulty of exercising the right to a judge owing to the insufficient decentralization of military courts, the minister of military justice[xi] has predominated in the implementation of public action.

With regard to insufficient decentralization, it should be noted that one military court is established per region[xii], which does not facilitate access to a court for individuals. On the other hand, such a situation seems to be conducive to a high risk of judicial delay and thus a violation of the right to be tried within a reasonable time if one takes into account the fact that the jurisdiction of the military court extends to other offences[xiii] other than terrorism.

On the powers of the Minister of military justice, it must be emphasized that he officiates as super prosecutor to the extent that he is the only one who can decide whether to prosecute throughout the territory[xiv]. Technically, in the prosecution offices of the ten military courts, the respective government commissioners must refer each time to the Minister of military justice who will decide whether or not this or that other case deserves prosecution. This practice could

lead to multiple judicial delays and thus human rights violations in the light of the requirements of international human rights law. In the same vein, the absolute powers of prosecutorial authorities can be criticized in stop-action mechanisms where there are no legal conditions that determine their action or inaction[xv].

In addition to these main derogations stemming from the 2008 law on the organization of military jurisdiction, it is still important to recall that procedural rights are also dangerously put aside in the context of ultra-simplification of the procedure in exceptional times. This leads us to look at the shortcomings observed in the investigation.

2- The failures observed in the investigation phase

These shortcomings are related to police custody and the lack of guarantees of release. As far as the shortcomings in police custody are concerned, it means, first of all, extending the time limit. The period of ordinary custody is forty-eight hours, renewable once in principle. Exceptionally, this period may be renewed twice with the authorization of the public prosecutor. The maximum period of police custody is therefore six days (CF. Art. 19 para. 2). In light of these provisions, the contrast with Section 11 of the 2014 Act is particularly noteworthy. Indeed, under the Anti-Terrorism Act, the period of police custody in terrorism investigations is at least seven times higher than in the ordinary investigation, increasing from forty-eight hours to 15 days. Moreover, the power to extend this measure of deprivation of Liberty seems to have lost all the precautions that surrounded it and prevented it from becoming an instrument of arbitrariness. This very temporary measure of deprivation of Liberty seems to have come very close to a real prison sentence, since it can be renewed indefinitely. The public prosecutor now has unlimited powers of extension. According to the explanatory memorandum to the Anti-Terrorism Act, this particularity of police custody is justified by the complex nature of the investigation and the dangerousness of the perpetrators[xvi].

Thus, the analysis of this article 11 reveals the institution of an unlimited deprivation of Liberty because, no precision is made on the number of authorized renewals. Unlike the 2008 Act, which sets the time limits at 48 hours renewable once and two other periods of 48 hours each with written authorization from the government commissioner[xvii], the 2014 Act remained silent. This silence thus undermines the right to a fair hearing within a reasonable time by a competent

court. The government commissioner may then detain a suspect of terrorist acts for as long as is necessary to complete the investigation.

With regard to the lack of guarantees of freedom in the field of terrorism, it should be recalled that our criminal procedure has begun a decisive turning point in its modernization process with the drafting of the first code of criminal procedure resulting from Act No. 2005/007 of 27 July 2005. The main objectives of this code, which is intended to be democratic and liberal, were: to harmonize procedural rules throughout the country ; to adapt those rules to the requirements of safeguarding citizens ' rights at all stages of judicial proceedings ; reduction of judicial delays; rapid execution of court decisions, recovery of fines from the moment of delivery of the decision[xviii].

Thus, on the question of taking human rights into account in the administration of criminal justice, Cameroon had made a qualitative leap with the adoption of the code. Unfortunately, the specialization of the suppression of terrorism excludes the defendants in this matter from the benefit of the procedural guarantees issued by the 2005 law. We refer, inter alia, to the institution of bail under article 224, the guarantees under article 246 (g) and articles 584 and next of the code of Criminal Procedure establishing habeas corpus. All these guarantees are ignored before the military courts and, as a result, in the suppression of terrorism, because the principle here is that of the systematicity or even the automaticity of detention[xix].

The peculiarities of the survey being studied, let us now turn to the peculiarities of the instruction.

B- The investigation phase

Even if we note in practice that there is survival of the investigating judge, it is nevertheless true that we make the observation that the legislator of 2014 has voluntarily made the choice of the deletion of the phase of the investigation (2). Before we get there, let us first specify the importance of this phase (2).

1 - The importance of the investigation in the criminal trial

The investigation, or judicial investigation, is one of the key phases of the criminal trial. It is the one during which the investigating judge, if necessary, gathers the charges in order to verify whether the offence is really constituted. This is, in a sense, a phase in which the investigating

judge assesses the relevance of a legal action in the light of the evidence produced by the prosecutor and in the light of possible procedural incidents. This moment allows an assessment of the judicial file by a person with a certain neutrality in relation to the prosecutor who has the mission to seek these elements. Thus, as a guarantee of fair justice, it must be objective. The requirement of these guarantees did not, however, deter the 2014 legislature from abolishing this essential phase of the criminal trial. Article 12 of the law provides for an exclusive referral to the court of judgment by order of direct judgment of the Government Commissioner. This return to the procedure in force at the time of the application of the code of criminal investigation of 1838 could be regarded as a setback[xx].

2- Removal of the instruction from the 2014 law

Judicial information has undergone a remarkable evolution in Cameroonian law. It was an autonomous Phase set up by an investigating judge in 1972, almost ten years after independence, and entrusted to another body, the Public Prosecutor's office, in order to combat the resurgence of major banditry. The legislator's concern was to set up an appropriate procedure, which responds effectively to the malfunctioning of the judicial system. Unfortunately, the new organization of this institution has shown its limitations, due to the flagrant violation of the principles governing criminal procedure and constitutionally protected on the one hand; and on the other hand, the violation of individual rights and freedoms. With the implementation of judicial information by the public prosecutor's office, there was more to fear for the violation of these rights and freedoms, especially since the objectives of the manifestation of truth and proper administration of justice were not always achieved. It was therefore necessary that a reorganization of the judicial investigation be considered. This was made possible with the institution of the Code of Criminal Procedure. The entry into force of this text has made it possible to observe a great upheaval in the conduct of judicial investigation, but also in the organization of this phase of Criminal Procedure and the protection of the rights of the parties. The legislation reverted to the principles of the presumption of innocence and the separation of prosecutorial and investigative functions. In addition, taking into account its historical past, from which a judicial duality arose, the Legislature proceeded to a genuine harmonization of the procedures of Romano-Germanic law and Common Law, offering the parties the necessary guarantees for the protection of their respective interests. The investigation is discontinued[xxi] as there is no judicial investigation

because of the seriousness of the offence of terrorism, which has rather high consequences. The public authorities must react quickly through the courts. However, despite the reform, the objective had not been achieved, not only because all the elements necessary to achieve it had not been taken into account, but also because the text contained many shortcomings, to which must be added the difficulty of the judicial authorities in complying with its provisions. It is therefore inevitable to consider yet another reform, so that the search for the truth that governs this phase of the criminal procedure takes place under conditions that reconcile the proper administration of justice and the protection of the rights of the parties. Anything that justifies the powers of the investigating judge in the identity of the decisions rendered.

As soon as the investigating judge considers that the judicial investigation has been completed, he shall communicate the file to the Government Commissioner for his final closing arguments[xxii]. When the investigating judge declares himself incompetent, the Government Commissioner, unless he appeals against an order, shall immediately forward the file of the proceedings to the corresponding court. In this case, the warrant of pretrial detention issued against the accused continues to have full effect until the indictment is pronounced by the judge of the newly seized court[xxiii]. The order of dismissal or partial dismissal shall be notified.

After the investigation, the case is brought before the judge.

THE TRIAL PHASE OF TERRORIST ACTS

The peculiarities of the trial in the matter of terrorism relate to the jurisdiction of the court and the conduct of the trial. Indeed, the conduct of the criminal trial is surrounded by several guarantees. It is in this sense that article 4 § 2 of the International Covenant on Civil and Political Rights specifies the substantive non-derogable rights which are non-derogable even in the context of the fight against terrorism. Thus, the human rights committee, in its Comment No. 29[xxiv], stressed that the provisions of the covenant relating to procedural guarantees may never be the subject of measures that would violate the protection of non-derogable rights.

However, the review of the 2014 act demonstrates several peculiarities during the trial aimed at derogating from the guarantees of the trial. The question of trial is not the same when it is necessary to judge adults (A) and minors (B) terrorists.

A- The judgment of major terrorists

The Cameroonian law on the fight against terrorism gives jurisdiction to the Military Court (1) and this requires adjustments.

1- The attribution of jurisdiction to the military court

As jurisdiction is vested in the military court, we will always make incursions into the code of military justice for more information. This code, in its article 5 (1), allows us to know that at the headquarters level, the military Tribunal is composed of a president, one or more Vice-presidents, two regular assessors and alternate assessors, a chief clerk, one or more clerks. Jurisdiction is territorial as well as material.

Within the framework of territorial jurisdiction, the military court, like any other jurisdiction, is an organ of the public service of justice. As such, it must obey the principle of the functioning of justice, in that it must be close to the litigants, the history of the "decentralization" of military justice in Cameroon testifies to the progressive consideration of this principle. Initially, there was only one military court sitting in Yaoundé, whose jurisdiction extended throughout the national territory[xxv] on the authorization of the president of the Republic, that court could hold mobile courts in other localities of the country or it could be created decrees of the same authority. It can be seen that at that time, military justice was far from the litigants who were in the peripheral areas. This could pose two problems. The first relates to the right of access to military justice. Of course, for a litigant who is far from Yaoundé, he could not benefit from the same facilities as those who live there. It is well known that travel can be costly both in terms of time and money. The family of the prosecuted person cannot visit him in due time. If he chooses to be defended by a local lawyer, this entails additional costs.

The second problem is the possible overcrowding of the military court, which could affect the right to be tried within a reasonable time[xxvi]. However, the reference to the requirement of respect for reasonable time, which irrigates all procedural law, cannot be ignored by the military justice system[xxvii].

In view of the requirements, military courts have been established in some former provinces: Bafoussam and Buea[xxviii], Douala[xxix] and Garoua[xxx]. This process of "decentralisation" has made significant progress with the law of 29 December 2008 which, in article 3, endowed the

ten regions, each, with a military court. It goes further by providing not only for the possibility of establishing other courts in the same region, but also, and above all, the possibility of holding hearings, that is, the military court can hold hearings in the departments, or even the districts. Moreover, the decision to hold mobile hearings has been simplified, as it now rests with the tribunal itself.

Article 3 of the 2017 " new " code of military justice reflects these advances. This means that the Legislature has followed the logic of homelessness, which promotes the convenience of access to military justice by avoiding distance-related obstacles[xxxi]. This is a major step forward in the area of military justice[xxxii]. While providing each region with a military court, the Legislature nevertheless maintained the national jurisdiction of the Yaoundé military court.

Article 4 (1) of the code of Military justice introduces a derogation with regard to the regional jurisdiction of the Yaoundé Military Court. Indeed, in certain so-called exceptional circumstances, the Yaounde Military Court receives jurisdiction over the entire territory. These circumstances are the state of emergency and the state of emergency. In accordance with article 9 of the Constitution, " the president of the Republic May, when circumstances so require, declare by decree a state of emergency which confers special powers on him under the conditions laid down by law ". According to Paragraph 2 of the same article, " the president of the Republic may, in the event of a serious threat to the integrity of the territory, life, independence or institutions of the Republic, declare, by decree, a state of emergency and take such measures as he deems necessary. He shall inform the Nation by means of a message."

Thus, when a state of emergency or state of emergency is declared in a region, the Yaoundé Military Court replaces the Military Court of the region in which these exceptional circumstances were decreed.

This substitution may also occur when the trial of persons prosecuted in the region where the military offences were committed, may constitute a serious threat to public order, public order, security of the state. The same is true in the case of terrorism. Here, there is concern that terrorists attack the Military Court of the region under threat of an act of terrorism for the trial of their members.

In all cases, the aim of the "referral" hypothesis is to safeguard public order which would be disturbed by the judgment of a case before the Military Court of the region concerned. The most frequent hypotheses concern riots, wars and strikes.

However, the text does not specify the authority empowered to request such " removal on grounds of Public Safety ". In any case, reference may be made to the provisions of the code of Criminal Procedure, which recognizes this competence, to the Supreme Court, which may, for reasons of Public Order, remove a court from a case and refer the case to another of the same degree[xxxiii], or to the public prosecutor's office, which alone may refer to the needs of public order[xxxiv]. It should be noted that, in these cases, only the Yaoundé Military Court has jurisdiction. This means that the court can only refer the case to the court or the public prosecutor's office can only refer the case to the court.

In addition, the code of military justice does not provide for the assumption that these exceptional circumstances would occur in Yaoundé. Does this mean that they will never happen, or even if it would be the case, the Military Court of Yaounde has all the means to curb them? It is desirable that, by maintaining the national jurisdiction of the Yaoundé Military Court, a kind of "general dismissal" could be envisaged, in accordance with article 604 of the Code of Criminal Procedure[xxxv].

Moreover, it is noted that several cases of terrorism offences have been brought before the Yaounde Military Court in Maroua and in the North-West and South-West.

As to substantive jurisdiction, Article 1, Paragraph 3, of the 2014 law recognizes the exclusive jurisdiction of military courts for the suppression of terrorism. The latter are courts with Special Jurisdiction[xxxvi] which therefore apply a system of derogation which necessarily limits too much the rights of the person being prosecuted. This duplication of criminal proceedings based on a parallel procedural[xxxvii] system reveals the political will to strengthen the social response to terrorist aggression. The main effect of the intervention of the military court is that all the derogations established by Act No. 2008/015 of 29 December 2008 on the organization of the military judiciary and laying down rules of procedure applicable before the military courts are applicable to persons charged with terrorist offences.

The option for "militaristic" treatment of terrorism is based on the conviction that the requirements of national security require the removal of traditional procedural and substantive criminal guarantees[xxxviii].

It remains to be recalled that in order to judge, the military court obeys a principle. Indeed, in criminal matters, article 7 of the code of military justice lays down an absolute principle of collegiality. Any case falling within the jurisdiction of the military tribunal shall be adjudicated on a collegiate basis. This principle has had the advantage of avoiding judicial errors and consolidating the principle of impartiality. It will simply be recalled that the classification of these offences is based on the tripartite distinction between offences under article 21 of the Criminal code. In this sense, for cases related to terrorism, the military court is subject to the principle of collegiality. Article 7(1b) and (3) of the 2017 Code of military justice address the issue of collegiality formation. Indeed, the collegiality is composed of a presiding magistrate and two assessors or three magistrates. When the formation of collegiality is presided over by a civil magistrate, the two assessors must necessarily members of the Defense forces. This is understood to the extent that the civilian magistrate may have approximate knowledge of the technical nature of certain offences peculiar to the military vocabulary. The assessors are like those who assist the president in customary matters to enlighten him on the meaning of the custom invoked. That is why the same requirement was not formulated when collegiality is presided over by a military magistrate. In any case, the presence of assessors is not required because collegiality is formed by three magistrates. But at least one of the members of the collegiality must be a military magistrate[xxxix].

However, the question of the jurisdiction of the military Tribunal over terrorism required some adjustment.

2- The need for real development

This could include the idea of the specialization of repressive judges and the consolidation of the right to a fair trial.

For the need for specialization of repressive judges, the adaptation of criminal justice to new contexts postulates the integration of the judge in this process of contextualization of legal solutions in the face of new social realities. While remaining faithful to the strict interpretation of the criminal law, the judge can no longer be only " the mouth that says the law ". It is the

whole problem of specialization of the personnel of the justice and the repressive judge in particular that is highlighted[xl]. The specialization of judges consists in the assignment of disputes of a certain nature to a specific judge due to the technicality, the inherent complexity of this litigation. Specialization is perceived as one of the ways to implement effective and quality justice, given the complexity and technicality of some cases. The question arises in judicial circles with increasing acuity. The Cameroonian legislator seems to have been convinced by the virtues of this technique. He therefore opted to specialize judges in certain criminal matters considered particularly complex. This is the case, in particular, of the judge of the offenses of embezzlement of last publics in an amount exceeding 50,000,000[xli], litigation which was entrusted exclusively to the judges of the Special Criminal Court. In view of the advantages generally presented by this technique, it seems imperative that it be extended to terrorism in order to meet the many challenges of counter-terrorism legislation. It is possible to suspect that the legislator implicitly joined the school of specialization through the consecration of the exclusive jurisdiction of the litigation of terrorist acts in the military court. If that were the case, progress could not conceal the inadequacy of this specialization, which relegates it solely to the purely jurisdictional level. Indeed, the exclusive devolution of jurisdiction does not concern matters that could be submitted to the military judge, but only the type of competent jurisdiction. The military judge, of course, also remains competent to hear a wide range of disputes which may be of such a nature as to diminish the effectiveness of this fine statement. Since the military judge has obviously been appointed an anti-terrorist judge in Cameroon, we hope that the public authorities will refine their work through accompanying measures relating to the training of the judicial personnel concerned. The solution could be more effective if it allowed the creation of a special section with a public prosecutor's office and a specialized registry in addition to an anti-terrorist judge[xlii].

For the need to consolidate the right to a fair trial, it is important that any implementation of the rules of criminal law be governed by a master idea that seems to be the soul of criminal justice without which all the power attributed to its repressive instruments would only ruin the society they are supposed to protect. We must never lose sight of the fact that the ultimate goal is the search for truth. The general principle that best embodies this idea is the principle of equity, of which variations such as the presumption of innocence, impartiality, publicity and the right of Defence are only aspects. In general, the spectre of a serious threat to this cardinal

principle of criminal justice should be pointed out from several points of view; pitfalls that should be avoided throughout the process of implementing this new legislation.

The presumption of innocence is, at first sight, the most exposed aspect of the principle of fairness in the light of the provisions of the new law, if we confine ourselves not only to the length of police custody, but also to the power of prorogation granted to the Government Commissioner (See Article 11). It should therefore be stressed that the rights of detainees in police custody, as laid down in the Code of criminal procedure, must in no case be ignored as long as they are not incompatible with the new law. Safeguarding the right to humane treatment of the suspect, particularly with all the ensuing consequences, is a challenge, given the tensions and anger surrounding terrorist acts. The same applies to the right to physical and moral health; the principle of adversarial proceedings, which includes the right to the assistance of a lawyer, the right to information and the right to a reasonable time for the preparation of the defence. All these measures are designed to protect the suspect against the arbitrary use of means of coercion placed in the hands of his opponent. It should be recalled that the public prosecutor & apos; s office is the main party to the criminal trial. The unlimited extension of police custody thus confers on him a power of "sanction" comparable at least to that of pre-trial detention, which has in principle been withdrawn from him under ordinary procedure. The authorities responsible for the application of this law are questioned in this respect as to the dexterity with which they will have to seek the right balance between the extremely repressive aspects and the preservation of the acquis in the quest for the ideal of a state governed by the rule of law[xliii].

The principle of impartiality also seems to be able to take a blow through the application of the provisions of article 12 of the 2014 law. Indeed, the need to guarantee every citizen a treatment without bias, justifies although the legislator has framed the procedure of mechanisms that can guarantee impartiality in the whole process. The diversification of the judicial functions performed by different judges is precisely part of these guarantees offered to citizens who may be wrongly prosecuted even for the most serious reasons[xliv]. The advantages of this diversification are greater here in view of the severity of the penalties incurred. However, it is precisely this guarantee of fairness that the 2014 legislator proposed to reorganize through the abolition of the investigation phase. This necessarily calls for greater thoroughness and a greater sense of objectivity on the part of the trial judge who, in the context of terrorism proceedings, must himself bring the case to trial before trying. It must therefore be established,

having regard to the determining nature of the function of Investigation in the event of a crime, that if the Legislature has abolished the investigation phase, the function of investigation itself remains. Its implementation is therefore within the framework of this law devolves to the judge of judgment who will thus have to combine the functions of Investigation and that of judgment.

In all cases, the adjudication of terrorist acts also poses a problem in terms of the imprescriptibility of prosecution and penalties. Indeed, the fear of the dangerousness of terrorists seems to justify the imprescriptibility of public action in the case of terrorism offences, which are subject to "*jus cogens*[xlv]", such as certain offences forming a hard core that shocks the conscience of humanity. The concern that the accused should not be given a chance to take advantage of some sanctuary to escape justice because of the complexity of the investigations can be seen almost similarly. In this connection, Article 15 states that criminal proceedings and penalties are not subject to statute of limitations in the event of the commission of terrorist acts. The declination of the severity that the legislator intends to give to the treatment of terrorist activity is not limited to this observation, some guarantees of fairness of the procedure having been removed[xlvi].

The imprescriptibility of penalties (art.15) should also be stressed. Article 67 of the Criminal Code provides that, in the event of crimes, penalties and security measures not incurred may no longer be carried out after the expiry of a period of 20 years. Acts of terrorism are a clear departure from this rule; since article 15 of the 2014 law clearly states that the penalties imposed by the competent courts are imprescriptible[xlvii], all of which lead to the diminishment of criminal leniency.

The judgement of a person of full age before the military court for acts of terrorism apprehended, let us now turn to that of the minor.

B- The particularity of the judgment of the terrorist minor

The trial of the minor terrorist has evolved in Cameroonian law. Indeed, before the 2017 Code of military justice, we were in a controversial situation (1), which was stabilized with the coming of this code (2).

1- The controversial situation before the 2017 Code of military justice

Prior to the 2017 Code of military justice, Article 1, Paragraph 3, of the 2014 terrorist acts Act provides that: "the offences provided for in this Act shall be subject to the exclusive jurisdiction of the military courts ". Paragraph 2 of the same article states that: "the Criminal code, the code of Criminal Procedure and the code of military justice shall remain applicable in their provisions not contrary to this law ". However, according to the code of Criminal Procedure, the court of First Instance, which is specially composed, is competent to rule on juvenile delinquency[xlviii]. In the same vein, article 8 of Act No. 2008/015 of 29 December 2008 on the organization of military justice and laying down rules of procedure applicable before the Military Court provides that minors between the ages of fourteen and eighteen are not subject to the jurisdiction of military courts, but rather to those of ordinary law. This situation created a conflict between the 2014 law, the code of Criminal Procedure and the 2008[xlix] law. Two theses were opposed on the question: the thesis that supports the jurisdiction of the military court and the thesis that supports the jurisdiction of the specially composed Court of First Instance.

Those who support the jurisdiction of the military Tribunal are based on four considerations. The first consideration arises from the interpretation of article 1 (3) of the 2014 law, which states that the offences provided for in that law fall within the exclusive jurisdiction of the military courts. In this respect, two arguments have been put forward: one concerns the argument of the interpretation of this text and the other on the maxim of interpretation. The interpretative argument invoked is the reasoning "*a contrario*". According to them, article 1 of the said law confers exclusive jurisdiction on the military court in matters of terrorism; this means that a contrario the ordinary courts cannot apply it. In other words, the Court of First Instance, which has jurisdiction over juvenile delinquency, cannot apply the 2014 law. As a result, a minor prosecuted before this court cannot be subject to the incriminations prescribed by this law. Such a solution would dilute the will show by the legislator to eradicate terrorism by giving it the appropriate qualification.

As regards the interpretation maxims invoked, reference is made in particular to the maxim "lex posterior derogant ante" and the maxim " lex specilia generalibus derogant ". Under the first maxim, the subsequent law derogates from the earlier law. In accordance with this maxim, the code of Criminal Procedure, the law on the organization of military justice and the law on the suppression of terrorist acts are laws at the same level in the hierarchy of legal norms. As

such, where they contain conflicting provisions, reference should be made to the maxim "lex posterior derogant ante" to interpret them. By applying this maxim to the case, the subsequent law is that of 2014 and therefore derogates from the code of Criminal Procedure and the law of 2008. From this point of view, only the military courts are competent to try all terrorist acts, regardless of the status of the perpetrator, insofar as this law makes no distinction between adults and minors. This grid is supplemented by recourse to the maxim " specialia generalibus derogant ", under which the special law derogates from the general law. From this point of view, it is considered that the code of Criminal Procedure constitutes the general procedural law and that the 2014 law constitutes a special law that has provided for a special procedure in the fight against terrorism by entrusting exclusive jurisdiction to the military court.

The second consideration is based on the terms of Section 1 (2) of the 2014 act. It states that "the Criminal code, the code of Criminal Procedure and the code of military justice shall remain applicable in their provisions not contrary to this law". It follows from the exegesis of this text that when the provisions of these previous laws are contrary to that of 2014, it eclipses in favor of the latter. However, the provisions of the code of Criminal Procedure[l] and the 2008 Act on the organization of military justice[li], in that it gives the Court of First Instance overall jurisdiction over juvenile delinquency, are contrary to the 2014 Act, which gives military courts exclusive jurisdiction over terrorist offences.

The third consideration is based on the argument that a virtual negative jurisdictional conflict between the military tribunal and the Court of First Instance has the detrimental effect. This is in fact the case where the military court declines jurisdiction and refers the minor to its "natural" jurisdiction. Having reached this court, the magistrate, relying on a strict reading of the 2014 law, also declares himself incompetent by invoking paragraph 3 of Article 1 Above invoked. This would result in a denial of justice. This ping-pong game is counterproductive in the dynamics of repression of terrorist acts. To circumvent this, the terms of article 1 (3), must be strictly observed.

The last consideration which underlies the argument of military jurisdiction is based on the argument based on the specificity of prosecution in the field of suppression of terrorism. According to the proponents of this thesis, the 2014 legislature placed the repression of terrorist acts on the prism of speed by abolishing the investigation phase and subjecting the referral to the military court to a simple order of direct judgment of the competent commissioner of

government[lii]. However, if it is accepted that the terrorist minor is subject to ordinary jurisdiction, the 2014 Act is thus void of its content and spirit, on the understanding that, with regard to the criminal justice of minors, the code of Criminal Procedure makes the investigation phase compulsory in respect of crime and misdemeanour[liii]. The public prosecutor, who is the representative of the public prosecutor's office before the ordinary criminal courts, may not apply to the Court of First Instance by order of direct trial. This interpretation of the 2014 Act is not unanimously shared.

Those who support the incompetence of the military court justify their position by several arguments. The first argument arises from the interpretation of article 8 of the 2008 law on military judicial organization, which peremptorily excludes minors from the jurisdiction of military courts[liv]. Following this line of reasoning, the 2014 law is a complement to the provisions of article 7 that set the basis for the substantive jurisdiction of the military court. In those circumstances, it had just extended the jurisdiction of the military tribunal to cover terrorist acts without emptying article 8 of its content, which was still applicable in the matter.

The second argument is based on the idea that the 2014 and 2008 acts are both special acts. Thus, a special law cannot derogate from another special law. By way of comparison, the proponents of this thesis invoke the Special Criminal Court Act, 2011 (SCT). This text according to them, is drafted in the terms of those of 2014 but this does not mean that the minor author of a diversion of more than fifty thousand CFA francs will be justiciable before the TCS. It always remains subject to its " natural "jurisdiction.

The third argument is based on the difficulties of prosecution under the 2014 law, which emphasizes the speed of the trial of terrorist acts by entrusting the initiation of public action, by direct order of the government commissioner, which cannot exist before the Court of First Instance to justify the referral of the terrorist minor to military jurisdiction. In their view, this is an unsubstantiated argument. "As such, the terrorist minor with regard to the mode of prosecution is not subject to the procedure of the direct trial order. In his case, the competent Public Prosecutor shall refer the terrorist minor to the investigating judge by means of an application instituting proceedings, following judicial investigation if there are charges, he shall be referred to the Court of First Instance"[lv]. In other words, with regard to the procedure for the investigation of a terrorist minor, the rules of the code of Criminal Procedure remain applicable.

As we can see, there is indeed a controversy over the jurisdiction over the trial of a minor who has committed a terrorist offence under Cameroonian law arising from the silence of the 2014 law on the issue. But in reality, this silence of the law is only apparent.

Indeed, it must be said that another part of the doctrine puts forward another type of argument to retain the jurisdiction of the Court of First Instance[lvi]. This argument is drawn from international conventions ratified by Cameroon, which has acceded to almost all international legal instruments relating to the rights of children[lvii] , including the Convention on the rights of the child, the African Charter on the rights and welfare of children[lviii], the Optional Protocol to the convention on the rights of the child, concerning the involvement of children in armed conflict. These international texts emphasize the specialization of the court competent to rule on juvenile delinquency. From this point of view, the court specializing in the trial of minors must therefore remain the Court of First Instance. Not all contrary domestic laws can be enforced under article 45 of the Constitution. It follows that, in proceedings involving only minors, judicial police officers had to defend them directly before the competent public prosecutor in order to bring the matter before the investigating judge. If by mistake the military court is seized in such a case, it should pass a judgment of incompetence and refer the public prosecutor to better appeal. In the event that the minor is involved with the major co-actors or accomplices, the disjunction must be systematic, even if it involves the risk of two trials for the same case, with the consequence of the victims appearing twice before the bar. In such cases, the minor should appear before the Court of First Instance and the adults before the military court.

In any case, the jurisprudence is favourable to the thesis refuting the jurisdiction of the military court for offenses committed by minors. Indeed, it always declares itself incompetent *rasione personae* and orders the disjunction of the procedures[lix].

2- The stability provided by the 2017 Code of military justice

Without going back to the relevant arguments drawn from the international treaties and agreements ratified by Cameroon which, according to article 45 of the Constitution, are placed above the law, it can now be said that under the maxim " lex posterior derogant ante ", minors are not justiciable before the military court. Article 9 of the 2017 law reaffirms this position. This is all the more justified since, by excluding the jurisdiction of the military court for

offences committed by minors, the same act, in article 8, paragraph c, specifically includes offences relating to acts of terrorism. Although the definition of these offences is contained in the 2014 Act, jurisdiction over minors is vested in their " natural "jurisdiction.

This seems to be self-evident, since Criminal Policy in the field of juvenile delinquency would like it to be focused on prevention and only in a very exceptional way can recourse be had to judicial institutions[lx]. Recourse to judicial institutions must be accompanied by the adoption of a procedure and measures specific to the trial of minors[lxi]. In total, it can be said that the 2017 Code of military justice silenced the controversy by enshrining the jurisprudential solutions in this matter. Article 9 of the code goes further by providing an expected clarification on how the procedure should be followed. Indeed, the file must be transmitted to the competent prosecutor's office by the Government Commissioner, after disjunction of the procedures, if necessary.

CONCLUSION

Ultimately, it is noted that during the trial of a terrorist offence, several mechanisms come into play. These mechanisms differ from ordinary law. This is why they are described as particularities of the judgment in terrorism matters. These particularities are mainly perceived by the fact that the 2014 legislator gave exclusive jurisdiction to the military court when it comes to terrorist litigation. It is clear from this that in the procedure for the suppression of terrorism the peculiarities lie not only before the trial, but also during the trial phase.

Before judgment, two phases are important. On the one hand, the investigation is carried out by a government commissioner, which leads to several abuses such as abuses of police custody and the automaticity of detention, which leads to a lack of guarantee of freedom. On the other hand, the investigation phase is abolished in the 2014 law even if the powers of the investigating judge are maintained. As far as the trial phase is concerned, it is dominated by the idea of "militarization" of the terrorist trial insofar as the military court alone is competent to deal with terrorist offences. However, there is a concern for a real adjustment in the matter since the "bellicization" of terrorist litigation entails significant consequences.

The importance and even gravity of violations of human rights and freedoms raises questions about its effectiveness in the fight against terrorism. Was it necessary to go through all these derogations in order to better combat terrorism?

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[ii] Le Code de procédure pénal nouveau, adopté en 2005 semble résolument inscrit dans cette philosophie.

[iii] Mebu Nchimi (J. C.), « Les auspices de la loi n° 2014/028 du 23 décembre 2014 portant répression des actes de terrorisme », op. cit. p. 9.

[iv] Il s'agit de la loi n°2017/011 du 12 juillet 2017 portant Code de justice militaire.

[v] Article 5 (1) paragraphe c.

[vi] Le procès pénal au Cameroun connaît trois phases : l'enquête, l'instruction et le jugement. L'instruction est conduite par le juge d'instruction, magistrat du siège dans le cadre de l'information judiciaire. Le retour du juge d'instruction supprimé par l'ordonnance n° 72/04 du 26 août 1972 dans le code de procédure pénale de 2005 a mis fin au cumul des fonctions de poursuite et d'instruction jusque-là établi au profit du procureur de la République. Cette une avancée dans la mesure où, le juge d'instruction, de par sa double compétence matérielle apparaît à la fois comme enquêteur et juridiction. En matière de crime où l'information est obligatoire, il joue un rôle de filtre dans la mesure où il instruit à charge et à décharge. Il n'a donc pas toujours la même obsession que le procureur de la République qui recherche essentiellement à obtenir la répression (art. 142 à 202 du code de procédure pénale camerounais). C'est pour cette raison que son retour dans le procès pénal camerounais a été présenté comme un critère de modernisation de notre procédure pénale. Lire à propos KEUBOU P., *Précis de procédure pénale camerounaise*, PUA, 2010, pp. 129 et s. et YAWAGA S., *L'information judiciaire au Cameroun*, PUA, 2007, 226 p.

[vii] Confère alinéa 2 de l'article 12 de la loi n° 2008/015 du 29 décembre 2008 portant organisation judiciaire militaire et fixant des règles de procédure applicables devant les tribunaux militaires.

[viii] Confère article 12 de la loi n° 2008 op, cit.

[ix] Cet article dispose que « Sur prescription du président de la république, le ministre chargé de la justice militaire peut arrêter à tout moment, avant le prononcé du jugement toute poursuite pénale devant le tribunal militaire. Cet arrêt n'empêche pas la reprise des poursuites lorsque cela se révèle nécessaire».

[x] Confère article 13 de la loi n° 2008 op, cit.

[xi] Ministre délégué à la présidence en charge de la defense.

[xii] Article 3 de la loi n° 2008/015 du 29 décembre 2008 portant organisation judiciaire militaire et fixant les règles de procédure applicables devant les tribunaux militaires.

[xiii] Articles 7 et s. texte précité.

[xiv] Article 12 al. 1 texte précité.

[xv] Article 12 al. 3 et 13 al. 1 texte précité.

[xvi] Mebu Nchimi (J. C.), « Les auspices de la loi n° 2014/028 du 23 décembre 2014 portant répression des actes de terrorisme », op. cit., p. 23.

[xvii] Lazerges (C.), « La dérive de la procédure pénale », RSC, 2003, pp. 644 et s.

[xviii] Cf. exposé des motifs du projet de loi portant code de procédure pénale.

[xix] Bikié (F. R)., « Le droit pénal à l'aune du paradigme de l'ennemi. Réflexion sur l'Etat démocratique à l'épreuve de la loi camerounaise n°2014/028 du 23 décembre 2014 portant répression des actes de terrorisme », *Revue des droits de l'homme*, p. 9.

[xx] Mebu Nchimi (J. C.), « Les auspices de la loi n° 2014/028 du 23 décembre 2014 portant répression des actes de terrorisme », op. cit. p. 24.
[xxi] Confer loi 2014 portant répression des actes de terrorisme.
[xxii] Confer article 14 alinéa 1 de la loi n°2008 op, cit.
[xxiii] Confer article 14 alinéa 2 de la loi n°2008 op, cit.
[xxiv] Fiche d'information n° 32, droits de l'homme, terrorisme et lutte antiterroriste, Haut Commissariat des Nations Unies aux droits de l'Homme, 2009, p. 28 : http://www.ohchr.org/ Documents/Publications/Factsheet32FR.pdf.
[xxv] Article 1er de l'ordonnance n° 72/5 du 26 août 1972.
[xxvi] Sur l'exigence du délai raisonnable voir l'article 6 alinéa 1 de la convention européenne des droits de l'homme ; l'article 7 D de la Charte africaine des droits de l'homme et des peuples ; la convention des Nations Unies du 17 février 1963 sur les règles matérielles relatives à la répression de la vente des marchandises ; Cholet (D.), *La célérité de la procédure en droit processuel*, LGDJ, 2006, Préface G. Giudecelli-Delage ; Hémery (B.), « Le délai raisonnable de jugement : naissance d'une notion », Justice et Cassation, *Rev. des avocats aux conseils*, 2007, p. 76 ; Amarani-Mekki (S.), « Le principe de célérité », *RF adm. publ*., 2008/125, p 43 ; Belbara (B.), « Les tecniques d'accélération de la procédure pénale en droit camerounais », *CJP-Université de Ngaoundéré*, 2014, pp. 303 et s.
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[xxxiii] Article 604 alinéa 1 du Code de Procédure Pénale.
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[xlviii] Article 709 du Code de procédure pénale.
[xlix] Voir Tayo (R. A.), « Le mineur terroriste: quelques considérations sur la loi camerounaise n° 2014/028 du 23 décembre 2014 portant répression des actes terroristes », in Spener Yawaga (dir.), *Crises humanitaires et responsabilités*, l'Harmattan, 2018 pp. 221-244.
[l] Cf. article 709 et suivants.
[li] Cf. article 8.
[lii] Article 12 de la loi 2014
[liii] Article 700 (1) du Code de procédure pénale
[liv] Article 8 de ladite loi est libellé ainsi qu'il suit : « Les mineurs de quatorze (14) à dix-huit (18) ans auteurs ou complices des faits visés à l'article 7 ci-dessus sont justiciables des juridictions de droit commun ». L'article 7 précise en réalité les infractions qui relèvent de la compétence du tribunal militaire.
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