



Transaction in Congolese Labor Law: Attention to the evolution of the Law from 2002 to 2016

Actualité législative publié le **02/07/2022**, vu **204 fois**, Auteur : [YAV & ASSOCIATES](#)

Transaction constitutes an alternative method of settling disputes. This was not the case before the amendment of the Congolese Labour Code in 2016.

The transaction, defined in Civil Code as “a contract by which the parties end a dispute that has arisen, or prevent a dispute that is to arise”, enshrines the freedom of the parties by allowing them to “decide” together on their dispute. In an increasingly complex legislative context, and while state courts are not always specialized enough to deal with the -growing complexity of conflicts and all areas of law, judicial uncertainty seems to be growing. In many cases, it militates in favor of finding a settlement that will give the parties legal certainty and avoid long, costly and uncertain litigation.

It therefore constitutes an alternative method of settling disputes and as such, a distinction is made between extrajudicial transactions, which occur before any proceedings, and judicial transactions, which occur during the proceedings but before a final decision has been taken. rendered.

In the Democratic Republic of Congo, rupture by mutual agreement was a regime totally unknown to the Law No. 015-2002 on the Labor Code, although the authors unanimously accepted it as a method of terminating the employment contract.[1]

The Congolese jurisprudence remained very divided on the issue. A trend has decided that the termination of the employment contract by transaction or by mutual consent is null and void because it is considered to be made at the initiative of the employer and therefore without valid reason. It goes further that such a termination gives right on the basis of article 63, paragraph 2 of the labor code, to damages (Kin ., 22.7.1993, RTA. 1914 Aff.Wangata against Marsavco ; unpublished) . These damages find their source in article 40 of the Congolese Civil Code, Book III.[2]

Another jurisprudential trend has argued the opposite by stating that the termination by mutual agreement otherwise called amicable termination or termination by settlement, although non-existent in the labor code, could still be conceived on the basis of the principle of autonomy of will of the contracting parties, which could achieve this by means of transaction ; this being , in matters of work, governed by the provisions of Title X of the Civil Code, Book III because it tends, not only to end disputes, but also to prevent those to be born ... (Supreme Court of Justice , March 29, 1991, in the Micros -Comituri v . Kabemba case).

It was necessary to wait for the intervention of the legislator on the occasion of the modification of the labor code by law n° 16/010 of July 15, 2016 to see the outcome of this jurisprudential controversy intervene. Indeed, article 61 bis of the new Congolese Labor Code provides that "Without prejudice to the provisions of article 61 of this Code, the employment contract may be also terminated ? by mutual agreement of the parties".

Thus, the addition of articles 61 bis and 61 ter of the Labor Code has found the merit of settling the jurisprudential and doctrinal disputes on the termination of the employment contract by mutual agreement. This supplement avoids confusion between the termination of the employment contract by mutual agreement and the transaction, which is governed by the provisions of the Decree of July 30, 1888, and only applies when the parties prevent the resolution of a conflict already born or from a future conflict. [3]

In addition, if Article 61 bis enshrines the possibility for the parties to voluntarily terminate their employment contract by mutual agreement, Article 61 ter in turn determines the conditions and the procedure to be followed.

From this provision, the termination of an employment contract by mutual consent of the parties is therefore applicable now in Congolese law, a legal mode of termination of a contractual relationship in the field of employment.

However, if the termination of the employment contract by mutual agreement is legal under the Congolese Labor Code, the question related to the implementation of the clause relating thereto and inserted in an employment contract remains.

[1] Prof. Joseph YAV KATSHUNG , On the question of the affixing of the enforcement formula on a so-called "transactional" act signed subject to labor law, <https://www.legavox.fr/blog/yav-associates/question-opposition-formule-executory-act-8670.htm>

[2] Me Dorcas LOKINGA FATUMA, The implementation of the termination clause by mutual agreement in an employment contract, <http://www.rmkaassociates.org/UniFichiers/Public/Pdf/jo2B478I20170913160639.pdf>

[3] Me Firmin Fundji Kilunga and Me Joel Biaya Matamba , Gloss of the amended and supplemented provisions of the Labor Code: progress or window dressing for the Congolese worker? https://legalrdc.com/2020/10/02/glose-des-dispositions-modifiees-et-completees-du-code-du-travail-progres-ou-poudre-aux-yeux-du-travailleur-congolais/#_ftn23