UBUSHINJACYAHA v MBARUSHIMANA

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00499/2021/CA (Kaliwabo, P.J.) 22 Nyakanga 2022]

Amategeko agenga imanza z'inshinjabyaha – Igihano – Mu gutanga igihano, Umucamanza areba imibereho y'uwakoze icyaha mbere yo kugikora, igihe yagikoraga na nyuma yo kugikora, akabihuza n'uko icyaha cyakozwe, uburemere bwacyo n'ingaruka cyateye muri sosiyete, bivuze ko atanga igihano akigereranyije n'icyaha cyakozwe (principe de la proportionnalité de la peine à l'infraction).

Amategeko agenga imanza z'inshinjabyaha – Igihano – Mu gutanga igihano, ingano ntoya y'urumogi uregwa yafatanywe ikwiye kwitabwaho kuko ingaruka zigera ku bantu bakeya ugereranyije n'abacuruza urumogi rwinshi.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Ubushinjacyaha bukurikiranyeho Mbarushimana icyaha cyo gucuruza urumogi, buvuga ko yafashwe acuruza udupfunyika 3 tw'urumogi (3 boules). Mu ibazwa rye imbere y'Ubugenzacyaha uregwa yemeye icyaha cyo gucuruza ibiyobyabwenge, ageze imbere y'Ubushinjacyaha n'imbere y'Urukiko avuga ko urumogi yafatanywe ari urwo kunywa. Urwo Rukiko rwaciye urubanza rwemeza ko uregwa ahamwa n'icyaha cyo gucuruza urumogi, rumuhanisha igihano cy'igifungo cya burundu n'ihazabu y'amafaranga 20.100.000.

Uregwa yajuririye Urukiko Rukuru avuga ko agamije gutakamba ngo agabanyirizwe igihano kuko yemera icyaha cyo kunywa urumogi kandi ko yamaze kumva ububi bwacyo, ariko ko atemera icyaha cyo gucuruza urumogi. Urwo Rukiko narwo rwaciye urubanza rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririwe.

Uregwa yarongeye ajuririra Urukiko rw'Ubujurire avuga ko asaba kurenganurwa kuko yahamijwe icyaha cyo gucuruza urumogi yemeye kubera iyicarubozo yakorewe, ko icyaha yemera kandi asabira imbabazi ari icyo kunywa urumogi, akaba asaba ko urukiko rw'ubujurire aricyo rwashingiraho rumuhana kandi rukaba rwamugabanyiriza igihano.

Ubushinjacyaha bwo bwaburanye buvuga ko nta kimenyetso cyerekana ko uregwa yakorewe iyicarubozo, ko yemeye icyaha agasobanura imikorere yacyo, aho arangura urumogi n'uburyo arugeza ku bantu barushaka, buvuga kandi ko yahanishwa igifungo kitarenze imyaka 25 hashingiwe ku ngano ntoya y'ibiyobyabwenge yafatanywe no kuba ari ubwa mbere aguye mu cyaha.

Incamake y'icyemezo: 1.Mu gutanga igihano, Umucamanza areba imibereho y'uwakoze icyaha mbere yo kugikora, igihe yagikoraga na nyuma yo kugikora, akabihuza n'uko icyaha cyakozwe, uburemere bwacyo n'ingaruka cyateye muri sosiyete, bivuze ko atanga igihano akigereranyije n'icyaha cyakozwe (principe de la proportionnalité de la peine à l'infraction) ingano ntoya y'urumogi uregwa yafatanywe ikwiye kwitabwaho kuko ingaruka zigera ku bantu bakeya ugereranyije n'abacuruza urumogi rwinshi, bityo hakurikijwe ingano ntoya (3 boules) y'urumogi Mbarushimana yafatanywe, rurasanga Mbarushimana akwiye guhanishwa igifungo cy'imyaka

icumi (10) n'ihazabu y'amafaranga 5.000.000 mu mwanya w'igifungo cya burundu n'ihazabu y'amafaranga 20 100.000 yahanishijwe n'Urukiko Rukuru.

Urubanza rwajuririwe ruhindutse ku birebana n'igihano.

Amategeko yakoreshejwe:

Itegeko N° 69/2019 ryo kuwa 08/11/2019 ihindura ingingo ya 263 y'Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, Ingingo ya 11.

Itegeko Nº 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, Ingingo ya 49.

Itegeko N° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu nkiko n'itangwa ryabyo ivuga ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana, Ingingo ya 3.

Imanza zifashishijwe:

Ubushinjacyaha v. Rusesabagina, RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022, igika cya 252.

Inyandiko z'abahanga:

Harald Renoult, Droit pénal général, 19e édition, Bruylant-Paradigme, Bruxelles, 2020, P. 291

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Ubushinjacyaha bukurikiranyeho Mbarushimana Damascène icyaha cyo gucuruza urumogi, buvuga ko Mbarushimana Damascène yafashwe acuruza udupfunyika 3 tw'urumogi (3 boules). Mu ibazwa rye imbere y'Ubugenzacyaha Mbarushimana yemeye icyaha cyo gucuruza ibiyobyabwenge, ageze imbere y'Ubushinjacyaha n'imbere y'Urukiko avuga ko urumogi yafatanywe ari urwo kunywa.

[2] Mu rubanza RP 01211/2019/TGI/GSBO rwaciwe kuwa 27/09/2019, Urukiko rwemeje ko Mbarushimana Damascène ahamwa n'icyaha cyo gucuruza urumogi, rumuhanisha gufungwa burundu n'ihazabu y'amafaranga 20.100.000, ndetse rutegeka ko urumogi rwafatiriwe rutwikwa. Rwashingiye ku mvugo ye yavugiye imbere y'Ubugenzacyaha no kuba iyi mvugo ihura n'ibyavuzwe n'umutangabuhamya Hakizakwiha. Rwashingiye kandi kuri raporo y'Ubuyobozi bw'Umudugudu wa Nyakabungo nayo igaragaza ko acuruza ibiyobyabwenge.

[3] Mbarushimana Damascène yajuririye Urukiko Rukuru avuga ko agamije gutakamba ngo agabanyirizwe igihano kuko yemera icyaha cyo kunywa urumogi kandi ko yamaze kumva ububi bwacyo, ariko ko atemera icyaha cyo gucuruza urumogi.

[4] Mu rubanza RPA 01754/2019/HC/KIG rwaciwe kuwa 28/01/2021, Urukiko rwemeje ko ubujurire bwa Mbarushimana Damascène nta shingiro bufite, ruhamishaho imikirize y'urubanza rwajuririwe.

[5] Mbarushimana Damascène yajuririye Urukiko rw'Ubujurire asaba kurenganurwa kuko yahamijwe icyaha cyo gucuruza urumogi yemeye kubera iyicarubozo yakorewe, ko icyaha yemera kandi asabira imbabazi ari icyo kunywa urumogi, akaba asaba ko urukiko rw'ubujurire aricyo rwashingiraho rumuhana kandi rukaba rwamugabanyiriza igihano kuko yamaze kumva ububi bwacyo. Yanenze urukiko ko rwamuhannye nk'uwakoze isubiracyaha nyamara rutagaragaza urubanza rwamuhaniye iki cyaha.

[6] Ubushinjacyaha buvuga ko nta kosa Urukiko rwakoze mu guhanira Mbarushimana Damascène icyaha cyo gucuruza ibiyobyabwenge kuko rwashingiye ku mvugo ye yavugiye mu Bugenzacyaha kandi ko ihura n'ubuhamya bwatanzwe na Hakizakwiha, ko iyicarubozo avuga nta bimenyetso abifitiye. Ku birebana n'ingingo y'isubiracyaha, Ubushinjacyaha bwavuze ko Urukiko Rukuru rwayivuzeho mu bisobanuro nyamara ko atariyo yashingiweho mu kumuhana kuko nta rundi rubanza rwamuhaniye iki cyaha. Ku birebana n'ibihano, Ubushinjacyaha bwasabye ko Mbarushimana yahanishwa igifungo kitarenze imyaka 25 hashingiwe ku ngano ntoya y'ibiyobyabwenge yafatanywe no kuba ari ubwa mbere aguye mu cyaha.

[7] Iburanisha ryabaye Mbarushimana yunganiwe na Me Mukashyaka Josephine naho Ubushinjacyaha buhagarariwe na Rudatinya N. Gaspard, Umushinjacyaha ku Rwego rw'Igihugu.Urukiko rurasuzuma ibirebana n'inyito y'icyaha n'igabanyagihano risabwa na Mbarushimana.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA.

A. Kumenya niba Mbarushimana Damascène yahanirwa icyaha cyo kunywa urumogi mu mwanya w'icyaha cyo kurucuruza.

[8] Mbarushimana Damascène yunganiwe na Me Mukashyaka Josephine yajuriye avuga ko yahaniwe icyaha cyo gucuruza ibiyobyabwenge hashingiwe ku mvugo yakoze mu Bugenzacyaha nyamara ngo yaragaragaje ko yayikoze kubera iyicarubozo yakorewe kuri station ya polisi ya Nduba, ko yakubiswe icyuma ku igufa ry'umurundi no ku kagombamburi. Yakomeje avuga ko atemera ubuhamya bwa Hakizakwiha kuko atamuzi, asaba ko yahanirwa icyaha cyo kunywa ibiyobyabwenge kuko aricyo yemera akanagisabira imbabazi.

[9] Me Mukashyaka Josephine yavuze ko imvugo ya Mbarushimana mu Bugenzacyaha idakwiye kuba ikimenyetso kimushinja kuko yagaragaje uburyo yatotejwe, kandi ko ubuhamya bwe butatangiwe imbere y'Urukiko nta shingiro bwagombye guhabwa, asaba ko rwazashingira ku rubanza RPAA 00178/2021/CA rwaciwe n'uru Rukiko kuwa 23/11/2021, haburana Ubushinjacyaha na Rugwiro Landouard, aho ushinjwa yagizwe umwere kubera ko yemeye icyaha atotejwe.

[10] Ubushinjacyaha basubije kuri iyi ngingo buvuga ko nta kimenyetso cyerekana ko Mbarushimana yakorewe iyicarubozo, ko yemeye icyaha agasobanura imikorere yacyo, aho arangura urumogi n'uburyo arugeza ku bantu barushaka, iyi mvugo ikaba igomba kugumana agaciro kayo. Bwavuze kandi ko umutangabuhamya nawe yasobanuye uburyo bamenye ko Mbarushimana ari gucuruza ibiyobyabwenge akabimenyesha inzego z'umutekano zahise zimusangana urumogi, ko kuba ushinjwa avuga ko atazi Hakizakwiha umushinja ntacyo bigabanya ku buhamya yatanze.

[11] Ubushinjacyaha bwavuze ko ubuhamya budashobora guteshwa agaciro hashingiwe gusa ku kuba butaratangiwe imbere y'Urukiko, ko Urukiko rw'Ikirenga rwabitanzeho umurongo mu rubanza RPAA 0011/06/SC haburana Ubushinjacyaha na Sergent Ntaganira na bagenzi be, aho rwemeje ko imvugo y'umuburanyi idahabwa ukuri hashingiwe gusa ko yakorewe imbere y'Urukiko, ko ahubwo Urukiko arirwo rusesengura ibyo yavugiye mu nzego z'ikurikiranacyaha, rwasanga ihuje n'ukuri rukayiha agaciro kabone n'iyo ushinjwa yaba yarahinduye imvugo ageze imbere y'Urukiko.

UKO URUKIKO RUBIBONA

[12] Ingingo ya 3 y'Itegeko N° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu nkiko n'itangwa ryabyo ivuga ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[13] Urukiko rurasanga inyandiko mvugo y'ibazwa rya Mbarushimana imbere y'Umugenzacyaha yakozwe kuwa 28/08/2019, uyu yaremeye ko yafatanywe udupfunyika 3 tw'urumogi kandi ko amaze amezi 3 arucuruza, ko arurangura kwa Tonton, ko nubwo atazi iwe ariko bahurira ku kiraro cya Rufigiza akaba ariho arumuhera, naho we abakiliya be akaba ababona kuri telefoni. Muri iyi nyandiko kandi, Mbarushimana yabajijwe impamvu ki acuruza urumogi kandi azi ko ari icyaha, asubiza ko yabikoze agamije gushaka amafaranga yazatuma abona "permis de conduire", iyi nyandiko mvugo akaba yarayishyizeho umukono nta yindi nkomyi (sans reserve).

[14] Urukiko rurasanga ikimenyetso cy'igufa ry'ukuguru Murindahabi yatanze kitarwemeza ko yaba yarakubiswe kuko, uretse no kuba nta kidasanzwe kiribonekaho, nta n'uburyo yari gukubitwa ku igufa kugeza rivuye mu mwanya waryo ngo habure gucika igise, Urukiko rukaba nta nkovu rwahabonye. Rurasanga, uburyo Mbarushimana asobanura imikorere y'icyaha biboneka ko atari imvugo y'umuntu washyizweho agahato.

[15] Urukiko rurasanga kuba uru Rukiko, mu rubanza RPAA 00178/2021/CA rw'Ubushinjacyaha na Rugwiro Landouard, rwaratesheje agaciro ibimenyetso byabonetse ku buryo bunyuranyije n'amategeko, ibyo bihuje n'ibivugwa mu ngingo ya 8 y'Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, nyamara ibi bikaba ntacyo byamarira Mbarushimana mu rubanza aburana kuko nta kimenyetso kirwemeza ko imvugo ye yatangiye mu Bugenzacyaha yayitanze kubera gutotezwa nk'uko abiburanisha.

[16] Urukiko rurasanga nanone, ingingo Mbarushimana aburanisha ko imvugo ye yatangiye mu Bugenzacyaha itaba ikimenyetso kimushinja kuko ngo itatangiwe mu Rukiko nta shingiro ifite kuko Urukiko rw'Ikirenga rwamaze kuyitangaho umurongo, aho mu rubanza RPAA 0011/06/SC rw'Ubushinjacyaha na Sergent Ntaganira na bagenzi be, rwemeje ko Urukiko arirwo rusesengura rukanaha agaciro imvugo ushinjwa yavugiye mu nzego z'ikurikiranacyaha, iyo rusanze arizo zihuza n'ukuri kw'ibyabaye, kabone n'iyo ushinjwa yaba yarahinduye imvugo ageze imbere y'Urukiko.

[17] Urukiko rurasanga ingingo Mbarushimana aburanisha avuga ko ubuhamya bwa Hakizakwiha budakwiye guhabwa agaciro kuko ngo uyu muntu atamuzi, nayo nta shingiro yahabwa kuko icyo uyu mutangabuhamya yahamije aruko yahaye abashinzwe umutekano amakuru ko Mbarushimana ari gucuruza urumogi kandi aba bakaba barafatanye Mbarushimana udupfunyika 3 tw'urumogi ndetse uyu nawe akaba yaremereye Umugenzacyaha ko arucuruza;

bityo kuba yaba atazi Hakizakwiha bikaba ntacyo bihindura ku buhamya yatanze kuko buhuza n’ibyo nawe yiyemereye.

[18] Urukiko rurasanga nta kosa Urukiko Rukuru rwakoze mu guhamya Mbarushimana icyaha cyo gucuruza ibiyobyabwenge kuko rwashingiye ku bimenyetso bifite ireme, harimo n’imvugo y’ushinjwa wemeye icyaha imbere y’Ubugenzacyaha.

B. Ku birebana n’igabanya gihano risabwa na Mbarushimana

[19] Mbarushimana yunganiwe na Me Mukashyaka yajuriye avuga ko yahanishijwe igifungo cya burundu hashingiwe ku kuba ari isubiracyaha ariko ngo Urukiko ntirwagaragaza urundi rubanza rwaba rwaramuhamije icyaha, asaba kugabanyirizwa igihano kuko ari ubwa mbere aguye mu cyaha kandi ko yamaze kumva ububi bw’icyaha.

[20] Ku birebana n’ingingo y’isubiracyaha, Ubushinjacyaha bwavuze ko Urukiko Rukuru rwayivuzeho mu bisobanuro nyamara ko atariyo yashingiweho mu guhana Mbarushimana kuko nta rundi rubanza rwamuhaniye iki cyaha. Ku birebana n’ibihano, Ubushinjacyaha bwasabye ko Mbarushimana yahanishwa igifungo kitarenze imyaka 25 hashingiwe ku ngano ntoya y’ibiyobyabwenge yafatanywe no kuba ari ubwa mbere aguye mu cyaha.

UKO URUKIKO RUBIBONA

[21] Ingingo ya 11 y’Itegeko N° 69/2019 ryo kuwa 08/11/2019 ihindura ingingo ya 263 y’Itegeko n° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n’ibihano muri rusange iteganya ko umuntu uhamwe n’icyaha cyo gucuruza ibiyobyabwenge bihambaye ahanishwa igifungo cya burundu n’ihazabu y’amafaranga y’u Rwanda atari munsi ya miliyoni makumyabiri (20.000.000 Frw) ariko atarenze miliyoni mirongo itatu (30.000.000 Frw). Naho ingingo ya 4 y’Iteka rya Ministiri N° 001/MOH/2019 ryo kuwa 04/03/2019 rigena urutonde rw’ibiyobyabwenge n’ibyiciro byabyo ikaba ishyira urumogi mu rwego rw’ibiyobyabwenge bihambaye.

[22] 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’’.

[23] Urukiko rurasanga nk’uko ababuranyi bombi babivuga nta subiracyaha rireba Mbarushimana kuko nta rundi rubanza rwagaragajwe rwaba rwaramuhamije iki cyaha, bityo ibivugwa mu gika 12 cy’urubanza RPA 01754/2019/HC/KIG ko Mbarushimana adashobora kugabanyirizwa igihano kuko yakoze isubiracyaha, bikaba nta shingiro bifite kuko Urukiko Rukuru rutagaragaza urubanza rushingiraho rubyemeza. Rurasanga, kuba ubuyobozi bw’Umudugudu wa Nyakabungo bwaratanze raporo ko Mbarushimana yigeze ajyanwa mu kigo ngororamuco cy’Iwawa kubera gucuruza ibiyobyabwenge, ibyo bitafatwa nk’aho akoze isubiracyaha ahubwo ibyo bigize imibereho y’ushinjwa igira ingaruka mu kugena igihano nk’uko biteganywa mu ngingo ya 49 y’Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n’ibihano muri rusange.

[24] Nk'uko uru Rukiko rwabisesenguye mu rubanza RPA 00060/2021/CA, ingingo za 49 n'iya 58 z'Itegeko n° 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru zumvikanisha ko Umucamanza mu bushishozi bwe asuzuma impamvu nyoroshyacyaha (circonstances atténuantes judiciaires ou causes judiciaires d'atténuation), akazisobanura, akemeza ko koko zoroshya uburemere bw'icyaha kandi ko zikwiye gushingirwaho. Iyo amaze kwemeza ko zashingirwaho atanga igihano kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo. Ubwo burenganzira bufitwe na buri mucamanza usuzuma urubanza yashyikirijwe harimo n'Umucamanza uburanisha urubanza rujuririrwa[1].

[25] Abahanga mu mategeko nabo bateganya ko mu gutanga igihano, Umucamanza areba imibereho y'uwakoze icyaha mbere yo kugikora, igihe yagikoraga na nyuma yo kugikora, akabihuza n'uko icyaha cyakozwe, uburemere bwacyo n'ingaruka cyateye muri sosiyete, bivuze ko atanga igihano akigereranyije n'icyaha cyakozwe (principe de la proportionnalité de la peine à l'infraction), ibyo akabikora agamije kurengera sosiyete, guhana koko uwakatiwe, kurengera inyungu z'uwahohotewe, anabihuza n'inyungu yo gusubiza mu buzima busanzwe uwakatiwe no gukumira ibyaha bishya[2].

[26] Urukiko rurasanga, nk'uko uru Rukiko rwabitanzeho umurongo mu rubanza RPAA 00408/2020/CA rwaciye kuwa 27/06/2022 haburana Ubushinjacyaha na Niyitegeka Augustin no mu rubanza RPAA 00132/2021/CA rwaciye kuwa 15/07/2022 haburana Ubushinjacyaha na UYISENGA Théogène, Urukiko rushobora kugabanya igihano rushingiye ku ngano y'ibiyobyabwenge ushinjwa yatunze cyangwa yacuruje, mu rwego rwo guhuza igihano n'uburemere bw'icyaha (Principe de la proportionnalité de la peine à l'infraction).

[27] Urukiko rurasanga nubwo urumogi ruri mu biyobyabwenge bihambaye kandi ubicuruza akaba ahanishwa igifungo cya burundu, nyamara kandi birakwiye ko umucamanza ashyira mu gaciro uburemere bw'icyaha n'igihano gitanzwe. Rurasanga ingano y'urumogi (3 boules) Mbarushimana Damascène yafatanywe itakwirengagizwa mu kugena igihano kuko, uko irushaho kuba ntoya ari nako amahirwe yo kwangiriza aba agabanutse, bityo ingaruka z'iki gikorwa zikaba zidashobora kugera ku bantu benshi, binyuranye n'uko abacuruza ibiyobyabwenge bitubutse ku mubare, batera ibyago abantu benshi.

[28] Urukiko rurasanga, hakurikijwe ingano ntoya (3 boules) y'uru rumogi Mbarushimana yafatanywe, rurasanga Mbarushimana akwiye guhanishwa igifungo cy'imyaka icumi (10) n'ihazabu y'amafaranga 5.000.000 mu mwanya w'igifungo cya burundu n'ihazabu y'amafaranga 20 100.000 yahanishijwe n'Urukiko Rukuru.

III. ICYEMEZO CY'URUKIKO

[29] Rwemeje ko urubanza RPA 01754/2019/HC/KIG, rwaciwe n'Urukiko Rukuru, kuwa 28/01/2021 ruhindutse gusa ku birebana n'ibihano.

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[1] Reba igika cya 252 cy'urubanza RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022 haburana Ubushinjacyaha na Rusesabagina Paul na bagenzi be, urupapuro rwa 88.

[2] Harald Renoult, Droit pénal général, 19e édition, Bruylant-Paradigme, Bruxelles, 2020, P. 291: 'Le choix de la peine par le juge doit donc obéir à cinq considérations: la protection de la société, la punition du condamné, la prise en compte des intérêts de la victime, la réinsertion du condamné et la lutte contre la récidive.''

[30] Rwemeje ko Mbarushimana Damascène ahanishwa igifungo cy'imyaka icumi (10) n'ihazabu y'amafaranga miliyoni eshanu (5.000.000Frw).

[31] Rutegetse ko Mbarushimana Damascène asonerwa amagarama y'Urukiko kuko yaburanye afunzwe.