



The Legal Reasoning on the Constituent Elements of the Offence in Congolese Criminal Law. From the Silence of the Congolese Penal Code to the Doctrinal Battle

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ABSTRACT

Turning to the first point, the notion of offenses in Congolese law, beyond the different doctrinal definitions retained in the absence of a legal definition, we classified the offenses according to the various categories while placing particular emphasis on the unjustified choice of the repressive system. Congolese: the offense monism (any violation of the criminal law equals "offense"). Even though the Democratic Republic of Congo has ratified a number of international conventions with repressive systems: the tripartite division, which requires it to modify its monist system in favor of tripartite unlawful division (crimes, offenses and contraventions).

After this light on what is meant by an offense in Congolese criminal law, we have scrutinized what is the legal reasoning on the constituent elements of it in the second point. According to these doctrines studied, there are sometimes four elements constituting the offense, sometimes it is three, or sometimes only two. But let us point out that there is in all the studied doctrines, the maintenance of the material element and the moral element. While the others were sometimes maintained, sometimes rejected, even taken as legal basis or the preliminary or the founding element of the offense.

However, our position in this doctrinal controversy seems too demanding because we are more globalizing and broad, even rigorous than all the doctrines studied, especially since we count in turn up to six different elements constituting offense, namely: the legal element, the material element, the moral element, the unjust element, the existence of the author and the victim, of which we have described in which each of them is indispensable to the crystallization of an offense, which was not shared by any of the doctrines in this study.

Keywords: legal reasoning, offense, elements of offense, Congolese criminal law, doctrine, legal metonymy, criminal mathematics.

1. INTROCUCTION

According to Pierre Brunet, legal reasoning is understood simply as the reasoning of jurists and judges, but mainly judges, and which is opposed to judicial reasoning. However, Frederick Schauer, while rejecting the idea that there is a form of specifically legal reasoning, develops a more nuanced position according to which, without being specific to the law, certain forms of reasoning in which generalization and authority play a major role (reasoning based on rules, precedents, justification by reasons) are found more in the law than elsewhere, so that it would be justified to speak of a specifically legal reasoning. But based on Hart's realist critique of legal reasoning, we will align ourselves with the thesis that law is first and foremost a social practice and that the analysis of the legal reasoning of criminal liability for unintentional offences must consist of an analysis of this practice. And this legal reasoning in this direction is a practice that calls for several complementary actors: it cannot therefore be said that judges create the law, any more than it could be said that the law is entirely contained in texts. In reality, the law here would be the product of an interaction and collaboration of several actors, including the intervention of doctrinaires in matters of the constituent elements of offences in Congolese criminal law.

However, nowhere does the Congolese penal code give in limine litis what would be legally considered as a constituent element of an offence. Faced with this lack of precision and clarity, the doctrines compete in ingenuity to present these constituent elements of an offence. Thus, we cross and disassociate in the course of the books and teaching notes which present them sometimes in four, sometimes in three, sometimes in two elements. According to all these different doctrines, these elements constituting an offence are the most relevant, in particular: the mental element, the material element, the legal element, the unjust element, the presence of a perpetrator and that of a victim.

It is by trying to include a large number of elements, to retain everything we find, we are almost certain not to forget anything, or in any case, not to forget an important element.

Immediately it is interesting for us to reflect through this scientific article on "the legal reasoning of the constituent elements of an offence in Congolese criminal law" in an approach which, in our opinion, is considered too generous because some of the Doctrines attempt to include elements external to the offence, without which the offence can still perfectly exist. And others also subtract certain important elements of an offence and thus create numerous controversies between the legal officers of justice and the two categories of judges when it is necessary to render justice. Indeed, this debate on the constituent elements of an offence intensifies from day to day from one doctrine to another. The aim here is to demonstrate what constitutes an offence? Without what element, the offence as the result of a fact or act cannot be qualified as an offence? , By questioning the doctrines, which one proposes a good quantification? And what is our position in this debate? These questions will be at the centre of our reflection in this article.

As a result, we will try to address two points in this article: the concept of offences in Congolese criminal law (I) and the legal reasoning on the constituent elements of an offence in Congolese criminal law (II).

I. Concept of offences in Congolese criminal law

A. Definition of Offence

For its harmony and evolution, every society has at its disposal rules of various kinds; however, not all the members of this society still have the same sensitivity to these rules. Some of its members often adopt a conduct contrary to the established rules governing their relationship.

Thus, in order to ensure individual freedom, in the face of the behavioral differences observed between members living in the same society and given that the rules of other disciplines are often ineffective, society is obliged to make criminal law one of its favorite weapons, to correct any violation of established rules qualified as an "offense" and thus restore public order, social peace and public tranquility disturbed. Thus, in a clear and precise way, what is an offense according to the Congolese penal code and doctrines? What is a constituent element of an offense? And according to the different possible classifications, what doctrinal position should be supported and why in this article?

1. Legal definition

The Congolese penal code has not explicitly defined what the application of justice by the courts and tribunals qualifies as an offence. The same is also true for the Belgian and French penal codes, which claim legal authorship. This lack of legal definition from the penal code express verbis that the courts and tribunals, through judges and tribunals, Magistrates as well as legal practitioners refer to the different definitions provided by the various doctrines with multiple controversies on the constituent elements of what would be qualified as an offence.

2. Doctrinal definition

Moreover, in the absence of a legal definition, doctrines draw opinions to define the offence as well as the determination of its constituent elements. Doctrine corresponds to the opinions expressed by authors in works, the law as theorists conceive it. Those who profess such opinions, through their publications, exercise, within the legal class, a critical function, a function of judgment on the law, on the law and on jurisprudence. But also, it must first of all be recognized that doctrine has played such a considerable role in the construction of criminal law since the French Revolution. It was doctrine that rediscovered and perfected the principles applicable to Rome at the same time as canon law was developing. The authors and scholars who make up the doctrines shed light on the science and knowledge of law through exchanges or debates on the results of their research and compare their practices, because most of them were and are also lawyers or magistrates.

Thus, for Raphael GAROFALO, the offence is the outrage made in any state of conscience in a place to a certain average feeling of probity and charity. ⁴ Legally, this definition is insufficient, but not negligible scientifically.

Whereas according to HAUSS, by offence we must understand the violation of a criminal law, by the action or inaction that the law imposes on a penalty. ⁵

And for Joseph-Antoine NGOTO NGOIE NGALINGI, while maintaining that in order to better understand the concept of offence, it is necessary to highlight the differences with its related concepts and to specify its constituent elements; he then emphasizes that the offence is an act punishable by law and can be imputed to its perpetrator. It is an act that is provided for and punished by the criminal law⁶. For him, he continues, this definition calls for much clarification, because the offence is not the only harmful or anti-social act of man that the law sanctions. For example, the person who has caused damage is ordered to pay damages and interests; he is said to have committed a civil offence. The same is true for a lawyer convicted of serious indelicacy is disbarred from his professional order; he is said to have committed a disciplinary offence. By its definitional approach, it is retained that the offence has two constituent elements (material and intentional) whose legal basis must be recognised as the founder or prerequisite of any offence.

Emmanuel DREYER for his part, the offence is proof of guilt which makes it possible to confirm the suspicion that one might have had as to the criminal classification of the facts. Such facts constitute an offence only if they reveal that the officer behaved well with the state of mind provided for by the incrimination serving as the basis for the prosecution. By its definition, three distinct constituent elements of the offence can be identified.

B. Classification of offences

The concept of offence covers multiple realities that it is desirable to classify it by various homogeneous categories.

1. The completed offence

By focusing on the classification of the result obtained by the completion of the offence, it is necessary to distinguish between two types of offences: formal offences and substantive offences.

a. The formal offence

The formal offence is the one by which the legislator criminalises the process, regardless of the result. ⁷

A typical example of this is the offence provided for in article 50 of the Congolese Penal Code LII: "Anyone who has voluntarily administered substances that can cause death or substances which, although not likely to cause death, may nevertheless seriously impair health". ⁸

b. Substantive Infringement

Unlike a formal offence, a substantive offence is one that the law characterises by its result. It is only effectively completed when the result defined by the law has occurred, which is one of the constituent elements of the impugned conduct.

The most of the offences provided for in the penal code are material offences such as: murder, theft, voluntary or involuntary bodily harm, etc.

2. Depending on nature

In this classification according to the nature of the offence, there are three categories of offences which can be divided into two tendencies as follows: political offences and ordinary offences, and the latter military offences.

a. Common law offences and political offences

Here it must be remembered that it is not easy to establish the existing distinction between a political offence and an offence under ordinary law because the law has not given as many indications of their demarcation. So, it is necessary to try to find out what to do with a political offence if the others are common law? Two criteria are conceivable for this concern, the first objective and the second subjective.

- The objective test is that the offence is political when its purpose is political. For example, conspiring to change a political regime.
- According to the subjective test, any offence is political or can become political if the motive of the perpetrator is a political one.

But although these two criteria are applied, they are no less complex insofar as we often find ourselves faced with situations in which it is difficult to distinguish between the political and the non-political. This is the case of the assassination of a head of state⁹. For assassination is objectively an offence under common law and criminalized and punishable by articles 44 and 45 of the Congolese penal code, but the status of the victim reveals the political motive of the assassination. Hence, it is necessary to distinguish with J.C. SOHIER three categories of political offences, in particular: pure political offences, complex or mixed political offences and political offences annexed to political offences¹⁰.

- Pure political offenses: these are those that only undermine the political order. These are high treason or conspiracy to overthrow a government. ¹¹
- Complex or mixed political offences: these are offences which, according to Professor NYABIRUNGU, exist when one and the same act has a dual character, i.e. it violates both common law and political law. ¹²
- Offences related to political offences: these are common law offences inherent to political action. They are committed on the occasion of a civil war or an insurrection. By way of example, we can mention the malicious destruction of the monuments of political opponents.

It should be noted that the distinction between political offences and those under ordinary law has a dual interest, particularly at the national and international levels. Firstly, at the international level, it allows us to know that the political offence does not give rise to extradition¹³. And secondly, at the national level, it allows us to know that the political offence does not give rise to any disqualification and does not give rise to any professional incapacity.

b. Ordinary law offences and military offences

Article 40, paragraph 1, of the Military Criminal Code provides that: "Military offences are those committed only by military personnel or persons treated as such. They consist of a breach of the duty of their State"¹⁴. Indeed, these offences are divided into four categories:

Offences tending to exempt the perpetrator from his military obligations. Specifically, these are insubordination, irregular absence, desertions, voluntary mutilation and cowardice.

Offences against honour or duty, in particular the offence of capitulation or defeatism, military conspiracy, looting, destruction, forgery, falsification, bribery and corruption, usurpation of uniforms, decorations, etc. distinctive signs and emblems, insulting the flag or the army, incitement to commit acts contrary to duty or discipline.¹⁵

Offences against discipline such as: military revolt, rebellion, refusal to obey, assault and insult to superiors, violence or insults to sentry, violence against the civilian population, refusal of a service due by law, requisition, misappropriation of seized objects, illegal constitution of a criminal court¹⁶.

Violations of instructions¹⁷.

It must be recognized that the validity of this demarcation between ordinary law offences and so-called military offences is the fact that all other offences are, of course, common law offences qualified as military offences: on the one hand, strictly military offences, because they are inconceivable outside military life. This is the case of desertion or insubordination. And on the other hand, offences which may be committed outside military life, but which take on a particular gravity, and as a different nature, because of the particularly strict discipline imposed on soldiers. This is the case of contempt or assault against a superior¹⁸.

3. Depending on the severity

While the French penal system is based on the principle of tripartite division of offences according to seriousness, the Congolese penal system, on the other hand, has only enshrined the principle of offence-monism in terms of classification according to seriousness. It is thus opposed to the tripartite division of offences enshrined in French criminal law, which distinguishes between crimes, misdemeanours and contraventions, according to seriousness. Nevertheless, beyond this offence-monism, there are still certain classifications of offences¹⁹. However, the tripartite division is often described as illogical and artificial:

- Illogical because it justifies the seriousness of the offence by that of the penalty²⁰.
- Artificial because in reality it does not bring out the contraventions. It is for this reason that some prefer the bipartite division of offences; in particular into crimes and misdemeanours; given that the contraventions which are only breaches of the by-laws do not necessarily imply the perversity of their authors.²¹

It then appears to emphasize that, although Congolese lawyers use the expressions crimes and misdemeanours, but its penal system chosen by the Democratic Republic of Congo remains the offense monism.

4. Depending on the form of the behavior

Offences can be classified into three main categories based on the form of the conduct complained of, including: the offence of commission or omission, the simple or composite offence and the offence whose existence depends on the existence of another.

a. The offence of commission or omission

There is an offence of commission when the behaviour complained of is a positive behaviour, an action. Whereas there is an offence of omission when, on the contrary, the behaviour complained of is passive behaviour, an abstention.

Most offences are commission offences, since someone else is accused of having done something. It is more difficult to reproach for not having done anything. Nevertheless, the latter is rarely encountered whenever there is an obligation to act on the part of the person and the failure to comply with this obligation is punishable under criminal law. And thus, the choice to criminalize an action or an abstention belongs to the legislator because the principle of legality prohibits making it dependent on the judge²².

b. Simple or complex (composite) offences

Simple offences, requiring the perpetrator to carry out a single act, are contrasted with various offences which presuppose the performance by him of several acts of execution which inscribe them in time even though their consumption is instantaneous. They are therefore of a composite nature.

c. Single or multiple offences

In this category of offences, two hypotheses must be mentioned, which will lead us to speak of successive offences or to oppose an original offence to an offence of consequence.

In each case, it is a question of considering a single offence but one which has a close link with a previous offence. This results in a plurality of offences which deserves to be dealt with in detail part: either because these offences are committed consecutively by the same person, or because the second offence is committed by a person who benefits from a first offence committed by another.

Successive offences presuppose a plurality of identical offences, committed one after the other. The result is an apparent unity on the material level. However, this is not reflected in legal terms because each offence retains its autonomy in relation to the previous and subsequent offences.

5. Depending on the psychological state of the author

In considering this classification of offences according to the psychological state of the perpetrator, we come across two types of offences which are mutually opposed to each other, namely:

- Intentional offences based on knowledge and the intention to compromise a criminal law by a material act in question. In simple and non-technical, but certainly expressive terms, it is said that "he did it on purpose". This is the case with robbery, murder, etc.
- Unintentional offences based on the absence or ignorance of the existence of a particular law violated, but the result of the perpetrator's act leads to an offence result. Here the common expression is that which is said to be

"that he did not do it on purpose". The offence occurred despite the deliberate will of the perpetrator. This is the case for the offences of preterintentional offences, manslaughter, etc.

It should be stressed that the classification of offences according to the psychological state of the perpetrator has the advantage of verifying the possibility of applying aggravating circumstances to the perpetrator of one of these two types of offences, depending on whether it is intentional, with the causes of aggravation, or mitigating circumstances, depending on whether it is unintentional.

II. Legal reasoning on the elements of an offence in Congolese criminal law

Given that the legal reasoning has been discussed at length above, it is then a question of substantiating what constitutes an element of an offence.

By constituent element of an offence, we must understand any action or inaction deemed essential to the commission or commission of an offence. And the number of these constituent elements of an offence being not defined by the law, so the doctrines are drawn the sheets of opinions to justify each person's choice on the various elements essential to the commission of an offence.

A. The doctrine in four elements

According to this doctrine enacted by P. KOLB in his teachings on general criminal law, for an act to be considered an offence, it must have the combination of four elements essential to qualify an action or behaviour as an offence.

1. Arguments of the doctrine

- There can be no offence without the combination of these four constituent elements: legal, material, moral and unjust.
- The legal element : this doctrine requires the legal element among the constituent elements of an offence because, it maintains, there can be no offence without law. This is the meaning sought by the principle of legality of Beccaria *nullum crimen, nullum judicium, nulla poena sine lege*. An action or inaction, however prejudicial to the social order, can only be sanctioned by the judge when the legislator has provided for it in a text and criminalised under the threat of a penalty. It constitutes an offence only if and because a law has previously criminalised it and covered it with sanction.

- The material element : this doctrine refers to the material element to recall the requirement of an act attributable to its author, because it is true as long as the criminal law does not make accusations of intent. The criminal law that protects society could not punish simple ideas and intentions of offence, or even the resolution to commit an offence, because they do not yet disturb the social order without a material act being criminalized.
- The mental element : by referring to the mental element among the constituent elements of an offence, this doctrine seeks to specify whether the perpetrator acted with conscience or unconsciousness in order to be able to answer for his act. Thus, guilt presupposes the existence of a fault which must be intentional or unintentional, in order for it to be imputed to the account of the person who committed it. Some prefer to call this element; an intentional element.
- The Unjust Element : The Inclusion of the Requirement of an Unjust Element This doctrine suggests that in certain circumstances, an offence may be justified²³. Thus, this offence does not continue either because the act does not appear to be anti-social or because the act appears to be favourable to society.

2. The merits of the doctrine

P. KOLB's doctrine certainly has the merit of having described the offence in the most dynamic way possible.

3. Criticisms received

This doctrine with four constituent elements of an offence is unrealistic in some respects. Its criticisms are the fact of including in the offence elements that are external to it, such as the legal element and the unjust element, because the law that criminalises a fact or any behaviour in a given society cannot itself be part of the constituent elements of its violation, but is rather a founding element of an offence, hence a prerequisite for any offence²⁴. And the unjust element considered by many authors as a negative element lies in the absence of a justifying fact. However, for these many authors, the study of the justifying facts is confused with that of the legal element, which excludes any autonomy of the unjust element.

B. The doctrine with three elements of an offence

For this doctrine, an offence has three elements that are essential to its existence; in particular: the legal or unjust element, the material element and the mental element. For this doctrine, which BOULOC is part of, it is necessary to subtract sometimes the unjust element or the legal element, both of which are considered to be an element external to the offence and without which the offence will always take place.

1. Arguments presented by the doctrine

- There are two possibilities for subtracting either the unjust or the legal element from the four elements of the offence supported by the preceding doctrine.

- By removing the unjust element, this doctrine presents the argument that the unjust element is merged into the legal element. On the one hand, by relying on the study of the facts justifying the offence, which reveals that the existence of a justifying fact removes the mental element of the offence²⁵. This argument is intended to justify the merging of the unjust element with the existence of the mental element. On the other hand, the tenors of this doctrine maintain that the unjust element is indeed
- and synonymous with anti-juridicity, that is to say, the fact of being prohibited by law; and therefore equivalent to the legal element. ²⁶
- By removing the legal element, this doctrine affirms that it is practically unacceptable for the legal element to be part of the offence. For, according to it, to include the legal element would be to admit that the criminal law can be integrated into a fact, and a fortiori an unlawful act. ²⁷ This means that the legal element disappears among the constituent elements of an offence in favour of its consideration as a prerequisite for the existence of any offence or the legal basis, because the law exists even before the offence is committed and consequently coincides with it and will accompany it.

2. The merits of the doctrine

This doctrine has the merit of being able to essentially circumscribe those elements that would constitute an offence and its prerequisite taken in the sense of the legal basis or the basis of any offence. It is from this doctrine that the notion of the founding element or the preliminary element of any offence or the legal basis comes from.

3. Criticism received

The weakness to be reproached with this doctrine would be the fact of lacking precision on which of the constituent elements of the offence supported by the four-element doctrine to subtract. Sometimes it admits the legal element, sometimes it rejects it. Sometimes it is the unjust element that is admitted, sometimes it is it that is refuted; sometimes it is confused with the legal element, sometimes it causes the mental element of the offence to be suppressed and thus renders the offence a justified act and therefore not open to challenge.

C. The doctrine in two elements constituting an offence

According to this last doctrine, which NGOTO NGOIE NGALINGI is part of and which he considers logical, the unjust and legal element must be eliminated from the constituent elements of an offence, but making them the prerequisite or legal basis, because they are not essential to the commission of an offence. Therefore, the offence has only two constituent elements that it cannot do without, namely: the material element and the mental element.

1. Arguments presented by the doctrine

This doctrine justifies its choice to retain only two elements constituting an offence in the following way:

- The material element to show the demarcation that criminal law has in relation to morality which arouses consciences and punishes bad thoughts and guilty intentions. Penal law, on the other hand, which protects society, does not punish simple criminal ideas and intentions, nor the resolution to commit a crime, because they do not disturb the social order. It punishes them only when they have manifested themselves externally by a fact or act. The external fact or act by which the criminal intent or criminal fault is revealed constitutes the material element of the offence. These are, for example, the shooting or stabbing of another person (homicide), the removal of someone else's property (theft), the fact of not having helped a person in danger, the fact of having left one's car in a place where parking is prohibited²⁸. What makes an offence, even if attempted or missed, punishable in the same way as a completed offence²⁹ is the fact that the material element is found in a fact or act and not necessarily in the result of that act. The material element necessary for the existence of the offence may then be either a positive or a negative act (action or omission), or an instantaneous or continuous act, or a single act or several acts.
- The mental element : for an offence to exist legally, only the material act is not sufficient. It must also be established that this material act was the work of a will of its author. Thus, the mental element that some find better called the intentional element consists in the link between the act and the perpetrator³⁰.

2. The merits of the doctrine

This doctrine has the merit of wanting to simplify the knowledge of the essential constituent elements of the offence. By merging the unjust element into the legal element, the doctrine has two elements does not find what and why the law itself would be a party to an act deemed unlawful. Hence, this doctrine also has the merit of having synthesized the important constituent elements into two, including a material element and a mental element, because the others are considered either as a prerequisite or a legal basis for the offence, or as external elements of the offence.

3. Criticism received

Beyond the success expected in the doctrinal debate by its synthesis, this doctrine, like all the others, nevertheless has some weaknesses, all the more so since, in wanting to synthesize too much, it has forgotten to retain certain elements essential to the crystallization of an offence, such as the legal element, the unjust element, the existence of the perpetrator and the victim.

D. Position of the article in the debate

Since we do not share the opinion of any of the doctrines studied by this article, our position in this debate seems too demanding because we are even more global and broad than all the doctrines studied in this article, because we in turn count six different elements constituting an offence, namely: the legal element, the material element, the mental element, the unjust element, the existence of the perpetrator and the victim. Thus, the crystallization of any offence depends on the combination of these six above-mentioned elements, namely:

- The legal element : we recognize the legal element among the constituent elements of an offence because, we maintain that there cannot be an offence without law according to the meaning sought by the principle of legality of Beccaria *nullum crimen, nullum judicium, nulla poena sine lege*. This is a legally metonymic expression. Because let's say by metonymic reasoning; I drank a glass of water, for example, to simply mean I drank the contents of the glass, which is nothing but water. Thus, by supporting the idea that the offence has a legal element, which is the law violated, this does not make the law an unlawful act, but a victim of an unlawful act.
- The material element : we retain the material element, all the more so since we support the requirement of a material act possibly attributable to its author, because criminal law does not only make judgments of intent. The criminal law that protects society could not sanction simple ideas and intentions of offence, or even the resolution to commit an offence, because they do not yet disturb the social order without a material act being incriminated.
- The mental element : we have retained the mental element among the elements constituting an offence, because it makes it possible to know precisely whether the perpetrator of an act acted consciously or unconsciously in order to be able to establish his responsibility. However, guilt does presuppose the existence of a fault which must be intentional or unintentional, imputed to the account of the person who committed it.

This is why some prefer to call this element an intentional element.

The unjust element : referring to Patrick KOLB, we considered it important to include an unfair element to show that in certain circumstances, an offending act can be justified³¹. Thus, this offence would no longer be prosecuted because either the act does not appear to be anti-social or the act appears to be favourable to society. So, whether or not this justification makes it possible to crystallize a fact into an offence.

The existence of a perpetrator : in any offence, the perpetrator is a triggering element, because without him the material act and the guilty intent of the offence do not exist. Hence, the offence cannot exist even because of the lack of the possibility of carrying out what we qualify here as criminal mathematics ($\text{guilt} + \text{imputability} = \text{criminal responsibility}$). And the difficulty or not of being able to identify or not the perpetrator of an offence can in no way erase or question his existence and his great role has played in the crystallisation of an offence. Thus, it should be stressed that if this perpetrator does not be a natural person, he may well also be a legal person. Therefore, there is always a perpetrator for every offence.

The existence of a victim : it is also necessary to recognize the necessity of the existence of a victim for there to be the motive for any criminal prosecution. For, after all, an act is only declared an offence when it has harmed a victim. The latter can then be a natural or legal person, but in any case, there is always a victim, whether he or she is recognized or ignored.

Conclusion

This study has been devoted to the legal reasoning on the constituent elements of the offence in Congolese criminal law. From the silence of the Congolese penal code to the doctrinal battle.

The offence is the act of a man living in society severely punished by law in the Democratic Republic of Congo as in other countries, because the commission of the offence undermines both public order and private interests. Committing an offence is the situation of all individuals who do not observe the behaviour required by the law by falling back on prohibitions and suggestions. However, with regard to these marginalized and outlawed people, the repression is necessary and it reflects society's reaction to the violation of certain rules of law that protect the most eminent values. And the violation of the rules of criminal law leads to more restrictive measures is qualified as an offence. So we qualify an act as an offence only after having assessed for this act the possibility for it to gather the constituent elements of an offence.

But the constituent elements being neither defined nor quantified beforehand by Congolese criminal law as they are not under other skies either, leave the different doctrines free to define and quantify them to support the augury judge of the matter.

It is therefore at this stage that the crux of the doctrinal debate raised by our study emerges in an overly generous and objective approach according to which some doctrines attempt to include elements external to the offence, in the absence of which the offence can still perfectly exist. And others, by also subtracting certain elements constituting an offence, thus create numerous controversies between the legal officers of justice and the two categories of judges when it is necessary to render justice. Indeed, this debate on the constituent elements of an offence intensifies from day to day from one doctrine to another, from controversy to controversy. This has enabled us to demonstrate through this study what constitutes an element of an offence? What is the element without which the offence as the result of a fact or act cannot be qualified as such? , By questioning all these doctrines, which of them proposes a good quantification? And what is our position in this debate?

Of these questions, we have deemed it imperative to address this article in two essential parts, in particular: the notion of offences in Congolese criminal law (I) and the legal reasoning on the constituent elements of an offence in Congolese criminal law (II).

By addressing the first point of the notion of offences in Congolese law, beyond the different doctrinal definitions adopted in the absence of a legal definition, we have classified the offences according to the various categories while placing particular emphasis on the unjustified choice of the Congolese repressive system: offence-monism (any violation of the criminal law equals "offence"). While the fact that the Democratic Republic of Congo has ratified several conventions of international law with repressive systems: the tripartite division of offences obliges it to modify its monist system in favour of the tripartite division of offences (crimes, misdemeanours and contraventions).

After this clarification of what is meant by an offence in Congolese criminal law, we examined what the legal reasoning would be on the constituent elements of the offence in the second point. Then we studied the different

numbers of constituent elements of the offence supported by each doctrine studied in this article, with the constant being the maintenance of the material element and the mental element by all the doctrines studied. While the others were sometimes maintained, sometimes rejected.

However, as far as our participatory position in the debate is concerned, we do not share the opinion of any of the doctrines studied by this article, which justifies our position in this debate for appearing too demanding because we are more global and broad, even rigorous, than all the doctrines studied, especially since we in turn have up to six different elements constituting an offence, namely: the legal element, the material element, the mental element, the unjust element, the existence of the perpetrator and the victim, each of which we have detailed in what way each of them is essential to the crystallization of an offence.

Foonotes:

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