UBUSHINJACYAHA v MERERWANEZA

[Rwanda URUKIKO RW'UBUJURIRE – RPAA00042/2020/CA (Kanyange, P.J.) 31 Mutarama 2022]

Amategeko agenga imanza nshinjabyaha – Ubutabera buboneye – Igihano – Umucamanza afite inshingano yo guhanisha uwahamwe n'icyaha igihano gikwiye, akurikije uburemere bw'icyaha yakoze, ingaruka cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyamagabe akurikiranyweho icyaha cyo gusambanya umwana w'umukobwa w'imyaka 16 y'amavuko, Ubushinjacyaha bukavuga ko ku itariki ya 02/08/2018 ari bwo yasambanyije uwo mukobwa, ahita anamugira umugore barabana kugeza ku wa 19/12/2018 ubwo yatangiraga gukurikiranwa. Mu ibazwa rye yemeye ko yasambanyije uwo mukobwa babyumvikanyeho ndetse no mu kuburana kwe mu Rukiko Rwisumbuye rwa Nyamagabe avuga ko yabanye n'uwo mukobwa azi ko yujuje imyaka y'ubukure. Urwo Rukiko rwaciye urubanza rumuhamya icyaha ahanishwa igihano cy'igifungo cy'imyaka 20.

Uregwa yajuririye Urukiko Rukuru, urugereko rwa Nyanza, avuga ko Urukiko Rwisumbuye rwa Nyamagabe rwashingiye ku Itegeko ryagiyeho nyuma y'ikorwa ry'icyaha aho gushingira ku Itegeko ryakurikizwaga icyaha gikorwa, ko yanahawe ibihano biremereye kandi yaraburanye yemera icyaha. Urwo Rukiko rwaciye urubanza rusobanura ko mu guhana icyaha uregwa akurikiranyweho, hatashingirwa ku Itegeko Nº 01/2012/OL ryo ku wa 02/05/2012 nk'uko abivuga ahubwo hashingirwa ku Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange. Rwavuze kandi ko icyaha gihama uregwa ari icyo gusambanya umwana byakurikiwe no kubana nk'umugabo n'umugore ko rero Urukiko Rwisumbuye rwa Nyamagabe rwibeshye rushingira ku gika cya 2 cy'ingingo ya 133 y'Itegeko Nº 68/2018 ryo ku wa 30/08/2018, mu gihe rwagombaga gushingira ku gika cya 5 cy'iyo ngingo, rukamuhanisha igifungo cya burundu kidashobora kugabanywa, ko ariko kuba uregwa ari we wajuriye wenyine, Urukiko rutazamura igihano yahawe, maze mu kwanzura rwemeza ko imikirize y'urubanza rwajuririwe idahindutse, rugumishaho igifungo cy'imyaka 20 uregwa yahanishijwe ku rwego rwa mbere.

Uregwa yarongeye ajuririra Urukiko rw'Ubujurire avuga ko mu kumuhana hagombaga gushingirwa ku Itegeko Nº 01/2012/OL ryo ku wa 02/05/2012 ryakurikizwaga icyaha gikorwa, kuko ari ryo riteganya ibihano byoroheje.

Ubushinjacyaha bwo buvugako kuba bwaraburanye mu Rukiko Rukuru buvuga ko hashingirwa ku Itegeko ryakurikizwaga uregwa atangira gusambanya umwana bagatangira no kubana nk'umugabo n'umugore ariko Urukiko ntirubihe agaciro, ntacyo byamumarira kuko umucamanza aca urubanza ashingiye ku mategeko aho gushingira ku byifuzo by'ababuranyi, bityo kuba yarasuzumye ibyifuzo by'ababuranyi akabihuza n'amategeko, nta kosa yakoze.

Incamake y'icyemezo: 1. Umucamanza afite inshingano yo guhanisha uwahamwe n'icyaha igihano gikwiye, akurikije uburemere bw'icyaha yakoze, ingaruka cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo.

Ubujurire bufite ishingiro kuri bimwe;
Urubanza ruhindutse ku birebana n'igihano.

Amategeko yashingiweho:
Itegeko Nº 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, Ingingo ya 49 n'iya 58.
Itegeko Ngenga Nº 01/2012/OL ryo ku wa 02/02/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 191.

Imanza zifashishijwe:
Urubanza RS/INCONST/SPES 00003/2019/SC; Re. KABASINGA rwaciwe n'Urukiko rw'Ikirenga ku wa 04 Ukuboza 2019.
Urubanza RS/INCOSNT/SPEC 00005/2020/CS-RS/INCOSNT/SPEC 00006/2020/CS; Re. KABASINGA N'UNDI rwaciwe n'Urukiko rw'Ikirenga ku wa 12/02/2020.

Ibitekerezo by'abahanga:
Frédéric Desportes, Francis Le Gunehec, Droit pénal général, 14 e édition, 2007, p.386-387.
Bernard Bouloc, Haritini Matsopoulu, Droit pénal général et procédure pénale, SIREY, 16 e édition, 2006. P.57.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mererwaneza Valens yakurikiranyweho icyaha cyo gusambanya umwana w'umukobwa w'imyaka 16 y'amavuko, Ubushinjacyaha bukavuga ko ku itariki ya 02/08/2018 ari bwo yasambanyije uwo mukobwa, ahita anamugira umugore barabana kugeza ku wa 19/12/2018 ubwo yatangiraga gukurikiranwa. Mu ibazwa rye yemeye ko yasambanyije uwo mukobwa babyumvikanyeho ndetse no mu kuburana kwe mu Rukiko Rwisumbuye rwa Nyamagabe avuga ko yabanye n'uwo mukobwa azi ko yujuje imyaka y'ubukure.

[2] Mu rubanza nº RP 00002/2019/TGI/NYG rwaciwe ku wa 16/01/2019, Urukiko Rwisumbuye rwa Nyamagabe rwasobanuye ko ku birebana n'imyaka y'umukobwa wasambanyijwe, hatashingirwa ku ifishi yatanzwe ya Mererwaneza Valens agamije kugaragaza ko yavutse mu mwaka wa 1999, kuko itagaragara mu gitabo cy'ikingira cy'Ikigo nderabuzima iyo fishi yitirirwa, ko ahubwo hagomba gushingirwa ku cyemezo cy'amavuko cyatanzwe n'ubuyobozi bubifitiye ububasha kigaragaza ko yavutse ku wa 09/06/2002, bigashimangirwa n'igitabo cyandikwamo abana bakingirwa kigaragaza ko yatangiye gukingirwa mu mwaka wa 2002.

[3] Ku birebana n'icyaha, Urukiko rwashingiye ku mvugo ya se w'umukobwa wasambanyijwe n'iy'abatangabuhamya, zishimangirwa na raporo y'Akagari, no ku mvugo ya Mererwaneza Valens ubwe wemeye ko yasambanyije uwo mukobwa, rusanga yarakoze icyaha cyo gusambanya umwana giteganywa n'ingingo ya 133 y'Itegeko riteganya ibyaha n'ibihano muri rusange, akaba agomba guhanwa hakurikijwe ingingi ya 134, igika cya kane, y'Itegeko rimaze kuvugwa kuko ari ryo riteganya ibihano bito, rusanga kandi kuba Mererwaneza Valens yemera icyaha mu buryo

budashidikanywaho ari impamvu nyoroshyacyaha ituma yagabanyrizwa igihano agahanishwa igihano gito hashingiwe ku ngingo ya 60 igika cya 2 y'Itegeko ryavuzwe, rumuhanisha igifungo cy'imyaka 20.

[4] Mererwaneza Valens yajuriye mu Rukiko Rukuru, urugereko rwa Nyanza, avuga ko Urukiko Rwisumbuye rwa Nyamagabe rwashingiye ku Itegeko ryagiyeho nyuma y'ikorwa ry'icyaha aho gushingire ku Itegeko ryakurikizwaga icyaha gikorwa, ko yanahawe ibihano biremereye kandi yaraburanye yemera icyaha.

[5] Mu rubanza nº RPA 00093/2019/HC/NYZ rwaciwe ku wa 28/11/2019, Urukiko rwasobanuye ko mu guhana icyaha Mererwaneza Valens aregwa, hatashingirwa ku Itegeko nº 01/2012/OL ryo ku wa 02/05/2012 nk'uko abivuga ahubwo hashingirwa ku Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, kuko nubwo icyaha cyatangiye gukorwa mbere y'uko risohoka, na nyuma y'aho cyakomeje gukorwa kandi nabwo umukobwa wasambanyijwe akaba yari ataruzuza imyaka y'ubukure, bivuze ko icyaha cyanakozwe Itegeko rishya ryarasohotse, rikaba ari ryo rigomba gukurikizwa kuko ryasohotse icyaha cyo gusambanya umwana byakurikiwe no kubana nk'umugabo n'umugore kitarahanwa, n'uwagikoze ataratangira kugikurikiranwaho.

[6] Rwasobanuye kandi ko icyaha gihama Mererwaneza Valens ari icyo gusambanya umwana byakurikiwe no kubana nk'umugabo n'umugore nk'uko nawe abyemera, ko rero Urukiko Rwisumbuye rwa Nyamagabe rwibeshye rushingira ku gika cya 2 cy'ingingo ya 133 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, mu gihe rwagombaga gushingira ku gika cya 5 cy'iyo ngingo, rukamuhanisha igifungo cya burundu kidashobora kugabanywa, ko ariko kuba uregwa ari we wajuriye wenyine, Urukiko rutazamura igihano yahawe, maze mu kwanzura rwemeza ko imikirize y'urubanza rwajuririwe idahindutse, rugumishaho igifungo cy'imyaka 20 Mererwaneza Valens yahanishijwe ku rwego rwa mbere.

[7] Mererwaneza Valens yajuririye Urukiko rw'Ubujurire avuga ko mu kumuhana hagombaga gushingirwa ku Itegeko nº 01/2012/OL ryo ku wa 02/05/2012 ryakurikizwaga icyaha gikorwa, kuko ari ryo riteganya ibihano byoroheje.

[8] Urubanza rwaburanishijwe mu ruhame ku wa 04/01/2022 hakoreshejwe ikoranabuhanga, Mererwaneza Valens ari kuri gereza ya Huye yunganirwa na Me Ngendahayo François- Xavier wari mu Rukiko, Ubushinjacyaha buhagarariwe na Niyibizi Tite, Umushinjacyaha ku rwego rw'Igihugu.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

Kumenya Itegeko rigombaga gushingirwaho mu guhana Mererwaneza Valens, no kumenya niba yagabanyirizwa igihano.

[9] Me Ngendahayo François-Xavier, avuga ko Urukiko rwashingiye ku Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ruhanisha Mererwaneza Valens igifungo cy'imyaka 20 rwirengagije ko igihano cyo hasi (minimum) yashoboraga guhanishwa ari imyaka 10 hashingiwe ku ngingo ya 78 y'Itegeko Ngenga nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana.

[10] Asobanura ko hashingiwe ku ngingo ya 6 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iyo hari amategeko abiri ahana, hakurikizwa Itegeko rishya iyo ritanga ibihano byoroheje, ko n'ubwo Itegeko nº 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru ryateganyaga ibihano bihanitse bigereranyijwe n'ibiteganywa n'Itegeko rikurikizwa ubu ku birebana n'icyaha Mererwaneza Valens akurikiranyweho, ku birebana no kugabanyirizwa ibihano Itegeko rya mbere niryo riteganya ibihano ibyoroheje.

[11] Avuga kandi ko atemera ibivugwa n'Ubushinjacyaha ko icyaha cyakomeje gukorwa (infraction continue), kuko asanga icyaha cyarakozwe ku wa 02/08/2018 hakurikizwa Itegeko Ngenga nº 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru, bityo hashigiwe ku ngingo yaryo ya 78, Mererwaneza Valens Valens akaba yagabanyirizwa kugeza ku myaka 10 kuko yemeye icyaha mu buryo budashidikanywa.

[12] Akomeza avuga ko mu guhana Mererwaneza Valens, Umucamanza yagombaga gushingira ku ngingo ya 49 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, akita ku kuba nyuma y'urupfu rwa se, nyina yamutaye ajya gushaka undi mugabo, Mererwaneza Valens asigara atuye mu Mudugudu umwe n'ababyeyi b'umukobwa aregwa ko yasambanyije, ko ndetse batigeze bajya gutanga ikirego ahubwo bisa nk'aho bamushyingiye atarageza ku myaka y'ubukure, Mererwaneza Valens afatwa bavuye kwikingiza, ababyeyi b'umukobwa bagerageza kumufunguza bamushakira ifishi y'impimbano bagamije kwerekana ko uwo mukobwa yari mukuru, bituma bacibwa urubanza bahanishwa igifungo cy'imyaka 7 n'ihazabu ya 500.000 Frw, ubu hakaba ntawuzi aho bagiye.

[13] Asanga rero ababyeyi b'umukobwa barashyigikiye ukubana kwe na Mererwaneza Valens, ko no mu ibazwa ry'uwo mukobwa yavuze ko hari hashize umwaka bakundana ko kandi yari yaramwemereye ko bazabana, anavuga ko atamufashe ku ngufu; ko na nyina w'umukobwa yavugiye mu Bugenzacyaha ko bashatse ifishi y'impimbano kugira ngo Mererwaneza afungurwe, baba ari nabo bamushakira umwunganira, ko rero asaba ko ibyo nabyo byakwitabwaho akagabanyirizwa igihano kugeza ku myaka 10.

[14] Mererwaneza Valens avuga ko asaba guhabwa imbabazi kugira ngo ashobore kujya kurera umwana yabyaraye na Twizeyimana Agnès kuko n'ababyeyi b'uwo mukobwa badahari, ko kandi ibyo yakoze atari azi ko amategeko abihana, akaba kandi yararebye igihagararo cy'umukobwa akabona ari mukuru.

[15] Uhagarariye Ubushinjacyaha avuga ko hashingiwe ku ngingo ya 176 y'Itegeko Nshinga iteganya ko ntawakwitwaza ko atazi Itegeko, Mererwaneza Valens nawe atakwitwaza ko atari azi ko ibyo yakoze bigize icyaha, ko atanakwitwaza ko yagabanyirizwa igihano kugira ngo ajye kurera umwana wavutse kuko mu manza Urukiko rw'Ikirenga rwagiye ruca, rwasobanuye ko ntawakwitwaza ingaruka z'icyaha yakoze ngo asabe kugabanyirizwa igihano, ko kandi bajya kubana yari azi ingaruka zizavamo.

[16] Ku birebana n'Itegeko rigomba gushingirwaho, avuga ko Mererwaneza Valens afatwa yari agikora icyaha akurikiranyweho, ko rero Ubushinjacyaha bufata ko icyaha cyakozwe ku wa 18/12/2018 kuko aribwo cyamenyekanye atangira gukurikiranwa, bukaba busanga ingingo ya 6 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru itakurikizwa muri uru rubanza kuko igikorwa cyabaye hakurikizwa Itegeko rishya riteganya ibyaha n'ibihano muri rusange.

[17] Ku byerekeye kugabanyirizwa igihano, avuga ko hashingiwe ku ngingo ya 4 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru ivuga uburyo amategeko mpanabyaha agomba gusobanurwa, ingingo ya 48 ko iteganya ko nta cyaha gishobora kugabanyirizwa igihano keretse mu bihe no mu buryo biteganywa n'itegeko hamwe n'ingingo ya 60 iteganya uburyo ibihano bigabanywa, asanga nta kosa Urukiko rwakoze kuko rwagabanyije igihano rukurikije ibiteganywa n'ingingo imaze kuvugwa, ko kandi n'ubwo mu rubanza rwa Kabasinga, Urukiko rw'Ikirenga rwasanze Umucamanza agomba guhabwa ubwinyagamburiro, ariko kugeza ubu ntacyo Umushingamategeko arabikoraho.

Avuga kandi ko kuba Ubushinjacyaha bwaraburanye mu Rukiko Rukuru buvuga ko hashingirwa ku Itegeko ryakurikizwaga Mererwaneza Valens atangira gusambanya umwana bagatangira no kubana nk'umugabo n'umugore ariko Urukiko ntirubihe agaciro, ntacyo byamumarira kuko umucamanza aca urubanza ashingiye ku mategeko aho gushingira ku byifuzo by'ababuranyi, bityo kuba yarasuzumye ibyifuzo by'ababuranyi akabihuza n'amategeko, nta kosa yakoze.

[18] Avuga kandi ko Mererwaneza Valens atakwitwaza ko ababyeyi b'umukobwa bagize uruhare mu ikorwa ry'icyaha kuko niba barabirebereye, urwego rw'ubucamanza rutabirebera, bikaba rero bitakuraho uburyozwacyaha bwe, ahubwo hagomba no kwitabwa ku ngaruka zatejwe n'icyaha yakoze zirimo kuba umwana wavutse azaba umutwaro ku gihugu.

UKO URUKIKO RUBIBONA

[19] Ingingo ya 49 y'Itegeko Nº 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko "Umucamanza atanga igihano akurikije uburemere bw'icyaha, ingaruka icyaha cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo''.

[20] Ingingo ya 58 y'Itegeko nº 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusangeiteganya ko ''Umucamanza ubwe niwe ugena niba impamvu nyoroshyacyaha zemezwa n'umucamanza zihabwa agaciro. Kwemeza impamvu nyoroshyacyaha bigomba gusobanurwa mu cyemezo cy'urukiko''.

[21] Icyo Mererwaneza Valens agamije mu bujuriire bwe, ni ukugabanyirizwa igihano, akabishingira ku kuba iyo hashingirwa ku Itegeko Ngenga nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, aba yaragabanyirijwe igihano kugeza ku myaka 10 hashingiwe ku ngingo ya 78 y'iryo Tegeko, ari naho ashingira avuga ko iryo tegeko riteganya ibihano byoroheje kurusha Itegeko nº 68/2018 ryo ku wa 30/08/2018 ryashingiweho agahabwa igihano cy'igifungo cy'imyaka 20.

[22] Dosiye igaragaza ko mu kirego cy'Ubushinjacyaha mu Rukiko Rwisumbuye rwa Nyamagabe, bwasobanuye ko ku wa 02/08/2018 aribwo Mererwaneza Valens yasambanyije Twizeyimana Agnès, bahita banabana nk'umugabo n'umugore, afatwa ku wa 18/12/2018 atangira gukurikiranwa.

[23] Urukiko rurasanga hashingiwe ku Itegeko ryariho ku wa 02/08/2018, icyaha cyo gusambanya umwana cyahanishwaga ingingo ya 191 yateganyaga igifungo cya burundu cy'umwihariko, naho icyaha cyo kubana n'umwana nk'umugabo cyangwa umugore kigahanishwa

ingingo ya 194, igika cya mbere, yateganyaga ko uwagikoze ahanwa kimwe n'uwasambanyije umwana.

[24] Urukiko rurasanga ariko ubwo Mererwaneza Valens yatangiraga gukurikiranwa ku wa 18/12/2018, hari haragiyeho Itegeko nº 68/2018 ryo ku wa 30/08/2018, rikaba ritaragaruye mu byaha bihanwa icyateganywaga n'ingingo ya 194 cyavuzwe haruguru nk'icyaha cyihariye, ahubwo bigaragara ko mu ngingo yaryo ya 133 iteganya icyaha cyo gusambanya umwana, hateganyijwe ko iyo byakurikiwe no kubana nk'umugabo cyangwa umugore, biba impamvu nkomezacyaha ituma igihano kiremera kurusha icyo gusambanya umwana byonyine, bivuze rero ko ubwo Mererwaneza Valens yatangiraga gukurikiranwa, icyaha cyo kubana n'umwana nk'umugabo cyangwa umugore atashoboraga kugikurikiranwaho kuko kitagarutse mu Itegeko nº 68/2018 ryo ku wa 30/08/2018 nk'icyaha cyihariye.

[25] Urukiko rurasanga hashingiwe ku bimaze gusobanurwa, icyaha Mererwaneza Valens yakoze ari icyo gusambanya umwana. Rurasanga kandi icyo cyaha cyo gusambanya umwana cyarakozwe umunsi wa mbere Mererwaneza yagikoreyeho (infraction instantanée), ni ukuvuga ku wa 02/08/2018 kabone n'ubwo yatangiye gukurikiranwa ku wa 18/12/2018, bityo ibyo Urukiko Rukuru, urugereko rwa Nyanza rwavuze ko ari icyaha cyakomeje (infraction continue), uru Rukiko rukaba atariko rubibona, kuko hashingiwe ku bisobanura bitangwa n'abahanga mu mategeko no ku ngero batanga, bavuga ko icyaha gikoreweho (infraction instantanée) ari igikorwa mu gihe gito, nk'ubwicanyi, ubujura, ihohoterwa…, naho icyaha gikomeza (infraction continue) bakavuga ko imikorere yacyo ubwayo yumvikanisha ko gikomeza mu gihe runaka, nk'icyaha cyo guhisha ikintu, gushimuta umuntu, gukora akabare mu buryo butemewe.[1]

[26] Hashingiwe kuri ibyo bisobanuro no ku ngero zatanzwe, Urukiko rurasanga icyaha cyo gusambanya umwana cyarakozwe ku wa 02/08/2018 (infraction instantanée), icyo gihe kikaba cyarahanishwaga ingingo ya 191 y'Itegeko Ngenga nº 01/2012/OL ryo ku wa 02/02/2012 rishyiraho Igitabo cy'amategeko ahana, bityo kuba ubwo Murerwaneza yatangiraga gukurikiranwa hari haragiyeho Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, hakaba hagomba gushingirwa ku ngingo ya 6 y'iryo Tegeko[2] mu kumenya Itegeko rigomba gukurikizwa, harebwa iriteganya igihano cyoroheje.

[27] Urukiko rurasanga nk'uko byibukijwe haruguru, mu Itegeko nº 01/2012/OL ryo ku wa 02/02/2012 ryavuzwe haruguru, icyaha cyo gusambanya umwana cyahanishwaga igifungo cya burundu cy'umwihariko (ingingo ya 191), naho mu Itegeko nº 68/2018 ryo ku wa 30/08/2018 naryo ryavuzwe haruguru, icyaha cyo gusambanya umwana uri hejuru y'imyaka 14 gihanishwa igifungo kitari munsi y'imyaka 20 ariko kitarenze imyaka 25 (ingingo ya 133, igika cya 2), bivuze rero ko iri Tegeko ariryo riteganya ibihano byoroheje kurusha iryaribanjirije.

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[1] ''*L'acte matériel de certaines infractions s'accomplit en un trait de temps: c'est le cas du meurtre, du vol, des violences, et, d'une manière générale, de la majorité des crimes et des délits, qui sont alors qualifiés d'infractions instantanées (…). D'autres infractions sont constituées d'un élément matériel qui, en raison de la définition même de l'incrimination, se prolonge pendant une certaine durée du fait de la volonté réitérée du délinquant. Ainsi en est-il du recel d'une chose, de la sequestration d'une personne, du port illégal de décoration, de l'exploitation illicite d'un débit de boisson''*, par Frédéric Desportes, Francis Le Gunehec, Droit pénal général, 14 e édition, 2007, p.386-387

[2] ''Mu gihe hari amategeko ahana, rimwe ryariho mu gihe icyaha cyakorwaga, irindi ryaratangajwe nyuma y'uko icyaha gikorwa, ariko urubanza rutaracibwa burundu, itegeko rishya niryo rikurikizwa iyo riteganya igihano cyoroheje.''

[28] Ibivugwa n'uburanira Mererwaneza Valens ko Itegeko Ngenga nº 01/2012/OL ryo ku wa 02/02/2012 ari ryo riteganya ibihano byoroheje kuko ingingo yaryo ya 78 yemera ko igihano gishobora kugabanywa kugeza ku myaka 10, Urukiko rurasanga nta shingiro bifite, kuko ikigomba kurebwa ari ibihano byateganyirijwe icyaha, hakarebwa Itegeko ritanga ibyoroshye[3], aho gushingira ku ngingo iteganya uburyo ibihano bishobora kugabanywa, kuko atariyo igena ibihano ku cyaha cyakozwe ahubwo iha ububasha umucamanza bwo kuba yakigabanya mu gihe hari impamvu nyoroshyacyaha.

[29] Urukiko rurasanga rero hashingiwe ku bimaze gusobanurwa, Itegeko rigomba gushingirwaho ari Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange kuko ari ryo riteganya ibihano byoroheje ku cyaha Mererwaneza Valens akurikiranyweho.

[30] Ku birebana no kugabanyizwa igihano cy'imyaka 20 Mererwaneza Valens yahanishiijwe, Urukiko rurasanga nk'uko byibukijwe mu miterere y'urubanza, Urukiko Rwisumbuye rwa Nyamagabe rwamugabanyirije igihano kuko yemeye icyaha mu buryo budashidikanywaho, rumuhanisha igifungo cy'imyaka 20 rushingiye ku ngingo ya 60, igika cya 2, y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, naho Urukiko Rukuru, urugereko rwa Nyanza, rusanga ataragombaga no kugabanyirizwa igihano kuko yagombaga guhanishwa igifungo cya burundu kitagabanywa hashingiwe ku ngingo ya 133, igika cya 5, y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange.

[31] Uru rukiko rurasanga usibye kuba mu rubanza RS/INCONST/SPES 00003/2019/SC rwaciwe ku wa 04 Ukuboza 2019, Urukiko rw'Ikirenga rwaremeje ko igika cya 5 cy'ingingo ya 133 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nta gaciro gifite kuko kinyuranye n'Itegeko Nshinga, nta cyabuza ko Mererwaneza agabanyirizwa igihano hadashingiwe gusa ku ngingo ya 60 y'Itegeko rimaze kuvugwa[4], yateganyagaga ko ''Iyo hari impamvu zigabanya ububi bw'icyaha (…), igihano cy'igifungo kimara igihe kizwi cyangwa ihazabu bishobora kugabanywa ariko ntibijye munsi y'igihano gito ntarengwa giteganyirijwe icyaha cyakozwe'', ahubwo hashingiwe ku isesengura ryakozwe mu rubanza nº RS/INCOSNT/SPEC 00003/2019/SC rwaciwe ku wa 04/12/2019 n'urubanza nº RS/INCOSNT/SPEC 00005/2020/CS-RS/INCOSNT/SPEC 00006/2020/CS rwaciwe ku wa 12/02/2020, aho Urukiko rw'Ikirenga rwasobanuye ko Umucamanza afite inshingano yo guhanisha uwahamwe n'icyaha igihano gikwiye, akurikije uburemere bw'icyaha yakoze, ingaruka cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo nk'uko biteganywa n'ingingo ya 49 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ko kubuza Umucamanza kugabanya igihano giteganyijwe n'Itegeko mu gihe hari impamvu nyoroshywacyaha, cyangwa kubimwemerera ariko iryo gabanya ntirijye munsi y'igihano gito ntarengwa giteganyirijwe icyaha cyakozwe kandi kiri hejuru, byaba ari ukumwambura ubwisanzure n'ubwigenge bwo gutanga igihano kigendanye

[3] S'il s'agit des lois portant sur des peines, la loi nouvelle est plus douce, si elle supprime une peine ou en abaisse le niveau: Bernard Bouloc, Haritini Matsopoulu, Droit pénal général et procédure pénale, SIREY, 16 e édition, 2006. P.57

[4] Iyo ngingo yahinduwe n'ingingo ya mbere y'Itegeko nº 69/2019 ryo ku wa 08/11/2019 iteganya ko '' Iyo hari impamvu nyoroshyacyaha, ibihano bishobora kugabanywa ku buryo bukurikira: (…) 2º igihano cy'igifungo kimara igihe kizwi cyangwa ihazabu bishobora kugabanywa ariko ntibijye munsi y'igihano gito ntarengwa giteganyirijwe icyaha cyakozwe."

n’icyaha cyakozwe, bigatuma adaha umuburanyi uburenganzira ku butabera buboneye, ibyo kandi bikaba binyuranye n’ingingo ya 29 n’iya 151 z’Itegeko Nshinga rya Repubulika y’u Rwanda.

[32] Urukiko rurasanga ku birebana na Merewaneza Valens, dosiye igaragaza ko yemeye icyaha kuva agifatwa anagisabira imbabazi, bityo uko kwemera no kwicuza, byiyongereyeho ikigero cy’imyaka yari afite ubwo yatangiraga gukora icyaha (20), kigaragaza ko n’ubwo atari mu kigero cy’abana kuko yari arengeje imyaka 18, ariko nibwo yari akiva mu bwana, ari mu kigero kirangwa ahanini n’ubushishozi bucye, hakaniyongeraho ko hakurikijwe ibisobanuro by’umwunganira Ubushinjacyaha butavuguruje, nta mubyeyi wamubaye hafi ngo abe yamuha impanuro z’uburyo agomba kwitwara muri sosiyete, ahubwo bigaragara ko ababyeyi b’umukobwa bamushyigikiye bashaka uburyo bwose atafungwa ahubwo agakomeza kubana n’umukobwa wabo, bityo hashingiwe ku biteganywa n’ingingo za 49 na 58 zavuzwe haruguru, ku isesengura ryakozwe n’Urukiko rw’Ikirenga no ku mpamvu nyoroshyacyaha zagaragajwe, Urukiko rurasanga igifungo cy’imyaka 20 Mererwaneza yahanishijwe kiri hejuru, kikaba kigomba kugabanywa, bityo akaba ahanishijwe igifungo cy’imyaka icumi (10).

III. ICYEMEZO CY’URUKIKO

[33] Rwemeje ko ubujurire bwa Mererwaneza Valens bufite ishingiro kuri bimwe ;

[34] Rwemeje ko igifungo cy’imyaka 20 yari yahanishijwe gisimbujwe igifungo cy’imyaka icumi (10) ;

[35] Rwemeje ko urubanza rwajuririwe ruhindutse ku birebana n’igihano ;

[36] Rwemeje ko amagarama y’urubanza aherera ku Isanduku ya Leta.