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Review Article

An Appraisal on the Protection of the Rights of Accused Persons Standing Trial before a Competent Court of Law under the Cameroonian Legal System

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Abstract

An accused person, otherwise referred to in French as "le prevenu", is a person who must appear before the trial court to answer to the charge brought against him whether in respect of a simple offence, a misdemeanor or a felony [1]. The Cameroon Criminal Procedure Code upholds the trial rights of accused persons. The code like the 1996 Constitution of Cameroon provides a platform for the implementation of criminal norms in the country. It also helps protect accused persons from arbitrary and unjust laws and sanctions. The present Criminal Code harmonized the two procedural codes that existed in Francophone and Anglophone Cameroon which were the Code d'Instruction Criminelle, and the Criminal Procedure Ordinance respectively. These trial rights of accused persons are upheld through a legal process by the trial courts of Law in Cameroon. This therefore means that the rights of accused persons are therefore suppose to be treated in a particular way during a criminal trial. These rights embody the right to be given something as well as the right to be allowed to do something in a specific manner. Adopting purely qualitative research method involving purely content analysis of cases and relevant statutes, this paper conclude that the government has made efforts in respecting the rights of accused persons standing trial before a competent court of law but its efforts are inadequate. Notwithstanding, finding a compromise between the respects of the rights of accused persons standing trial before a competent court of law with societal interest has never been a trouble-free assignment. To this end, the paper seeks to examine the protection of the rights of accused persons as are confectioned in the criminal procedure code and its extent of implementation as we sought to respond to the main question, to what extent does the Cameroon government guarantee the respect of the rights of accused persons standing trial before a competent court of law?

Keywords: Appraisal-Protection-Human Rights-Accused Persons-Standing Trial-Competent court-Cameroonian Legal System**.**

INTRODUCTION

The Cameroon Criminal Procedure Code upholds the trial rights of accused persons. The code like the 1996 Constitution of Cameroon provides a platform for the implementation of criminal norms in the country. It also helps protect accused persons from arbitrary and unjust laws and sanctions. The present Criminal Code harmonized the two procedural codes that existed in the Francophone and Anglophone Cameroon which were the Code d'Instruction Criminelle, and the Criminal Procedure Ordinance respectively. These trial rights of accused are upheld through a legal process by the trial courts of Law. Accused persons are therefore treated as a right in a particular way during a criminal trial. These rights embody the right to be given something as well as the right to be allowed to do something in a specific manner. At trial, this will be held to mean the things which an accused person has or he is supposed to have or do during the period in a competent court of law.

It is worth mentioning here that the rights of accused persons referred here are those rights which a person is entitled to during trial and no more. However, there exist rights of accused at remand with its worth considering as an integral part of the rights of accused persons standing trial.

CONSECRATING THE TRIAL RIGHTS OF ACCUSED PERSONS UNDER THE CRIMINAL JUSTICE SYSTEM OF CAMEROON

The integrity and soundness of any legal system lies greatly on whether the courts are able to

hear and determine cases in fairness. This thus makes public trust on such an institution a vital component of the criminal justice system which the courts must uphold at all times. The absence of such integrity and credibility of any legal system gives birth to corruption which has an adverse effect on the rights of accused persons in many criminal justice systems which can have severe consequences for the due process of law. The legislators of the Criminal Procedure Code and the Constitution of Cameroon set out standards which uphold the rights of accused persons in particular and a just legal system in general. The construction of provisions upholding the rights of accused persons reflects internationally recognized stands for a fair trial and the rights of accused persons. To this effect, the rights of accused persons standing trial in a court of law are discussed exhaustively in the following heads:

The Right to fair hearing (and trial)

Every person has the right to a fair hearing at trial both in civil and criminal cases. The rights of accused persons to a fair hearing are enshrined in the Preamble of the 1996 Constitution which states that "the law shall ensure the right of every person to a fair hearing before the court." The provision of this constitution draws inspiration from the rule of natural justice which comprises of two limbs; that is, the rule against bias (*nemoiudex in causasua*); and the right to a fair hearing (a*udialterampastem* hear the other side). The aim of the race against bias is that, the principles of justice and impartiality must be observed by treating all the parties to a dispute equally and fairly. Fairness here is meant that all the parties to a dispute be given equal opportunities to participate in the decision making process without favouring anyone. The requirement under impartiality is that, a judge should not approach an issue without predisposition of a character or strength which prevents him/her from a conclusion against his or her previous position. This principle also requires that, the decision maker should be open to persuasion but don't require that he or she must be with a bank mind. The rule against bias has its origin from the principle that no one should be a judge in his own case and that justice should not only be done but manifestly and undoubtedly be seen to be done. Therefore, not only impartiality for decision makers is necessary but must objectively apply their minds for the solution of disputes. In the words of Lord Atkin LJ in RV Sussex Justice ex Parte McCarthy (1924), "Justice should not only be done, but should manifestly and undoubtedly be seen to be done. As such, the maxim of *nemo Judex in causasua*, which means, a decision maker should not adjudicate upon a case in which he is interested, was recognized in English Law and the 1996 Constitution under the natural justice rule.

To this effect, the Code provides in section 591 that:

> *Any magistrate of the bench or Judge may be challenged for any of the following reasons: (a) Where he or his spouse is a relative, guardian or relative by marriage up to the degree of uncle, nephew, first cousin, or the child of the first cousin of the parties; (b) where he or his spouse is employer, employer, next of kin, donnee, creditor, debtor, companion of one of the parties or director of enterprise or company involved in the case; (c) where he has previously taken part in the proceedings or if he had been arbitrator or counsel or witness; (d) where he or his spouse is a party in a case which shall be tried by one of the parties; (e) where he or his spouse is involved in any incident tending to show friendship or hatred toward any of the parties and likely to cast a doubt on his impartiality."*

In the same vein, Section 592 of the Criminal Procedure Code provides that:

> *Any magistrate of the bench who thinks that he could be challenged for any of the reasons provided for under section 591 above, or who has good reasons to abstain from hearing and determining a case shall inform his superior. In such a case, the provision of section 593 to 598 herein after shall apply.*

The above provisions are aimed at ensuring respect and compliance with the rights of natural justice (i.e. the right to fair hearing of an accused in a criminal trial). They are aimed at ensuring also that the requirements of impartiality and independence of the adjudicating authority are met in the trial by the judge.

Thus, in the case of *Chief Gani Fawehinini Legal Practitioners Disciplinary Committee* [2], the applicant in one of his publications, attacked the Attorney General of the Federal State and was served with a letter from the Attorney General's Office to appear before the Legal Practitioners' Disciplinary Committee to explain why he should not be punished for advertising himself, as "a famous, reputable and controversial lawyer", contrary to the Bar Council Act which forbids legal practitioners from advertising themselves. The Attorney General was chairman of Disciplinary Committee. The applicant challenged the validity of the proceedings on the grounds that, he would be denied fair hearing, in as much as in the circumstances of the case, the Attorney General was biased against him in upholding his contention. The court held that:

> *The facts and circumstances were sufficiently capable of creating fear and suspicion in the applicant's mind as to the fair trial because the Attorney General was the prosecutor, the complainant and the judge. The Disciplinary Committee was quasi-judicial authority and could inflict punishment. But because of the circumstances, and the Attorney General being the chairman, a biased one, the committee cannot be said to be constituted in a manner likely to secure*

its independence and impartiality. Hence, the right to fair hearing was breached.

Similarly, in the case of *Yusuf Garba v. The University of Maduguri* [3], the court held that the students who were expelled by the Disciplinary Investigative Panel, were denied fair hearing on the ground that the chairman of the said panel the Deputy Vice Chancellor was also a victim of the students activities and a witness to the prosecution; hence the chairman being such a witness; a victim and also a judge, there was a real likelihood of bias and this violated the trial right of fair hearing. The import of the above two decisions is that in criminal cases, the tribunal or the court or any other judicial authority must not only be independent but must also be impartial.

The courts have so revered on the principle of fair hearing such that it considers the trial (or hearing of the case) of an accused person by one body followed by the decision or judgment delivered by another body as violating the principle of fair hearing. Thus, in the case of *Sebastian Barth Ozoana v. Police Service Commission* [4], where the Inspector General of Police queried the appellant while the respondent Police Service Commission dismissed him based on the query by the Inspector General of Police, the court held that such a procedure breached the appellant's right to fair hearing, since according to the court, fair hearing implies that the body that hears will consider all representation made and then, come to a consideration. The court remarked that, "in this case we are faced with a situation in which the apex senior, that is, the inspector General of police did the querying, while another authority did the dismissal. We do not know how both bodies communicated to arrive at the dismissal stage since there is no evidence proffered by the respondent that even the commission was aware of what was happening. There is neither establishment nor proven nexus between the act of the inspector General of police and that of the commission [5].

The court therefore unanimously allowed the appeal. The court's ruling in this case seems to apply that even if the trial (that is hearing) of an accused person is done by one authority and judgment is delivered by another authority that per se cannot invalidate the judgment if it can be proven that the two bodies communicated to arrive at the same decision or there is an establishment or proven nexus, between the act of the deferent bodies.

Fair hearing has been held to be the same with fair trial and fair hearing must involve a fair trial. Also, a fair hearing or a fair trial must be consist of the whole hearing up to the time of passing judgment or any ruling if necessary. They both consist of eight that guarantee minimum effective protection of an individual. A fair trial equally envisages "a trial that is fair to the accused because it provides a minimum procedural protection. Trial right like the right to a fair hearing stresses the rights of accused persons as "basic" to fairness in perceptual process.

Process without which the process can be abused and manipulated to car fall individual liberties, which ultimately would deny the said accused from justice. Fair hearing is said to be an indispensable principle in our criminal justice system speaking on its importance, Mnnamani J.S.C in *Nwokoro v.Onuomaa* declared that "the right to be heard is so fundamental a principle of an adjudication process. It cannot be compromised.

For a proper understanding of what constitutes fair hearing. The court enumerates the attributes of the principle of (fair hearing) in the case of *Iwuchavokoroiko* as follows:

- The court shall hear both sides not only in the case but also on all material issues in the case before reaching a decision which may be prejudicial to any party to the case.
- With respect to the criminal procedure code, section 387 (1) provides that "in respect of each of the parties a judgment shall either be considered as hearing been delivered after full hearing or in default ". That sub sections suggest that, for the court to arrive at decision, there must be full hearing that is to say all the parties and their witnesses to a case must be heard including all the materials issues involved. It is only by doing this that the court can claim not to have default against the principle of fair hearing.
- The court or tribunal shall give equal treatment, opportunity and consideration to all concerned;
- That the proceedings shall be held in public and all concerned shall have access to and b informed of such a place of public.

With respect to this principle, section 302 of the criminal procedure code provides that "hearing shall be conducted in public and with respect to notice of the hearing, section 41(2) provides that:

A summon shall state the facts of the case and provisions of the law under which the defendant is charged. It shall also state as the case may be, the examining magistrate or the court seized of the matter, the place, date and hour of the hearing and shall specify whether the person has been summoned as defendant, accused, civil party, person vicariously liable witness or an insurer.

This provision is good because the accused is aware of the offence he has to answer for, the magistrate or the court seized, the place and time of hearing and the capacity in which he is being summoned. This provision also prevents the possibility of bias by the judge in the sense that, if the accused is convinced, that the judge has an interest in the outcome

of the case, he can raise an objection by appealing for a change of the magistrate.

Having regards to all the circumstances of the case, justice must not only be done, but must be seen to have been done [7]. Another striking question with respect to fair hearing is whether the claim of state privilege or professional secrets as provided for in section 325(2) of the criminal procedure code is consistent with the right to fair hearing granted by the constitution. Section 325 (2) provides that:

> *Subject to the provisions of section 322 (2), any person summoned as witness shall be bound to appeal and take oath before giving evidence. However, and unless otherwise provided for by law, the oath shall not relieve the witness of his obligation to keep secrets which have been confided to him by reason of his profession.*

With regards to this issue of state privilege or professional secretes, the court in *African Press Ltd v. Afforney-General of Wesrern Nigeria* [8] came to the conclusion that the claim of privilege (professional secrete) derogates for by the constitution because it prevents the party in the suit to use such information and or document in support of his case or to demolish the case of the persecution. It is therefore recommended that, where the courts are of the opinion that the disclosure of any information and or document is not in the public interest, the matter should be heard in Camera. Criminal procedure code provides that, when a public hearing is repugnant to public order or morality, the court may at any time at its own motion, or on the application of one of the interested parties and after the submission of the legal department rule either that the proceeding or any part thereof.

The right to the presumption of innocence

The presumption of innocence at any criminal trial is considered fundamental to any credible justice system. In order to uphold such a dignified legal system of justice, the state has the primary responsibility of detection, apprehension, persecution and conviction of offenders in this process, the accused always faces the might of the state and this challenges the fairness of the criminal justice system. In using the various tools, the law tries to maintain the balance between the searches for the truth and ensure the fairness of the process. The criminal justice system is expected to maintain the rights of the individuals even when this at times seems to go against the search for truth. The law does so by affording individuals certain protection such as the presumption of innocence which proven guilty before a competent independent and impartial court and by imposing on the state the study of proving each ingredient that constitutes crime [8].

In striking a balance between the search for the truth and the fairness of the process certain rights of the accused like his right to the presumption of innocence has to be respected and protected to assume that all persons are innocent until proven guilty provide guarantee against unjust convictions. In Cameroon, the right to the presumption of innocent is enshrined in the preamble of the constitution of the republic of Cameroon. The preamble stipulates that, “every accused person is considered innocent until found guilty during a hearing conducted in strict compliance with the rights of defense”. This principle is the bed rock of fair trial criminal proceedings. In other to attain this fairness in trial proceedings, the Cameroon criminal procedure code makes the respect and implementation of these principles compulsory from the investigation stage up to adjudication. Article 8(1) of the criminal procedure code states clearly this mandatory provision. It states that, any person suspected of having committed a criminal offence shall be presumed innocent until his guilt has been legally established in the course of a trial where he shall be given all necessary guarantees for his defense code continues to articulate in such section 8(1) that “the presumption of innocent shall apply to every suspect, defendant and accused persons.

Presumption of innocence is a restatement of the rule that in criminal matters, the public prosecutor has the burden of proving guilt of the accused in other for the accused to be convicted of the crime he is charged with. Should they exist any slightest doubt case to the guilt of the accused person in the evidence adduced by the persecution, the accused is given the benefit of doubt and is discharged and acquitted in the case of *Tajuoleen Alabic v. The states* [9] The appellant was standing trial for armed-robbery and the trial judge convicted him on the grounds that, he (the judge) was not satisfied with the evidence adduced by the first accused and the appellant in that, they did not convince him as to their innocence. Their appeal to the court was dismissed and on further appeal. The supreme court unanimously allows their appeal and quashed the conviction on the grounds that the law invests in every person charged with the commission of a crime a presumption of innocent and the accused person is not therefore oblige to prove his innocence as it is in the inquisitorial approach of criminal trial practiced in the French speaking provinces in Cameroon before coming into force of the informed criminal procedure code.

The burden of proof which lies on the persecution has two elements. The first element is the evidential burden, that is, producing evidence in the support of one’s allegations, while the second element relates to the burden of persuasion (also referred to as the legal burden), which is the obligation of the party to convince the court that the evidence tendered proves the party the rights of facts as such, it upholding the rights of accused persons to a fair trial, the burden of proof remains on the accuser.

The exception to the above stated general rule on the burden of proofing the guilt of the accused lies

on the prosecution is that, the law may sometimes place upon the accused, the burden of proving certain (particular) facts, this is purely a common law can concept derived from the law of evidence which has been incorporated into the harmonized criminal procedure code of Cameroon. To this effect, section 309 of the code provides that "any accused who pleads any fact in justification of an offence or top establish his criminal irresponsibility shall have the burden of proving it.

In this situation the presiding judge shall put questions to the accused persons with the aim of requiring him to prove that specific fact or facts which he is racing in his defense. Proof of a particular act is different from proof of the charge. It is only in certain matters of detailed nature that it can reasonably be set to be with the personal; knowledge of the accused that, the law imposes a duty upon that if he does not prove to the contrary, the law will presume that he has done certain things for example, if a civil servant who is appointed to a public office had declared his assets and properties at the beginning of his tenure of office in consonance with section 66 of the 1996 constitution and at the end of his tenure of office, it is found that his assets and properties have increase drastically, that is, it will be presumed that he has accumulated wealth by way of corruption means, in such a case the burden of the persecutors will be to prove is known or declared sources of income at the time of entering in to that office and the amount of wealth so accumulated by him and then establish that the mount of wealth so accumulated is far in excess of such income with the that having been done, the onus then shift on the accused person to prove the facts as to how he got that extra wealth because these facts can only be known by him alone.

This departure from the fundamental principle of criminal law could be justified on the ground that the same complicated economic and social crimes, the knowledge of the offence or some related facts are known to be offenders only in this regard therefore, it is necessary sometimes to require the accused person to prove some specific facts.

Prohibitions against Retrospective Legislation

The principle of *nullum-crimen et nulla-poena sine lege* lies at the very hearts of the concept of the rule of law so much so that it is re- frequently referred to merely as "the principle of legality [10]. Retrospective legislation is generally defined as legislation which takes away or impairs any vested rights acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect to transactions or considerations already past [11].

The prohibition against retrospective legislation also known as bar against export facts law, is provided for in the preamble of the 1996 constitution to the effect that "the law may not have a retrospective effect. No person may be judged and punished except by vesture of a law enactor and published before the offence committed the Cameroon general procedure code also upholds this principle of non-retrospection of the law stated in its section 3 that:

> *No criminal law shall apply to acts or omissions committed before its coming in to force or in respect of acts or omissions which judgment has not been delivered before its repeal or expiry.*

Following the above stated legislations, retrospective legislations will mean making a law which punishes an act which was not an offence at the time the conduct was committed, also referred to as "no punishment without law" [12]. It follows that; laws should not be retrospectively charged legal rights and obligations or create offences with retrospective application.

Retrospective creation of a criminal offence is a particular accede example of infraction by the state of individual liberty. Holding a person criminally liable for doing what it was lawful to do at the time that he did it is usually obviously wrong. The retroactive removal of an actual freedom coupled with the gravity of consequences that may accompany a breach of the criminal law meaning that retroactive imposition of a criminal liability and the common justified. Consequently, harm infected for a fact done before there was a law that forbade it is not punishment but an act of hostility for before the law there is no transgression of the law [13]. This is so because it is impossible for a party to foresee that an action, innocent when it was done, could be afterward converted to guilt by a subsequent law. He had therefore had no Cause to abstain from it and so, all the punishment for not abstaining must of consequences is cruel and unjust. All laws should be therefore made to commence in future and be notified before their commencement [14].

Retroactive laws are commonly considered in consistent with the rule of law. As such, in an effort to uphold the rule of law, the accused cannot be punished for something which was not criminal when he did it and cannot be punished more severely than he could have been punished of the time of the offence [15].

Equally, retroactive laws make the law less certain and reliable. Lord Diplock said "acceptance of the rule of law as a constitutional principle requires that a citizen before committing himself to any cause of action should be able to know in advance what the legal consequences that will flow from it are [16]. A person who makes a decision based on what the law is, may be disadvantaged if the law is changed retrospective, it is said to be unjust because it disappoints a justified expectations [17]. Retrospection law-making is unjust because it disappoints the justified expectation of those who, in acting, having relied on the assumption that the

legal consequences of their act will be determined by the known state of the law established at the time of their acts.

In *Director of public persecution (ctb) v. Keating* the Australian High court emphasized the common law principle that the criminal law should be certain and its criminal responsibility" and "underpins the strength of the presumption against retrospectively in the interpretation of statistics that impose criminal liability" the court quoted Bennion on statutory interpretation:

> *A person cannot rely on ignorance of the law and is required to obey the law. It follows that he or she should be able to trust the law and that it should be predictable. A law that is altered retrospectively cannot be predicted. If the alternative is substantive it is therefore likely to be unjust. It is presumed that, parliament does not intend to act unjustly.*

Furthermore, commence about the officials of retrospective laws are closely related to concerns about uncertainty if a person does not know or is uncertain about the law; it is difficult for the person to comply with-it. The law does not comply in this circumstance, guide or detor behavior. As such, if such a law cannot be known ahead of time, individuals and businesses may not be able to arrange their affairs to comply with them. It potential exposes individuals and businesses to sanctions for noncompliance and such retrospective laws cannot be guide actions. Laws therefore need to be certain and prospective for the proper functioning of the criminal justice system. The above analysis implies that, in trying an accused person the judge must not only apply on him or to her case any criminal (substantive) laws that was not in existence at the time he committed the offense.

But the import of the preamble of the 1996 constitution and the penal code respectively are that if, an act was already an offense at the time it was committed, nothing stops the legislation from continuing to regard it as such in subsequent legislation. What these laws prohibited. For example, making an earlier innocent act, a criminal offense or changing the nature of an offense to the detriment of an accused or increasing punishment for an offense.

In the same spirit, the penal code of Cameroon accords protection to accused persons when it state in section 44 that a new provision of criminal shall, if less severe, apply to any offense in respect of which judgment has not yet been delivered before its coming into force. By implication these provides a shield to accused persons on trial and their rights not to be interfered with. If the nature of the offense is retrospectively changed or the nature of the punishment is retrospectively changed in favour of the accused, an act which amounted to murder may be retrospectively changed to be regarded as manslaughter or an act which attracted the sentence of life imprisonment may be changed to attract 3 years imprisonment.

In *Sylvester Agbomar v. the state* [18]; the appellant was charged with robbery and conspiracy. He was convicted and sentenced to death. He was charged under a law which describes it by omitting certain words of the title of a book. The correct description of the law was the robbery and fire arm. But the charge omitted the words "special provision". They challenged the validity of the trail and conviction on the ground that he was charged and convicted under a law that never existed when he committed the offense. The court rejected the contention and held that there was no constitutional or other prohibition against the trial and conviction of a person for an offense which is known to law and is in existence at the time of its commission, but that the relevant statutes had been correctly stated in the charge. A mere mis-discription of the law under which a charge has been brought does not necessarily render the offense charge unknown to the law at the time of its commission [19].

The rule against double Jeopardy

The rule or principle of double Jeopardy is but an aspect of the Canon of fundamental fairness of legal procedures, inherent in our constitution, which is expressed in the maximum, *nemo debt bisvexari pro eademcausa* [20], per Henchy J. The maximum *nemo debt bisvexari pro eademcausa* stipulates that, no one ought to be twice troubled or harassed for one and the same cause, or risk being punished twice for the same criminal offense. This principle operates as a prescription against retrials for the same criminal offense following a trial not the merit by a court of competent criminal jurisdiction concluding in an acquittal or conviction [21]. The principle developed in Common Law in response to the punishments traditionally imposed on the defendant and efficiencies in medieval criminal procedure to the advantage of the prosecution.

The common law immunity from retrospection gradually developed in response to the injustice in permitting retails for the same offense following an acquittal or conviction. The principle was also designed to prevent the imposition of multiple punishments for the same criminal transgression in separate proceeding [22]. 'The common Law principle against double jeopardy is a fundamental right of the accused in accordance with the rule of law [23]. This fundamental principle is enshrined in section 365 (3) of the criminal procedure code which provides that, " Anyone finally acquitted or convicted of an offense shall not be retried on the same facts even under a different statement of offense" To this effect, when an accused person has been conclusively prosecuted for an offense, he cannot be prosecuted again for the same offense. A retail for

the same criminal offense would constitute and infringement of section 395 (3).

Thus according to section 62 (1) of the criminal procedure code, criminal proceedings against a person can be discharged following a successful plea of *autrefoisaquit or autrefois convict*. This means that once the plea is upheld, it will therefore bar any further proceedings on the indictment. The following rule to be considered of. That is; (a) what does it mean by being prosecuted twice for the same offense? (b) What this amount to acquittal or conviction in this context and what is the procedure to be followed after the pleas are raise [24].

If therefore one or all of the pleas is considered in the affirmative, it will be tantamount to a total bar to any other proceedings on the indictment [25]. Thus, in upholding this view Lord Morris of Borth-Y-Guest in Connelly Director of public persecution (DPP), summarized old authorities at length of the subject as follows:

> *a) a man may not be tried for a crime in respect of which he has previously been acquitted or convicted ; b) A man cannot be tried of an offence in respect of which he could on some previous indictment have been convicted ; c) A man cannot be tried for a crime of which he has previously been convicted by way of alternative verdict); and d) what has to be considered is whether the crime or offence charged in the latter indictment is the same as the crime charged in the former indictment and it is immaterial that the facts under examination or the witnesses being called in the latter proceedings are the same as those in some earlier proceedings*" [26].

However, for an accused person to successfully raise this plea stated under section 32(1)€ and 395(3) of the Cameroon criminal procedure code, he must show prove of the fact that the following conditions operate in his favour [27].

Firstly, the accused must prove that the first trial was before a court of competent Jurisdiction [28]. This means that if the trial was not before a court of competent jurisdiction, the person may be tried again for the same offense before a court of competent jurisdiction. By court of competent jurisdiction therefore we look up to the provision of section 294 of the criminal procedure code, which states that; "A court shall have jurisdiction over a case when it is (a) the court of the place of the commission of the offence or (b) The court of the place of residence of arrest of the accused". Furthermore, it is generally acceptable fact that a competent jurisdiction is said to have been reached if the court is properly constituted by law; and has both territorial jurisdiction and material jurisdiction over the subject matter [29].

Secondly, the accused person must have to show that the first trial was completed and resulted to either an acquittal or a conviction in other words, the case must be res judicata, which means that, if the first trial terminated abruptly and the case is discharged without the judge recording either conviction or acquittal the second trial cannot be barred [30]. Furthermore, section 399 of the criminal procedure code gives both parties the right to appeal on the decision of the judge. To this, section 455 is to the effect that, the court of appeal shall have the right to retry the decision of a lower court of the judgment appealed against acquitted the accused in order to verify whether or not the judgment is founded [31]. It should therefore be noted that, such an appeal when done, does not contrivers the rules against double jeopardy. To this effect, section 458 of the harmonized code provided that:

> Where the legal department appeals, the court of appeal may either uphold or reverse wholly or partially the judgment of the trial court in manner of the accused [32].

In addition, the court of appeal may, in an appeal by the legal department, pass a sentence against an accused acquitted by the court of first instance, or by a military court, increase or reduce the sentence passed on conviction or acquit the accused. It may uphold or reserve all or part of the others points of the judgment appealed against [33]. This means that is the legal department appeals wholly or partially against the judgment of the trial court in a manner unfavorable to the accused person, he cannot content that decision on the grounds of double jeopardy. This is not a new trial, but part of a singular process in the administration of justice [34].

It follows from the above that, there are two major premises on double jeopardy mechanism for preventing abuse of court procedure is based. First, there is the recognition of the imbalance in the position and resources of the prosecutor, and the accused, an acknowledgment that, this imbalance should be corrected; and secondly that the court acts as an impartial forum for the determination of matter between the state and the accused [35].

The Accused Right to an Interpreter

According to water house, language law and crime are connected in basic ways. The law exists through words and is made possible by language, which is a basic human character; crime is part of the human condition, and communication constitutes a viral part of the criminal process which is made up of language from beginning to the end.

The language and behaviour used by professionals within in the criminal justice system is not always easy to understand for the average layperson, partly because such person have spent part of their

working lives immense in the complexity of the law, but also because the language of the law is a product of tradition and uses grammatical features and archaic expression that are far removed from the English of everyday life. Lawyers and judges, always spend large amount of time engaged in linguistic analysis like interpreting legislation, and thus tend to be excellent language users. In the light of far going expressions by water house, there is a need for an accused to be guaranteed communication by an interpreter in the context of a fair trial.

As such, it is trite law that, where an accused person does not understand the official language of the court, (English and French), an interpreter must be given to him without any expenses [36]. It appears to contemplate that, the interpreter should be paid by the state, although, there is nothing to prohibit the accused or a witness from paying the cost [37]. Such an interpreter as described by section 254(1) of the criminal procedure code shall be a person of not less than 21 years of age who takes an oath to interpret faithfully the testimonies of the person speaking in a different language and the interpretation of the documents as the case maybe. The interpreter under oath, interprets correctly to the accused anything said in a language foreign to him. Simultaneously, there should be and adequate interpretation to the court anything said by the accused person.

In an event when the parties refuse to interpret, the court shall rule immediately on the refusal and as such ruling shall not be subjected to appeal [38]. The law empowers any party to the proceedings to point out an interpreter who does not give a true and faithful interpretation. Such an interpreter shall be replaced [39]. On the other hand, the law prohibits the register in attendance to act as an interpreter even when the accused gives his or her consent [40].

An interpreter is also appointed by the examining magistrate in an event where the accused is deaf and dumb and does not know how to write. Where the accused is deaf and dumb but can write, the registrar shall reduce into writing the questions or observations to put to him. They shall be in writing [41].

The value and importance of interpretation of proceedings to an accused person are not in doubt. Indeed, interpretation is the only means to ensure a proper understanding by and participation of an accused person in the trial proceedings where the proceedings are been conducted in the language he does not understand and enable justice [42]. Stresses the need for an interpreter to an accused who does not understand the language of the court as the non-respect of this right will constitute a violation of the accused rights as language remains the communication tool par excellence in a criminal proceeding. The accused can therefore be able to effectively exercise his rights; he must be able to obtain information on his legal position in a language that he understands. That requires the assistance for an interpreter or a translator.

The interpreters therefore have a crucial role in safeguarding a fair trial. If proper performance of the interpreter has not been sufficiently guaranteed, this may have extreme serious implications and may even result in the conviction of an innocent person [43]: therefore remains the core foundation for justice. It is a means through which the rights of the accused are secured and exercised. Linguistic complexities such as misunderstanding, translation errors and cultural distance amongst participants in criminal trials, affects court room communication, the presentation and the perception of the evidence, hence jeopardizing the foundation of a fair trial [44]. The right to an interpreter is not applicable in every case; it only becomes applicable where the accused cannot understand the language used at the trial of the offence. Hence, it is the obligation of the accused person or the counsel to inform the court of his inability to understand the language used in the court.

Where he or his counsel; fails in this duty, he cannot be heard on appeal that he was not given a fair trial because he was not provided with an interpreter. This point of the law was buttressed in the case of *Onyia V State* [45] where Tobi J. SC said “it is a common spontaneous human reaction in court for an accused person who does not understand the language used to say so openly in court, or protests that he need an interpretation of the language so that he can understand”. It is the duty of the accused person to inform the court that he does not understand the language at the trial. Unless it appears clearly from the records that the accused person does not understand the language used and that his request for an interpreter was refused, the presumption in favour of regularity applies and an appeal against the proceedings of the trial court cannot be sustained on this ground [46].

CONCLUSION AND RECOMMENDATIONS

Conclusively, it should be said that on the 27thday of July 2005 Cameroon adopted law No. 2005/007 on the CCPC. This text while assembling dispersed legislation on criminal procedure, sought to conform to international legislation duly ratified by Cameroon in the domain of human rights. Among the rights sought to be protected by the Cameroonian legislator was the rights to a fair trial which include among others, the right to the presumption of innocence, prohibitions against retrospective legislation, the rule against double jeopardy, the right to an interpreter, the right to counsel, the right to be treated with humanity and freedom from torture, the right to be tried without undue delay or within a reasonable time, the right to defend oneself in person or through representative, etc.

The above foregoing cases and sections of the Cameroon Criminal Procedure Code have identified and discussed the major challenges on the protection of the rights of accused persons standing trial before a competent court of law in Cameroon. It is universally said that the identification of a problem is a step towards solving the same problem. Our work will be curtailed and of little essence if after citing the various challenges faced by accused persons standing trial before a competent of law, no solutions are proposed, or recommendations made. Recognizing these dilemmas, we recommend as a measure of limiting abuse, a frank collaboration between the JPO's, the Legal Department and the bench for the interest of the respect of the right of accused person standing trial before court of law. The effective and efficient implementation of the aforementioned recommendation by all the relevant stakeholders will certainly go a long way to ameliorate and guarantee human right protection and respects of all accused persons standing trial before a competent court of law in Cameroon and the globe at large.

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