

A CRITICAL EXAMINATION OF EMERGING CHALLENGES FOR THE REPRESSION OF CHEQUES RELATED OFFENCES IN CAMEROON

Written by Oscar Bikoko Bout

*Barrister at Law, Ph.D Research Scholar in Private Law, Faculty of Law and Political
Science, University of Dschang, Dschang, Cameroon*

ABSTRACT

A Cheque is considered as one of the most well-known commercial papers due to the important role it plays in various types of business transactions. It is mostly known to reduce the need for the use of cash and help reduce the risk of being robbed or misplacing cash by the drawer. Cheques are also considered to be an effective means of showing commitment by the drawer as the bank can easily prove payment that is due. Due to the significant of this instrument, legislations and control bodies have been put in place by the CEMAC member states for the repression of cheques related offences. Despite their efforts, cheque-related offences still continue to be committed within the CEMAC banking industry which Cameroon happened to be a member due to emerging challenges. In this vein, the main aim of this paper is to investigate the emerging challenges impairing the repression of cheques related offences in Cameroon. To achieve this objective, the methodology employed in this article is purely doctrinal which is based on both primary and secondary data. The paper concludes with some robust recommendations which if effectively implemented and enforced will go a long way to remedied these obstacles thus, enhance the sustainability of the banking sector within the CEMAC region.

Keywords: Critical, Examination, Challenges, Cheques, Repression, Offences, Cameroon

INTRODUCTION

A new facet has been given to the commercial and corporate world with the arrival of cheques in the market. People now abstain from carrying huge amounts of money, because they prefer to use cheques, which is worth the value of that money. Dealings in cheques are not only vital banking purposes, but also for the country's commercial, industrial and economic activities. Cheques are used for almost all transactions such as re-payment of loan, payment of salary, bills, and fees.ⁱ Quite a large number of cheques are processed by the banks on daily basis. They are dispensed in order to fortify the evidence of payments done, thus they are a credible way of payment for many people.

As a matter of law, a cheque is an instrument on which the customer, acting as principal, instructs the bank, his agent, to perform a specific act, which is the payment of a determined amount of money to the order of the payee or the bearerⁱⁱ. As such, it constitutes an instruction or order given by the customer to the bank, which is his agent. It is a mandate and the bank is, therefore, under a duty to observe the terms of the authority or mandate, conferred on it by the customer.ⁱⁱⁱ

It should be noted that, cheques are used the world over for financial transactions. Up to today, cheques are still processed manually every day in both developed and developing countries albeit at a limited scale.^{iv} However, modern research and technology development have brought about a new system which operates a recognition system of handwritings, amounts and signatures.^v

Cheques were one of the first payment methods before the 13th century and the first known cheque dates back to the same 13th century. The bill of exchange started in Venice as a result of the invention of cheques as a means to reduce the huge transfer of gold and silver. This invention was adopted in France and later in the 14th century in England when the first known references to cheques were made in businesses related to the transfer of funds out of the country.^{vi} However, these bills were not used for local trade and only witnessed a change by the 17th century when bills of exchange were used not only for international transactions but also for domestic transactions.^{vii} The cheque was originally referred to as a "drawn note" as it let merchants draw money from another's bank account.

Against this backdrop, we intend to examine in this paper the various constraints impeding the repression of cheques related offences in Cameroon. We argued in this chapter that the

repression of cheques related offences in Cameroon faces a lot of hurdles which impaired the implementation and effectiveness. Consequently, these impediments create tension and continue to increase the rate of cheques related offences in the country.

A Prodigious knowledge of these key argument necessitates an examination of the emerging challenges for the repression of cheques related offences and the propos solution therefore, justify the *raison d'être* of this research paper. In this light, these emerging challenges are distinct, to wit, legal and institutional.

LEGAL IMPEDIMENTS FOR THE REPRESSION OF CHEQUES RELATED OFFENCES

Regulations are absolutely essential in every facet of business life but experience has shown that, there are no regulations that parties will not try to circumvent. In the case of cheques, this is mostly because of their fragmented, obscurity, ambiguity and unclear nature of the laws. Thus, we shall from this lens examine the legal constraints or challenges inherent in the regulations and repression of cheques related offences in Cameroon.

Fragmented Laws on Cheques related Offences

One of the overarching obstacles for the repression of cheques related offences in Cameroon is the prevalence of fragmented laws to that effect. Cheques related offences are spread in several legislations both national and regional, amongst them include, Contract law, Civil Code, Penal Code, OHADA UA on general commercial law and economic interest groups as well as those of simplified recovery procedures. A marmot of these legal instruments regulating cheques related offences renders application difficult in banks and credit establishments. If attempts are to be made in solving this problem, the legislator has to first of all make a compendium or harmonize the various laws that are dotted in the country to form a single document constituting all cheques related fraud in Cameroon. This will go a long way in facilitating the settlement of tenancy disputes in the country.

Difficulties of Proving Intention in Case of Post-Dated Cheque

The law recognizes the possibility of issuing a cheque whose date of payment is later than the date of issue. Would the drawer be criminally responsible if the cheque is presented for payment before the date and it is dishonored due to lack of cover? By virtue of article 42 of the

Regulation n° 02/03 of 04 April 2003, a cheque is payable at sight and all stipulations as to time are immaterial. Hence, a cheque presented for payment before the date provided for payment therein is in order and therefore payable. This insinuates that the customer is eligible for criminal prosecution as soon as he issues a cheque without cover, the fact that it is postdated notwithstanding.^{viii}

This position is inspired and supported by article 15 of the above Regulation, which insists that sufficient funds must exist in the account and the customer must have the right to dispose of them at the time the cheque is issued.^{ix} It is also based on the view or principle that a cheque is not subject to maturity. For that reason, the bad faith (intention) of the issuer is established by simple knowledge of lack of cover. Based on this strict interpretation, we may imagine that the intention can be established even from the issuer's failure to verify his account balance before issuing the cheque.

However, in our opinion, this view is contestable given that the act does not constitute an offence until the instrument is actually presented for payment and it is dishonoured. Judicial support for this reasoning is offered by Cameroonian courts.^x Today, such presentment must be made within the specified time, if not the offence is not committed. Article 43 of *Règlement n° 02/03/CEMAC/UMAC/CM du 4 Avril 2003* specifies the time-limit within which a cheque must be presented which ranges from 8 days to 60 days depending on where the cheque is issued. If it is drawn on the branch of the bank in the same town, the cheque should be presented within 8 days. If it is issued abroad, the cheque should be presented within 60 days. In *Mbi Egbe Martin v The people & Khan Elroy Moses*,^{xi} two cheques issued in January 2010 and post-dated 15 February 2010 and 5 April 2010 respectively, were only presented for payment at Eco- bank on 16 May 2010.

The issuer was held not to have committed any offence when the cheques were returned unpaid for insufficient funds. This decision is contrary to that of the Cameroonian Supreme Court in *Companie Française de l'Afrique Occidentale (C.F.A.O) c/ Manganiotis Auguste*,^{xii} where a cheque presented after the statutory period of eight days when the issuer had withdrawn the funds in his account was not honoured. The criminal responsibility of the issuer was established based on withdrawal of cover after issue of a cheque.^{xiii} It must be said that the position of the law as it stands is harsh and illogical. What then is the purpose of a post-dated cheque? Why should the legislator allow such possibility? The customer may intend to ensure that there is adequate provision in his account before the date of the cheque.

A civil servant who issues a cheque to be presented only at the end of the month is a classic example. In this case, it will be difficult to prove the intention of committing the offence. In our humble opinion, it constitutes an offence only if on the date specified on the cheque, the customer has not secured adequate provision in his account. This reasoning is supported by the decision in *The People v TANYI Gerald*, where magistrate *Nnoko* held that:

“The drawing of a cheque does not imply that the drawer now has funds in the bank for the amount drawn for he may have authority to overdraw or may intend to pay in, before the cheque in question can be presented for payment.”^{xiv}

Under English law, a cheque is payable on demand and it is immaterial that it is post-dated. Nevertheless, the banker loses his statutory protection if he pays before the due date of payment and bears the loss that arises out of such an action. A banker who pays a post-dated cheque before the ostensible date stands a very poor chance of being able to debit his customer's account with the amount of the cheque in any conceivable circumstance, if the customer chooses to object to be so debited.

Interestingly, the position under English law is much better. English case law holds that, the cheque is a good and valid order for the payment of the amount, that is, in the ordinary state of events, the cheque will on its future presentment be duly honoured. It does not imply any representation that the drawer now has money in the bank for the amount drawn; in as much as he may well have authority to overdraw, or may intend to pay in (before the cheque is presented) sufficient money to meet it.^{xv} The major requirement therefore, is that on presentation for payment on or after the date specified on the cheque, it be met.^{xvi} This implies that criminal responsibility may likely not arise from a post-dated cheque without immediate cover.

Worthy of note is that some decisions of the Cameroonian courts are in sharp contrast with this English case law. As was emphasized by *Justice J.F. Fonkwe* in *The People & Nwangum Michael v Ekane Philip Ewang*:^{xvii}

The statement of the law is that a cheque is money. For a cheque to be issued there must be pre-existing and adequate cover in the bank account of the drawer; the law on bounced cheques is one of strict liability in that once issued, the cover must be maintained in the bank at the disposal of the drawee who may endorse the same cheque to another beneficiary and the chain continues.

What is the effect of part payment on the offence?^{xxviii} Is the offence consummated if there is cover but inadequate so that only part of the cheque is paid? Under English law, the principle is that the banker is under no obligation to pay part of the sum for which a cheque has been drawn. This is simply because a cheque is regarded as a mandate to pay a specific sum. Under French law, article 34 of the “décret-loi” of 1935 (applicable in former East Cameroon) authorizes part payment.

The practice in Cameroon is mixed. The banker on the one hand, can pay the amount available in the drawer’s account and clearly state so on the cheque. Statutory recognition of this practice is offered by article 48 of the 2003 Regulation above, which authorizes partial payment and even gives the beneficiary the option to ask payment to the extent of the amount in the account against a receipt. On the other hand, the banker may pay the whole sum ordered by the cheque, and subsequently, debit the drawer’s account with the difference.

This is very discretionary and largely depends upon the trust and confidence reposed on the drawer of the cheque by the bank.^{xix} Whatever the case, the bank will try to inform the customer based on the nature of their business relation.^{xx} In the first option, the offence still stands so long as part of the cheque is not paid (inadequate cover), and in the second, if the bank refuses to pay, the offence is committed. Cameroonian case law is contrary to the above view.

The Supreme Court of Cameroon held in *Michael Njine v The People*^{xxi} that, in cases of fraud, misappropriation, cheque without cover, where the complainant is the owner of the property and decides to accept part payment, he by so doing waives his right of possession and thus, turns the matter into a civil claim for damages. This view has been criticized as being strange in our law because it fetters the rights of the State Counsel in appreciating the opportunity of prosecuting any criminal offence.^{xxii}

The bank may honour the issuer’s cheque without cover based on their business relationship or agreements. The question here is whether a customer who issues cheques without cover based on such attitude of the bank can be guilty of the offence. The principle is that once the issuer is aware that there is no cover, he is guilty once the cheque is not honoured, irrespective of any tacit agreement between the bank and the customer and that the bank use to honour such cheques. In *Société Amo c/ Ministère Public et Ebokolo Mouna Jules*,^{xxiii} the Supreme Court rejected and annulled the decision of the Littoral Court of Appeal^{xxiv} which held that Ebokolo

Mouna Jules acted in good faith in issuing a cheque without cover, because the bank has always honoured his cheques without pre-existing cover.

INSTITUTIONAL IMPEDIMENTS FOR THE REPRESSION OF CHEQUES RELATED OFFENCES

In this head we intend to examine the institutional constraints impeding the repression of cheques related offences in Cameroon. These challenges include the following:

Difficulties of Proving Intention in case of a Mistake

Difficulties of proving intention may be faced in case of a mistake. What will be the situation if the drawer realizes that he issued the cheque by mistake? For example, the customer owns two accounts with the bank, one credited and the other debited and he mistakenly draws a cheque on the debited account. Could the bank not pay and then set off the amount against the credited account of the customer? This may be possible by virtue of the practice of consolidating accounts.

In any case, if this solution is not adopted, the offence is committed unless the customer can successfully prove that it was a mistake and that as soon as he realized the mistake, he tried to stop presentment of the cheque to no avail. If he realizes his mistake, he can only try to stop the bearer or beneficiary from presenting the cheque for payment and not stopping payment itself because the law has clearly enumerated instances where payment of the cheque can be countermanded.^{xxv} Where payment is stopped in violation of the legal reasons for countermand order, the issuer may be prosecuted for false pretences.^{xxvi}

The mistake may proceed from the bank. What will be the position if the customer relied on the balance to the credit of his account resulting from an error made by the bank, and drew a cheque but it turned out that the bank had rectified the error without his knowledge? On this point, the CEMAC legislator is silent. In our opinion, there is no intention, unless it is otherwise shown that the customer had reason to believe it was a mistake, but decided to draw or make gain from the proceeds of the error. The CEMAC legislator seems to be in line with this view. Article 204 of the 2003 Regulation above is to the effect that banking prohibition or injunction is lifted when it was made under circumstances not imputable on the drawer of the cheque, notably following an error of the drawee.

English case law holds that a customer who acts on such a mistake in good faith is entitled to recover damages from the bank even though the bank is entitled to have the wrong entry corrected.^{xxvii} The mistake may equally proceed from the bank where the drawer had regularly paid money into his account but which the bank mistakenly fails to credit his account. Here the offence is not committed.^{xxviii}

The Problem and Effects of Posterior Acts on the Offence

The problem of determining intention will equally arise where there is adequate but not free cover. The funds in the customer's account might have been made inalienable without his knowledge. This may arise for example, where there is an order of sequestration or garnishee order not notified to the customer or the notification reaches him only when the cheque has been issued. Here there is no intention of committing the offence.

Another burning and pertinent issue to determine is the effect of the customer's willingness to pay the amount of the bounced cheque or has already paid? The imprimaturs of Cameroonian courts show that courts always use their discretion and in most of the cases, discharge the accused for lack of criminal intention.^{xxix} This solution seems to receive statutory blessing in article 198 of the 2003 Regulation. This provision requires that the customer, whose chequebook has been withdrawn by the bank for issuing a cheque without cover, can regain his right to issue cheques if he pays the amount of the cheque or pays sufficient cover in the account.

This provision of the law and court decisions give the impression that the willingness by the accused to pay the amount of the cheque, or actual payment extinguishes the offence or determines whether or not it is committed. This is not true because the offence has been consummated and any posterior corrections do not extinguish it. The post-offence positive attitude of the offender only diminishes responsibility. As such, any acquittal of the offender based on post-offence comportment will be quashed in appeal.^{xxx}

Generally, the parties may express their desire to settle the matter peacefully. Here the court does not hesitate to throw out the case.^{xxxi} This position adopted by our courts has received statutory blessing with the coming of the new Criminal Procedure Code, which offers the opportunity for parties to a criminal process to withdraw it from court.^{xxxii} In fact, from the punishment provided for the offence, it is clear that the intention of the legislator was to launch a fierce battle against the offence to fight it to its grave, since it was becoming an economic

plague.^{xxxiii} This fight is reinforced by the fact that any person who receives the cheque with knowledge of inexistent, inadequate or no free cover is guilty as an accessory to the offence.^{xxxiv}

Nevertheless, as noted by Mbah Tidong, unfortunately, perusing the decisions of the Cameroonian courts, section 253 of the Penal Code has failed.^{xxxv} This author proposes a different reading of this section thus: “whoever issues a cheque on a bank or postal account, within or without the Republic, which is returned unpaid due to inadequate cover in his account...shall be punished by the penalties of section 318 of the same.”^{xxxvi} The views of this researcher may be castigated today given that the provisions of the 2003 CEMAC Regulation have brought some precisions as to the time of commission of the offence.

Whatever views researches and courts may have about the offence, the truth is that it is intended to fight the act of issuing of cheque without cover, to ensure that bank customers do not dupe or deceive their creditors, suppliers and contracting parties by issuing cheques, which will not be paid, and above all to preserve the credibility of the banking system. The act may no longer be punishable in some countries like France,^{xxxvii} but our laws still need to sanction it because of the peculiarities of our banking system. This is testified by the consistency and determination of the CEMAC lawmaker to reduce chances of cheque without cover. A glaring example is a certified cheque^{xxxviii} where a bank attests that the amount indicated on it exists and undertakes to keep the account blocked^{xxxix} for the benefit of the beneficiary till the deadline for presentment. This implies the drawer of the cheque can no longer withdraw the funds in his account.^{xl} This measure secures the cheque and tends to evade the multiplication of cheques without cover.^{xli}

The legislator’s determination to fight offences related to cheques and other means of payment is equally demonstrated by the inflation of such offences. As such, the law equally punishes any person who knowingly accepts a cheque without cover, makes use of a stolen or countermanded cheque, uses a cheque in defiance of an injunction to restitute, uses or tries to use a missing or stolen banking card, or uses a card after opposition.^{xlii}

Lack of Sufficient Human Resources

Despite the fact that the National Monetary Authority assists the Banking Commission in discharging its duties, there are still certain areas of control which are reserve for COBAC. The Commission still faces the problem of lack of personnel to carry out this control. The efficiency of the intervention of COBAC depends as well on the personnel, which it is provided with, in

the exercise of its mission. In effect, with the volume of the portfolio of the supervision in which the Banking Commission is charged with, it is doubtful whether it will be supplied with sufficient personnel, both qualitative and quantitative in the discharge of its mission.^{xliii}

This limits COBAC from carrying out effectively the controls scheduled for them in a year. Like the case of Cameroon in 2010, out of the fifteen controls programmed for the COBAC, only three of them were carried out and only one out of the general verification for credit establishments.^{xliv}

The Relative Independence of COBAC as a Regulatory Commission

The relative independence of COBAC stems from the fact that COBAC does not function on its own. It operates under the auspices of BEAC and even its staff as well. This can be seen from the fact that the Governor of BEAC presides over the meetings of the Banking Commissions. From the reading of the annex to the 1990 Convention, BEAC ensures through its budget and with the help of its staff, the personnel and budget needed by the Banking Commission in discharging its duties.^{xlv}

The relative independence of COBAC is however susceptible to compromise the efficiency of their action. With this, the banking commission is said to be partially independent from BEAC. In connection with the failure by the Banking Commission to carry out all the control scheduled for the Commission due to lack of personnel, BEAC as the provider of the staff should recruit personnel, not just quantitative personnel but also qualitative personnel so as to effectively effect the controls scheduled for the banking commission. In addition, the Banking Commission should not only focus on bureaucratic works for this might slow the rate of on-the-spot control and supervision by the Banking Commission.

CONCLUSION AND THE WAY FORWARD

From the above analysis, it is fairly easy now for us to better comprehend why there has been constant cheques related offences in Cameroon. The various actions available to parties to a banking transaction contribute to the amelioration and protection of their rights. In fact, one of the aspects of banking security which is reassuring is the confidence the parties have that there will always be a solution to any problem arising from their transactions. The regional legislators

have not done much as far as regulating the various actions is concerned. The simple reason is that the regional lawmakers are more interested in substantive law and not court proceedings, though the latter is not completely neglected. The efforts made in this domain, notably, simplified procedure of injunction to pay, enforcement measures and the specific procedures for cheques without cover are laudable. These special methods of recovery are reinforced by ordinary proceedings. Also spectacular, is the fact that the State is imposed the duty to lend assistance in the execution of decisions and other writs of execution. Any default or refusal by the State to lend assistance commits its liability.^{xlvi} The OHADA legislator is innovative in this respect. Under the Sheriff and Civil Process Ordinance hitherto applicable in Anglophone Cameroon, such obligation was placed on the State but the question of its liability was not posed.

However, this spectacular move by the OHADA legislator is fraught with difficulties because forceful execution cannot be ordered against the State or its entities.^{xlvii} However, this difficulty is mitigated by the fact that in case the State is made liable, the beneficiary can set off the claim against any debt owed the State by a third party.^{xlviii} Since the regional lawmakers are constantly at work, we believe they will enact other laws in addition to the existing ones, either to regulate new procedures or improve on the present ones to reinforce the protection of parties to banking transactions.

In this way, the legislators will remedy some of the shortcomings in the various procedures discussed above, for instance, making the procedure of attachment of real property shorter and rapid. The legislator has meticulously regulated the procedure for attachment of real property, but has made it too long and time consuming. This may be disadvantageous to the banker. Nevertheless, a banker may avert this procedure by carefully negotiating for contractual transfer during the mortgage contract.

In this regard, the following propositions are inevitable: firstly, the legislators should also improve on the law relating to cheque without cover. There is no legal guarantee for payment of cheques without cover. The institution of a legal guarantee for the payment of cheques of certain amounts without cover is one of the reforms highly awaited.

Secondly, the legislator should harmonize fragmented pieces of legislation and mitigate cross referencing of provisions related to cheques and cheques without cover into a single document

which is easily accessible. In addition, the harmonized laws should be in the two official languages in simple and clear terms for better understanding and implementation.

Thirdly, we realized in our paper that, the CEMAC and OHADA legislators are hailed for the great efforts made towards securing quick recovery of the value of cheques issued without cover, by enacting special and simplified recovery procedures for this purpose. Despite these efforts, these special measures or procedures have loopholes that hinder the objective of facilitating the payment of the payee, thus defeating the intention of the legislators. We therefore, recommended that, the lawmakers should initiate reforms to address the various lacunae pointed out above, especially those relating to deadlines. This will improve on the procedures and make them more efficient and rapid.

Fourthly, we also recommended that, bankers, legal practitioners should consider the use of ADR for the repression and settlement of disputes concerning cheques related offences. This might require necessary training of legal practitioners to be able to effectively operate as mediators, conciliators or arbitrators.

On the bases of this conclusion, it could be deduced that commendable efforts have been made by the various stakeholders towards the repression of cheques related offences in Cameroon. Unfortunately, these efforts have so far met with limited success owing to certain legal and institutional constraints as we have examined in this paper.

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- ^{xvi} R v Gilmartin [1983] 1 All ER 829.
- ^{xvii} Suit n° CASWP/21 C/97 (2002) 1 CCLR, at 18.
- ^{xviii} This question is considered in details in MBAH (E.), “Cheques and the Law in a Bi-jural State; Cheques Drawn on Accounts with Inadequate Credit; a Comparative Study of the Application of the English and French Legal Concepts in Cameroon” (1998), 2 *Annales de la FSJP*, Université de Dschang, 151-166.
- ^{xix} Mbah Tidong (E.), *The Law of Cheques in Cameroon*, *op. cit.*, 171.
- ^{xx} Tcheumaliu F Ansi (M.R.), *Les Stratégies de Modernisation des Instruments Financiers de Paiement: Etude Comparative Europe-Afrique*, D.N.R. Thesis, Université de Strasbourg, 2010, 171.
- ^{xxi} Suit n° 306/A of 15/09/1979.
- ^{xxii} Justice J.F. Fonkwe in *The People & Nvvangum Michael v Ekane Philip Ewang*, Suit n° CASWP/2IC/97 (2002) 1 CCLR, at 18.
- ^{xxiii} C.S. Arrêt n° 82/P du 23 Mars 1978 (unreported).
- ^{xxiv} Arrêt n° 144/P du 5 Novembre 1974 (unreported).
- ^{xxv} Article 46 of Regulation n° 02/03 of 04 April 2003, authorizes opposition to payment of a cheque exceptionally in case of loss, theft or fraudulent usage of the cheque or in case of on-going judicial proceedings relating to the cheque, or collective proceedings are opened against the beneficiary.
- ^{xxvi} Maka Njoh Kuntz c/ Ministère Public et Ekwé Frédéric, C.S Arrêt n° 122 du 8 Février 1972 (unreported) ; P.G.C.A Douala et Kamoua Venant c/ Fotso Victor, C.S Arrêt n° 164 du 5 Avril 1973 (unreported).
- ^{xxvii} *Holland v Manchester and Liverpool District Banking Co* [1909] 25 TLR 386.
- ^{xxviii} *Onambele Martin c/ Ministère Public et Société Bernabe-Cameroun*, C.S Arrêt n° 320/P 15 Décembre 1983 (unreported).
- ^{xxix} *The People v Susan Atte*, suit n° BM/176C/87 (unreported); *The People v Awoken William*, suit n° BM/806C/81 (unreported); *The People v Bender Ngongi*, suit n° LM/186C/87 (unreported).
- ^{xxx} *Procureur Général près la Cour d’ Appel de Garoua c/ Aubague Max*, C.S Arrêt n° 170/P du 6 Mai 1999 (unreported) ; *Ngankeu Ngassam Albert c/ Ministère Public et Les Laboratoires Heimer Frères*, C.S Arrêt n° 290/P du 23 Septembre 1993 (unreported).
- ^{xxxi} *The People v Micheál Acquenay*, suit n° KM/286C/88 (unreported).
- ^{xxxii} See circumstances under which criminal proceedings may be discontinued in section 62 of CPC.
- ^{xxxiii} Mouralis (J.C.), « *Le Chèque sans Provision en Droit Pénal Camerounais* » (1973), *op. cit.*, 147.
- ^{xxxiv} *Procureur Général près la Cour d’ Appel de Douala c/ Nyanda Njiki Mathieu*, C.S Arrêt n° 62 2 Décembre 1969 (unreported).
- ^{xxxv} see Mbah Tidong (E.), *The Law of Cheques in Cameroon*, *op. cit.*, 197.
- ^{xxxvi} *Ibid*, p. 198.
- ^{xxxvii} According to article 621-2 of Law n° 91/1382 of 30 December 1991, cheques without cover no longer constitute an offence. The suppression of the offence was just a consolidation of the position adopted by the courts since courts were reticent in sanctioning cheque without cover as an offence. The legislator began by restricting the conditions under which it could be considered as an offence and finally suppressed it, see RIPERT (G.) et ROBLLOT (R.), *Traité de Droit Commercial, Tome 2 : Effets des Commerce-Banque et Bourse – Contrats Commerciaux - Procédures Collective*, *op. cit.*, 259-260.
- ^{xxxviii} Article 25 of the Regulation.
- ^{xxxix} In other systems such as the USA, the amount of the cheque is usually charged to the drawer’s account at once and placed in a special account, “certified checks outstanding.” See Compton (E.N.), *Principles of Banking*, *op. cit.*, 56.
- ^{xl} This resolves the problem of doubt as to the strength and validity of the claim, since a cheque is not a legal tender; it is only a claim to money. By giving the payee a certified cheque, the problem is resolved and the transaction can be completed. When the drawee certifies the cheque, it transforms the drawer’s order to pay into the bank’s promise to pay.
- ^{xli} Tcheumaliu Fansi (M.R.), *Les Stratégies de Modernisation des Instruments Financiers de Paiement: Etude Comparative Europe-Afrique*, *op. cit.*, 147.
- ^{xlii} See articles 237 and 238 of the 2003 Regulation on Systems of Payment and section 253 of the draft bill to amend the Cameroon Penal Code.

^{xliii} Sunkam Kamdem (A.), « Réflexion sur le system de régulation institutionnelle de l'activité bancaire dans le CEMAC » *Revue Libre de Droit*, 2014, pp.134-148.

^{xliv} Kelese Nshom (G.), *Regional integration laws and banking security in Cameroon*, op. cit.

^{xliv} See article 5 of the 1990 convention.

^{xlvi} UASRPME, S. 29.

^{xlvii} UASRPME, S. 30(1); see also Aziablevi Yovo et autres c/ Société Togo Telecom, CCJA, Arrêt n° 045/2005 du 7 Juillet 2005, *Recueil de Jurisprudence de la Cour Commune de Justice et d'Arbitrage*, Vol. 1, 2003-2005, 657 661.

^{xlviii} UASRPME, S. 30(2).

