

The Responsibility of the Judicial Police Officer under Cameroonian Law

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ABSTRACT

This paper looks at the legal and institutional framework and the procedural mechanisms involved in rendering judicial police officers accountable for offences committed while performing their duties. The difficulties involved in getting a judicial police officer answer for his criminal misconduct will be of particular interest. Challenges facing the criminal trial process prior to and after the enactment of a single criminal procedure code in Cameroon are also examined and recommendation offered with the view to enhancing the criminal trial of judicial police officers in Cameroon without hampering the smooth running of their duties.

KEYWORDS: *Judicial police officer, criminal procedure code, role, responsibility, penal code*

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GENERAL INTRODUCTION

The Cameroon Criminal Procedure Code was harmonised, amended and entered into force in 2005 by law No 2005/007 of 27 July 2005. This Code lays down the principles and procedures involved in criminal trials. This law stipulates the rules which deal particularly with the investigation of offences, the search and identification of offenders, the method of adducing evidence, the powers of those charged with prosecution, the organisation, composition and jurisdiction of courts in criminal matters, verdict, sentencing, the right of the parties and the methods of executing sentences. As a matter of fact, the Code is well defined and structured.

With the advent of this Code and the present state of affairs reigning in the country, one can say that Cameroon is witnessing a positive change in its Judicial System. The Code has brought in many significant changes which were not seen in the past. The basic human rights of all citizens are guaranteed in this Code. For example, the presumption of innocence in any legal suit which is of prime importance to the suspect is well defined. Unlike the old Code which stipulated that guilt must be proven beyond reasonable doubt, this new Code is to the effect that any person suspected of having committed an 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 defence. This in effect means that guilt must be proven at all cost. There must be no doubt in establishing guilt. The least doubt disqualifies guilt. The presumption of innocence shall also apply to every suspect,

defendant or accused¹.

The various parties involved in a criminal proceeding have had their roles redefined in the code. The Judicial Police Officer (JPO) who is part of this procedure is no exception. Although this code gives the Judicial Police Officer considerable powers in the conduct of investigations, it has also enacted a number of measures to protect the suspect against his (JPO) illegal actions such as arbitrariness and insidious police maneuvers². This raised our interest on the special case of the JPO in the criminal procedure code. This article is mostly of practical interest. It will enable us to analyse the implementation of the provisions relating to the Judicial Police in order to identify the difficulties encountered and to propose solutions.

In the past, the English-speaking part (former West Cameroon) applied the "Criminal procedure ordinance" borrowed from the Nigerian law of 1958. While the French-speaking part (former East Cameroon) was governed by the "Code d'Instruction Criminelle" (CIC) taken from the French

¹ NICO HALLE & Co. LAW FIRM, THE CAMEROON CRIMINAL PROCEDURE CODE, available at: <http://www.hallelaw.com>. Accessed on 10 October 2019 at 10:22 PM.

² J.P.S NKENGUE, « L'Officier de Police Judiciaire : enquête de police et la torture » in « les tendances de la nouvelle procédure pénale camerounaise » 2007, volume 1, PUA, pg.225.

ordinance of 14 February 1938 and its subsequent amendments³. Faced with these two very different and sometimes contradictory texts, the implementation of the Criminal Procedure Code (CPC) was not easy. It was in the beginning of the 70s that the Cameroonian administration solicited the contribution of eminent specialists, national and foreign experts, including Professor Stanislas MELONE to set up a criminal procedure Code in Cameroon. This led thirty years later to the birth of the CPC. About fourteen years after its entry into force, the CPC continues to create change. It is for this reason that all the actors involved are called upon to respect this law so that this tool of work is well used.

Judicial Police Officers are representatives of the authority whose decisions to a great extent determine whether other components of the criminal justice network will take official action. They are auxiliaries of the State Counsel who directs them. They consist of police, gendarmes (Note should be taken here that not all police and gendarmerie staff are judicial police officers. Only those empowered by law to investigate offences are judicial police officers) and staff of certain departments (e.g. the Ministry of Environment and Nature Protection, the Ministry of Forestry and Wild Life etc.) who are empowered by the law to carry out investigations in criminal matters⁴.

The role of the JPO has always been subject to controversy. Even after the entry into force of the CPC, his role has been more and more misunderstood by users. Our concern is to clarify this role and to allow, thanks to our research, readers and users to have another perspective at the JPO's mission, to make them understand that the JPO is an assistant to the State Counsel who is at the service of everyone. The JPO must work in compliance with the law and the rights of the suspect, otherwise he is likely to be answerable for his actions in court (Cameroon being a state of law). We therefore wish to make available to users (non-professionals and legal professionals) the elements that will enable them to be more informed about the complex mission of the JPO. This entails what actions they can take in case their rights are violated by the judicial police officer in charge of their investigation.

Under the CIC, the JPO acted as "a wolf for the user". The judicial police officer took advantage of the fact that this code did not take into consideration the protection of the rights of the suspect. The latter was then at the mercy of his investigator. The CIC did not provide any means of prosecution against the JPO. The CPC changed all these practices, it is a tool for the protection of the rights of the suspect. This does not mean that the powers of the JPO have been weakened. On the contrary, they were reinforced while

³ We should note that the « Code d'instruction criminelle » and the « Criminal Procedure Ordinance » were laws that originated from our colonial masters. The first was adopted in France in 1808 and was implemented in Cameroon by an ordinance of 14 February 1938. The second was gotten from the « Laws of Nigeria » of 1958 and was made applicable in Cameroon by Britain who administered part of Cameroon with Nigeria.

⁴ The judicial system in Cameroon, available at: <http://www.justiceandpeacebamenda.org>, accessed on 15 March 2019.

adding respect for the rights of the suspect during proceedings.

After having outlined the conceptual framework of this research, we can therefore ask ourselves the following questions. As an auxiliary to the State Counsel, what is the role of the Judicial Police Officer in the Criminal Procedure Code? What are the guarantees provided by the Criminal Procedure Code to enable the JPO to fulfill his mission while respecting the balance between the rights of the person pursued and the interests of the society? In other words, which provisions in the CPC permits the JPO to play his role effectively while respecting individual freedoms and social balance? Are the provisions of the Criminal Procedure Code relating to the Judicial Police Officer likely to favor the execution by the latter of his mission while respecting the balance between the rights of the suspect and the respect of the social order?

This article will be divided into two parts, in the first part we shall be establishing the legal standards and principles governing judicial police officers and secondly the control and responsibility of the JPO.

1. Establishing the legal standards and principles governing the Judicial Police Officer

The CPC has extended the status of JPO to other elements of the Gendarmerie and National Security. We shall first analyse the principles governing the JPO and then we shall examine the nature of the powers of the JPO in the Criminal Procedure Code.

1.1. The Legal standards and principles governing the Judicial Police Officer

The Criminal Procedure Code has clearly defined who has the capacity to be a JPO. Given the very important role played by the JPO in criminal proceedings, the legislator has granted it very important powers. Thus, we can say that the JPO is to an extent the main actor in criminal proceedings. The role of the JPO is clearly defined in the Criminal Procedure Code. Who can be a JPO in the Criminal Procedure Code? What powers does the JPO have in criminal proceedings? To provide answers to these questions, we shall first see the nature of the concept of JPO in the Criminal Procedure Code and then later analyse the importance of his powers in a criminal trial.

1.1.1. The Nature Of The Notion Of Judicial Police Officer In The Criminal Procedure Code

This nature is explained with the diversity of officials having the status of a JPO and also by the fact that certain officials are vested with the powers and specific missions of a judicial police officer.

1.1.1.1. The diversity of officials having the status of Judicial Police Officer

The Criminal Procedure Code extended the status of JPO to other officials and members of separate administrative bodies and this has been extended to certain magistrates.

A. The extension of the status of JPO to other staffs or officials

Section 79 to 80 of the CPC extended the status of Judicial Police Officer to other personnel. This extension was made both on the side of the Gendarmerie and the National Security.

1. Judicial Police Officers under the Gendarmerie

According to Section 79 of the Criminal Procedure Code, the following shall have the status of Judicial Police Officer: Officers and non-commissioned officers of the gendarmerie, gendarmes in charge even in an acting capacity of a gendarmerie brigade or gendarmerie post, gendarmes who have passed the Judicial Police Officer's examination and taken the oath. Currently, we found that all gendarmes have the opportunity to become JPO. With regard to gendarmerie officers, we can note that one distinguishes on the one hand the senior officers (Gendarmerie Generals, Colonels of Gendarmerie, Lieutenants-Colonels of Gendarmerie, Commanders of Gendarmerie) and on the other the junior officers (captains of gendarmerie, lieutenants of gendarmerie, sub-lieutenants of gendarmerie). In the case of non-commissioned gendarmerie officers, there are senior non-commissioned officers (chief warrant officers, gendarmerie chief warrant officers, gendarmerie adjutants) and junior non-commissioned officers (chief marshals and house marshals).

Does the Secretary of State for Defense in charge of the Gendarmerie as an authority have the status of JPO? In Cameroon, the authority is not necessarily a gendarme and the CPC does not recognize him as JPO. It would be recommendable for the legislator to give him the status of JPO during his mandate at the head of the gendarmerie.

2. Judicial police officers reporting to the National Security Police

According to Section 79 of the CPC, the following shall have the status of JPO, police commissioners, police officers, public servants even if they are temporarily performing the functions of head of an external service of the National Security, as well as inspectors of police who have passed the JPO's examination and taken the oath. The CPC extended the status of JPO to police inspectors⁵ who passed an examination and were sworn in. It should be noted that the police commissioners referred to by the CPC are: the General Inspectors of Police, Divisional Police Commissioners, Chief Police Commissioners and the police commissioners.

With regard to police officers we have: Principal Police Officers, 2nd Degree Police Officers and 1st Rank Police Officers. Does the Delegate General for National Security have the status of JPO? The CPC does not recognize this status on him. Therefore, the legislator should give him the status of JPO during his stay at the head of DGNS.

B. The acquisition of the status of JPO by certain magistrates under certain conditions

These officials are not mentioned in Section 79 of the CPC. On the other hand, section 137 (3) of the CPC provides that the State Counsel may, at any time and place act as a judicial police officer. Can he perform the functions of the JPO without being a JPO? It must be mentioned that the State Counsel can have the status of a JPO under certain conditions. On the strength of section 111 of the CPC, in the case of a felony committed flagrante delicto, the State Counsel shall be competent to carry out the investigation. When the state counsel arrives at the scene of the

⁵As police inspectors, we have the main police inspectors (IPP), the 2nd grade police inspectors (IP2) and finally the 1st grade police inspectors (IP1)

commission of the offence, the powers of the judicial police officer to carry out the investigation shall cease immediately unless the said State Counsel decides otherwise.

1.1.1.2. Some public servants have been assigned Judicial Police duties

The Criminal Procedure Code has provided specific missions to some JPOs. We will determine below the officials vested with these specific missions, before seeing the limited scope of their competence.

A. Who are these officials with specific missions?

According to Section 80 of the CPC, public servants and other public employees who have been assigned judicial police duties by special instruments⁶ shall discharge those duties under the conditions and within the limits fixed by the said instruments. They are found in Forests and wildlife, Customs, Posts and Telecommunications, Transport⁷, Taxes and Trade, Labour Inspection.

B. The limited scope of their influence

The JPO with special missions operates in a well-defined and specific area. He intervenes in areas like posts and telecommunications, customs, Forests and wildlife. These judicial police powers are granted by special texts, to certain officials and agents of public services (inspectors and sworn agents of forests and wildlife in charge of searching and reporting offences against the regulations of forests and wildlife, hunting and even weapons). This is on the strength of section 141 of Law No. 94-01 of 20 January 1994 to lay down Forestry, Wildlife and Fisheries Regulations⁸.

The investigation of violations to certain specific regulations (domain, indirect contributions, registration, Forests and wildlife, etc.) requires special skills and techniques. This is why agents and civil servants are vested with judicial police powers. Moreover, their mandate is limited to the investigation and detection of offenses within the administration in which they belong. The arrival of a JPO with special skills at the scene of an offense or a crime within its area of competence automatically divest the JPO with general skills.

1.1.2. The Difficulties Encountered By The JPO During The Exercise of Its Functions

Only power can stop power. It is in this sense that the 2005 legislator limited the powers of the JPO in the Criminal Procedure Code. This will enable us to explain the limits of the powers of the JPO before analysing the difficulties the latter encounters in accomplishing his mission with the advent of the CPC.

1.1.2.1. The Limited Nature Of The Power Of The JPO In The CPC

This is materialized by the preponderance of the power of the State Counsel on acts posed by the JPO and by the significance of the reports drawn up by the JPO.

⁶ We have identified more than twenty laws and decrees granting certain officials and agents of certain Administrations the status of JPO with special competences.

⁷ The first batch of JPOs with special competence was sworn in at the Court of Appeal of Yaoundé on behalf of the Ministry of Transport in 2008.

⁸ This law is completed by Ordinance No. 99/1 of 31 August 1999, Sec. 141-146

A. Preponderance of the power of the State Counsel over acts posed by the JPO

This preponderance is illustrated by the power to direct investigations which is granted by the legislator to the State Counsel and especially the possibility of replacing the JPO during investigations in criminal trials.

I. The power of the State Counsel to direct police investigations

Section 78 of the CPC provides that the duties of the judicial police shall be performed by judicial police officers, judicial police agents and all other civil servants or persons to whom judicial police duties are assigned by law under the supervision of the state counsel. In other words, in criminal investigations, the JPO is supervised by the State Counsel. The latter may at any time withdraw all JPOs from an investigation⁹. In other words, in police investigations, the JPO receives instructions from the state counsel. All reports written by the JPO must imperatively be sent to the State Counsel. He is the only one to appreciate them. He is the one who decides if a case will proceed to court or not. He can dismiss a case sent to him by the JPO without any explanations. We see that the power of the JPO ends where that of the State Counsel begins. The instructions of the State Counsel arrives at the JPO in the form of a referral or return the case files¹⁰.

An investigation may have been started by a JPO of the gendarmerie but the state counsel withdraws the case from him and gives it to the JPO of the National Security and vice versa. The State Counsel (SC) can inside the same body divest a JPO for the benefit of another. In these cases, the CPC at Section 83 (5) provides that the SC shall inform that officer's immediate superior of his reasons for doing so.

The law obliges the JPO to transmit all his procedures to the State Counsel. The latter must be informed of all the investigations undertaken by the JPO. As we have seen, the SC not only directs investigations, he is also the head of the judicial police. The CPC recognizes the power to replace the JPO at any time with regard to police investigation.

II. The replacement of the JPO by the State Counsel during investigations in criminal trials

According to Section 137 (3) of the Criminal Procedure Code, the SC may, at any time and place act as a JPO. The legislator therefore recognises the power of the JPO to the State Counsel. He can perform all the functions of the JPO. Section 111 of the CPC provides that in case of a felony committed flagrante delicto, the State Counsel shall be competent to carry out the investigation. When the State Counsel arrives at the scene of the commission of the offence, the powers of the judicial police officer to carry out the investigation shall cease immediately unless the said State council decides otherwise. Clearly, the State Counsel can conduct preliminary investigations and flagrante delicto investigations. He can at the same time order the police custody.

⁹ Section 83 (5) of the CPC

¹⁰ According to Section 141 of the CPC: "A state counsel before whom a criminal matter has been brought under conditions laid down in section 135, 139 and 140, may return the case files to the judicial police for further investigation".

B. The importance of reports prepared by the JPO

The reports written up by the JPO shall serve only as mere information which he can be called at any time to defend during a hearing.

I. The importance of the reports

Section 91 of the Criminal Procedure Code provides that unless otherwise provided by law, reports written by JPO shall serve only as mere information. This shows the little or no importance of the reports prepared by the JPO during police investigations. These reports are not binding on the judicial authority, which retains full discretion in their regard¹¹. From the foregoing, we can safely say that the JPO's police investigation powers are not absolute. The reports prepared on this occasion can even be set aside by the SC. Especially if these reports are not in conformity with the law, they may even be void.

On the other hand, although the JPO's report serves as mere information, some of the reports are authentic until proven otherwise in writing or by witnesses. We can cite in this respect report on contraventions. Moreover, some reports prepared by certain sworn civil servants invested with judicial police powers and noting certain offenses in matters of Forest and Wildlife, energy and water, hunting and customs, transport (degradation of the roadway) are authentic until proven otherwise or the entries are false. The utterances and affirmations of these reports can only be fought by special procedures.

II. The presence of the JPO at a hearing when defending his report

The presence of the JPO at hearings already existed in the English-speaking part of our country. The CPC harmonized this practice throughout the national territory. In this regard, Section 317 of the CPC provides that the person who builds a case file or a report may in addition be heard as a witness before the court. Once again this situation shows that the power of the JPO is not absolute. The JPO may be summoned to a hearing to defend his report. This is the case, for example, of reports made by the JPO during field work (search warrants, house searches, seizures etc.). The latter is thus cited as a witness and becomes a party to the criminal trial. Like any power, the JPO experiences difficulties. During the exercise of his functions, the JPO faces enormous difficulties as will be noted below.

1.1.2.2. Difficulties Encountered By the JPO While Performing His Functions

The difficulties faced by the JPO while performing his functions are numerous. We will group them into two, namely the material and personal difficulties and the difficulties facing litigants.

A. Difficulties of a material and personal nature

The JPO in the exercise of his functions is most often faced with material difficulties (i) and employees who have difficulties adapting to the new situation (ii).

I. Difficulties on the material level

The lack of working equipment (typing machine, A4 size paper and carbon paper) is one of the difficulties faced by

¹¹ G. MANGIN (Dir.), "Procédure Penale", new ed. African, 1982, Legal Encyclopedia, Volume 10, page 197.

the JPO in performing his duties. In some police or gendarmerie units, we found that half a dozen investigators share a single computer. This makes the procedures at these various units very slow and cumbersome. This is an opportunity for us to launch a strong call to the administration to equip these units with computers. NGOs can be very helpful in making donations, especially since they are in partnership with their Western counterparts.

In practice, litigants are often asked to compensate the investigators for this scarcity for example papers. This practice should be condemned because a JPO receiving papers from a suspect or plaintiff is no longer morally free in conducting his investigations. Objectively, in searching for the truth during his investigation, the JPO must avoid receiving anything from the litigant or else he will be guilty of corruption or undue demand, which is punishable in the penal code¹².

II. Difficult adaptation of the staff

Some JPOs are still struggling to adapt to the new criminal procedure. This is also the case with the staff placed at their disposal. Learning and practicing new rules is not easy. But we are confident that with training and practice the JPO and its staff will be able to appropriate this new procedure, which breaks with the old unorthodox practices.

B. Difficulties facing litigants

We will first examine the case of the suspect (i) then that of the counsel (ii)

I. The case of the suspect

Some suspects are abandoned in police or gendarmerie units. Others, at the time of their hearing, decide to speak only in the presence of their lawyer. Finally, no lawyer shows up. What should the JPO do in a case where no lawyer shows up after the period of custody is over? Some JPO decide to refer the suspect to the prosecutor's office without their depositions. In this case, there is a violation of procedure because the law requires that before being kept in custody, the suspect must be heard by the JPO. This situation makes the JPO's mission difficult. The suspect blocks the evolution of the procedure because his lawyer is not always present¹³. The Law No. 2009/004 of 14 April 2009 on the organization of legal assistance in Cameroon provided solutions to this problem. But legal aid should not be limited at the level of courts, it should extend to police and gendarmerie units. The administration could appoint lawyers to the police and gendarmerie units to resolve these difficulties. Sick or wounded detainees are often abandoned by their friends and families. They cannot benefit from food or medical care. This is one of the difficulties that the JPO has. The abandoned suspect who is taken to the hospital cannot receive free medical care because medical personnel require a deposit of an amount of money before the beginning of care¹⁴. The JPO does not have a budget for that. There are cases where the detained person dies due to lack of care. We believe that this

¹² See the penal code in its section 134 and 142 dealing with corruption and undue demand

¹³ In America for example, an appointed lawyer is sent in this case

¹⁴ Apart from depositing a sum of money, it is necessary to have money for the purchase of medicines to the sick suspect.

right to medical care could be accompanied by a measure that obliges public hospitals to receive and treat free of charge suspects abandoned at police or gendarmerie units.

Another difficulty is that of feeding suspects abandoned by their families and friends. Section 122 (4) of the CPC provides that the State shall be responsible for feeding persons remanded in police custody. However, such persons shall have the right to receive from members of their families or friends a means of subsistence and other necessities. In case these suspects have no visit from their family or friends, it is up to the State to take care of their feeding. The implementation of this part of sec. 122 of the CPC will solve one of the difficulties that the JPO encounters in fulfilling its mission.

Promiscuity in detention cells is also a real problem for the JPO. These rooms are usually very small and there are sometimes 30 to 50 or even 70 suspects in a room of 3 to 4 square meters. Juvenile detention cells do not exist in our police or gendarmerie units. We rarely even find a cell for females. Both sexes (male and female) are kept in the same room and this may also lead to a risk of rape. Minors also suffer in the same way as female detainees. We urge the authorities to build separate detention cells (with toilets) for these three categories of people in custody.

II. The case of the counsel

The intervention of the Counsel in the police phase of the criminal procedure was one of the great innovations introduced by our Criminal Procedure Code. Before the coming of this code, the right to a counsel was only allowed during the preliminary investigation and the trial. This innovation is consecrated by sec. 116 (3) of the CPC, which provides that, as soon as investigations are opened, the judicial police officer shall, under the penalty of nullity, inform the suspect of: His right to counsel. Who can be a counsel at the level of police investigations? The CPC sometimes mentions counsel and other times lawyers. The law does not define who can be counsel. During the impregnation seminars, the speakers said that anybody can be a counsel, provided the person has knowledge on the matter. This means that the role of a counsel is not reserved exclusively to lawyers. People generally think that only a lawyer can be counsel, but they must know that any competent person can be, provided he/she has knowledge of the matter for which he/she is assisting the suspect.

Some counsels most often want to be heard in the place of the suspect, they even want to answer the questions in the place of their client. All of this makes the JPO's mission difficult. It is true that the role of the counsel has not been clearly defined by the CPC. In this respect, we can say that the counsel or the lawyer cannot transform the police or gendarmerie unit into a court. Pleadings must be done before the courts.

2. The Control and Responsibility of the Judicial Police Officer

The JPO has a significant role to play in criminal proceedings in Cameroon. In order to avoid an abuse of power, the 2005 legislator enacted texts that serve as safeguards to better control these abuse of power, and if necessary sanctions the JPO. We therefore witnessed the control of the activity of the

JPO (2.1); which entails his responsibility in the exercise of these powers (2.2).

2.1. Monitoring the Activities of the Judicial Police Officer

The 2005 legislator granted important powers to the judicial police officer. To avoid excesses, the law provides for control mechanisms that must lead the JPO to respect rules and regulations. This control can be exercised not only by the hierarchy of the JPO (2.1.1), but also by independent bodies (2.1.2).

2.1.1. Hierarchical Control

The judicial police officer in the exercise of his duties may be subject to a double hierarchical control: that of prosecutors (section 1), and an administrative control from his direct superiors (section 2).

Section 1: The control exercised by prosecutors

This control is exercised concurrently by the Procureur General (A) and the State Council (B).

A. The control exercised by the Procureur General

Section 134 of the CPC states in its paragraph 2 (a) that the Procureur General at the Court of Appeal shall supervise the activities of the judicial police officers and agents working within the jurisdiction of the court of appeal. Shall submit half yearly reports to the minister in charge of justice on their activities and conduct. It should be noted that this is a major innovation, since currently the JPO can only act within his powers. The judicial police is exercised under the control and supervision of the prosecutor's office. In order for this control to be effective, the Minister of Justice and keeper of the seals in his circular No. 24848 / CD / 9276 / DAJS of 23 May 1990, directed the Procureur General (PG) to ask the State counsel to carry out, in addition to punctual interventions, weekly visits to all police and gendarmerie units.

The PG monitors the personnel and the activities of the judicial police. He ensures the application of the law to the full extent of the jurisdiction of the Court of Appeal. He can intervene at any stage of the investigation and give recommendations to the JPO (Section 134 (1) of the CPC). The PG controls custody within the jurisdiction of the Court of Appeal for which he has competence. But it must be emphasized that rarely does this senior official move. In general he leaves this task to the state counsel and his substitutes. The CPC goes further in its section 134 (2) to state that the PG shall evaluate the work and give marks to each judicial police officer within his jurisdiction. At this level we have reservations about the implementation of this part of the article. On a practical level, one wonders how the PG will proceed in giving marks to the JPO within his jurisdiction. JPOs and magistrates do not depend on the same ministry. How will the rating work? The PG can only accord marks to JPOs in connection with the judicial police, because he is the head. We wonder if the JPO will have 02 marks, that of his boss and that of the PG? This gives food for thought.

The purpose of this control by the PG is not only to prevent abuses on suspects by certain JPOs, but to ensure that the suspects follow the procedure. It should be noted that the

Cameroonian PG has the power to control and not sanction JPOs.

B. The control exercised by the State Council

This control, which can be in several forms (1), also has limits (2) which shall be examined below.

1. The manifestations of control

Section 137 of the CPC provides that the state counsel shall direct and control the operations of the officers and agents of the judicial police. The state counsel may at any time and place act as a judicial police officer¹⁵. The State Council controls the actions of the JPO by studying the minutes that are transmitted to him by the latter. The State Council must be able, from the minutes, to verify these findings that have been made and the circumstances surrounding them as well as the traces they have left¹⁶.

The state counsel appreciates the hearings, the confrontations, the questions asked to the suspects, in short all the operations carried out by the JPO during the police investigation. This control is also done at the level of custody¹⁷. The State Council must make unannounced visits to the police and gendarmerie units to inquire on the realities of the JPO's compliance with criminal procedure relating to police custody. The Minister of Justice and keeper of the seal on this subject, enacted a circular¹⁸ in which he instructed magistrates to invite JPOs responsible for the police and gendarmerie units to send them weekly reports of individuals in custody. These statements must include the following information relating to each case: Name and Surname, occupation, date of arrest, reason etc.

More often, visits by magistrates are not weekly, they are sometimes monthly and even quarterly. In cities like Douala and Yaoundé, magistrates are often loaded with work to the point where visits and controls are relegated to the background. For the sake of efficiency, we propose that certain officials of the Ministry of Justice should be assigned to the State Counsel's office and are exclusively appointed for this task and only come to report to the State Council in big cities of the country.

Another difficulty is most often related to the fact that some JPOs during the control of cells by magistrates refuse to open the doors. Some justify their refusal by the absence of the head of unit or the fact that they were not informed in advance of the arrival of the magistrate. Some oppose the instructions of the magistrate when he asks for the release of the suspect whose custody is long or illegal on the grounds that they have not received any order from their hierarchy. Finally, others refuse to accept the substitutes and require the presence of the state counsel himself. This is the place to denounce the many incidents between magistrates and JPOs

¹⁵ Section 137 (3) of the CPC

¹⁶ When certain formalities are not respected by the JPO, the state counsel will send back the minutes to the latter for verification. For example, the case where the judicial police officer did not notify the suspect of his custody.

¹⁷ Section 34 of the CPC stipulates that judicial police officers shall forward daily a list of persons detained at their police stations to the competent State Council.

¹⁸ See on this subject circular n° 9276/DAJS of 1 November 1990.

during the control of cells. The most famous case is the LAGASSO case¹⁹. This JPO, together with some of his collaborators, beat up a magistrate who went to control the cell on a Saturday at the police station of the 1st district of Yaoundé. They further locked him up for hours in a cell where there were other people in custody. The JPO was sentenced to two years in prison.

This control of the State Counsel is of paramount importance and appears to be the only guarantee enjoyed by suspects whose rights are often violated.

2. The limits of this control exercised by the State Counsel

Given his involvement in police investigations in general, it was necessary to remove him from the control of the regularity of police custody (for greater efficiency). An example of a police custody that was ordered by the State Counsel in police units²⁰, we witnessed suspects spending two, three or even a month in custody. These suspects spend time moving from the police station to court and back. All this is done in violation of the provisions of the CPC on the maximum of 08 (eight) days in custody²¹. When questioned, some told us they were under investigation. Why are they still in police custody when they should be remand in custody? Who controls these state counsel custody? We are raising a very serious problem that our judicial and legislative authorities must address before the worst happens. This charge (control of the regularity of police custody) could have been entrusted to certain officials specially assigned to the prosecutor's office for these purposes. They could report to the Procureur General on the progress of their activities in the field.

With his status and the powers of the judicial police officer conferred on him by the CPC, he is already a judge and a party, and whatever the qualities recognized on this great magistrate, it is difficult to control himself²². The legislator would have done better to leave all the powers of JPO to the JPO exclusively and let the state counsel lead and control, so he can better exercise his powers as chief of the judicial police.

Section 2: Administrative control of the direct superiors of the judicial police officer

The control here is carried out either internally (1) that is to say inside the unit or by a specialized service (2) from the central services.

¹⁹ The high court of Mfoundi in its judgement n° 122/crim of 1st march 1996 sentenced this police to 10 years imprisonment. The court of appeal reduced this sentence to 2 years in its judgement n°37/crim of 10 December 1996.

²⁰ We have in the central police station No. 1 of the city of Yaoundé a cell for prosecutors. Custody are ordered by the state counsel (court of first instance or high court)

²¹ Mr OUMATE HAMADOU spent 46 (forty six) days in custody in the cell floor of the central police station No. 1 in Yaoundé. He arrived there on May 25, 2009 and was released on July 9, 2009. An order giving by the State Counsel, who kept on renewing it till the day he regained his freedom. These cases have become rare since the coming into force of the CPC.

²² P.R. DJOUTSOP, « La flagrance des crimes et des délits dans le CPP camerounais », in Annales de la FSJP, Dschang, special edition, tome 11, 2007, p.93.

1. Internal control

Whether at the gendarmerie or the National Security, hierarchical leaders ensure the smooth running of all services not only by planning, but also by organizing and coordinating the efforts of their employees. These leaders must control the actions of subordinates. This control by superiors ensures the JPO respects the rights of suspects in his unit.

2. Control by a specialized service

This is done by examining documents such as messages, reports and PVs (Proces verbal) received from subordinates. Field control is exercised in all parts of the service and the inspection can either be announced or unannounced. Its focus is on the activities of the service as a whole. The purpose of this control is to ensure not only the effectiveness of the service, but also and above all the regularity of the acts performed by the staffs of the service. All these checks have proven to be effective for the protection of the rights of suspects and the respect of procedure during police investigations.

2.1.2. Control by Independent Bodies

In order to consolidate the rule of law and democracy in Cameroon, some new types of controls have emerged with the aim of reinforcing existing control mechanisms. We shall therefore distinguish between control by the National Commission on Human Rights and Freedoms (NCHRF) (section 1) and other informal controls (section 2).

Section 1: The control exercised by the National Commission on Human Rights and Freedoms (NCHRF)

It should be noted that this commission was created by public authorities. A law defines the procedure for control (A) and like any state structure, we find that its effectiveness is relative (B).

A. The procedure for control

The NCHRF was created by Law No. 2004/016 of 22 July 2004²³. According to section 2 of this law, "the commission shall be responsible for the promotion and protection of Human Rights and Freedoms". To achieve these goals, the NCHRF must control the actions of the JPO. In addition, it is apparent from the text that the NCHRF receives all denunciations relating to violations of Human Rights and Freedoms; conduct all enquiries and carry out all the necessary investigations on violations of Human Rights and freedoms and report thereon to the President of the Republic; refer cases of violations of Human Rights and Freedoms to the competent authorities; as and when necessary, inspect penitentiary establishments, police stations and gendarmerie brigades, in the presence of the competent State Counsel or his representative as provided in art.2 of the aforementioned law. The NCHRF drew the attention of the Government as early as June 1992 to the conditions of police custody which were worrying. Despite this, however, the conditions of detention of suspects continued to deteriorate. They are characterized among other things by the bloated numbers in the cells, which are usually narrow and unhealthy. The non-existence in police

²³ the National Commission on Human Rights and Freedoms (NCHRF) replaced the National Committee on Human Rights and Freedoms which was then governed by Decree No. 90/1459 of 8 November 1990

and gendarmerie units of juvenile cells and rarely the existence of a cell which is exclusively for women. In some units, men and women are put in the same cell.

B. Relative efficiency

Despite its limited powers, we deplore the constant absence of the NCHRF on the field. Their visits are not unannounced and they are most often announced with great media coverage during the world human rights day or week²⁴. After these days, the NCHRF plunges back into its legendary lethargy while waiting for the next year. The presence of the members of the control often provoked incidents in the police stations and gendarmerie. For example, on March 7, 1992, at a gendarmerie unit in Yaoundé, members of the commission and the substitute of the state counsel, who were on a mission to inspect and control were falsely imprisoned. Some gendarmes even go as far as to prevent the members of the commission from accessing their unit. Controls by the Commission are also ineffective because of the text which created it²⁵. This text does not give the Commission enough powers given that its powers are limited to mere findings. The NCHRF cannot either condemn the JPO for violating human rights and individual liberties, or put an end to the violation. The NCHRF would benefit from being more present in the field²⁶. Other institutions are also involved in this endeavor.

Section 2: Informal controls

These controls are said to be informal because they have not been provided for by the legislator. These types of controls are mainly exercised by lawyers and family members of the suspect (A) and by private human rights groups and non-governmental organizations (B).

A. Informal controls by lawyers and family members of the suspect

Section 122 (3) of the CPC states that “the person on remand may at any time within the period of detention and during working hours, be visited by his counsel, members of his family, and by any other person following up his treatment while in detention”. It is mentioned above that the suspect is entitled to a counsel that is to say that the aforementioned people can control criminal procedure while ensuring the rights of the suspect are respected by the JPO. They may identify certain violations. The presence of a counsel at the level of the police station or gendarmerie may cause the JPO to rectify the way he proceeds. If it is true that a counsel can make the JPO to change, family members who come to visit the suspect may also identify certain shortcomings in respect of Human Rights and Freedoms. In this case, they can seize the NCHRF to open an investigation into the facts, or the family members can seize the competent authority to stop the violation. While it is clear that the intervention here is

²⁴ Held from the 20th of November to 10th of December

²⁵ The members are appointed by a presidential decree (art.6 of the law of July 22, 2004), their guardianship remains the one who appoints them. They can be changed at any time. Decree No. 2006/275 of 6 September appoints the members of the NCHRF. They were first sworn in on 9 November 2006 before the Supreme Court in Plenary Assembly.

²⁶ The commission must popularize by all means the instruments relating to human rights and freedoms and ensure the development of a culture of human rights, particularly within the police and gendarmerie units

limited in scope, the fact remains that when the counsel, especially the lawyer, or the family acts effectively, his action is beneficial for the respect of the suspect's rights. They are also the ones who can trigger the procedure for the immediate release of a person illegally arrested by means of habeas corpus (article 584 of the CPC). Thus by a simple non stamped application, the relatives of the person can seize the president of the High Court of the place of arrest or detention or any other judge of the said court in order to request for his immediate release.

B. Control exercised by private associations for the defense of human rights and non-governmental organizations (NGOs)

It must be said that these controls are very limited while private associations and organizations responsible for protecting Human Rights can like the NCHRF denounce violations of Rights and individual freedoms noticed during police investigations. Pursuant to Law No. 90/053 of 19 December 1990 on the freedom of association and Law No. 99/016 of 22 December 1999 dealing with non-governmental organizations, several bodies authorized by these texts specialized in the protection of freedoms and human rights were created in Cameroon. Their scope of competence covers the whole national territory. Among these associations, we can mention ACAT (Action des Chrétiens pour l'Abolition de la Torture) and APDHAC (Association pour la Promotion des Droits de l'Homme en Afrique Centrale) which works in close collaboration with the NCHRF. Their role is not only to denounce, but also to sensitize and train various actors so as to ensure effective prevention. From this perspective, associations and NGOs play a particularly important role in ensuring the respect of human rights in police and gendarmerie units. But it should be noted that they are rarely seen in these units to perform their role.

3. Implementation Of The JPO's Responsibility In The Exercise Of His Powers

The JPO must exercise his judicial police mission in accordance with the laws and regulations of the Republic. If not, he could be held liable (section 1) but the legislator granted him a jurisdictional privilege (section 2).

3.1. The Responsibility of the JPO in the Exercise of His Missions

We will first examine cases of the implementation of the JPO's responsibility (section 1) before seeing the variety of sanctions provided for by the law (section 2).

Section 1: Cases of implementation of the responsibility of the JPO

The 2005 legislator, while giving the JPO significant powers when conducting investigations, has been able to enact a number of measures to protect the suspect from unorthodox practices such as arbitrariness, insidious and unfair practices. During police investigations, JPOs may violate procedure (A) or the personal liberties of the suspect (B).

A. Violation of procedure by the JPO

The JPO may violate certain rules of procedure at the beginning of an investigation. The legislator requires certain information to be mentioned in the JPO's report to prevent these violations. The CPC requires that the suspect be informed of certain rights. He must be notified of his

detention, the reasons for his presence in the police or gendarmerie unit. The suspect has the right to defense. Section 116 (3) of the CPC provides that the JPO shall, under the penalty of nullity, inform the suspect of: his right to counsel, his right to remain silent. The JPO must also observe certain rules relating to searches and seizures in an advocate's chambers (Section 106 (3)), other searches and seizures (Article 100).

B. The violation of the individual freedoms of the suspect

Law No. 58/203 of 26 December 1958 did not pay attention to the rights of the suspect. Today, in order to create a conducive environment for the respect of Human Rights (the protection of the right to life, the right to physical and moral integrity and the right to security), section 37 of the CPC provides that: any person arrested shall be given reasonable facilities in particular to be in contact with his family. In section 122 (2), the suspect shall not be subjected to any physical or mental constraints, or to torture, violence, threats or any pressure whatsoever, or to deceit, insidious manoeuvres, false proposals, prolonged questioning, hypnosis, the administration of drugs or to any other method which is likely to compromise or limit his freedom of actions or decision, or his memory or sense of judgment. This means that, the suspect's dignity, right to moral assistance, food, right to consultation and medical care should be respected.

The violation of all these rights engages the responsibility of the JPO during the police investigation and gives rise to various sanctions. The JPO must not interfere with the integrity of the suspect (torture), his freedom (improper custody, arbitrary arrest, and forcible confinement), violation of his domicile. The JPO should not be the author (during police investigations) of specific offenses such as corruption, favouritism, bribery, refusal of a service due, and abuse of power²⁷. In short, the JPO in the exercise of his functions may be guilty of offenses which will engage directly or indirectly his responsibility. This gives rise to the application of different sanctions.

Section 2: Various sanctions provided by the law

We have sanctions which nullify unlawful acts on the one hand (A) and on the JPO on the other (B).

A. The invalidity of irregular acts

We shall first analyze the character of nullity (1), on the one hand, and its scope (2) on the other hand.

1. The character of nullity

Irregular acts may be subject to either absolute nullity or relative nullity. There is a fundamental principle in criminal law which states that a person cannot or should not face criminal punishment except for an act that was criminalized by law before he/she performed that act ("*nullum crimen, nulla poena sine lege*"). This means that any sanction must be provided by a law. The legislator has taken this into account and nullified certain acts performed by the JPO in violation with the law.

Absolute nullity means "an act that is void because it is against public policy, law or order", while Nullity is said to be

²⁷ See the new penal code of Cameroon: Section 134,143, 137, 142, 148.

relative "when the act violates a rule intended for the protection of private parties". Here the exception must be raised by the parties "*in limine litis*"²⁸ and before the court. Section 3 of the CPC provides that the sanction against the infringement of any rule of criminal procedure shall be an absolute nullity when it is prejudicial to the rights of the defense as defined by legal provisions in force and contrary to public policy. This is true of reports that don't mention the reasons for remanding the suspecting police custody, the length of time within which he was subjected to requesting, the interval of rest during questioning, the day and hours when he was either released or brought before the State Counsel (Section 124 (1) of the CPC).

Section 116 (3) of the CPC makes it an obligation for the JPO to inform the suspect of his right to counsel and his right to remain silent as soon as investigations are opened. Mention of this information shall be made in the report, if not it will be under the penalty of nullity. The report is also void in case of erasures, alterations and interlineations not approved by the suspect (Sec 90 (3) of the CPP). The procedural flaw can be invoked by any interested person, and in priority by the suspect within the time period of absolute nullities. But it must be said that this is at the discretion of the judge since he must, in order to uphold the grievance, ensure that he has violated a principle of public order or the rights of the defense. There is therefore no cause for annulment without the grievance being proven.

Similarly, a search which does not comply with the provisions of Section 99 of the CPC is void. Article 100 of the CPC clearly states that failure to comply with the provisions of section 93 to 99 shall render the search and seizure null and void. This means that the report is null. Failure to comply with substantive or procedural requirements may render the search and subsequent acts void if it has caused injury to the person concerned²⁹.

2. The scope of nullity

It is important to point out that acts which are void shall be withdrawn from the case file and med in the registry and it shall be forbidden to obtain information from the document withdrawn for use against the person concerned under pain of a civil action in damages (Section 5 of the CPC). But is it permissible to draw elements in his favor, despite the cancellation? It should be noted according to us that the legislator wanted to protect the victim of irregularity and not to sanction it. The other reservation as to the effect of the cancellation is that mentioned above and is provided in Section 100 (2) of the CPC, which states that, where the search has been declared null and void, the articles seized in the course thereof maybe admitted as exhibits if they are not contested. As to the extent of nullity, the question which arises is whether the sanction is limited to the act in dispute or whether it extends to the entire subsequent proceedings. Unless otherwise provided by law, the scope of the effects of nullity is determined by the court that pronounces it (Sec 263 (2) and 281 (2) CPC). An application of this rule can be

²⁸ At the threshold of litigation. Immediately before the commencement of a legal case

²⁹ Cass. Crim. 17 september 1996, Véraldi and a. : Juris Data n° 003917, 21 mars 1995. Delon and a: Rév. Pr. Coll., June 1995, n° 144 in GUINCHARD (S) and BUISSON (J), op. cit. p. 347

found in Section 124 (4) of the Criminal Procedure Code, which states that the non-observation of the provisions of this section shall lead to the nullity of the police report as well as all subsequent acts, without prejudice to disciplinary sanctions against the judicial police officer concerned. Finally, the JPO may, in case of felonies and misdemeanors committed flagrante delicto, and where the investigations, necessitate, go outside, either his territorial jurisdiction, or outside the territorial jurisdiction of the legal department where he carried out his duties, to follow up his investigations. In this case, he shall, under pain of nullity of the acts accomplished and disciplinary sanctions, obtain the authorization of the State Counsel of his area of jurisdiction. (Sec 110 (1) of the CPC).

B. Sanctions attributed to the JPO

Here we have the civil (1), disciplinary (2), and criminal (3) sanctions.

1. Civil sanctions

According to the provisions of Article 1382 of the Civil Code, "any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it". This compensation takes the form of damages and interest against the guilty JPO³⁰.

With regard to the illegal detention of the suspect, Section 236 of the CPC provides that any person who has been illegally detained may, when the proceeding end in a no case ruling or an acquittal which has become final, obtain compensation if he proves that he actually suffered injury of a serious nature as a result of such detention. Illegal detention within the context in subsection (1) above shall mean: Detention by the JPO in disrespect of the provisions of sections 119 to 126 of this code and detention by the State Counsel or the examining magistrate in disrespect of the provisions of section 218 to 235, 258 and 262 of this code.

In this regard how do we fight against illegal detention ordered by the State Counsel? As mentioned above, in practice, the state counsel often signs police warrants. And when they are abusive, can the suspect hold the state counsel responsible?

We believe that this is possible even if the law does not expressly specify it. Returning to Sec 236, we can note that the suspect who has spent more than 08 days in custody cannot claim compensation if he was released after. He can only do so when the proceeding end in a no case ruling or an acquittal which has become final. This situation makes the application of section 236 very difficult. In addition the compensation shall be paid by the State which may recover same from the JPO, the state counsel or the examining magistrate at fault. What makes it more difficult is that this allowance is allocated by decision of a commission which statute over the matter.

The commission is seized by an application, within 06 months from the day the custody came to an end, when the proceeding end in a no case ruling or an acquittal which has

³⁰ In the case of Public prosecutor V. EPANDA Richard, the police officer, the judge sentenced the latter to 100,000 FCFA fine and 343,643 FCFA of damages for minor injuries at the court of first instance in Bamenda.

become final. The appeal can be made before the judicial chamber of the Supreme Court. Its decision cannot be appealed against. The time limits for appeal are those provided for civil appeal³¹. It should be noted here that there is no specified time limit for the compensation commission to pronounce its decision after its referral. This risks making this machine very slow as it is the case for our bureaucracy.

As we said above, the legal basis for civil responsibility (of the JPO) is art. 1382 of the Civil Code. The judge is sometimes obliged to pronounce a judgement against the State and its agent (the JPO) who will have an obligation to compensate the victim for the harm suffered. Thus the state can turn against the JPO through a recursory action. It is a measure intended to give the victim certainty of recovery of the debt. The state, a legal entity, can hardly disappear and is able to honor its commitments³², even if it takes many years. Which is not the case with its agent³³. But we must also sadly note that, there is no recovery procedure against the State, which makes the compensation here more theoretical than practical.

The violation of the rights of the suspect may be assessed by a judge when condemning the JPO to pay damages. In this case the harm may either be moral (a), material (b) or bodily (c). This prejudice can even sometimes be moral, bodily and material.

A. Moral damage

Article 1382 of the Civil Code according to which any person who by his fault has caused damage to another person is obliged to repair it applies to moral damage. It is on the basis of this provision that the judge may decide that the pain experienced by the direct victim or by his successors may be worthy of redress. Moral damage comes from many aspects among which mental anguish, aesthetic prejudice etc. The compensation awarded to the victim in such a case is called in law the "*pretium doloris*"³⁴ (the price of pain). This compensation takes the form of damages against the guilty judicial police officer³⁵.

B. The material damage

Material damage is an injury to property. This property can be destroyed, deteriorated, or even be lost due to the fault of the judicial police officer or his collaborators. Some even go as far as seizing objects deposited by the suspect or stealing the goods seized. We can also mention the cases of detention of someone's thing without his permission. All these actions

³¹ 30 (thirty) days from the day after service

³² The court of appeal of the south sentenced BOUBAKARI MODIBO for mortal blow to two years' imprisonment and to pay the civil parties the amount of 10,500,000 FCFA in damages. The DGSN has been declared civilly liable for civil condemnation

³³ C. NDI, la responsabilité des agents de police pour violation des droits de l'Homme dans le cadre du maintien de l'ordre public au Cameroun, masters dissertation, campus numérique, Yaoundé, 2007, p.69

³⁴ « price of pain ». Intangible or « moral » damage caused by a wrongful act, such as mental anguish

³⁵ Case of Prosecutor and AYISSI MESSI v. OLAMA Laurent and AMBELLIE Zacharie, police, prosecuted for torture. AT the hearing on 18 April 2007, they were convicted and sentenced to 02 years imprisonment.

are likely to be perceived as violations of the rights of the human person, which can give rise to civil responsibility on the part of judicial police officers.

C. Bodily injury

Bodily injury results from a violation of physical integrity³⁶. The judicial police officer is obliged to make reparation for the damage he has caused, that is to say, the physical pain the victim has endured. This compensation will cover all the costs incurred by them (purchase of medication, hospital expenses, medical examination etc.). The human body being the support of life, attacks on the body is a threat to life. Torture may even sometimes result in the death of the suspect³⁷. Thus the civil remedies pronounced by the judge are commensurate with the injury suffered³⁸.

2. Disciplinary sanctions

During police investigations, the JPO may be the perpetrator of certain offenses, and could also be in violation of the rights of the suspect. All of these offenses may lead to disciplinary proceedings that most often result in disciplinary sanctions. It is for this reason that Section 122 (5) of the CPC provides that whoever violates or fails to comply with the provisions of this section or prevents their compliance with, shall be liable to prosecution without prejudice, where necessary, to disciplinary sanctions. These disciplinary sanctions are most often taken by the hierarchical authorities of the JPO or the boss of the JPO, in the worst case by the President of the Republic.

Speaking of the chief in command, is it the state counsel that directs and controls the acts of the JPO, or is it the hierarchical leader, that is, the direct leader? On this subject the CPC did not provide an answer. The disciplinary sanctions to date are taken for some by the direct hierarchical leader of the JPO (head of unit) and for others by the chief of the police corps or the President of the Republic. Whenever the hierarchy of the JPO is seized and the facts are proven, the JPO is liable to disciplinary sanctions³⁹. These vary according to whether the JPO is from the gendarmerie (a) or the National Security (b).

A. Disciplinary sanctions against the JPO of the gendarmerie

The judicial police officer of the gendarmerie or his collaborators, convicted of misconduct, negligence or professional fault⁴⁰ are liable to disciplinary sanctions. According to Decree no. 2007/199 of 07 July 2007 on

³⁶ The JPO EPANDA Richard was prosecuted at court of the Appeal of the North West Region for simple injuries.

³⁷ This was the case of young NDJOCK MAAH Emile. The suspect was killed after being tortured by police officers at the Yaoundé 3rd district police station in 1997

³⁸ Prosecutor v. NGONJO Collins, police officer, prosecuted for torture. This case is pending before the court of first instance of Ndian.

³⁹ We have been accustomed these days to the publication through the radio, press and television of the disciplinary sanctions imposed on the police officers or the gendarmes by their respective authorities

⁴⁰ 30 days of rigorous arrest was issued against the chief sergeant of the ter DAYBAYANSOU Gaston of the brigade Ter of Yagoua for acts of violence that resulted in the death of a suspect in custody.

General Discipline in the Defense Forces, acts constituting misconduct are grouped into 06 (six) categories. This categorization of faults is followed by a hierarchy of sanctions according to whether the person concerned is a gendarme subaltern (rank) or a "sous-officier" or even an officer (superior or subordinate). Another qualification (minor sanctions and major sanctions) completes this hierarchy of disciplinary sanctions incurred by the gendarmes.

We can cite as an example in the case of false testimony in a judicial police investigation, men of rank expose themselves to 45 days in prison and junior officers to 60 days of rigorous arrest⁴¹. In case of negligence in the application of the rules of protection of secrets, 15 days in cell for men of rank and 30 days of simple arrest for junior officers. A gendarme who tries to appropriate objects or property belonging to another⁴², the prison term will be 30 days for men of rank and 45 days for junior officers⁴³. This list of disciplinary sanctions for the JPO gendarmes is not exhaustive, these few examples are only illustrative because ultimately, it is the hierarchical authority to make a decision and enforce the disciplinary sanction.

B. Disciplinary sanctions against the JPO of the National Security

With regard to disciplinary sanctions, the hierarchy of JPO of the police has a panoply if one refers to decree n° 2001/087 of March 12th, 2001 relating to the special status of the body of the officials of the National Security. Among disciplinary misconducts, we can cite disobedience, faults relating to uniform and conduct, lack of hierarchical subordination, characterized negligence and personal misconduct, faults against honor, duty of integrity (Section 94)⁴⁴. Section 94 of the decree of 12 March 2001 stipulates that the hierarchical superior of the JPO assesses the seriousness of the fault and pronounces or proposes the appropriate sanction.

As for the sanctions, there are 17 (seventeen), grouped in three categories and according to the gravity of the fault. We have first-class sanctions (reprimand, the extra duty hours, warning, cell, prison or rigorous arrest, temporary suspension of 1 to 7 days), second-category of sanctions (written warning, severe warning written in a file, suspension without pay for a period of 08 to 20 days, removal from the promotion board or the list of aptitude, delay in advancement for a 1 year's duration), finally third

⁴¹ The officer Emini Emini on duty at the gendarmerie brigade of touboro was sanctioned with 30 days of rigorous arrest and transferred to the South West legion for sequestration and abuse of office

⁴² In Prosecutor v. NDZOGA Célestine, brigade commander, was prosecuted for breach of trust and he appropriated seized property not belonging to him.

⁴³ 20 days of rigorous arrest for the officer NJIENJOU Emmanuel for fraud and attempted fraud.

⁴⁴ As a precautionary measure, the president of the republic has often suspended appointed JPO and the head of the corps for JPO that were not appointed. So following commissioners of police were suspended for three months for these fault, namely OBAM OBAM Jean Michel, BEKOM ESSOMBA François Alexandre, AMOUGOU ATANGANA Moise, OWONA ASSIGA Luc Roger. Again the police officer MENGOLU ONDOUA Guy Béatrice was suspended for 3 months.

category sanctions (temporary exclusion from the service for a duration of three (03) months to one (01) year, demotion, downgrading, revocation without the suspension of pension rights, revocation with suspension of pension rights, revocation with cancellation of pension rights).

In Conclusion, It should be noted some sanctions are pronounced by the chief of service or the head of the police unit without consulting the disciplinary council, these are disciplinary sanctions of the first category (Section 116 of the decree of 12 March 2001). Others such as delay in advancement for a period of one year as well as sanctions of the third category can only be pronounced after consultation with the Disciplinary Board. The disciplinary sanctions of the second category (written warning, severe warning⁴⁵ written in a file, suspension without pay for a duration of 8 to 20 days) are pronounced by the head of the corps of the National Security without consulting the disciplinary council. Penalties (cancellation from the promotion board or the aptitude list, delay in advancement for a duration of one (01) year⁴⁶) of the second category and the penalty (the temporary exclusion of the service for a duration of three (03) months to one (01) year) of the third category are taken by the head of corps. Sanctions of the third category are within the competence of the President of the Republic (Section 120). With regard to disciplinary sanctions, it is left for the hierarchical authority to appreciate and apply them while the application of criminal sanctions is guaranteed by the judge.

3. Criminal sanctions

A judge when pronouncing a sanction, has a varied range of possibilities. Thus the JPO who is guilty of offenses such as the violation of physical integrity (torture (Sec 132 bis of the PC), beatings and injury, murder, homicide etc.)⁴⁷, violence and assault (deadly blows (Sec 278 PC)), infringement of liberties (arbitrary arrests, false arrest (Sec. 291 PC)⁴⁸, violation of domicile (Art. 299 CPC), offenses against proprietary interest (sec. 318 PC), detention of property belonging to another, corruption, will be exposed to criminal sanctions. These measures range from principal penalties (a) to accessory penalties (b).

A. The main sanctions

Section 18 of the new penal code of Cameroon provides that principal penalties are death penalty, imprisonment and fine.

The death penalty: death penalty remains controversial both nationally and internationally. Cameroon is still part of

⁴⁵ The JPO EKOUMA Fils François on duty at the police station of the 2nd district of the city of Dchang was warned for violence towards a person brought to the office.

⁴⁶ The JPO, FOTSO Jean advancement was delayed for a period of 1 year for misuse of weapon.

⁴⁷In prosecutor v. MEZEDJO Eric, NGAMESSI, TSAPI, ZENE Emile and NDOUMBE, gendarmes on duty at l'Escadron n° 30 of the "Etat Major" of the Gendarmerie of Maroua, was charged with unlawful confinement, rape, minor injury and failure to assist. This case is pending before the examining magistrate of the court of first instance in Maroua.

⁴⁸ An example is the case of Prosecutor v. ENGUENE Magloire, former commissioner of Emi-immigration in Garoua, inculpé de blessures et séquestration, cette affaire est encore pendante devant le TPI de Garoua.

those States that practice death sentence. According to Section 23 of the PC, execution of a death sentence shall be by shooting or hanging as may be ordered by the judgement and shall be public unless otherwise ordered in the decision not to commute. The bodies of persons executed shall be returned to their families at their request, but on condition of a quiet funeral. Nothing may be published by the press beyond the official record of the execution and any official communicate that may be released. A detail application of this section shall be prescribed by a decree. Ultimately, although the Cameroonian legislator continues to maintain death penalty, in practice, and for about thirty seven years, this measure is no longer performed. However, it continues to be inflicted, but the execution is suspended in fact. In reality, the President of the Republic regularly commutes these sentences in life sentence.

Imprisonment: A JPO prosecuted for violation of the suspect's rights in a police investigation may, if the judge finds him guilty be imprisoned⁴⁹. According to section 24 of the Cameroon Penal Code, "imprisonment shall mean loss of liberty during which the offender shall be obliged to work, subject to any contrary order of the court for reasons to be recorded in the judgement". In the case of prosecutor v. PETALE DJIWANG Michel, a sergeant of the ter ("Marechal des logis chef") on duty at the Gendarmerie Brigade in Meyomessala, was charged with abuse of function and minor injuries. This JPO, by the judgment of 28 August 2007, was convicted and sentenced to 24 months' imprisonment with a warrant of arrest at the hearing.

The duration of imprisonment varies according to the nature of the offense and the conviction of the judge⁵⁰. Thus during the period of imprisonment, the sentenced JPO is bound to work unless the judge has decided otherwise and it is necessary for the decision to be based on factual and legal arguments. If the work, which is often performed in the form of chores, is paid, part of this remuneration is paid to the convict. The effects of the imprisonment of the judicial police officer are numerous. If the latter is sentenced to deprivation of liberty for a period of six (6) months or less, he or she resumes work after serving his sentence. However, he cannot claim the arrears of his salary or a reconstitution of his career.

In the case of a conviction that has become final for a crime or offense related to torture or probity, including theft, forgery, fraud, corruption, misappropriation of public funds, breach of trust, the JPO cannot resume service. Moreover, the JPO (of the National Security) sentenced to a Deprivation of liberty of more than six months, which has become final, is brought before the Disciplinary council.

⁴⁹ A judgement of the court of first instance in Menoua sentenced two policemen for torturing and putting a citizen in cell with handcuffs. See Court of first instance judgement n° 662 of 28 April 2006, case of Prosecutor and NANFACK Etienne v. BISSENE AMOUGOU and EKOUMA Fils François

⁵⁰ The JPO ETOUNDI was sentenced to 03mois imprisonment and a fine of 200.000 Frs, other police (KAM John, BIMOGA, GREDOUBAI) had 05 years imprisonment for torture. See judgment n° 381/crim of 26/08/2003 of the High Court of Mfoundi.

The fine: Fine shall mean a financial penalty by virtue of which a convict, natural person or corporate body, pays an amount of money, specified by law, into the public treasury (Sec 25 (1))

B. Accessory penalties

These sentences are described as accessories because they are added to the main sentences. These are in particular first-class and second-type forfeitures.

Forfeitures: After having pronounced the main sentence against the JPO, the judge can also pronounce forfeitures which will make the convict to lose certain qualities or the exercise of certain functions. Section 30 of the PC lists a number of forfeitures. These consist in the removal and exclusion from any public service, employment or office; incapacity to be a juror, assessor, expert referee or sworn expert; incapacity to be guardian, curator, deputy guardian or committee, save of the offender's own children, or member of a family council. Forfeitures may include prohibition on wearing any decoration, prohibition on serving in the armed forces; prohibition on keeping a school, on teaching in any educational establishment, and in general on holding any post connected with the education or care of children.

Other accessory penalties: Publication of judgment and confiscation of "*corpus delicti*". The publication of a judgment is a measure intended to make the public aware of the conviction of an individual by a court. By its nature, the measure is likely to tarnish the image of the person being prosecuted and ends up discrediting them in society. In cases where the competent court has ordered the publication of its judgment, it shall be posted in a manner to be prescribed by decree for up to two months in the case of felony or misdemeanor or 15 days for a simple offence. Confiscation of the "*corpus delicti*", According to section 35 of the PC, "On conviction for any felony or misdemeanor, the competent court may order confiscation of any property, moveable or immovable, belonging to the offender and attached, which was used as an instrument of its commission, or is the proceeds of the offence. In summary, we are going to say here that the JPO in the exercise of its functions is not above the law. In case he commits an offence, he will face civil, disciplinary and even criminal sanctions. With regard to criminal prosecution, the legal proceedings against a JPO are not the same as those of ordinary litigants.

3.2. Selectivity With Regard To the Organ In Charge Of Judicial Police Investigation against the JPO and the Privilege of Jurisdiction

Before examining the privilege of jurisdiction granted to the JPO by the Criminal Procedure Code (section 2), we will study the selectivity with regard to the body in charge of the judicial police investigation against the judicial police officer (section 1).

Section 1: Selectivity with regard to the body responsible for judicial police investigation against the JPO

This selectivity is contained in ministerial orders (A) and we will see the particular case of the National Security (B).

A. Ministerial orders

A circular of 16 October 1964 on the relationship between the gendarmerie⁵¹, the army and the police decided, in part III on the rules of jurisdiction with regard to violations of laws and regulations, that in case of an incident or offense which involves gendarmes or soldiers and civilians, the investigations will be carried out by the gendarmerie. A competent gendarmerie service will have jurisdiction over cases where Civilians report or complain of an incident or offense involving a soldier or gendarme to the police. In the event of an incident or offense involving police officers and civilians, the police will be responsible for the case. Any complaint or denunciation addressed to the gendarmerie of an incident or offense involving a police officer is sent to the competent police department. In the event of an incident or an offense involving gendarmes, soldiers, police officers and civilians, the gendarmerie and the police are respectively seized of the facts concerning their representatives⁵². The very purpose of this circular is to put an end to the unfortunate incidents (which often happens) between these different bodies so that there is a clear cooperation between them in the best interests of the nation.

B. The particular case of the National Security

In the particular case of National Security, it should be noted that after having carried out the procedures relating to the judicial police investigation against the judicial police officer, the head of the corps has the discretionary power to defer the guilty policeman. For example, a circular of the Delegate General for National Security (DGNS) No. 0013 / DGNS of 11 March 1982 on the prosecution of police officers states that "in case of legal proceedings against police officers, either for personal actions attributable to them or in the exercise of their functions, they may be referred to the prosecutor only after seeking the opinion of the head of the corps to whom the proceedings are to be communicated urgently in order for him to make a decision". What we can note here is that this circular was enacted during the single party system, when the state was all powerful, human rights and individual freedoms were not guaranteed. The Delegate General for National Security, which must ultimately decide whether the police officer should be referred to the prosecution or not, can opt for the last solution and what will the victim do? This circular allows the head of the police force to block the criminal litigations of police officers. This poses a serious problem. We propose the head of the police corps abstains from such an act so as to enable justice to run its full course. This circular does not fit with the current context of our society. It should also be noted that at this time there was tension between the police and the judiciary to the extent that a head of unit removed some of his collaborators who had been brought to justice during hearing in court. But nowadays this circular is difficult to apply because we are in a state of law and the guarantee of individual liberties is the norm. We are all equal before the law.

⁵¹ Ministerial order n°

8/VP/6/INT/2308/MINFA/362/PS/S of 16 October 1964, determines the competence of each of the two organs only with regard to the author of the crime.

⁵² See on this subject this circular for details on the rules of cooperation between the National Security, Gendarmerie and Army.

Section 2: The privileged proceedings granted to the JPO and the effectiveness of criminal proceedings against the JPO

The legislator, given the difficult task he has given the JPO, has allowed the latter to benefit from privileged proceedings in case of criminal prosecution against him (A) which raises the problem of the effectiveness of criminal proceedings against the JPO (B).

A. The privileged Proceedings granted to the JPO

Section 634 (2) of the CPC provides that where a senior divisional officer or any other head of administrative unit or a judicial police officer has committed a felony or a misdemeanor even if unconnected with the exercise of his duties, the State Council shall transmit the case file to the competent Procureur General who shall seize the president of the competent Court of Appeal. The latter shall in turn designate both the legal department in charge of instituting prosecution and the competent trial court to hear and determine the matter. Paragraph 3 of the same article states that in the cases referred to in the preceding sub-sections, prosecution, investigation and trial shall be assigned to jurisdiction other than those of the province, division, sub-division, or district where the accused performs his duties.

The JPO joined in this closed circle magistrates who were the only ones that benefitted from privileged proceedings before the advent of the CPC. This privileged treatment is characterized by the fact that when a JPO has committed a crime or offense in the exercise and even outside the performance of his duties, he is not amenable to the court in whose jurisdiction he is in service. DGNS lawyers successfully raised the incompetence of the judge of the court of first instance administrative centre in Yaoundé in cases against Pamela FOMENIA and senior police inspector INACK on the one hand and NKOUIDJA and police inspector Brichard TAGOUE on the other hand for privileged proceedings. In both cases, NKOUIDJA and PAMELA as JPO benefitted from the provisions of section 634 (2) of the CPC on privileged proceedings. The State Counsel shall transmit the case file to the competent Procureur General who shall seize the president of the competent court of appeal. The president of the Court of Appeal could send these cases in a department other than that of Mfoundi but in the centre region because these JPOs are in office in the Mfoundi division. Privileged proceedings also guided the judge in the case of prosecutor v. TOCHE KAMGA, police commissioner, ex-commander of the public road group at Sangmélima central police station, prosecuted for torture, abuse of office, arbitrary detention. At the hearing on 13 June 2008, the court declared itself incompetent for jurisdictional privilege⁵³. What about JPOs having regional or national jurisdiction?

Privileged proceedings are justified because of the very wide range of powers enjoyed by the JPO. Judging them where they carry out their functions may raise reactions on both sides. On one hand, opinion may be favorable to him if he had a good reputation, on the other, it may be unfavorable to him. As an auxiliary to the State Counsel, a lack of objectivity in the search for the truth can be felt if it is the same prosecutor's office that is still seized to hear the case.

⁵³ See the report of the Ministry of Justice on the state of Human Rights in Cameroon, Pg 34

Privileged proceedings make it possible, within the spirit of the law, to have more fairness and equity with respect to both the JPO and the victim. But on the other hand, privileged proceedings will push litigants to a lot. For example, a JPO in service in the Mounjo division with divisional jurisdiction sees the case against him sent in the Sanaga Maritime or Nkam division. The displacement of the JPO and the civil party will be very expensive especially since it is not at the first hearing that the case will be decided. We think that judges will most often take into account the situation of indigence that characterizes the Cameroonian citizen to quickly decide the matter.

B. The effectiveness of criminal proceedings against the JPO

Criminal procedure against the JPO is not so simple. This is justified by the contours and stages that victims or their successors must go through in order to bring them to justice. As we can see, the prosecution of the JPO can only succeed with the blessing of its head of corps. Most often the JPO is transferred far from the place where he committed his crime, as they say, for his own safety, while underneath it is to prevent him from answering for his crime before a court of law. The judicial police officer who enjoys privileged proceedings, whenever he is summoned before a court, must receive the assent of his superiors before going there. This situation renders the prosecution against the JPO ineffective. In reality, he is not an ordinary person. It should be noted at the end of this analysis that the hierarchy of the judicial police officer plays a very important role in this process.

GENERAL CONCLUSION

The JPO plays a very important role in the conduct of criminal trials. He takes note of the offenses, collects the evidence, searches for perpetrators and accomplices and, if necessary, refers them to prosecution. The judicial police officer exercises his judicial police mission in accordance with the laws and regulations within the territorial limits where he performs his usual duties. The JPO has the power to operate in preliminary investigations or that of flagrante delicto according to specific attributions. In the case of an emergency or a crime or flagrant offense, the legislator has extended his jurisdiction, in order for him to carry out his investigations in jurisdictions where he does not normally perform his duties.

To the problem of knowing what are the guarantees provided by the CPC in order to allow the judicial police officer to accomplish his mission while respecting the balance between the rights of the person being prosecuted and the interest of the society, it seems judicious to make an observation: the 2005 legislator in his new "distribution of the cards" to the actors of criminal trial emphasized on the case of the JPO. This consecration reinforced his powers. It is clear that between the need to protect society against crime and the concern to preserve human dignity, including the worst criminal suspects, is found Man⁵⁴. Therefore, the reconciliation of these two imperatives, which seems to be the legislator's concern in the Criminal Procedure Code, boils down to the search for a delicate balance that requires on the part of the JPO more professionalism and more humanism.

⁵⁴ J.P.S NKENGUE, op. cit. p. 240

Faced with this demand, the fight against impunity for law enforcement officers, especially the JPO, is increasingly highlighted by state authorities. The 2005 legislator thus spared the carrot and the stick with regard to the JPO. The carrot is considered here as the very important powers that the criminal procedure code has devoted to the JPO. The stick is the set of laws that sanction the JPO. The CPC thus breaks with the old methods used by the JPO in the exercise of its missions. Admittedly, old habits have hard skin, but the JPO is in the process of changing. The fact is that the context

and the evolution of our society forces him to adapt with the reality. All this could allow the JPO to better reconcile the fight against crime and respect for human rights so that public order can reign forever. The JPO must embrace this thought of VAUVENARGUE according to which "we cannot be fair if we are not human ". It is safe to say that the 2005 Criminal Legislature has harmonized criminal procedure in Cameroon. It is left for various actors to apply it judiciously because of what use is a good text if it is not put into practice.

