

RWANDA

Criminal Defense Manual



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CRIMINAL DEFENSE RESOURCE MANUAL RWANDA

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Information

Who are we?

International Bridges to Justice is an independent, non-governmental organisation (NGO) founded in 2000 and based in Geneva. Its purpose is to support countries in practical ways to strengthen their own legal systems by advancing human rights, and to eradicate torture in the 21st century.

In recognition of the fundamental principles of the Universal Declaration of Human Rights, G. A. Res. 217A (III), U. N. Doc. A/810 (1948), International Bridges to Justice (IBJ) is dedicated to protecting the basic legal rights of ordinary citizens in developing countries. Specifically, IBJ works to guarantee all citizens the right to competent legal representation, freedom from infliction of torture and/or inhuman or degrading treatment, and the right to a fair trial.

IBJ's experience has shown that legal representation during the early phases of criminal defense can reduce cases of torture by up to 80%. To this end, IBJ works in conjunction with established legal aid lawyers in order to increase the protection and human dignity of individuals who have been unfairly indicted in developing and transitional countries.

Since its creation in 2000, IBJ has spearheaded a pragmatic approach to human rights and is, thus, the natural and necessary authority to be the catalyst for legal transformation and change throughout the world.

What do we do?

IBJ uses a four-pillar programming approach, which consists of:

Defender Capacity Building

IBJ's defender capacity building programmes are premised on the understanding that a sufficiently capable cadre of defence lawyers is essential to an effective criminal justice system. Consequently, IBJ has developed resources and training programs to build the skills required for criminal defenders to perform their jobs effectively, and most important of all, safely.

Ultimately, capacity building programs aim to ensure that the accused have access to experienced, competent and effective counsel in their cases, through empowering lawyers to safeguard their clients' rights while they are in pre-trial custody, preventing mistreatment in the form of coercion, torture and false confessions, and to provide their clients' with a meaningful defence. IBJ trainers seek to establish minimum standards to which all defenders should aspire, in order to professionalize the entire defense bar in IBJ project countries, and aid in the implementation of fair and effective criminal justice systems.

Providing defenders with the most current guidelines, standards and norms pertinent to both international and local law, as well as the latest information on advocacy strategies, appeal issues and noteworthy cases, IBJ also seeks to institutionalize defender practice standards in a way that enables local ownership of the transformation process. This process also provides an avenue for defenders to become legal trainers for their professional community, through implementation of a “train-the-trainer” model.

Criminal Justice Reform

Practically implementing law requires the cooperation of the other actors within the justice community. In all of our programming, IBJ uses Criminal Justice Roundtable sessions to bring together all of the key stakeholders in the criminal justice system, including defenders, prosecutors, judges, police, detention centre officials, local government representatives and legal academics. These roundtables serve to break down communication barriers, build mutual respect between all the actors and promote collegial working relationships.

Roundtable discussions have proven to be an effective method for changing beliefs and consciousness at a community level, ultimately culminating in institutional transformation of criminal justice systems. They have provided an important neutral forum for dialogue and have allowed for greater acceptance of the role of defenders as well as greater respect for the rights of the accused.

Rights Awareness

The average citizen’s lack of information and knowledge of their legal rights a major factor enabling the continuation of rights abuses. As a result, promoting rights awareness is integral to IBJ’s mission to strengthen criminal justice systems. IBJ Advisement of Rights Campaigns, based on various communication tools (posters, brochures, street law sessions, etc.) have played a critical role in helping everyday citizens gain knowledge, and more importantly, gain access to their legal rights. They incorporate minority languages and are formulated in straightforward, simplified language. Campaigns also involve other forms of information dissemination, such as the provision of free individual counselling sessions, informative sessions in detention centres, community workshops, moot courts, etc.

In devising the campaigns, IBJ seeks not only to raise awareness among individuals of the rights that they possess under the law, but also to ensure that they are better able to demand that these rights are upheld through empowering the broader legal and civilian community.

JusticeMakers Online Defender Community

Aware of the impossibility of directly contributing to the training of all lawyers, IBJ developed an online platform to enable the exchange of legal resources: www.justicemakers.net.

JusticeMakers is an online community that shares intellectual capital and best practices in the field of criminal justice. The site shares IBJ's defender training resources, connects passionate members of the criminal defence community, and hosts competitions that seed the most innovative proposals that seek to curb torture and legal abuse. A project of International Bridges to Justice, JusticeMakers seeks to unleash the collective energies of criminal defenders from around the world and realise the vast potential of international human rights legislation.

eLearning

International Bridges to Justice (IBJ) recognises that the work of public defenders can be challenging, lonely and sometimes dangerous. To extend its support for the community of defenders worldwide, IBJ is enhancing its JusticeMakers platform with a multimedia e-Learning and Accreditation initiative to promote effective legal representation of the accused according to international human rights and criminal legal standards. This programme will assist attorneys to obtain training and support to enable them to command respect for the rights of the accused, while enhancing their professional credentials and reputation.

The eLearning platform allows attorneys to perfect their legal skills as with regards to defending, advising and representing the accused of a crime from the moment of arrest to the sentencing. The Platform consists of a number of modules which correspond to the different stages in the criminal justice system. Each module contains a particular scenario and fact pattern in video format, details and discussion of the pertinent law and a quiz enabling them to test the knowledge that they have acquired.

JusticeMakers Competition

JusticeMakers was launched in 2008 with a global competition to encourage locally sourced solutions to criminal defence challenges in developing and transitional countries. The competition designated eight "heroes of criminal justice," who received \$5,000 in seed funding to implement their initiatives locally. The JusticeMakers team shares their stories, aspirations and challenges and position these heroes at the head of the larger criminal justice movement.

IBJ is ideally positioned to run a program like JusticeMakers because of the way the competition complements IBJ's existing portfolio of criminal defense initiatives.

- JusticeMakers enables the cross-fertilization of participants' ideas with those of IBJ's program staff.
- It provides a testing ground for criminal defence initiatives before they are brought to scale through IBJ's in-country programming.
- JusticeMakers serves to map initiatives within the criminal defence sector, pinpointing those areas where IBJ could be adding value.
- Finally, JusticeMakers helps source potential recruits for future country programs as IBJ takes its model to scale.

Online Community

The JusticeMakers Community is home to participants of the JM platform with partners helping to further our efforts to improve criminal justice systems. The platform is home to a forum facilitating the discussion and sharing of experiences relating to criminal defence thus linking members of the online defender community to the rest of the world.

Any question? E-mail us at: help@justicemakers.net

Support the Criminal Justice Movement

There are a variety of ways in which you can support us:

1. Make a donation via our website: www.ibj.org
2. Are you a lawyer, legal expert or business or corporate representative (finance, marketing, communications, public relations)? You can support our work by contributing your professional resources, advisory and consultancy services on a short or long-term basis. To find out more please send us an e-mail to: internationalbridges@ibj.org

*Justice*Makers

A Project of International Bridges to Justice

Find this manual as well as other legal resources online at:
www.justicemakers.net

TABLE OF CONTENTS

I	p.7
The Rule of Law and Due Process	
- Delays	
- Access to the case	
- Access to the client	
Presumption of Innocence: Burden of Proof	
Fundamental legislation – Legal Principles (Appendices)	
II	p.9
Client Interview	
Checklist for Client Interview	
Torture, Mistreatment and other abuses	
III	p.14
Strategies for Preparing the Hearing	
- With regard to the accused	
- With regard to the co-accused	
- With regard to victims and plaintiffs	
IV	p. 17
Strategies for the Hearing	
- Rupture And Connivence Defense	
- Admitted and Contested Guilt	
V –	p.22
Procedural Nullities	
- Elements of the philosophy of law	
- Cases of nullity	
- The demonstration of nullity	
VI - Appendices	p.30
Useful texts	
Examples of Statements of Cases	

Fundamental Principles

There are certain fundamental principles, taken from the Rwandan Constitution and from international treaties, that establish fundamental rights and, thus, have direct daily implications. If kept in mind, these principles will allow the lawyer to perform his job more fully, effectively, and thus more successfully.

The Right To A Fair Trial

Articles 17, 18 and 19 of the Constitution of Rwanda¹ guarantee that everyone shall be judged:

1. Fairly
2. Within a reasonable time
3. Publicly
4. With all necessary evidence and freedoms to establish and mount a full defense

Criminal lawyers regularly refer to and work with both the Criminal Code and the Criminal Procedure Code. Both codified criminal statutes reflect the constitutional law and comply with its fundamental basis. In practice, however, these codes may be silent on certain issues. This is true of Rwanda, as everywhere. The entire court, including the presiding judge is subject to the law and the Constitution, and, due to the fundamental principles of law, may also be the subject of legal proceedings.

Implicit in Rwandan law, though it is not explicitly stated in the Constitution, criminal code, or criminal procedure code, lawyers have the right to demand:

1. Unrestricted access to the file under the principle of absolute respect the proceedings: This principle, logically, extends to a copy of the provision under which the accused has been charged. In order to ensure equal protection under the law, this copy of the provision should be free. Practically, this is a manifestation of the right to a free and equal trial, and the right to defense, as provided in Article 18 of the Constitution.

All parties to the case must respect the adversarial proceedings. Under this principle, the defense counsel may not produce any evidence at the Tribunal without having previously shared it with all relevant parties.

Lawyers must also, through the application of the aforementioned principles and articles 38 and 39 of the criminal procedure code (CPC), have confidential, permanent and unrestricted access to the defendant.

2. The right to contest the detention of the client under the reasonable deadline clause of article 19 of the Constitution: The CPC allows for the renewal of

¹ Please see Appendix A for relevant provisions of the Constitution of Rwanda.

temporary detention, however, the idea of a reasonable deadline, as found in the Constitution and under international conventions, is quantifiable. Thus, after a number of detention renewals without judgement, the defense may invoke the Constitution to obtain the un-judged detainee's immediate release.

3. Public trial: Equality favors public debate. Free defense implies that lawyers will not be prosecuted for what is said while they truthfully and vigorously defend their client, nor will they be censured during proceedings.

This principle of attorney candor is subject to restrictions: outrage and insult remain both criminally and ethically reprehensible, and the lawyer's freedom of speech does not extend beyond the doors of the judicial chamber nor do lawyers enjoy complete freedom, nor do lawyers enjoy complete freedom of speech before the press.

The Presumption Of Innocence:

As stated in Article 19 of the Constitution, "every person accused of a crime shall be presumed innocent until his or her guilt has been conclusively proven in accordance with the law in a public and fair hearing, in which all the necessary guarantees for defense have been made available."

The two provisions stated in Article 19 should be the cornerstones of the defense.

Similarly, article 44 of the Criminal Procedure Code posits the principle of the presumption of innocence.

1. The presumption of innocence is in direct opposition with the idea of pre-trial detention. In cases where a person facing criminal charges has few guarantees of representation, a presumption of innocence argument should be emphasized to examining magistrates who may be tempted to use and overuse pre-trial detention without measuring its implications beforehand.
2. Under the presumption of innocence, the burden of proof lies upon the prosecution. This heavily influences the defense methodology. (See *Defense Strategies*)

- II -

Client Interview (Mistreatment)

Whether the aim preparing an absolute defense for the client, or advancing and proving procedural irregularity, it is key to ask the client certain questions in an interview to develop a defense. Even with time, experience, given a number of cases, or detention visits, all lawyers will forget a few important points or questions. This is why a small checklist can be a necessary and useful reminder.

Client Interview Checklist:

- Exact time and date of arrest.
- Details of the arrest: number of people, role of each in the arrest and, if possible, name and occupation of each.
- Words exchanged, rights evoked,
- Details of placement into custody, whether or not the client knowledge of the infraction when being placed into custody
- Language used, how the client understood the language used
- Visits
- Conditions and treatment after the arrest, and custody: doctor visits, lawyer visits, whether there was an interpreter, details on interrogators, rest, food, and family.
- Judicial follow-up: transfers to courtroom, summons, notifications, right to a lawyer

This checklist is useful in preparing a defense for various crimes. Through this particular interview, one may find that the client is a victim of torture or other mistreatment.

1 – The law in relation to torture and mistreatment

Even though there is a clear legal difference between torture and mistreatment, particularly as define by international instruments, it does not make much difference for the defender’s everyday work. In practice, there is no difference between blows, physical abuses of or insupportable pressure placed on the suspect in order to obtain a confession, or without any particular reason.

Given the state's monopoly on legitimate violence, it is able to provide the police force with very clear parameters about what is and what is not acceptable. To be pragmatic, a criminal defense lawyer can argue that:

Only force strictly necessary for the interrogation of a person or for his continued cooperation with the police is legitimate².

Any other attack on the individual, be it physical (slaps, blows, privations, physical abuse, detention without valid warrant or cause) or psychological (threats, pressure on acquaintances, deprivation of contact) is an illegal act, regardless of definition used.

The human being and his integrity are INVOLABLE, as guaranteed by the Constitution of Rwanda in Article 10, which states that “a human person is sacred and inviolable. The State and all public administration organs have the absolute obligation to respect, protect, and defend him or her.”

² Be careful with clients who attest to having been hit whilst fighting against the JPO. You will have to put things in perspective.

The Criminal Procedure Code guarantees freedom against torture through exerting control over the judicial police, and the Criminal Code guarantees freedom from torture by setting aside certain actions as infractions.

Thus, the lawyer may use, as needed, any of the aforementioned texts, which address torture or mistreatment, and should be indignant to ANY human suffering.

Remember:

*We call **torture** any activity that results in unbearable, and sometimes long term, suffering, whether psychological or physical, and which avoids, or at least delays, death. Its after-effects can be physical, such as mutilations, or psychological, such as trauma. The torturer has total control over the victim, who cannot escape.*

Possible objectives and motivations for torture:

- *Obtaining secret information, confessions;*
- *Punishment of real or imagined faults;*
- *Terrorising populations or political organizations, by using members of a specific group as an example, leading to fear and passivity in the rest of the population, who are afraid of becoming victims themselves;*
- *Sadistic pleasure;*
- *Psychological preparation used to convince the victim that he is weak, with the aim of obtaining complete submission;*
- *Self-justification, for the torturer of 'following orders';*

Torture is banned by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Geneva Convention) (adopted by the General Assembly of the United Nations on 10 December 1984, which came into effect the 26 June 1987) and by the third Geneva Convention. Nonetheless, torture is still used throughout the world, often concealed by an imprecise definition, or by vague domestic legislation.

Note that there is not enough space to cite all the texts and agreements made available by the United Nations agencies and NGOs on the theme of torture and mistreatment.

The reality is that lawyers are regularly confronted with detainees who have been the victims of mistreatment.

2 – Preparing for the hearing, with regard to the victim

When meeting with or interviewing a victim of torture, there are most commonly two reactions encountered.

Victims either remain silence, a reaction developed to deal with trauma, or they are extremely talkative about what happened to them. It is also possible to find those who adopt a mixture of these two attitudes.

Regardless of the cause of or response to torture, the defense lawyer must be methodological, keeping in mind the purpose and goals of the interview.

The case must be prepared, and the client must be questioned in order to construct an effective defense.

All potentially interfering personal feelings or conflicts of interests must be put aside. Another mistake to avoid is questioning and responding to the victim out of pure curiosity as this weakens or lowers efficiency.

To proceed methodologically:

- ❖ When faced with a client who appears to have been mistreated, but who chooses to remain silent:
 - Do not lose sight of the fact that he or she requires help to talk about his or her experience. Resist the temptation to speak on your client's behalf.
 - A good interviewing method is to ask the victim to tell the story of interrogation from the beginning, during which you ask for numerous details (for example, colour and brand of the police car, weather that day, what people near by were wearing). These details may initially seem insignificant, however, giving small details often makes it easier to speak of violence.
 - Never finish or complete the phrases of the client. Silences, even prolonged, may help him or her find the most appropriate or comfortable way of communicating what happened.
 - Remember to pay attention to the details of the account. The victim's understanding of the gravity of certain acts may be different from what is legally proscribed³.
 - Once the client has begun, do not interrupt him or her. Wait until the narration is over to ask further questions.
 - If possible, have the client describe physical mistreatment before exploring psychological mistreatment. .
 - With the victims, come up with an inventory of the visible marks that resulted. Ask if there were witnesses to the arrest (especially the family or colleagues), for descriptions and even possibly names, of the perpetrators (first names are often given during physical interrogations).

- ❖ Facing a talkative victim who is outraged at his or her experience, and who bears marks:
 - It is important to allow for an initial 'purging' phase during the interview, where the client is able to 'get it all out.' Take advantage of this time to identify elements that can be used to direct the later conversation.

³ Many will explain that they were reasonably battered (or mistreated in any form), or that they underwent 'normal' violence during an arrest.

- There can occasionally, but not always, be a tendency to exaggerate.
- Explain how certain details may aid or inform the creation of a defense (nullity, absolute defence, legal action against the perpetrators)
- Have the client make precise lists of people, of blows given, of clothing worn, and so on in order to regulate the flow.
- Have a talkative victim speak of mental or psychological torture first.
- Make breaks during the story to explain, for example, the anti-torture treaties or legislation which exist.
- If the flow is interrupted, change the subject for a time. Talking about family or friends is often a good way to ground the client in reality. After this, you can return to the details of the violations.
- Only look at the wounds at the end.
- Make an inventory of places, names and witnesses as above.

In both of the above cases, by the end of the interview the lawyer should have information:

1. On the time and place of the events
2. On any persons present (whether or not they participated).
3. On the exact role of each person or party involved, and especially, the nature and number of blows.
4. On all pressures or threats constituting mental or psychological torture.
5. On all marks personally seen.⁴
6. On possible witnesses (bystanders, co-prisoners).

Following the interview, a doctor should be called for expertise, and, if necessary, care, witnesses found from whom to take statements or cite, and then the defense should be prepared.

The defense can take one of three forms:

Nullity. Putting forth a defense of nullity of procedure can call for the invalidation of either the entire procedure, or just parts, such as the interrogation or custody. *Refer to Section V*

Absolute Defense. A defense that rejects statements or concessions given under conditions of violence and mistreatment.

Disciplinary Action Against Perpetrators. Criminal or civil disciplinary action can be taken against the perpetrators under the auspices of the prosecution by submitting a complaint.

It is possible to pursue the three actions simultaneously, and any of these may be added to the defences above.

³ The lawyer is *never* a witness, but can nonetheless inform.

In all cases, a CONCRETE file is needed before moving forward. This is the one case where the burden of proof lies upon the defense and this proof is, usually, quite complex.

- III -

Strategies for the Hearing

1- With regard to the defendant⁵

At the Tribunal, it is important to demonstrate the separateness between you, as a person, and your client. Similarly, in criminal defense cases, there is almost systematic and instinctive confusion between the defendant and the lawyer on the part of magistrates, the bench, and the prosecution.

Maintaining detachment and demonstrating separateness means adopting the following declarations:

- Even if my client lies, I will not lie.
- If he or she has committed a criminal or delinquent act, I take on the noble task of defense: the act is not mine.
- If the client is determined to present or go forward with a counter-productive defense strategy, I will counsel him or her against it, and in the event that she or he decides to continue with such a defense, only follow it with reservation.
- I will not hesitate to contradict the accused when it could be to his or her benefit.

But also, and above all:

- I am a bridge between the client and the court.
- I will fight against the client's own prejudices.
- I believe fundamentally in what I tell the court.
- The system is stronger than the defendant; I am there to re-establish an equilibrium.
- Exercising criminal defense requires leaving nothing to chance, from a technical point of view.
- Being a practitioner of the law justifies defending any act, and any cause.

Finally, it must ALWAYS be remembered that often:

THE FIRST ADVERSARY IS THE CLIENT

⁵ Hors les cas de défense de rupture, étudiés plus loin

Bearing this in mind, questions to be asked during trial can be formulated . While there is no automatic recipe for success, experience teaches certain basic rules which can help to avoid grievous mistake:

- Never ask a question to which you do not already know the answer.
- Do not ask too many questions which you have not fully gone through or explored in preliminary meetings.
- Explain to the defendant in advance that there you will not ask tricky questions, and that he or she should always answer in the way which seems the most obvious to him or her.
- Ask short questions and do not hesitate to reformulate or to explain if the client begins to lose his or her train of thought.
- Remind the defendant regularly that the answer is meant for the Tribunal.
- It is always better to allow a doubt to linger than to end up with a catastrophic answer which cannot be taken back because there is always a possibility to argue and plead.

Additionally, it is fundamental to remind the defendant that he or she should always reply to the prosecution or the plaintiff's lawyer and to the President of the Court as briefly and concisely as possible, which will help to avoid making mistakes.

2- Regarding co-defendants

Remember that nothing useful is gained by attacking others, including the opponent. Also, be mindful that there should be under no circumstances a sharing of the responsibility by fraternity.

Questions asked to co-defendants should be direct and frank. This does not necessarily mean doing the prosecution's work because the primary aim is not to implicate him, but to clear or lessen the your own client's responsibility.

Remember that it can be easy to cross the line between question and accusation.

Furthermore, co-defendant examination should never descend into a confrontation that may call for the colleague defending him. This is a waste of energy and the result can be disastrous. There is always a possibility to argue or plead a doubt whereas a certainty resulting from a disastrous answer cannot be undone.

Therefore, it is pointless to ask more than the Tribunal may need.

3- Regarding victims and plaintiffs

A second golden rule is that the last person to attack is the victim. Always address him or her courteously, gently, and calmly. It is important to show that the victim's point of view is understood, though not necessarily shared.

When facing a victim who is lying, he or she must be allowed to either admit to the lie or contradict previous statements, while the defense lawyer remains understanding and calm.

The lawyer should also treat the victim with caution. A lawyer should not be aggressive with the victim EXCEPT after it has become clear that he or she is lying, inventing, deforming, manipulating.

In this situation, the defender must be firm, even slightly disagreeable, in the questions asked. However, do not forget that anything said can be used by others in court either to defend the victim or against your client.

To summarize, it is always helpful to be conciliatory with victims, in order to avoid having everyone turned against you, but this does not prevent you from contradicting their statements.

Quick concrete points :

- It is all too common to observe defense lawyers being aggressive with plaintiffs, accentuating their victimhood and complicating the task of defending.
- On the opposite end of the spectrum, many defenders become quiet when dealing with victims and thus neglect to fulfill their duty to cross-examine.

It is a difficult balance to find; success usually comes somewhere in the middle, and the direction taken depends upon the attitude of the victim.

It is not shameful to argue against a brazen liar, given the stakes involved for the client, but it is important to be absolutely sure that a lie was told before accusation or arguing.

- IV -

Defense Strategies

1 – Background

Defense strategies are the methods by which a criminal defense attorney decides to try his or her client's case. They are different from hearing strategies, in that they are principles decided upon, developed and fixed by the lawyer and client prior to the hearing. They should remain consistent up to the deliberations.

It is fundamental that the defense strategy is agreed upon by *both* the defendant and the lawyer. While the lawyer may have special knowledge and expertise about the subject matter, ultimately, it is within the authority of the client to determine the purposes served by legal representation within the bounds of the law and the lawyer's professional obligations. Thus, a lawyer should present the available defense strategies to the client, advise the client on the advantages and disadvantages of both, and, with the client choose and apply the best defense strategy.

Lawyers have an implicit duty of communication, as being a successful and competent lawyer requires having the ability to communicate the best defense to the

client and, subsequently, working with the client to maintain the strategy throughout representation in this manner. In the case of a rupture defense, however, which generally extends to political cases, the defendant is able to seriously limit the freedom of the lawyer in the formulation of a strategy.

2 – Rupture And Connivence (Complicity) Defense

A. Rupture Defense

A rupture defense is founded on contesting the Tribunal's legitimacy. It is a questioning of the State authority and judicial power required to prosecute, and win, the case at hand.

Rupture defense, as a criminal defense strategy, appeared in the 1960s during the wars that accompanied and lead to decolonisation, most notably the Algerian conflict. It is unknown whether this defense strategy was first chosen by lawyers, or imposed upon them by their clients given the types of cases they were defending.

A lawyer may find him or herself defending members of political movements or rebelling ethnicities, who are fighting for independence, autonomy, or revolution. In these cases, the clients may choose not to recognize the legitimacy of the Tribunal in place to judge their acts and adjudicate their case.

Lawyers found in this position may, at first, experience a conflict of conscience, as they are regular participants of the judicial system whose legitimacy is being attacked.

B. Complicity Defense

Complicity defense is the standard defense most often prepared by a lawyer under civil law. In this defense, the lawyer and client admit to the legitimacy of the system and seek to argue a defense within the bounds of its legal substantive and procedural rules.

The lawyer's role in pleading a complicity defense is to satisfy, to the best of his or her ability, the objectives of the client. Legal ethics prevent a lawyer from making formal pleadings against the interests or desires of the represented client.

The outcome is often the same:

The defendant, if he or she considers the issue fully and coherently, should request not enter a plea, as this would, be an admission of the judiciary system's legitimacy.

Throughout the proceedings, the lawyer should be engage and advocate fully for his/her client, and he should not remain seated and/or silent.

The lawyer must either renounce the defense of the defendant during the hearing while still committing to be present as frequently as commissioned by

the President of the Tribunal, or explain the position of the defendant in advance, thereby justifying the absence of both a plea and a defense. It should be noted that the client can forbid the lawyer to speak on his/her belief, which can be a serious problem.

Whatever the situation, it is necessary to proceed with extreme caution. The client's position and wishes in terms of the defense must be precisely explained to the tribunal. Equally, and this is fundamental, the client must be informed of the consequences such a defense carries in terms of sentencing. In practice, putting forth such a defense can lead to the maximum sentence possible, if convicted.

In addition, the lawyer must explain to the tribunal the situation he or she is in being tied to the defendant and the Tribunal by ethical and professional obligations.

Take heed in putting forth a rupture defense. This cannot be stressed enough, as it is by definition a problematic *non-defense*, rather than a defense.

It is important to remember that, in this context, the lawyer must not be associated with the action of the alleged crime, in risk of losing the professional objects of performing your job properly. At the same time, it is the lawyer's job to ensure that all possible avenues of defense have been explored.

2 – Admitted or contested guilt

To prepare an effective defense, the lawyer needs to be familiar about the details of the case, and the strategy.

The civil law system in Rwanda does not, in principle, recognise the practice of putting forth a guilty plea, as it exists under Anglo-Saxon law. It would thus seem that in regular trials such pleas are not allowed. Knowing this, should the client admit to actions, or not?

Despite this, usually and logically, this is the first thing asked of the accused.

The Rwandan Criminal Code--following the example of many others--recognizes mitigating or attenuating circumstances as a partial or full defense to a crime. Mitigating and attenuating circumstances are not automatically assumed when the defendant acknowledges the facts raised. Contesting the evidence is a sure-fire means of giving up the possibility of using mitigating and attenuating circumstances.

Furthermore, the unconscious Tribunal – as much as the collective unconscious – is generally sensitive to the admission of guilt for a variety of reasons, which differ from one person to another.

A number of magistrates, of the bench as well as of the prosecution, have admitted to looking favorably upon cases in which actions are acknowledged, often because it is a considerable gain of time, or simply because systematic contestation is irritating in itself. As a result, the lawyer must respect a key principle if he would like to successfully plead attenuating circumstances or the personality of the defendant :

Never waste time on the details of facts that have already been admitted.

It is always a good strategy to keep the Tribunal in a good mood by not wasting time. Always remember that:

- Justice is not about the amount of audience time
- If it is necessary to return to and modify certain facts (whether because they are only partially known, or in order to lessen their importance), it is the proper duty of the lawyer to do so.

This may seem to be purely detail, but it can have large, long-term repercussions.

It also has immediate implications as the Tribunal will often be more severe.

In the long-term, the lawyer who presents his case in this way risks his own credibility.

Denying the evidence (as is too often done, with regards to finger prints) is a radical means of permanently damaging the lawyer's credibility with the Tribunal. Over the course of a lawyer's career, he or she will plead hundreds of cases, many of which will be before the same magistrates. Arriving before a Tribunal that does not consider you credible is an often insurmountable obstacle.

It is often better, when faced with a client who insists on a defense based on denial of the evidence and who refuses to see that his or her strategy is fundamentally counter-productive, to cease to represent him or her, rather than to act against one's oath and damage one's own credibility in the eyes of the judge.

To summarize, a defense strategy and course of action should be settled upon from the beginning of the hearing, and if the defense might help the client, the client should be counseled that a better idea might be to not contest the case. Be sure, however, to never convince a defendant to confess to crimes he or she did not commit. Once a decision is made, the defense can concentrate on mitigation and on the defendant's personality in order to attenuate the sentence or to propose alternative punishments to the Tribunal.

A defense strategy, when the facts are recognized, is prepared with the same level of rigor as one which contests the facts or confessions. In this context, the lawyer needs:

- To target the defendant's acquaintances
- To have all the elements of the defendant's personal history
- To collect information about the defendant's past life (for example, while in prison) from social workers
- To have his medical documents, if necessary
- To solicit the diagnoses of medical experts or psychiatrists, as needed
- To avoid platitudes

Knowledge of the defendant's past is particularly important, due to its continuing influence upon the individual.

In a situation where the facts are contested, a defense position must be decided upon and then the centre the argument around it created.

Two major approaches are possible⁶ :

1. Pure and simple contestation

There is not enough space to explore this approach fully, however, the basic concept is that a lawyer is ethically forbidden from pleading other than as directed by his client. Agreement between both the defendant and the lawyer is therefore essential. It is also essential that the argument and evidence provided be consistent. It is necessary to construct the argument on concrete facts (witness statements, material evidence, etc) in order to work against the accusation. This is a paradox given the developments below.

This is a strategy choice that involves a demonstrative methodology rather than a contestation of the charges made by the prosecution that precisely explains that, and details how, the case made for the accusation has not been sufficient.

When a case is complex or if a lawyer wants the Tribunal to respond to precise points in light of appeal, it might be useful to request or depose the request for immediate release⁷.

The principle of adversarial proceedings requires that the request for release be given to the prosecution. Nevertheless, it is not advised to give them too early, as there is a risk of seeing the Public Ministry expedite the processes in order to address the deficiencies raised.

Again, it is always a matter of finding the right balance for the strategy.

2. The absence of sufficient charges

The term 'benefit of the doubt' is totally insufficient in this context. The notion of doubt can be difficult, seeming to cast doubt upon the whole of the proceedings and upon the result of the Tribunal. Even the innocence of the defendant may thus come under doubt, coming from the authority of a potentially 'doubtful' source. Above all the defendant does not *benefit* from doubt (which might, perversely, portray him or her as indeed guilty, but let go this one time). He or she benefits, on the contrary, from a presumption of innocence.

This basic legal analysis is as follows:

⁶ These two strategies naturally combine with each other.

⁷ See model in the annex

The presumption of innocence is a fundamental and immutable principle which applies to all judicial procedures up until the pronouncement of a definitive decision (Art. 19, constitution of Rwanda and Article 44, CPC). The primary consequence is that the burden of proof wholly and unequivocally lies upon the prosecution, who must establish guilt.

The principle of judicial security means that guilt must be demonstrated and established with an absolute certainty and beyond all doubt. This is illustrated by the judicial adage upon which an equitable system is based: *Better that a hundred guilty go free than one innocent be condemned*. This is not a choice. This is a legal obligation, despite the objections of some. From this, if the Public Ministry is not able to fully establish the guilt of a suspect, the investigation must stop. It is never the duty of the defense to perform any action to prove the suspect innocent.

Within the contestable facts, there will be elements that will be considered apt to demonstrate the innocence of the defendant, and the case should not be deprived of them. However, it is important to remember this principle and to direct the defense's major energies towards the demonstration of the deficiencies in prosecution's case before engaging in the proof of innocence. The inverse is illogical and furthermore, it comes from a reflex which we all have and which little by little instills practice contrary to the presumption of innocence.

Do not forget that it is difficult to bring forward negative proof, that which to prove that the accused did not do something, and that it is much easier to demonstrate the lacunae of the prosecution.

- IV -

Nullities of Procedure

Elements of the philosophy of law:

The fundamental principal of justice establishes the need to respond to barbarity, in whatever form through legality. This is the essence of the notion of procedure. Procedure is the route by which decision is reached and leads, ideally, to social harmony.

As a consequence, all participants in the judicial process must submit to the rule of procedure. The highest echelon of this process is the magistrate, which means the bench as well as the prosecution.

Acting from the bench, the judging magistrate only acquires legitimacy from a scrupulous following of the fundamental rules. More than any other, the magistrate can void an entire section of the proceedings, release a guilty man who admits

responsibility, no matter what his crime, due to the rule of law being flouted to the extent that the entire case is entrenched in illegality.

This scrupulous respect of the procedure, leading when necessary to annulment, gives the judge the real power, and right, to judge all other files, to condemn, if appropriate, all other guilty accused. It is not purely through respect for the word of the law, but through an understanding of the purpose of the justice system which magistrates vow to accomplish their duty.

Whilst acting as the prosecution, the magistrate must not work with the same tools as the accused. To infringe upon procedure is to enter into illegality on the same level as those being pursued. The most inexcusable practice for the magistrate is if this is taken as the basis of banditry. A situation must not develop where a magistrate provides an escape from the law. Absolute equality is the basis of civilised, democratic justice.

Under the current system it is the prosecution's task to request the annulment of any doubtful elements of the proceedings, just as it is its job, at the preliminary discussions, to set out the parameters of its investigators, to give instructions, and to respect, and make others respect, the rule of law. It is also the prosecutor's mission, proscribed by the CPC, to assure that those who operate under its authority are monitored, and sanctioned if any of these procedural rules are broken.

Thus, the prosecution acquires the legitimacy to judge with its desired severity against the accused, in the strictly legal sphere.

For the police, as for lawyers and magistrates, to respect procedure is above all to respect the ethical framework of each of these professions. It is impossible to participate in the work of justice without being just and legal. The only means is through that of Criminal Procedure. There is only one justice, and this comes out of fair trials and from the respect of fundamental rights.

Cases of Nullity:

In practice, and without being exhaustive, within regular criminal procedures three major domains⁸ typically may qualify as a nullity:

- *The rights of the human person*
- *The rights of the defense*
- *The principles of the judicial organisation*

There is no full list of all the circumstances that may result in a nullity of procedure. Each party in the judicial process must highlight violations of procedure and request that they be sanctioned as such. Note, however, that not all (minor) infractions of procedure will justify an annulment.

⁸ The first two are linked and constitute a single domain for some writers.

The modern legislator will often take the time to clarify cases that may be open to nullity. Often, sole fundamental principles are looked at, or understated by the law which deals with the General Rule of Law.

The Criminal Procedure Code of Rwanda does not make specific allowance for annulment of procedure, not even for the annulment sanctions of illegal acts. Furthermore, the Criminal Procedure Code creates strict rules of procedure without explicitly providing for sanctions should they be broken, whether through a nullity or a procedural sanction.

At the same time, Article 16 in the Constitution of Rwanda states that: *All persons are equal before the Law. They have right, without exception, to equal protection before the Law.*

In the same vein, Article 15 states that *All persons have right to their physical and mental integrity. They must not be made the object of torture, of abuses, or of cruel, degrading or inhuman treatment.*

Rwandan criminal law does not contain express provisions for nullity in the sphere of criminal procedure (textual nullity) but it is instead a general constitutional principal which acts as the foundation of all invoked nullities following any trespass on the human (substantial nullity).

Thus, law practitioners in Rwanda should use the above texts regularly as it is evident that the system exists to protect the general rule of law, which all democracies should respect. .

In the absence of any general text on nullity of criminal procedure, it is possible to use a model founded upon substantial nullities. To scrupulously approach the application of procedure is to guarantee judicial security and permit the magistrate to appreciate nullities in the context of their occurrence.

The lawyer should therefore spend his energy on condemning irregular acts by the police and police interrogation and inquiry (illegal searches, absence of a lawyer, physical violence against the suspect, etc).

There are a number of ways to address such instances. Firstly, there are disciplinary sanctions to with a judge, police officer or clerk at fault can be subjected. Additionally, there are then criminal sanctions that can be extended in cases of illegal searching or arrest, abusive detention, violence, torture and so on, occurring over the course of legal proceedings. Finally, there are civil sanctions that can be extended by the injured party bringing a case forward in which damages are sought.

We are interested here in the most effective sanction: the procedural sanction. The procedural sanction may be used with either textual or substantial nullity of procedures.

1 - Even if the Code outlines no clear means of pursuing textual nullity, as far as it relates to interrogations or arrests, the application of a textual nullity need not necessarily cause problems from a theoretical point of view.

- In cases where extorted admission can be shown, textual nullity can be used to avoid the confession.
- In practice, however, lawyers routinely must produce concrete elements of proof (statements, attestations, medical certificates, etc.) for the judge to uphold a sanction.

In this area, remember that if the lawyer is the defender of these principles and of these rights, the magistrate, both the bench and prosecution, is their guardian.

The prosecutor general must monitor all the work of the prosecution and exercise control over the police forces to ensure that they act legally (*it is under the auspices of the authorities of the Public Minister that the JPO act, see Article 18 of the CPC*).

Attorneys are thus on the first level of those who are able to work with this 'non-nullity' in practice, with leads to the following:

Obtaining admissions that could lead to the annulment of the entire procedure is counter-productive

The judge faced with a request for nullity can, from the moment torture has been established, whatever its form, only pronounce nullity. The criminal code imposes heavy sanctions on the perpetrators.

2 – Rwanda is a signatory of most international treaties that guarantee fundamental rights. A number of these treaties include the right to free and impartial justice and the nation's justice system must thus sanction those substantial nullities that may taint the judicial process.

Theoretically, Article 1 of the Constitution of Rwanda provides a foundation for procedural nullities. In addition, the aforementioned ratified treaties also provide such a foundation.

In any case, the legal foundation for procedural nullities is found in the Criminal Procedure Code in dealing with the acts by the police or by the inquiry. Because of the substantial nature of the nullity, it needs no express legal allowance.

The basis of substantial nullity is as follows:

The severity of an procedural irregularity, whether it be a failure of provision or some other responsibility of the legal system, or an act that causes the ceter of the act such grievance, he or she may be entitled to an annulment, even if the situation has not been specifically textually allowed for.

This second nullity includes nullities of public order and nullities of grievance. We can thus allow for⁹ substantial nullities resulting from ignorance of the

⁹ This distinction is arbitrary and was inspired by French law.

principles relating to public order. These transgressions should be highlighted even if there was no direct trespass on the rights of the defence.

These sorts of transgressions may be seen in an absence of formality case, and where there is incompetence on the part of whoever committed the violation of the Code of the Judicial Organisation According to R.GARRAUD, this regards a flaw in the *processes, necessary for the act to fulfil its function*, for J.PRADEL *those who are not protectors of the interests of concerned parties, but who are concerned with the superior interests of the judicial organisation*. Reasons include but are not limited to the investigator or examining magistrate's territorial or material incompetence or a judicial ordinance of designation lacking the judge's signature. With regards to act of procedure, included are the absence of expert testimony, the absence of essential notifications, and the total absence of an examination of the accused.

Jurisprudence is established case by case. It can only result from decisions taken by the Supreme Court in accordance with the approach to nullity it will have chosen, either restrictive or permissive.

Elsewhere, substantial nullities, resulting from principles and not express in texts, are found where the right to defense has been trespassed upon.

We must therefore consider, in compensating for the absence of provision for textual nullities in the CPC, **that there is nullity when the ignorance or misreading of a substantial formality has trespassed upon the interests of the concerned party**. Here, we return to the notion of grievance.

The concept of grievance is fundamental in fighting against dilatory practice, consistent with actions resulting in nullities of detail.

Remember that the size of the prejudice demonstrated is more important than the severity of the irregularity.

This principle carries with it a key consequence, in that anyone who trespasses on the rights of defense by definition causes grievance.

This is equally true of elements that are cited in the code but not explicitly related to nullity: cases of custody and other control mechanisms (Articles 37 to 40 CPC), questions of evidence (Article 40, CPC), home visits, searches and seizures (Articles 67 to 73 CPC), the absence of a lawyer, the unavailability of the file, the absence of a notification of rights, of medical visits, of the availability of an interpreter for those who do not understand the language being used and so on. The above are cases of substantial nullity directly against the interests of the concerned party, infringing upon the rights of the defense. In cases of trespass upon the rights of defense, there should be an absolute presumption of grievance¹⁰.

¹⁰ J.PRADEL –*Criminal Procedure* – Cour de Cassation Française-2003

Here, we see a second degree in the sanction of nullities.

To conform to international democratic standards, it is not enough to sanction only direct trespasses on the rights of the defense. Indirect trespasses, that is instances where the accused is not put in a position to exercise fundamental rights, on these rights must also be addressed.

Simply not putting a suspect in the position to exercise his or her rights, or to exercise his or her rights effectively, should also cause nullity. For example, to not inform a suspect of the fact that he or she has the right to legal assistance constitutes a characteristic violation of defense rights, even if the suspects later says that he or she does not want a lawyer. This illustrates the difference between impartial and equal judicial systems and those that are not.

By sanctions aimed to ensure that necessary information about rights is passed on to suspects, the judge can ensure that the judiciary system progresses, or remains at a reasonable level.

Proceedings that infringe upon the following in one way or another must not be respected or validated:

- The public order of the judiciary
- The presumption of innocence
- The right to a just, impartial and fair trial
- The integrity of the person
- The rights of the defense
- The substantial formalities after the grievance is caused

The implementation of nullities:

Taking into account the legislative drafting of the Criminal Procedure Code and its total silence on when nullities should be implemented, it would appear that the nullities are judicial last resorts that, to be implemented, must include a thorough review for the entire file. It seems that nullities cannot be implemented *In limine Litis* except during the pre-inquiry observations or, as stated in §8 and §9 of Article 144 of the CPC, the examination of exhibits being used to convict. *The author here suggests confronting this principle on a jurisdictional basis.*

The Judge will then have the choice to immediately adjudicate the nullity, or to look at the incident more thoroughly and to deliver a decision based purely on the circumstances of the case.

A nullity may always be invoked at each stage of procedure following custody, as pre-trial proceedings are required the presence of the lawyer and are important in the evocation of nullities.

Note also that the defendant can also make observations on the custody permissory note. Hearings for provisional detention and of its prolongation, appeals, and the inquiry's interrogation are all also favourable times at which to argue for a nullity.

It is imperative to make use of these opportunities in a case of provisional detention, during which the lawyer has a formidable weapon. Effectively, a suspect, presumed innocent, should be placed in provisional detention during proceedings that may be tainted by nullity. This idea is, on the level of principle, unacceptable.

A lawyer must then petition judges and demand that they review the validity of the procedure, even before touching upon the freedom of the accused, and even if he or she accepts responsibility for the charges.

For lawyers, this creates the problem in case development (*see strategies of defense and interview*). As in other cases, careful analysis of the file will reveal gaps in information (missing signatures, times of searches, etc).

Remember that case development, when dealing with nullities, still includes standard tools of witness testimony, medical certificates, etc. Remember that the defender has two cases to demonstrate:

- the existence of procedural violations, for which some textual basis is needed
- The existence of grievance caused to the party being defended

Assuming that the nullity is demonstrated, what are the effects?

The effects of the nullity are admittedly equal, in some degree, to the illustration of the chosen criminal politics. The Judge, as the legislator, can be restrictive or liberal.

The question is posed is:

Is the nullity limited to the single irregular act concerned or has it stretched to the rest of the proceedings, tainting the entire structure¹¹?

A single judge will decide based on the evidence, taking into account the seriousness of the irregularity and the consequences it could have. Therefore, a search outside of legal hours will not have the same consequences as the torture of a suspect.

The severity of an act of physical or psychological torture and its universal prohibition under international law have lead to the creation of a specific sanction in the Criminal Procedure Code. One might question what is left in a case in which the admissions of guilt have disappeared. Certainly not much to condemn their declarer.

The freedom of the judge and of the Supreme Court must, on principle, be total and thus can be exercised through the demonstration of a causal link between nullity and the annulment of subsequent acts. In any case, it appears that with the gravity of certain procedural trespasses, the violation of fundamental principles should result in

¹¹ This is similar in essence to the idea of fruits of the poisonous tree in American jurisprudence.

an automatic annulment of all acts subsequent to the nullity, and thus of the entirety of the procedure. The requirements of the causal link must be examined on a case by case basis.

The French judge, for example, finds himself half-way between the two opposing theories. He judges, for instance, that, on the one hand, a confession following an irregular search should be annulled but that experts should be allowed to refer to the voided acts. The general rule is that acts following an irregularity that do *not by nature affect any other part of the procedure* should not be annulled. Contrarily, the French Court of Annulment sees anything following an annulled act as void.

While this has the merit of relative clarity, this system might be judged as insufficiently principled. Many American states, in contrast, apply the 'fruits of a poisoned tree' theory strictly and the annulled act is seen as never having existed, and must at no point be referred to by either party.

We can furthermore envision¹², as European legislations do, that through court order, these acts be performed again in a legal manner when there has been a nullity of procedure. In no case may an act causing a substantial nullity, which has infringed upon the integrity of the suspect or of a witness, be preformed again.

In this sphere, judicial legitimacy is born of respect of the rules.

In practice, it is useful to highlight nullities in writing whether they occur during the hearing or during meetings and pre-trial observations.

The benefit of writing down nullities is partly that it allows for the respect of adversarial proceeding principles in that, by giving a copy to the prosecution, one ensures that they know the nature of the arguments requiring response. In addition, deposing writings forces the court to respond. Furthermore, the act of deposing in writing forces the Tribunal to respond with its decision and thus allows for censure by an appeal court if need be.

You will find at the end of this document two models of conclusions and models articulating nullities of procedure.

Finally, the plea, with the support of those writings, should be based upon fundamental principles, utilize national jurisprudence, and the previous precedent and decisions of the Supreme Court to facilitate the immediate work of the presiding judge.

¹² Despite that fact that this collides with the principle of *non bis in idem*

APPENDICES

Appendix A: Useful Texts

The Constitution of Rwanda

Article 15

Every person has the right to physical and mental integrity.

No person shall be subjected to torture, physical abuse or cruel, inhuman or degrading treatment.

No one shall be subjected to experimentation without his or her informed consent. The modalities of such consent and experiments are determined by law.

Article 16

All human beings are equal before the law. They shall enjoy, without any discrimination, equal protection of the law.

Article 17

Criminal liability is personal. Civil liability is determined by law.

No one shall be imprisoned on the ground of inability to fulfil obligations arising from civil or commercial laws.

Article 18

The person's liberty is guaranteed by the State.

No one shall be subjected to prosecution, arrest, detention or punishment on account of any act or omission which did not constitute a crime under the law in force at the time it was committed.

The right to be informed of the nature and cause of charges and the right to defence are absolute at all levels and degrees of proceedings before administrative, judicial and all other decision making organs.

Article 19

Every person accused of a crime shall be presumed innocent until his or her guilt has been conclusively proved in accordance with the law in a public and fair hearing in which all the necessary guarantees for defense have been made available.

Nobody shall be denied the right to appear before a judge competent by law to hear his or her case.

Article 20

Nobody shall be punished for acts or omissions that did not constitute an offence under national or international law at the time of commission or omission.

Neither shall any person be punished with a penalty which is heavier than the one that was applicable under the law at the time when the offence was committed.

Article 21

No person shall be subjected to security measures except as provided for by law, for reasons of public order and State security.

Article 22

The private life, family, home or correspondence of a person shall not be subjected to arbitrary interference; his or her honour and good reputation shall be respected.

A person's home is inviolable. No search of or entry into a home may be carried out without the consent of the owner, except in circumstances and in accordance with procedures determined by law.

Confidentiality of correspondence and communication shall not be subject to waiver except in circumstances and in accordance with procedures determined by law.

Article 43

In the exercise of rights and enjoyment of freedoms, every person shall only be subjected to the limitations set by the law in order to ensure the recognition and respect of others' rights and freedoms, good morals, public order and social welfare which characterize a democratic society.

Article 44

The judiciary as the guardian of rights and freedoms of the public ensures respect thereof in accordance with procedures determined by law.

Article 141 (Amended by the Amendment of 13/08/2008)

"Court proceedings shall be conducted in public unless court determines that proceedings should be in camera on ground that a public hearing might have an adverse effect on general public order or cause moral embarrassment.

Every court decision shall indicate the grounds of its basis, be written in its entirety, delivered in open court together with the reasons and Orders taken therein.

Courts shall apply orders or regulations that are not inconsistent with the Constitution and other laws.

Without prejudice to equality of litigants before courts of law, the organic law establishing the organization, functioning and jurisdiction of the Supreme Court shall determine the institution of a single judge and his/her jurisdiction in the Supreme Court.

The organic law determining the organization, functioning and jurisdiction of Courts shall determine institution of a single judge and his/her jurisdiction in others ordinary and commercial courts. The same law shall provide for the application of the above provisions."

Procedural Nullities

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TRIBUNAL DE GRANDE INSTANCE
6^{ème} Chambre Correctionnelle
Audience du 21 Mars 2002
Parquet : 02/25251

FINAL CONCLUSIONS ON NULLITY: NULLITY REQUEST

FOR :

Mr. Djamel BENCHIKHA, born 11/01/1975 in LYON (69), of French nationality, currently residing at 18, Rue du professeur Nicolas 69008 LYON.

DEFENDANT

Maître Mehdi BENBOUZID,
Lawyer

AGAINST :

The General Prosecutor of the Republic

IN THE PRESCENCE OF:

Mr. Djamel ARROUDJ, residing at 36, Rue du Professeur Morat, 69008 LYON.

DEFENDANT

Maître Christel CHABERT,
Lawyer

DECISION/ORDER OF THE COURT

I –

On 2 March 2002, Mr Djamel BENCHIKHA, the driver and owner of a Renault 5, registered 5212 VV 69 was driving on Vienna street to Venissieux.

Mrs. ARROUDJ and GHAZLI were passengers in this vehicle.

At 20 Hrs 10, a team from the Anti-Criminality Brigade decided to conduct a police check on the occupants of the vehicle.

The police team stated that the driver attempted to avoid contact and drove away, leading to a chase between the two vehicles.

Once the chase had concluded, Mr. BENCHIKHA was arraigned and did not show any resistance.

He appeared before the Correctional Tribunal the 4 Mars 2002 in the context of the procedure of immediate appearance and placed under the mandate of deportation.

Defense wishes to see the annulment of the identity check and the entirety of the subsequent proceedings.

II –

As a consequence of article 78-2 al. 1 of the CPC the officers of the judicial police may proceed to an identity check *of any person who, at the time of the encounter, gives reason to believe that he or she has committed, or attempted to commit, an infraction, or that he or she is preparing to commit a crime or an offence.*

Jurisprudence has clarified, without equivocation, that it is the duty of the officer of the judicial police to qualify precisely the objective elements which provided the aforementioned indication, sticking closely to the nature of the behaviour and to the persons involved.

Jurisprudence emerging from the Criminal Court also argued that legislators had imposed strict limits on identity checks in order to protect the fundamental freedom of movement.

As a consequence, the initial contestation of the external indicator of an infraction forbids the use of the identity control as means to investigate an infraction which did not draw the attention of the third party as it was being committed, or prepared.

The minutes of the initial conversation were as follows:

Noting that a vehicle, a Renault 5, occupied by three individuals, had stopped beside us at a red light at the intersection with Moulin à vent street;

The passenger exhibited what seemed to us to be transceivers or telephones and was showing them to the passenger behind him

Taking these facts into account...

Taking into account article 78 2 paragraph 1, we decided to proceed to a control of the persons in the car

It is worth highlighting the uncertainty of the police officers with regard to the objects held by the passenger before the detention, as this is in no way substantive of an infraction and absolutely not an indication that an infraction was about to be committed.

It is clear that the conditions of a proper application of article 78-2 para. 1 of the CPC, expressly cited by the police officers, were not achieved.

No objective, exterior element could be seen as the smallest indication that one or other of the occupants of the vehicle had committed, or was about to commit an infraction

The identity check which was taken is, as a result, completely irregular and infringed upon the civil liberties protected by the principle of strict application of criminal code.

Jurisprudence further clarified that the irregularity of the identity check necessarily caused grievance to the persons concerned, and thus tainted the subsequent investigation including the placement in custody of the defendant. The Tribunal will annul, as a result, the entirety of the proceedings due to the judged nullity of the identity check.

ON THESE GROUNDS

Considering Article 78-2 of the Criminal Procedure Code ;

The identity check of Monsieur BENCHIKHA on the 2 March 2002 was irregular,

Therefore, it consequently extends that all the subsequent procedure is consequently void and cancelled.

UNDER ALL RESERVES

Mehdi BENBOUZID
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**COUR D'APPEL DE LYON
CHAMBRE D'ACCUSATION**

**FINAL CANCELLATION
REQUEST**

Inst : 00/17673
Prosecution : L00/00018*

TO THE PRESIDENTS AND COUNSELORS OF THE GRAND JURY

Mr. **Noury FERG** born the 26 June 1980 in LYON, residing at 3, Chemin de Malval 69120 VAULX-EN-VELIN . Represented by Mr. Mehdi BENBOUZID, Lawyer to the Bar of LYON - Toque 22..

Has the honour of presenting to you:

That he was arraigned the 15 Februrary 2000 by the police after a confrontation at the n°11 bus in Lyon between a person of African appearance and a group of young people.

He was placed under custody of the Vue Station the 15 February at **19 hours 30** in the locale of the Commissariat of the 3rd and 6th neighborhoods in the company of three other suspects.

The 16 February 2000, at 8 hours 15 police officers of the Lyon B. S. U. presented themselves and took charge of the four people in custody.

Those who were present:(**D.14**) : The guard David BAYLE, accompanied by Under-Police Sarjeants Philippe MERCADAL, José RODRIGUES and Peace Guardians Eric CONQUER

et Guillaume CRIVELLARO. These five police officers were accompanied by Sarjeant Yves ROCHET, in charge of custody at the Commissariat of the 3° 6°.

During Mr. FERG's removal from the cell, an incident erupted with aforementioned police officers during which, according to him, one of his hands was handcuffed.

The explanations given for the origin of the incident remain confused, with the police arguing for a rebellion in the custody cell (which would then result in subsequent proceedings (D.77)), the examined explaining before the magistrate that he had simply responded to the police officers, who had insulted his brother.

Mr. FERG will confirm this position when he will be heard during proceedings for inciting rebellion.

It nevertheless remains that:

The minutes describing the 'incident' (D.14) relate:

'Given the particularly violent attitude of Nouri FERG, at that moment uncontrollable despite attempts to hold him down, Under-Police Sarjeant RODRIGUES hit him twice quickly in the face, FERG keeping his body further back. The first blow was to the left eye, the second to the nose.'

The police officers clarified that FERG did not say a word and that the words of the police employees remained professional at all times during the incident.

Mr. RODRIGUES, admitting during his hearing (D.77) to having *hit FERG twice successively in the face with his fists*. He clarified as well, *with CRIVELLARO we were able to hold him down on the ground, even while he was continuing to fight*.

The Prosecutor of the Republic noted, during the prolongation of custody (D67) : *We note that the concerned presented with a large haematoma on the eye and on the left cheekbone.*

The doctor called upon (on incidental procedure) stated that the 16 February at 12 hours 10 :
*Haematoma + ecchymosis on the left infra-orbital
Trauma to the nasal cavity and especially to the left nasal fossa
I.T.T 5 days.*

Notwithstanding the police declarations that the actions were taken in response to rebellion, it must be noted that these brutalities gravely infringed upon the right of all persons to safety and physical integrity, and that these actions fundamentally vitiate the search for the truth.

We cannot accept that a person held for observation should be subjected to violent blows to his face therefore note:

That Mr FERG, taken out of the cell in the morning and partially handcuffed, was at the time surrounded by **six police officers**.

That it is inconceivable that a procedure labelled 'girding' and 'handcuffing' in such a situation would result in violent blows to the eye and nose of the person in custody and trigger such sequelae.

Furthermore, these events constitute a criminal infraction aggravated by the nature of their perpetrators.

It is incontestable that these actions, coming from such a large number of civil servants in whom public authority resides, violate the fundamental principle of the state which guarantees to each private individual the respect of his physical integrity.

Finally, we highlight the violation in light of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which institutes an absolute prohibition of any mistreatment.

The European Court of Human Rights has furthermore noted at numerous occasions that this treaty consecrates *one of the fundamental values of democratic societies*--7 July 1989, *Soering*- clarifying that article 3 expounds an intangible right, not susceptible to restrictions or derogations *even in the most difficult circumstances, such as in the fight against terrorism and organised crime*--a situation which is far from the present situation.

The European Court sets in a very clear way the principles applicable to cases of custody.

France has also been condemned for a judgement taken the 28 July 1999 –*Selmouni vs. France*- confirming the presumption of seriousness resulting from any act of violence committed against a person in custody and taking up without ambiguity the considerations of principles of its previous judgements. –*Soering préc.*- and *Ribitsch* of the 4 Dec. 1995 and which result in the principle that ***considering a person whose liberty has been taken, the use of physical force which is not rendered strictly necessary by the actions of the aforementioned person is an infringement upon human dignity and constitutes by definition a violation of the right guaranteed by article 3.***

The conditions under which the blows received by Mr. FERG were dealt were at the very least far from the recommendations for handcuffing in the police manual, and thus constitute a violation of the above-mentioned principles, vitiating by nature the search for the truth and consequently creating an absolute nullity, regarding both the measure of holding Mr. FERG in custody and the entirety of the following proceedings.

As a result, and taking into account all the above elements,

It is requested of the Grand Jury of the Appeals Court of LYON:

Taking into consideration article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

Taking into consideration articles 171 and 174 of the Code of Penal Procedure ,

- To annul the holding in custody of Mr. Noury FERG the 15 February 2000 at 19 hours 30 to the 17 February 2000 at 9 hours 25.
- To annul as result all the subsequent proceedings and this with all the consequences of the law.

SOUS TOUTES RESERVES

Mehdi BENBOUZID

AVOCAT

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TRIBUNAL DE GRANDE INSTANCE
DE BOURG EN BRESSE
Chambre Correctionnelle
Audience du 3 décembre 2008
Parquet : 07010585

FINAL NULLITY CONCLUSION

FOR :

Mr Kenan GULE, born the 14/08/1962, residing at 15, Rue Saint-Joseph, 01200 CHATILLON EN MICHAILLE.

Defendant

Maître Mehdi BENBOUZID,
Lawyer

Against :

The Prosecutor of the Republic

In the prescense of :

Mr. and Mrs. ROBICHON, residing at Colombys, 257 Rogeland Route, à 01170 GEX.

PLAINTIFFS

Maître Jean-François BOGUE
Lawyer

COURT ORDER

I –

The 26 July 2007, Mrs Catherine ROBICHON submitted a complaint naming Monsieur Kenan GULER to the Prosecutor of the Republic of BOURG-EN-BRESSE, working for *the brand KENOL IMPEX*.

This complaint had as its foundation: *'the non-respect of the provisions of the articles of 1792 and following of the Civil Code, as modified by the law of 2005, notably that concerning compulsory insurance for all construction work as well as for fraud and and breach of trust.'*

The minutes provided by the bailiff, taking up the statements of Mrs. ROBICHON, were linked to this complaint.

Mr. Kenan GULER was summoned to appear by the bailiff the 26 August 2008 before the Tribunal of Céans.

Defense wishes to see the annulment of this quote.

II –

Article 551 of the Criminal Procedure Code states that *The summons states the fact prosecuted and quotes the legal provision that punishes it.*

This proscription is made at the risk of nullity, as from the application of article 565 from the same code, *A process may only be declared void where the irregularity has the effect of harming the interests of the person concerned,*

It is taken from elsewhere that everyone has the right to be informed exactly of that which they are being accused of, of the nature of the applicable sanction, and of the Law which foresees and inhibits these actions.

These components make up the minimum which allows for the effective exercise of the right to defense.

In light of this, article 6 of the European Convention on Human Rights foresees the inalienable quality that *everyone is entitled to a fair and public hearing*, which assumes that the accused has been *informed* of the of the *nature and cause of the accusation against him*.

In this case, Mr. GULER is accused under articles L.111-13 à L.111-16, L.111-19, L.111-20, L-111-28 and L.111-34 of the Consumer Code.

Beyond the fact that these texts simply do not exist, nowhere in the Consumer Code are offences relating to a default of insurance mentioned.

Yet it is a constant that from the moment that *an ambiguity arises from the citation* when the infraction is pursued and at its foundation *as every defendant has the right to be informed as to the nature and cause of the accusation of which he is the object*, nullity of citation should be pronounced. (**Cass. Crim. 6 mars 1990, Bull. Crim. 1990 n° 106**).

Equally, error or absence of the accusing text is a trespass against the concerned from the moment from which he could have, as in this case, *have a doubt regarding nature and cause of the act for which he has been brought before the Tribunal.* (**Cass. Crim. 20 octobre 1964, Bull. n0 269**).

The Tribunal will, as a consequence, annul the summons to appear before the Correctional Tribunal delivered to Mr. GULER.

ON THESE GROUNDS

Taking into account articles 551, 565 of the Criminal Procedure Code; article 6 of the European Convention on Human Rights;

Establishing that the citation to appear before the Correctional Tribunal delivered to Mr. Kenan GULER does not mention texts of law forbidding the actions being condemned,

Noting and judging that in citing articles L.111-13 to L.111-16, L.111-19, L.111-20, L-111-28 and L.111-34 of the Consumer Code when these texts do not exist, the citation does not allow M. GULER to know which infraction he is being accused of and what the judicial foundations are of the actions being taken against him.

Noting and judging that this absence of a legal basis trespasses against the rights of the defense and to the interests of the defendant.

Establishing as a result nullity of citation to appear delivered to M. Kenan GULER the XXth of XXXX

And this, with all the consequences of the law.

SOUS TOUTES RESERVES

Discharge

Mehdi BENBOUZID
Avocat à la Cour
(Toque 22)

21, Rue François Garcin
69003 LYON
Tél : 04.78.62.04.18 - Fax : 78.60.07.71

TRIBUNAL CORRECTIONNEL DE LYON
11ème CHAMBRE
AUDIENCE DU 16 OCTOBRE 1997
RG N° 92/25364

CONCLUSIONS AUX FINS DE RELAXE

FOR :

Mr. Djamel DAHMAN, born the le 27 May 1964 at EL ATTAF (Algeria), of Algerian nationality, residing in the Centre de Semi Liberté de LYON, 69100 VILLEURBANNE,

DEFENDANT

Maître BENBOUZID, Lawyer
Toque n°

AGAINST :

Prosecutor of the Republic of the Lyon Tribunal de Grande Instance

IN THE PRESCENCE OF :

Mr. Cyrille GONON

PLAINTIFF

Maître SALQUE, Lawyer
Toque n° 583

ARGUMENT BEFORE THE TRIBUNAL

I - FACTS AND PROCEDURE

The 6 October 1992, Cyrille GONON registered a complaint against Djamel DAHMANI Djamel for extortion of funds through violence and various other pressures.

Cyrille GONON alleged that Mr. DAHMANI extorted from him the approximate sum of 43.000,00 francs between the months of April and October 1992.

According to the statement of Cyrille GONON, Mr DAHMANI threatened that he would reveal his complicity in the theft of a wallet, unless the plaintiff agreed give the accused diverse amount of money, and even pushed the plaintiff to take out a loan of 47.000,00 francs.

GONON explained to the police services that during the period covering the months of April to October 1992, Djamel DAHMANI menaced him continuously and forced him to withdraw sums of money from bank machines and to then give them to him.

In order to support his statements, he stated to the investigators a number of dates of withdrawal and the amounts, even mentioning occasionally the exact locations of the bank machines concerned.

In all cases, investigators established that it was impossible to confirm GONON's statements regarding the materiality of the withdrawals; the dates and the indicated amounts did not correspond to the account withdrawals shown on bank statements.

Following his 'fantastical' declarations, GONON went as far as to affirm that he had been threatened physically, contradicting his initial testimony of the moral constraint of complicity leading to blackmail.

GONON even alleged before the examining magistrate as well as before the psychiatric expert the pseudo-existence of new movements of money, supposedly at the benefit of the defendant, and which he had 'forgotten' to mention to the police.

Clearly, it was yet again impossible to find any recorded trace of these pseudo-withdrawals.

During the relevant period, Mr. DAHMANI, laid off from the company TELESERVICE where he had been employed with Mr. GONON, bought a motorcycle worth 102.900 francs on behalf of one his friends, Mr. BELHADJ, financed by his severance pay of more than 100.000 francs received from his previous employer.

From that point onwards, Djamel DAHMANI lived off of benefits granted by the ASSEDIC (Association for Employment in Industry and Commerce.), of the gradual repayment by Mr. BELHADJ and from his credit account AURORE from the company CETELEM.

It was through the use of this AURORE card that it was able to pay for the hotel rooms he was staying in, as he proved afterwards by showing the transactions taken on his CETELEM account.

Before the police, Djamel DAHMANI *categorically refuted* that he had extorted any money from Cyrille GONON.

Presented to the examining magistrate the 15 December 1992, Djamel DAHMANI was given a deportation warrant following his interrogation during the first appearance.

He reiterated in front of Madame the Examining Magistrate EYRAUD his denial and maintained this position throughout the instruction.

Djamel DAHMANI was kept in detention until the 19 February 1993, at which point he was discharged and his case was put to judicial review.

He was re-sent before the Correctional Tribunal by order of Madame the Examining Judge dating 18 July 1994.

II - DISCUSSION

No evidence emerged which showed any transfer of funds, nor which proved any threats or other duress.

As a result, the Tribunal of céans could not but conclude that the materiality of the infraction was in fact inexistent.

1 - On the threats and duress

Mr. Cyrille GONON alleged that the events began in April 1992, but did not make a complaint until the 6 October 1992, which, given the accusation which followed, is particularly incomprehensible.

It is inconceivable that such a period could have continued without the interruption of the supposed pressures, which, as reported by the plaintiff, shocked the Tribunal de to their illogical nature

This court establishes furthermore, that this incomprehension increased throughout the proceedings, adding to the impression that Mr. DAHMANI is a complete stranger to the details and motivations of the case being brought forward.

Cyrille GONON also declares that he was the subject to constant and regular pressure during these 7 months by the defendant.

Mr. GONON made contradictory statements on this subject, affirming (côte D2) that Mr. DAHMANI made him the accomplice in the theft of a wallet and that he used this fact as a means to pressure the plaintiff.

The first statement by the plaintiff stated that, accompanied by the defendant, he lunched in a cafeteria and that at that occasion the defendant substituted, in the pocket of a man's jacket, a wallet for a bus card. The defendant then transferred the wallet to Mr. GONAN, telling him that he had to get rid of it. This story appears to be logically flawed, not explaining why the defendant did not simply get rid of the wallet himself.

At this point, apparently, Cyrille GONON did not throw away the wallet, but rather concealed it in the glove box of the vehicle of Mr. DAHMANI, which is also surprising as this latter, supposedly, did not notice anything of this.

According to the supposed victim's statements, Mr. DAHMANI later confronted him, saying that he had been arrested a few days later in the possession of the wallet in his car, and as a result had undergone judicial proceedings.

He held him responsible for the situation, and, threatening to implicate him an accomplice, demanded the payment of several amounts of money.

IT appears, however, that according to an earlier statement the aforementioned theft was committed during a lunch that the two had together, which indicates that the two had already established a relationship; later, Mr. GONAN would state to the psychiatric expert (côte D26 page 4) that Mr. DAHMANI had brought him to the cafeteria in his car, as his own had been involved in an automobile accident. This is totally different to the story made by the previous statements.

In a first version, GONON had accompanied Mr. DAHMANI willingly, through friendship or professional relationship, but he contradicts himself later in saying that he was initially constrained by an accident which immobilised his own vehicle. In that case, then, why go to eat with Djamel DAHMANI?

In any case, it is impossible to ignore the uncertainty in the words of Cyrille GONON, who is unable to explain the source of the supposed threats or to maintain his statements. It is clear that the plaintiff has progressively modified his statements, hoping to render them more credible.

Furthermore, no deposition, nor factual element leads us to suspect the existence of threats or violence, whereas Cyrille GONON affirmed during the preliminary investigation that Mr. DAHMANI had specifically threatened him with physical reprisals (côte D2).

He continued to give detailed statements about these threats to the examining magistrate (côte D31) : «DAHMANI threatened *firstly* my mother, then the woman with whom I live, and finally me, that he would throw me from a bridge into the water below, or that he would burn me alive in my car... ».

In any case, it seems that the threats, bizarre and unsupported, should not be taken seriously as evidence, with Mr. GONON affirming at the *preliminary discussions* that he had initially been put under pressure by blackmail, which was the element which convinced him to transfer the funds (côte D26 page 7 paragraph 1).

Why would Djamel DAHMANI have made threats of physical violence when he had enough leverage through the blackmail of accusing the plaintiff of complicity?

In reality, the intrusion of the threats of physical violence in the testimony would seem to be a new attempt to consolidate (even though it actually contradicted!) the alleged duress and probably judged, after reflection and justifiably, as unconvincing by Cyrille GONON.

In fact, it emerges out of the proceedings that GONON presents different versions of the facts with the aim of making his initial 'scenario' more believable. This scenario was nonetheless contradicted throughout the duration of the investigation and the instruction.

It is also difficult to understand how the defendant was summoned before the Tribunal de céans when not only was nothing provided to support the accusations, but on the contrary the contradictions contained in the depositions and those emerging from the various 'proofs' provided in actual fact establish indubitably Mr. Djamel DAHMANI's innocence.

Thus, the self-styled victim successively declared:

- Before the examining Judge, with regards to his partner Miss JUDE (côte D31) : 'she's the young woman with whom I live and who I told some of the story but without keeping her updated the amounts taken, or about the threats'.

- This same 'victim' explained to the psychiatric expert (côte D26 page 4), that Miss Virginie JUDE knew everything about the matter, saying 'we worked though the matter together'.

- and maintained at the same time that he told her everything on the 31 July 1992 when he took out the CETELEM loan (côte D31).

The plaintiff thus gives three pieces of totally contradictory information.

Cyrille GONON also explains that his mother, Irène PLANETA, is very close to him and that she was the first person in the family he told of his problems (côte D26 page 2).

However, in another statement the supposed extortion of funds was actually revealed to Irène PLANETA by Jean-Philippe GIRARD, during the CETELEM loan, which the latter provided assistance for on the 28 July 1992 (côte D10).

Mrs. PLANETA then took the initiative of bringing forward a complaint, but not without having formulated (côte D26 page 5) « a phrase full of common sense: action should have been taken sooner !!! ».

One cannot help coming to the same conclusion, especially when it is noted that this timely initiative only took effect the 6 October 1992, the date of the complaint made by Cyrille GONON (côte D2)--that is, two months later !!!

Cyrille CONON does not give any explanation to his clumsy and surprising statements.

The Tribunal shall thus retain all these particularly striking irrelevances.

The Tribunal will further equally bizarrely note that:

The plaintiffs never considered bringing forward a complaint (or at least tried to have the Mister DAHMANI's threats ascertain by some witness).

The attempt made by GONON was fruitless due to an Officer of the Judicial Police refusing to register a complaint that he 'tried' to file.

Note that there appears to be no trace of this episode, despite the description of the JPO given by the 'victim.' (cote D.32 – Charge Sheet).

If these really were the steps taken by Cyrille GONON, this does not explain why he continued to pay the defendant after having deposed a complaint.

Furthermore, it is difficult to understand why the second attempt at a legal solution (occurring only months later) was this time fruitful.

Such assertions would by themselves come across as particularly disconcerting, creating a degree of legitimate doubt.

How should the following actions taken by the accuser of Mr. DAHMANI be explained?:

- having himself taken the initiative of asking Jean-Philippe GIRARD for his grey card (certificate of vehicle ownership) (côtes D10, D26) when he could have done without and, agreed to the defendant about the categorical refusal of the establishment of the card and therefore put an end to the so-called requirements.

- that after this, he did not only not attempt to stop the transfer of funds, but on the contrary, *out of his own volition* took out a loan for 47.000,00 francs.

- that he affirms, against all logic, that Mr. DAHMANI had not demanded more than 34.000,00 francs when the latter supposedly knew the exact amount of the loan, and, furthermore, states that the latter told him that he had paid a surety of 70.000,00 francs.

Now is the time to highlight the immensity of these contradictions, which we are sure the Tribunal will not neglect to do.

It is furthermore undeniable that these contradictions confirm the statements of Mr. DAHMANI who strongly denies having ever extorted funds from Cyrille GONON by duress or by violence.

At any rate, violence is not a concrete part of the accusation, and the alleged duress has never been established. In fact, the only element of the file which has been categorically demonstrated is the series of clumsy, yet also intolerable, mechanations which aimed to fool the Tribunal de céans and to thus attack Djamel DAHMANI.

This state of affairs illuminates perfectly the following developments:

2 On the materiality of the transfer of funds

The investigation never established the reality of the supposed transfers of funds, but rather, demonstrated the false nature of the statements made by Cyrille GONON.

Furthermore, based purely on the statements made by the plaintiff, the defendant wishes to have ascertained the fact that the so-called victim asserts (côte D2) that the first transfer took place during June 1995 and consisted of 2.500,00 francs, taken from a bank machine close to 184 cours Lafayette à LYON.

Not only is this statement categorically denied by the police services (côte D15), who were able to establish a single withdrawal 1.800,00 francs which appeared on the bank statement of Cyrille GONON, but the aforementioned withdrawal took place at the cash machine of LYON Part-Dieu, not during the month of June 1995 but the 30 April 1992 !

Cyrille GONON also stated that he had, as of August 1992, emptied his account and transferred the sum to that of Mademoiselle JUDE so as to not have pay the defendant, who was pressuring him (côtes D2, D26 page 5); however, the police services established with certainty that this statement is totally false and that this transfer does not appear on the account report (côtes D15 et D16).

Furthermore, Cyrille GONON stated to the psychiatric expert (côte D26 page 5) : « I was pretending to not understand what he wanted, *we went to my bank* and I gave him 15.000,00 francs for lawyer's fees ».

It is surprising, at the very least, that he never previously bothered to mention this sum to the investigators or to the investigating magistrate.

This is easily explained by the fact that this operation, yet again, does not appear anywhere and this it is simply the umpteenth scandalous and unscrupulous lie by GONON.

It is thus perfectly natural for the investigators to establish that: : « we recognise a shift in amounts and dates between the complaints and the sums underlined by Monsieur GONON » (côtes D15 et D16).

And that finally, in the execution of the rogatory commission of Madame the Investigative judge, these same investigators concluded (côte D33) that: « finally, no element of formal proof having been found to support the charge of extortion of funds, this investigation rested solely on one interrogation» !!!

These elements alone would have been enough to justify the release of the defendant, but out of the file came a number of certainties corroborating the words of Mr. DAHMANI.

This latter is indeed the holder of a credit card of the type « Aurore » from the CETELEM bank.

He was, in fact, there are the time when Mr. GONON had his interactions with this organisation.

Also, and contradicting the affirmations of the police officers (côte D42), the hotel rooms of the defendant were not paid for in cash, but using this card « Aurore » (côte D37).

Overall, his lifestyle was paid for the repayments in cash for the advance given to Mr. Boumediene BELHADJ, and thanks to his severance pay, which rose to more than 100.000 francs.

Furthermore, the police services concluded that « without the credit contracted with the bank CETELEM and without his severance pay from TELESERVICE, DAHMANI would certainly not have been able to have had expenses as they appeared » (côte D39).

These are the conclusions which will be adopted by the Tribunal.

The sum of these elements shows at the very least a serious doubt for the very existence of the infraction.

It is in reality perfectly possible to affirm that no extortion was ever committed.

From this understanding onwards, Justice will not be rendered in condemning Mr. DAHMANI on the basis of a file of which the contradictions and the uncertainties reveal the fertility of Cyrille GONON's imagination as much as the defects.

Finally, the Tribunal must not ignore that the personality of the supposed victim appears at the same time to be incompatible with the submissive character he describes in his narrative, yet perfectly capable of coming up with the plot to harm Mr. DAHMANI.

Indeed,

We did not see a subdued figure in Cyrille GONON, and his history revealed that (côte D26, page 3) :

- He entered openly into conflict with his employer over his hairstyling training and certification.
- He quit a job initiative at SAINT MACLOU which he perceived as being too hard.
- He was fired from the company TELESERVICE for 'having taken it upon himself to question the professional qualifications of his direct superior'
- He was exempted from military service by his own admission of a self-diagnosed problem of oversensitivity.

How can we believe him when we see an individual unable to resist, or even to display the smallest amount of self restraint?

It is especially instructive and revealing to note that (cote D.26 page 6):

- His romantic life appears to have been seriously damaged by neurotic behaviours.
- He also records *symptoms of a phobia of Algerians* and his beliefs regarding the necessity of ***protecting*** both professional and personal relationships from the ***intrusion of foreigners !***

Given the co-existence of these elements, this court will conclude that in the inexistence of the threats, duress and violence alleged, as well as the absence of proof of the materiality of the transfer of funds.

In fact, in the absence of those elements constituting the infraction of extortion of funds, the Tribunal will pronounce the release of Mr. Djamel DAHMANI.

FOR THE AFOREMENTIONED REASONS

Release Mr. Djamel DAHMANI of the charges of extortion of funds through threats, duress or violence.

We leave the expenses to the public purse.

SOUS TOUTES RESERVES