

Rule of Law in Higher Education and University Institutions in Democratic Republic of the Congo: The Law of the Strongest or the Force of the Law (Case of the University of Gbado-Lite, North Ubangi Province)

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Abstract:

The crisis in which the Higher Education and University Sector is mired threatens the future of the nation; it is therefore necessary to put things in order. In a context where ignorance and non-respect of academic, regulatory and legal norms are manifest, where the attitude of managers in the conduct of academic affairs is subject to doubts and sometimes challenges, even questioning their profile as managers, The Vade Mecum as a reference document or guide for managers of higher education and university establishments (both public and private) is timely in indicating to the managers of establishments the line of conduct to follow in order to respect and ensure respect for the various texts and laws conceived, elaborated and published within the framework of higher education and university in the Democratic Republic of Congo. This study on the rule of law in the Higher Education and University Establishments in DR Congo is therefore an analysis of the realities observed in the administrative management of the scientific, administrative, technical and working personnel recruited, appointed and assigned in these Establishments who, it is believed, only have duties to fulfill while they also have rights to preserve and to assert. The case under examination is that of an Assistant of the University of Gbado-Lite (UNIGBA), recruited and appointed regularly by a decision of the Rector whose dismissal by the Head of School has seriously violated the legal and regulatory provisions on disciplinary procedure; the latter having introduced a hierarchical appeal, was rehabilitated in his functions and in his rights without other forms of trial.

Keywords:

law; higher education; University of Gbado-Lite; Democratic Republic of the Congo

I. Introduction

The Democratic Republic of the Congo (DRC) declares itself to be a state governed by the rule of law; this is clearly stated in the explanatory memorandum and in Article 1 of the constitution of 18 February 2006, which guarantees the human rights and fundamental freedoms of citizens. The constitutional superstition that has characterized all the political regimes that have succeeded one another since independence, however, has not managed to reduce the gap between the constitutional façade and reality. Each regime, in order to justify its weaknesses in establishing the rule of law, accuses its predecessor of having drawn up a

text that does not fit with national realities and that another should be drawn up that will restore the authority of the state and tackles the problems of development in the community. But we realized that these texts have only a theoretical value, whose drafting is only to attest the existence of a state of law before the world (Mboso, 2020).

For ages, the Congolese have always aspired to a society of law and democracy where violence must give way to dialogue, domination to service, personal profit to the guarantee of freedom and the respect of the law by all. The University of Gbado-Lite (UNIGBA) located in the town of Gbado-Lite, capital of the North Ubangi Province, precisely in the TUDU village, 5 kilometers from the town of Gbado-Lite, was created on the initiative of the late Marshal MOBUTU SESE SEKO KUKU NGBENDU WAZA BANGA, then president of Zaire, under the name of "Aequatoria" and functioned from its creation in 1994 until 1996. It functioned as an extension of the University of Kinshasa following Ministerial Order No. 130/MINESU/CAB.MIN/FL/RS/2006 of 25/04/2006 creating an extension of the University of Kinshasa, called "Centre Universitaire de Gbado-Lite". It acquired its autonomy in 2011 following the Ministerial Order No. 146/MINESU/CABMIN/MML/CB/GM/2011 granting it a real self-management in order to meet the triple mission recognized to institutions of higher education and universities, namely: to train, to ensure scientific research and to serve the community.

The University of Gbado-Lite "UNIGBA" as a public educational institution, its operation and management are subject to compliance with the following laws (Ngbolua, 2020). The State decision n° 09/CC/81 of June 8, 1981 relating to higher and university education; The Ordinance-law n° 81-025 of October 3, 1981 relating to the general organization of higher and university education; The Ordinance n° 81-160 of October 7, 1981 relating to the status of the personnel of Higher and University Education modified by the Law n°18/38 of 29/12/2018 relating to the status of the personnel of Higher and University Education; Decisions n° 001/CAU/40th SO/2012 of November 9, 2012 on the promotion and appointment of academic and scientific staff of universities; The Framework Law n° 14-004 of February 11, 2014 of National Education; The Pact of Modernization of Higher Education and University of 2003; the Vade mecum of the manager of a Higher Education and University Institution; Decree n°151040 of December 14, 2015 on the viability criteria of the Higher Education and University Institutions of the Democratic Republic of Congo; Decree n°151041 of December 14, 2015 on Criteria for the organization of postgraduate training in Higher Education and University in the Democratic Republic of Congo; Decree n°18/003 of February 28, 2018 on the Creation, Organization and Functioning of the National Agency for Quality Assurance of Higher Education and University (ANAQ-ESU); the decrees of the Minister in charge.

II. Research Method

Two methods were used to develop this work: The first is legal, which allowed us to confront the facts with the established law; and the second is praxeological, which allowed us to analyze the social reality considered as a discursive production and which served to identify the relationship between the texts and their concrete application in the case under study by observing the behavior of the members of the Management Committee of the University of Gbado-Lite in order to form an opinion on the manner in which the legal and regulatory texts are applied.

III. Discussion

3.1 Definition of the Rule of Law

The rule of law is understood as a state in which all individuals or determined communities are sanctioned by the law. To give a definition of the rule of law seems to us a very hard task to accomplish because, the conceptions diverge and the points of view also. To do this, a review of the literature is necessary.

According to Russen (1990), a state governed by the rule of law is one in which the action of the rulers is subject to the empire of pre-established rules, one in which the decisions of the judge are imposed on the rulers and the governed.

Djoli (2012) believes that the paradigm of the rule of law is currently invested with a brand-new scope, becoming one of the major references of the political discourse, in a thought of repugnance of the African State and legal systems. All states are required to sacrifice to the cult of the rule of law, striving to capitalize on the resources for its legitimization, which has become not only an ideological resource of primary importance and an argument of authority on the national and international political scene, but also a constituent element of the modern state, a composite of its definition if not the very expression of modernity.

In establishing the relationship between human rights and fundamental freedoms, Kalindjye notes that the rule of law is that in which human rights and fundamental freedoms are guaranteed [6]. The rule of law can then be summarized by the formula: "no one is above the law". Thus, the primacy of the law is presented here as a principle. In other words, the laws must be known (public), no one can escape them, they must be effectively applied and the transgression of the law must lead to sanctions.

3.2 Characteristics of the Rule of Law

The rule of law is characterized by the following principles: respect for the hierarchy of norms, equality of subjects before the law, independence of the judiciary, separation of powers, respect for human rights and freedoms, control of the constitutionality of regulatory, legislative and administrative acts, and sovereignty (Mboso, 2020).

3.3 The New Paradigm of the Rule of Law in the Democratic Republic of the Congo

When one considers the weight of the potential limits to which the construction of the rule of law is subject, one has the impression that the notion, however indispensable to democracy and the development of the country, seems to be moving away from the doors of the Democratic Republic of the Congo, experiencing enormous difficulties to gather the criterion of definition of a state of law. We have decided to propose only a few thoughts. We affirm that "there is no pre-established model in a State of law: there are rather principles, which are not the same". There are no pure recipes for achieving a State governed by the rule of law: there are only experiences, with consequences that the history of each country makes it possible to identify.

Long plunged into chaos, it is time for the DRC to make a way out in order to let a State of law emerge. It should be noted that on the political, economic, social and cultural level, the new regime spares no effort for the advent of a rule of law in the DRC: on the legal level, the Congolese justice system is becoming more and more an organ that works for the national interest, in a spirit of separation of powers, considering that only justice raises a nation.

This mode of management must be observed as much in the Establishments of higher education and university so that meritocracy is consecrated instead of fanaticism, nepotism and clientelism. The university environment being apolitical, it is up to the Heads of ESU establishments to respect and make respect this provision contained in the legal and regulatory texts.

3.4 The Rule of Law in Higher Education and University Establishments and the Theory of the Principal and the Principal with regard to the Heads of Establishments towards their constituents in DRC

During its history, the Congolese Higher Education and University (ESU) have gone through several phases of reform. In spite of this, the crisis in which the Higher Education and University sector is mired continues to threaten the future of the nation dangerously because of a new and unknown fact to the general public, the politicization of public universities in the hinterland and the instrumentalization of justice in an attempt to prevent heads of institutions from fully playing their role as police of the institution (Ngbolua, 2020) with a view to quality assurance as desired by the supervisory authority.

Another fact that has been observed for some time is the administrative management of personnel in total disregard of legal and regulatory texts: the creation of positions and bodies not recognized in legal and regulatory texts, the hiring of personnel according to non-objective criteria, the recruitment and appointment of scientific personnel who do not have the required profile, etc.

As one could note, and in reference to the theory of the servant and the principal with regard to the heads of higher education and university establishments vis-à-vis their constituents in the DRC, the non-observance of the legal texts by the managers of the university establishments in the exercise of their functions likely to cause prejudice to the constituents can motivate the latter to go to court and apply for actions for compensation and this, in accordance with the prescriptions of the article 258 of the civil code book III in the terms of which "any act of the man, which causes to others a damage, obliges the one by the fault of which it arrived to repair it".

The question of responsibility falls to the public administration, i.e. the Ministry of Higher Education and Universities and its decentralized services, because of their employees or organs. According Kalongo (1974), in France as in Belgium, the country of origin of Congolese law, there is a tendency "towards the socialization of responsibility and individual risks" and under the terms of this movement, any victim of an accident or any other damage must be virtually sure of being compensated, wherever the origin of his or her damage comes from, whether it is an act of private or public management by the State.

The Heads of Higher Education and University Establishments will be considered validly in the exercise of their functions as the employees of the Ministry of Higher Education and University. This is justified by Kabange (1976), who notes in a sustained analysis that the State was subject to the rules of civil law and should, like any principal, answer for the acts of its agents when it assigned them to functions.

3.5 The Application of Legal and Regulatory Texts in the Administrative Management of the University of Gbado-Lite personnel

The Fundamental Law recognizes the right and the freedom of demonstration to all Congolese citizens and this, in the respect of the provisions on the matter. In fact, on May 16, 2022, the University's employees demonstrated and demanded the payment of their basic salary, a salary demanded by all ESU personnel throughout the country. This state of affairs did not leave the Government of the Republic indifferent through its Ministries of Public Service, Budget and Finance as well as that of ESU and the Union Representatives of the Academic, Scientific, Administrative, Technical and Labor Corps to sign in February 2022 an agreement aiming at improving the salary conditions of the latter. The Management Committee having convened an extraordinary meeting on that same date to evaluate the situation designated without any proof the Junior Lecturer Modeste NDABA MODEAWI as the sponsor of the said event. Not having been the subject of any disciplinary action procedure, the accused Assistant was dismissed on the basis of the minutes of an extraordinary meeting of the Management Committee by the Rector's decision n°018/UNIGBA/CAB. RECT/RZN/MADM/2022 signed on the same date of May 16, 2022, date of the demonstration and this, in disregard of the statutory provisions on disciplinary procedure; while the Agents authors of discourteous and derogatory remarks towards the academic authority were sanctioned with a 15 days layoff at the end of a disciplinary action opened against them.

The application of sanctions, as provided for in the legal and regulatory texts, being rigorous, the revoked Assistant in his letter of appeal referenced n°002/C I/DEC REC/UNIGBA/MNM/05/2022 addressed to the President of the Board of Directors of the Universities of Congo relied on the legal and regulatory provisions in the matter of disciplinary procedure by evoking Chapter XXIII, points 1, 2 and 3 of the Vade mecum of the manager of a Higher Education and University Establishment, 4th edition (2020) and articles 155 and 165 of the Law n° 18/038 of 29/12/2018 concerning the statutes of the ESU personnel.

After examination of appeal, the above mentioned Rectoral Decision was cancelled by the letter referenced CAU/SP/MM/MW/085/2022 of 05/08/2022 from the Permanent Secretary of this Technical Management Body of the universities of the DRC, restoring in his functions and rights the Assistant Modeste Ndaba Modeawi, author and co-author of more than nineteen scientific publications in indexed international journals, candidate to the promotion to the grade of Senior Lecturer and Master of Science student at the Department of International Relations at the University of Kinshasa. Thus, in a state governed by the rule of law, the law must prevail.

IV. Conclusion

At the end of this analysis, let it be said once again that the rule of law, today in vogue, has as its condition of existence the hierarchy of norms, the protection of the rights and fundamental freedoms of citizens, the equality of subjects before the law, independence, the separation of powers, etc., in addition, the obedience of all to the law. In view of this theoretical and practical analysis, the Heads of Higher Education and University Establishments of the DRC should evaluate the administrative management of the personnel in their charge and readjust the aim if necessary; moreover, they should make sure that their collaborators master the legal and regulatory texts governing higher and university education in the DRC. It is important to note that the responsibility of the Ministry of Higher Education as principal stems from the presumption of fault that the administration or the State may commit in the selection and supervision of these agents. In order for this fault to arise, it is not necessary that the agents be at

fault, it is sufficient to note a general poor performance of the modern public service or of its normal functioning. Typical examples of such misconduct include: cases where the public service has malfunctioned. Such is the case of a head of a higher education institution that wakes up one morning and dismisses an assistant without subjecting the latter to the disciplinary procedure provided for by the "Vade Mecum". All in all, and without wishing to give a moral lesson, this work is a challenge to the new governance in the sector of higher and university education so that the reforms which are and which will have to be engaged by the supervisory authority find managers who have the required profile, who are well trained, respectful of the texts and academic instructions and willing to ensure a flawless execution without any qualms. It is therefore time to make Higher and University Education in DR Congo alive, to reactivate the conscience of the Heads of Establishments on an exemplary administrative management free of any subjectivity and to consider that only the Texts of the Laws, the Academic Instructions and the Regulations which organize the functioning of the ESU sector are and remain effective instruments for an efficient management. This is also the rule of law

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