Re MURANGWA (Fond)

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC 00001/2022/SC – (Ntezilyayo, J. P., Cyanzayire, Mukamulisa, Hitiyaremye na Kazungu, J.) 22 Ukuboza 2023]

Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Iperereza – Isaka – Isaka ni igikorwa cy'iperereza riyoborwa n'umugenzacyaha cyangwa umushinjacyaha ariko hashingiwe ku ruhushya rw'isaka rwatanzwe n'ubuyobozi bw'ubushinjacyaha, rikorwa hagamijwe gushaka cyangwa kuzuza ibimenyetso mu rubanza nshinjabyaha.

Itegeko Nshinga – Ihame ryo kutavogera uburenganzira bwa muntu – Gusakwa – Kuba uruhushya rw'isakwa rwatangwa n'urwego runaka ubwabyo ntibyafatwa nk'uburenganzira usakwa ateganyirizwa n'Itegeko Nshinga, ahubwo biha inshingano urwego rugiye gukora isaka ukwitwara kinyamwuga no kubahiriza amategeko.

Itegeko Nshinga – Uburenganzira ku butabera buboneye – Ihame ryo gufatwa nk'umwere – Mu gihe inzego zishinzwe iperereza zikorana n'itangazamakuru mu rwego rwo kumenyesha rubanda iby'iperereza ririmo gukorwa, zigomba gukora ibishoboka byose kugira ngo hubahirizwe ihame ry'uko umuntu afatwa nk'umwere igihe cyose icyaha kitaramuhama.

Itegeko Nshinga – Ikirego gisaba kwemeza ko ingingo z'itegeko zinyuranyije n'Itegeko Nshinga – Kuregera urukiko rushinzwe kurinda Itegeko Nshinga – Umuburanyi ntashobora kuregera Urukiko rushinzwe kurinda Itegeko Nshinga arusaba guhindura, kuvana cyangwa kongera amagambo mu ngingo y'Itegeko, bitewe n'uko atamunyuze cyangwa kuri we ayagombaga gukoreshwa atariyo Umushingamategeko yakoresheje.

Incamake y'ikibazo: Murangwa yareze mu Rukiko rw'Ikirenga asaba kwemeza ko ingingo z'amategeko zijyanye n'isaka rikorwa hatanzwe uruhushya cyangwa ntarwatanzwe ko zinyuranyije n'Itegeko Nshinga, asaba kandi gutegeka Leta n'n'inzego zifite aho zihuriye n'iperereza guhagarika kwereka itangazamakuru abakekwaho ibyaha no kubahatira kuvugana naryo, ndetse rukanategeka abayobozi b'ibitangazamakuru, imbuga nkoranyambaga harimo na youtube, n'umuntu uwo ariwe wese, guhanagura burundu mu bubiko bwabo amafoto n'amashusho y'abakekwaho ibyaha bafashe.

Izo ngingo avuga ko zinyuranyije n'Itegeko Nshinga ni ingingo ya 10, agace ka 3, a, b na c ndetse n'agace ka 5, aka 7 n'aka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo; ingingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70, z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, zikaba zinyuranyije n'ingingo ya 13, iya 14, iya 23, iya 24, iya 29, iya 43 n'iya 61 z'Itegeko Nshinga rya Repubulika y'u Rwanda.

Uwatanze ikirego asobanura ko ibiteganyijwe mu ngingo ya 10 y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru ari ukuvogera uburenganzira buteganyijwe mu Itegeko Nshinga, aho iteganya impamvu n'ibihe Urwego rw'Igihugu rushinzwe Ubugenzacyaha rushobora gusaka umuntu cyangwa ibintu, kwinjira mu nyubako cyangwa ahantu nta ruhushya rwo gusaka, kuba rwakora isaka rudafite urupapuro rw'isaka. Akomeza avuga ko ibi bifite aho bihurira n'ibiteganyijwe mu ngingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70, z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru kuko zose zijyanye n'isaka rya hantu ahariho hose hakekwa ko habereye cyangwa hafitanye isano n'ikorwa ry'icyaha, zikaba kandi ziteganya ko uruhushya rw'isaka rutangwa n'urwego rubarizwa mu Butegetsi Nyubahirizategeko (*Executive*), nyamara ingingo ya 43 y'Itegeko Nshinga iteganya ko Ubutegetsi bw'Ubucamanza ari bwo murinzi w'uburenganzira n'ubwisanzure bwa muntu, ari nabwo bukwiye gutanga urupapuro rw'isaka.

Akomeza avuga ko inshingano zo gutanga urupapuro rw'isaka zakagombye gukorwa n'Urukiko ku busabe bw'Umushinjacyaha, Umugenzacyaha cyangwa Polisi, rugatangwa ari uko Umucamanza amaze kugaragarizwa impamvu zifatika kugira ngo abatazubahiriza imbibi zashyizweho n'Urukiko bazabibazwe. Uko bikorwa ubu bituma iyo uwatanze uruhushya rw'isaka ahutaje uburenganzira bw'ukekwaho icyaha habura umugenzura ngo amukebure cyangwa abimubaze, kuko atakwifatira ibihano we ubwe, ibi bikaba binyuranyije n'ingingo ya 61 y'Itegeko Nshinga. Bivuze ko kuba isaka rikorwa n'Umugenzacyaha cyangwa Umushinjacyaha bifite imbogamizi z'uko bashobora kuzimangatanya ibimenyetso byari kuzarengera ukekwaho icyaha, ariyo mpamvu inyandiko y'isaka igomba gutangwa n'Urukiko rumaze kugaragarizwa ibigiye gusakwa, kugirango habeho gukumira amakosa ashobora gukorwa n'Ubushinjacyaha n'Ubugenzacyaha.

Avuga kandi ko mu gihe hakorwa isaka hatanzwe urupapuro rw'isaka cyangwa mu gihe habayeho gusaka nta rupapuro hagomba kubahirizwa ihame ryo gufatwa nk'umwere k'ukekwaho icyaha kugeza igihe urukiko rubifitiye ububasha rumuhamije icyaha nk'uko biteganywa n'Itegeko Nshinga ndetse n'amasezerano mpuzamahanga atandukanye u Rwanda rwashyizeho umukono. Ngo guhatira ukurikiranyweho icyaha kuvugana n'itangazamakuru bibangamiye ihame ry'uko ntawutegetswe kwishinja icyaha kuko Ubugenzacyaha n'Ubushinjacyaha arizo nzego zifite inshingano zo kugenza ibyaha, kubishakira ibimenyetso ndetse no kubishinja. Iyi migirire ituma itangazamakuru rihinduka nk'Urukiko n'imyumvire ya rubanda ikaba yagira ingaruka ku cyerekezo cy'Urukiko mu gihe cyo guca urubanza.

Uwatanze ikirego asoza asaba uru Rukiko ko rukwiye gutanga umurongo usobanura uburyo amagambo: impamvu zifatika, ibimenyetso bifatika n'ibimenyetso bikomeye yakoreshejwe mu ngingo ya 10, agace ka 3, a, b na c ndetse n'agace ka 5, aka 7 n'aka 8, y'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru akwiye kumvikana n'imbibi zayo, ibi bigakorwa mu nyungu z'itegeko.

Abahagarariye Leta y'u Rwanda muri uru rubanza, bavuga ko Uwatanze ikirego ntaho agaragaza ko ingingo baregera zinyuranyije n'Itegeko Nshinga, ko bibanda ahanini ku miterere y'Ubushinjacyaha, bakabushyira mu Butegetsi Nyubahirizategeko ariko bakibagirwa ko bunafatwa nk'igice cy'Ubutegetsi bw'Ubucamanza. Bavuga ko itandukaniro ry'imikurikiranire y'icyaha mu Rwanda no mu bindi bihugu, ari uko mu Rwanda igenzura ry'inyandiko z'isaka rikorwa n'inkiko nyuma y'isaka, mu gihe mu bindi bihugu urupapuro rw'isaka cyangwa urwo kumviriza itumanaho rushyirwaho umukono n'Umucamanza mbere y'uko rukoreshwa. Ubu buryo bwo mu bindi bihugu ntibwarutishwa ubukoreshwa n'u Rwanda bworoshya imikorere n'imikoranire hagati y'inzego.

Bakomeza bavuga ko inyandiko z'isaka zitangwa mu Rwanda zitagereranywa n'izitangwa mu bindi bihugu kubera ko izitangwa ari iz'agateganyo kuko ukurikiranyweho icyaha agomba guhita ashyikirizwa Urukiko kugira ngo rubifateho icyemezo. Ibi bivuze ko imiterere n'ububasha by'inzego z'ubutabera idatuma Umucamanza ava ku rukiko ngo ajye kugenza ibyaha, ko izo nshingano ari iz'Ubugenzacyaha n'Ubushinjacyaha, bityo ko n'ubwo uburyo u Rwanda rukoresha butaboneka mu bihugu byinshi aribwo bwiza kuko bukora neza, inzego zikuzuzanya kandi ko ntaho bubangamiye Itegeko Nshinga.

Leta y'u Rwanda kandi isobanura ko mu Rwanda inshingano zo gutanga urwandiko rw'isaka zimuriwe mu Nkiko byaba bizinjije mu iperereza mbere y'uko ziregerwa, ibi bikaba byaburizamo ubwigenge n'ukutabogama (*independence and impatiality*) zisanganywe. Ibi bikaba byaba binyuranyije n'ibiteganyijwe mu ngingo ya 61 y'Itegeko Nshinga ku birebana n'imikoranire, ubwuzuzanye n'ubwigenge by'inzego z'ubutegetsi. Bityo, ikaba isanga nta mpamvu zo kwimurira mu bucamanza inshingano z'iperereza, ahubwo ko inkiko zigomba kugumana ububasha bwo kugenzura niba ibyakozwe byarubahirije amategeko ku buryo n'ukekwaho icyaha uvuga ko yahungabanye ahabwa umwanya wo kubigaragariza ibimenyetso.

Ku kijyanye n'isaka ryakorwa nta ruhushya, Abahagarariye Leta y'u Rwanda bavuga ko ibijyanye n'isaka nta ruhushya bitanyuranyije n'Itegeko Nshinga, haba mu ngingo yaryo ya 61 ndetse n'izindi zigaragazwa n'Urega mu mwanzuro we. Bavuga ko bidakwiye ko ingingo zaregewe zikurwaho kuko

Itegeko Nshinga ubwaryo ryateganyije ayo mategeko mu ngingo zaryo za 23 na 43, kugira ngo azateganye ku buryo burambuye ibyo ryo ritashoboraga guteganya hanagendewe ku busumbane bw'amategeko.

Ku birebana no kuba ukurikiranyweho icyaha aba agifatwa nk'umwere, Abahagarariye Leta y'u Rwanda basobanura ko amategeko ateganya uburyo amakuru ajyanye n'imikorere y'icyaha atangwa, ko umuntu wese wisobanura ku cyaha abanza kumenyeshwa ibyo aregwa, akagaragarizwa ko arimo kubazwa, akamenyeshwa n'uburenganzira bwe harimo n'ubwo guceceka, kutishinja ndetse no kubazwa yunganiwe. Ibi bikaba bigaragaza iyubahirizwa ry'uburenganzira ku butabera buboneye buteganywa mu ngingo ya 29 y'Itegeko Nshinga. Bakomeza bavuga ko gutanga amakuru bitavuze kuyatangira imbere y'itangazamakuru cyangwa ko uyatanga agomba kuba ufunzwe, ahubwo ko icyangombwa ari uko mu gihe abajijwe amakuru ategetswe kuyatanga mu rwego rwo gufasha mu iperereza. Kuri iyi ngingo, basoza bavuga ko ntaho ingingo iregerwa iteganya ko ukekwaho icyaha agomba kwiregurira imbere y'itangazamakuru, ndetse ko nta n'indi ngingo y'Itegeko Urega agaragaza yaba ibiteganya ityo. Bityo, bakaba basaba Urukiko rw'Ikirenga ko icyifuzo cy'Urega cyo gutegeka inzego za Leta zifite aho zihurira n'iperereza kudashyira ukekwaho gukora icyaha mu itangazamakuru, rutagisuzuma ngo rugifateho icyemezo kuko bidafitanye isano n'icyaregewe.

Incamake y'icyemezo: 1. Isaka ni igikorwa cy'iperereza riyoborwa n'umugenzacyaha cyangwa umushinjacyaha ariko hashingiwe ku ruhushya rw'isaka rwatanzwe n'ubuyobozi bw'ubushinjacyaha, rikorwa hagamijwe gushaka cyangwa kuzuza ibimenyetso mu rubanza nshinjabyaha.

2. Kuba uruhushya rw'isakwa rwatangwa n'urwego runaka ubwabyo ntibyafatwa nk'uburenganzira usakwa ateganyirizwa n'Itegeko Nshinga, ahubwo biha inshingano urwego rugiye gukora isaka ukwitwara kinyamwuga no kubahiriza amategeko.

3. Mu gihe inzego zishinzwe iperereza zikorana n'itangazamakuru mu rwego rwo kumenyesha rubanda iby'iperereza ririmo gukorwa, zigomba gukora ibishoboka byose kugira ngo hubahirizwe ihame ry'uko umuntu afatwa nk'umwere igihe cyose icyaha kitaramuhama.

4. Umuburanyi ntashobora kuregera Urukiko rushinzwe kurinda Itegeko Nshinga arusaba guhindura, kuvana cyangwa kongera amagambo mu ngingo y'Itegeko, bitewe n'uko atamunyuze cyangwa kuri we ayagombaga gukoreshwa atariyo Umushingamategeko yakoresheje.

Ikirego gisaba kwemeza ko ingingo z'itegeko zinyuranyije n'Itegeko Nshinga, nta shingiro gifite.
Ikirego gisaba gutanga umurongo mu nyungu z'itegeko, ntigikwiye gusuzumwa.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 3, 13,14, 23, 24, 29, 41, 43, 61 n'iya 142.

Amasezerano y'Ibihugu by'Uburayi yerekeye uburenganzira bwa muntu, ingingo ya 8.

Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 17, 38, 45, 47, 54, 55, 56, 57, 60, 61, 64, 70, 73, 76 n'iya 107.

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 65 n'iya 73.

Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo, ingingo ya 3, 9 n'iya 10.

Andi mategeko yashingiweho:

Article 32, 87 et 88 du Code d'Instruction Criminelle mise à jour au 07/08/2018.

Article. 10, al.4 du Code de Procédure Pénale (Loi N° 1/09 du 11/05/2018).

Article 81, al.1, du Code de procédure pénale, édition 2016.

Article 12, 16 et 177 du Code de Procédure Pénale du 27 Juillet 2005.

Article 47 of the Criminal Procedure Rules & article 8 of the Police and Criminal Evidence Act 1984, 2023 version.

Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha (Criminal Procedure Act, 1977), ingingo ya 21.

Imanza zifashishijwe:

RS/INCONST/RCOM 00001/2022/SC, Re Fast Truck Interior and Hardware Ltd, rwaciwe n'Urukiko rw'Ikirenga ku wa 19/05/2023.

RS/INCONST/SPEC 00003/2019/SC, Re Kabasinga Florida, rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2019.

RS/INCONST/SPEC 00001/ 2019/SC, Re Murangwa Edward, rwaciwe n'Urukiko rw'Ikirenga ku wa 29/11/2019.

RS/INCONST/SPEC 00002/ 2018/SC, Re Mugisha Richard, rwaciwe n'Urukiko rw'ikirenga ku wa 24/04/2019.

RS/INCONST/PÉN.0001/08/CS, Re Murorunkwere Spéciose, rwaciwe n'Urukiko rw'Ikirenga ku wa 26/09/2008.

(CCT253/15) [2016] (9) BCLR 1237(CC); 2016(2) SACR 473(CC) (27 July 2016), Minister of police and Others v Kunjana.

Ngqukumba v Minister of Safety and security and Others ([2014] ZACC 14).

(Application no 37971/97), Société Colas Est and others v. France, judgment Strasbourg 16 April 2002, mu gika cya 46.

11S v Coetzee and Others (CCT50/95) [1997] ZACC 2; 1997 (4) BCLR 437; 1997 (3) SA 527 (6 March 1997).

389U.S.347(1967), Katz v. United States, rwaciwe n'Urukiko rw'Ikirenga rwa Leta Zunze Ubumwe za Amerika.

367U.S.643 (1971) Mapp v. Ohio N°.236 Argued March 29,1961 rwaciwe n'Urukiko rw'Ikirenga rwa Leta Zunze Ubumwe za Amerika ku wa 19/06/1961.

UK Law Commission Report No 396, search warrant, 7 October 2020, p.129, para 5.70.

Gaertner and Others v. Minister of Finance and Others (CCT 56/13) [2013] ZACC 38; 2014 (1) SA 442 (CC); 2014 (1) BCLR 38 (CC) (14 November 2013).

Mistry v Interim National Medical and Dental Council and Others (CCT13/97) [1998] ZACC 10; 1998 (4) SA 1127; 1998 (7) BCLR 880 (29 May 1998).

Tinto v Minister of Police (EL18/2012, ECD 318/2012) [2013] ZAECELLC 8; 2014 (1) SACR 267 (ECG) (15 October 2013).

Minister of Police and Others v Kunjana (CCT253/15) [2016] ZACC 21; 2016 (9) BCLR 1237 (CC); 2016 (2) SACR 473 (CC) (27 July 2016).

Inyandiko z'abahanga zifashishijwe:

Michel Franchimont et les Autres, Manuel de procédure pénale, Bruxelles, Larcier,2012, p. 515.

John M. Scheb and John M. Scheb, Criminal Law and Procedure, Toronto, Thomson and Wadsorth, 2005, p.380.

Etienne du Toit and Others, Commentary on the Criminal Procedure Act, Juta, Cape Town, 1996, p. 2-3.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 15/01/2022, Murangwa Edward yatanze ikirego mu Rukiko rw'Ikirenga arusaba kwemeza ko ingingo ya 10, agace ka 3, a, b na c ndetse n'agace ka 5, aka 7 n'aka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo; ingingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70, z'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, zinyuranyije n'ingingo ya 13, iya 14, iya 23, iya 24, iya 29, iya 43 n'iya 61 z'Itegeko Nshinga rya Repubulika y'u Rwanda (Itegeko Nshinga muri uru rubanza). Yasabye kandi ko mu gihe ingingo zaregewe ko zinyuranyije n'ingingo z'Itegeko Nshinga zaba zitavanyweho, Urukiko, mu bushishozi bwarwo, rwaziha umurongo utuma zitagira uwo zihutaza kandi mu buryo butabangamiye inshingano z'inzego z'umutekano.

[2] Murangwa Edward asaba kandi Urukiko gutegeka Leta n'inzego zifite aho zihuriye n'iperereza guhagarika kwereka itangazamakuru abakekwaho ibyaha no kubahatira kuvugana naryo, ndetse rukanategeka abayobozi b'ibitangazamakuru, imbuga nkoranyambaga harimo na youtube, n'umuntu uwo ariwe wese, guhanagura burundu mu bubiko bwabo amafoto n'amashusho y'abakekwaho ibyaha bafashe.

[3] By'umwihariko, Murangwa Edward avuga ko:

a. Kuba ingingo ya 10, agace ka 3, a, b na c ndetse n'agace ka 5, aka 7 n'aka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo iteganya impamvu n'ibihe urwo rwego rushobora gusaka umuntu cyangwa ibintu, kwinjira mu nyubako cyangwa ahantu nta ruhushya rwo gusaka, kuba rwakora isaka rudafite urupapuro rw'isaka, ari ukuvogera uburenganzira buteganywa n'Itegeko Nshinga.

b. Kuba ingingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70, z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha zifite aho zihuriye n'ingingo ya 10, agace ka 3, a, b na c n'agace ka 5, aka 7 n'aka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru, kuko zose zijyanye n'isaka ry'umuntu, ahantu, ingo, ibiro cyangwa ahandi aho ariho hose hakekwa ko habereye cyangwa hafitanye isano n'ikorwa ry'icyaha, zikaba kandi ziteganya ko uruhushya rw'isaka rutangwa n'urwego rubarizwa mu Butegetsi Nyubahirizategeko (*Executive*), nyamara ingingo ya 43 y'Itegeko Nshinga iteganya ko Ubutegetsi bw'Ubucamanza ari bwo murinzi w'uburenganzira n'ubwisanzure bwa muntu, ari nabwo bukwiye gutanga urupapuro rw'isaka.

c. Kuba ingingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70 z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ziteganya igenzura ry'itumanaho mu iperereza n'ikurikiranacyaha, isaka, gukoresha isaka ryo ku mubiri cyangwa mu mubiri, ifatira n'itambamira ry'ibintu, uburenganzira bwo gusaka no kujya ahashobora kuboneka ibimenyetso, abafite ububasha bwo gutanga urwandiko rw'isaka ndetse no kugenzura ukekwaho icyaha hifashishijwe ikoranabuhanga, bibangamiye uburenganzira n'ubwisanzure bwa muntu buteganywa n'Itegeko Nshinga. Ibyo abisobanura mu buryo bukurikira:

i) Mu gukoresha uburenganzira n'ubwisanzure, buri wese azitirwa gusa n'itegeko rigamije kwemera no kubahiriza uburenganzira n'ubwisanzure by'abandi ndetse n'imyitwarire iboneye, ituze rusange rya rubanda n'imibereho myiza muri rusange biranga Igihugu kigendera kuri demokarasi nk'uko biteganywa n'ingingo ya 41 y'Itegeko Nshinga, ari nayo mpamvu kurinda ubwo burenganzira bigomba gukorwa n'Ubutegetsi bw'Ubucamanza (Judiciary) kuko ari rwo rwego rwabishinzwe n'Itegeko Nshinga;

ii) Uburenganzira bw'umuntu ni ntavogerwa, Itegeko Nshinga rikaba rigena uko burindwa, uko bwubahirizwa ndetse n'Urwego rw'Ubutegetsi rufite inshingano zo kuburinda. Bivuze ko, hashingiwe ku biteganywa n'ingingo ya 3 yaryo ivuga ko Itegeko Nshinga ari ryo risumba

ayandi kandi ko itegeko ryose, icyemezo cyangwa igikorwa cyose binyuranyije naryo nta gaciro bigira, ingingo z'Itegeko zanyuranya n'uko Itegeko Nshinga ryabiteganyije nta gaciro zifite;

iii) Mu gihe hatanzwe urupapuro rw'isaka cyangwa mu gihe habayeho gusaka nta rupapuro, gusaka umuntu ku mubiri n'imbere mu mubiri, inyubako, mu rugo n'ahakorerwa imirimo, hagomba kubahirizwa ihame ryo gufatwa nk'umwere k'ukekwaho icyaha kugeza igihe Urukiko rubifitiye ububasha rumuhamije icyaha nk'uko biteganywa n'Itegeko Nshinga ndetse n'amasezerano mpuzamahanga atandukanye u Rwanda rwashyizeho umukono;

iv) Mu gihe uruhushya rw'isaka, kumviriza, kugenzura, gusaka ku mubiri no mu mubiri cyangwa ibindi bikorwa bivugwa mu ngingo z'amategeko zasabiwe gukurwaho, rutanzwe n'urwego rutagenwe n'Itegeko Nshinga, byaba bivuze ko icyo gikorwa hamwe n'amategeko gishingiyeho binyuranye n'ingingo ya 23, agace ka 2 n'aka 3, iya 43 n'iya 61 z'Itegeko Nshinga, bityo bikaba nta gaciro bifite.

d. Kuba ibiteganywa n'ingingo ya 10, agace ka 8, y'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru by'uko umuntu uwo ari we wese ashobora gutegekwa gutanga amakuru yafasha mu iperereza ndetse n'ukekwaho icyaha akaba yagaragarizwa itangazamakuru ngo agire ibyo aritangariza bibangamiye ibiteganywa n'ingingo zikurikira:

i) Ingingo ya 29 y'Itegeko Nshinga iteganya uburenganzira ku butabera buboneye cyane cyane ihame ry'uko umuntu wese afite uburenganzira bwo gufatwa nk'umwere kugeza igihe Urukiko rubifitiye ububasha rumuhamije icyaha;

ii) Ingingo ya 73 n'iya 107 z'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ziteganya ibanga mu gihe cy'iperereza mu manza z'inshinjabyaha n'ufite inshingano zo gutanga ibimenyetso muri bene izo manza.

e) Kuba hashingiwe ku burenganzira ku butabera buboneye, uburenganzira ku mibereho bwite by'ukekwaho icyaha, umuryango we n'aho yakoraga ndetse n'inshingano z'inzego zishinzwe gukumira no kurwanya ibyaha, uru Rukiko rukwiye gutanga umurongo usobanura uburyo amagambo impamvu zifatika, ibimenyetso bifatika n'ibimenyetso bikomeye yakoreshejwe mu ngingo ya 10, agace ka 3, a, b na c ndetse n'agace ka 5, aka 7 n'aka 8, y'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru akwiye kumvikana n'imbibi zayo, ibi bigakorwa mu nyungu z'itegeko.

[4] Iburanisha mu ruhame ryabaye ku wa 18/10/2022, Murangwa Edward yunganiwe na Me Rugemintwaza Jean Marie Vianney na Me Bahati Védaste, naho Leta y'u Rwanda ihagarariwe na Me Kabibi Spéçiose na Me Kayitesi Pétronille, habanza gusuzumwa ikibazo cyabyukijwe n'Urukiko cyo kumenya niba Murangwa Edward afite inyungu muri uru rubanza.

[5] Mu rubanza rubanziriza urundi rwaciwe ku wa 16/12/2022, Urukiko rwasanze mu gusuzuma ko urega afite inyungu hagomba kurebwa:

a. Niba itegeko riregerwa ko rinyuranyije n'Itegeko Nshinga rireba urega cyangwa icyiciro abarizwamo by'umwihariko ku buryo afite inyungu ku giti cye zo gutanga ikirego. Urugero ni nk'itegeko rireba abanyamakuru, abaganga, abarimu, n'abandi;

b. Niba itegeko riregerwa ko rinyuranyije n'Itegeko Nshinga rireba abaturage muri rusange ku buryo rishobora kugira ingaruka ku burenganzira bwabo, ibyo bikaba aribyo bihesha umuntu uwo ari we wese rishobora kuzagiraho ingaruka, inyungu zo kuriregera ko rinyuranyije n'Itegeko Nshinga;

c. Niba uwatanze ikirego ari Avoka, uyu akaba mu nyungu z'ubutabera, yemerewe gutanga ikirego mu rwego rwo guteza imbere amategeko cyangwa uburenganzira bw'abarebwa n'iryo tegeko kabone n'ubwo nta nyungu we ku giti cye yaba afite muri icyo kirego.

[6] Urukiko rwasanze imwe mu mpamvu zimaze kuvugwa yihagije kugira ngo rwemeze ko urega afite inyungu, bityo ko mu gihe ingingo z'Itegeko ziregerwa ko zinyuranyije n'Itegeko Nshinga, ziri mu rwego rw'ingingo zireba buri wese, ibyo bihesha uwaziregeye nk'umwe mubo zireba, inyungu zo gutanga ikirego atabanje gutegereza ko we ku giti cye zimugiraho ingaruka. Urukiko rwemeje ko Murangwa Edward, nk'umwe mu barebwa n'ingingo z'Itegeko rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo ndetse n'iz'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha, afite inyungu zo gusaba kwemeza ko zimwe mu ngingo z'ayo mategeko zinyuranyije n'Itegeko Nshinga. Iburanisha ku mizi y'urubanza ryashyizwe ku wa 24/05/2023.

[7] Uwo munsi iburanisha ryabereye mu ruhame, Murangwa Edward yunganiwe nka mbere na Leta y'u Rwanda ihagarariwe nka mbere; hasuzumwa ibibazo bikurikira:

a. Kumenya niba ingingo ya 10, agace ka 3, a, b na c ndetse n'agace ka 5, aka 7 n'aka 8 y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo; n'ingingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70 z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, zinyuranyije n'ingingo ya 13, iya 14, iya 23, iya 24, iya 29, iya 43 n'iya 61 z'Itegeko Nshinga;

b. Kumenya niba amagambo impamvu zifatika, ibimenyetso bifatika n'ibimenyetso bikomeye yakoreshejwe mu ngingo ya 10 by'umwihariko mu gace kayo ka 3, a, b na c y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushizwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo, akwiriye gutangwaho umurongo mu nyungu z'Itegeko.

[8] Urukiko rwatangaje ko urubanza ruzasomwa ku wa 21/07/2023, ariko kuri iyo tariki ntibyashoboka ko rusomwa, isomwa ryarwo ryimurirwa ku wa 15/09/2023, ryongera kwimurirwa ku wa 06/10/2023, kubera impamvu zatanzwe n'Urukiko.

[9] Kuri iyi tariki Urukiko rwamenyesheje ababuranyi ko urubanza rutasomwe mu mizi nk'uko byari biteganyijwe, kubera ko mu gihe rwari rwiherereye ngo ruce urubanza, hagati aho ku itariki ya 04/08/2023 hasohotse Itegeko Nshinga (ryo ku wa 04/08/2023) rivugurura Itegeko Nshinga ryo mu mwaka wa 2003 ryavuguruwe mu mwaka wa 2015, iri uwatanze ikirego akaba ariryo yavugaga ko ingingo z'amategeko yaregeraga zinyuranye naryo, rusanga ari ngombwa kongera gupfundura iburanisha kugira ngo Murangwa Edward ahuze ikirego cye n'ingingo z'Itegeko Nshinga rivuguruye. Hagati aho kandi hari umwe mu bacamanza bari bagize inteko wahawe izindi nshingano, bituma inteko ihinduka.

[10] Iburanisha ryapfunduwe ku wa 28/11/2023, urega yunganiwe nka mbere, na Leta y'u Rwanda ihagarariwe nka mbere. Murangwa Edward yasabye Urukiko guhagarika no gufatira by'agateganyo ikomeza ry'urubanza ku bw'inyungu z'ubutabera, kugeza igihe amategeko yaregeye ari mu nzira z'ivugururwa azatangarizwa mu Igazeti ya Leta, akareba niba ibyo yari yaregeye byarakemutse ku buryo bitaba ngombwa ko akomeza ikirego, cyangwa niba bitarakemutse akabona guhuza ikirego n'Itegeko Nshinga rivuguruye nk'uko byasabwe n'Urukiko. Yavuze ko ibyo abishingira ku muhango (*procedure*) udateganyijwe mu mategeko y'u Rwanda, ukoreshwa muri Leta Zunze Ubumwe za Amerika, witwa motion in arrest of judgement.

[11] Urukiko rwasanze nta bisobanuro bifatika yatanze bishyigikira icyifuzo cye cyo guhagarika urubanza, akaba ataranabashije guhuza ibyo yifashisha bikorwa ahandi n'icyo asaba. Ku bijyanye no

guhuza ikirego n'Itegeko Nshinga rivuguruye, Murangwa Edward yavuze ko ingingo z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015 yari yashingiyeho arega zitahindutse mu Itegeko Nshinga rishya, asaba ko aho yari yakoresheje amagambo Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, byahinduka Itegeko Nshinga rya Repubulika y'u Rwanda. Urukiko rwemeje ko urubanza ruzasomwa ku wa 22/12/2023.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

II.1. Kumenya niba ingingo ya 10, agace ka 3, a,b na c ndetse n'agace ka 5, aka 7 n'aka 8 y'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo; n'ingingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70 z'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, zinyuranyije n'ingingo ya 13, iya 14, iya 23, iya 24, iya 29, iya 43 n'iya 61 z'Itegeko Nshinga

[12] Murangwa Edward n'abamwunganiye bavuga ko Ubutegetsi bw'Ubucamanza ari bwo murinzi w'uburenganzira n'ubwisanzure bwa muntu, ariko ko ingingo ya 10, agace ka 3, a, b na c ndetse n'agace ka 5, aka 7 n'aka 8 y'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru; hamwe n'ingingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70 z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ziteganya ko gusaka umuntu, ahantu, ingo, ibiro cyangwa ahandi aho ariho hose hakekwa ko habereye cyangwa hafitanye isano n'icyaha cyangwa harimo hakorerwa icyaha bikorwa n'inzego z'ubutabera zibarirwa mu Butegetsi Nyubahirizategeko (Executive).

[13] Bavuga ko ingingo z'amategeko zimaze kuvugwa zinyuranyije n'ingingo ya 13, iya 14, iya 23, iya 24, iya 29, iya 43 n'iya 61 z'Itegeko Nshinga kuko isaka rivogera uburenganzira bwa muntu kubera ko mbere y'uko urupapuro rw'isaka rutangwa bidasuzumwa ngo byemezwe n'Ubutegetsi bw'Ubucamanza, nyamara aribwo ingingo ya 43[1] y'Itegeko Nshinga iha inshingano zo kurinda no kubahiriza uburenganzira ntavogerwa bwa muntu. Bavuga ko ingingo ya 3 y'Itegeko Nshinga ishyiraho ihame ry'ubusumbane bw'amategeko, Itegeko Nshinga rikaba ariryo riri hejuru y'ayandi mu gihugu, bivuze ko ingingo z'amategeko yaregeye nta gaciro zikwiye kugira kuko zinyuranyije n'Itegeko Nshinga.

[14] Bavuga ko mu gihe hatangwa urupapuro rw'isaka (*search warrant*), mu gihe hasakwa nta rupapuro (*warrantless search*), cyangwa mu gihe hasakwa umuntu ku mubiri n'imbere mu mubiri, inyubako zituwemo n'ahakorerwa imirimo (*residences or professional places of work*), uburenganzira bw'ukekwaho icyaha, harimo n'ubwo gufatwa nk'umwere igihe cyose ataragihamywa n'Urukiko rubifitiye ububasha, bugomba kurindwa, kubahirizwa no kwitabwaho nk'uko biteganywa n'Itegeko Nshinga ndetse n'amasezerano mpuzamahanga atandukanye u Rwanda rwashyizeho umukono[2].

[15] Basobanura ko Umushinjacyaha ayobora Umugenzacyaha, uyu nawe akayobora Polisi, nyuma bose bakayoborwa na Minisitiri w'Ubutabera cyangwa undi Minisitiri, ko icyemezo cy'isaka ryaba rikozwe hari urupapuro rw'isaka cyangwa ntarwo, iyo byihutirwa gifatwa n'Umushinjacyaha, uyu akongera akaba ari nawe ubaza ukekwaho icyaha, akaba ari nawe umufatira icyemezo cya nyuma ndetse

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[1] Iyo ngingo iteganya ko Ubutegetsi bw'Ubucamanza aribwo murinzi w'uburenganzira n'ubwisanzure bwa muntu.

[2] Ayo masezerano ni aya akurikira: "*Universal declaration of Human Rights*" u Rwanda rwasinye tariki ya 18 ukwezi kwa cyenda 1962; "*The International Covenant on Civil and Political Rights. Rwanda acceded to the Convention on 1 March 1975 with neither reservations nor derogations; The International Covenant on Economic, Social and Cultural Rights. Rwanda acceded to the Convention on 1 March 1975. It initially had a reservation, which read, The Rwandese Republic [is] bound, however, in respect of education, only by the provisions of its Constitution, but this was withdrawn in October 2008; The African Charter on Human and Peoples'Rights. Rwanda signed the Charter on 11 November 1981 and ratified it on 1 July 1983*.

akazaza no kumushinja mu Rukiko. Bavuga ko ibi bikorwa byose binyuranye n'ihame ryo kureshyeshya ababuranyi (*equality of arms between parties*) riteganywa n'ingingo ya 126 y'Itegeko rigena imiburanishirize y'imanza nshinjabyaha ndetse n'amahame akurikiraateganywa n'Itegeko Nshinga:

a. Ihame ry'uko inzego z'ubutegetsi zigenzurana (*three co-equal arms of government, principal of checks and balance between the three co-equal branches of government*);

b. Ihame ry'ubutabera buboneye;

c. Ihame ry'uburenganzira ku mibereho bwite y'umuntu, iy'umuryango we, aho akorera n'ubutumwa yohererezanya n'abandi ndetse n'uburenganzira ku bwisanzure.

[16] Basobanura ko mu Rwanda inzego z'ubutabera zubatse ku buryo buri rwego rw'Ubushinjacyaha rufite n'Urukiko ruri ku rwego rwarwo, ko rero inshingano zo gutanga urupapuro rw'isaka zakagombye gukorwa n'Urukiko ku busabe bw'Umushinjacyaha, Umugenzacyaha cyangwa Polisi, rugatangwa ari uko Umucamanza amaze kugaragarizwa impamvu zifatika kugira ngo abatazubahiriza imbibi zashyizweho n'Urukiko bazabibazwe. Kuri bo, uko bikorwa ubu bituma iyo uwatanze uruhushya rw'isaka ahutaje uburenganzira bw'ukekwaho icyaha habura umugenzura ngo amukebure cyangwa abimubaze, kuko atakwifatira ibihano we ubwe; ibyo rero bikaba binyuranyije n'ingingo ya 61 y'Itegeko Nshinga ivuga ko ubutegetsi uko ari butatu butandukanye, bwigenga ariko kandi bwuzuzanya.

[17] Batanga urugero rw'uko mu bihe byashize, umuyoyobozi w'Akarere yakomatanyaga izo nshingano n'izo kuyobora Inama Njyanama bigatuma hatabaho kwigenzura no kwikebura (*checks and balances*) mu gihe yakoze amakosa. Basobanura ko no mu bikorera, umuyobozi w'inama y'ubutegetsi ataba n'umuyobozi mukuru w'ikigo cy'ubucuruzi.

[18] Bavuga ko nubwo inshingano zo kurinda umutekano, ubusugire bw'Igihugu, gukumira ndetse no kugenza ibyaha ari ingenzi kandi inzego zibishinzwe zikaba zikeneye ubufasha n'ubushobozi bwo gukora izo nshingano, uburyo zishyirwa mu bikorwa bigomba kubahiriza ibiteganywa n'Itegeko Nshinga. Basobanura ko ku bijyanye n'uru rubanza, bigaragara ko iyo ingingo ya 24, iya 41 n'iya 43 z'Itegeko Nshinga zisomewe hamwe, zumvikanisha ko Ubutegetsi bw'Ubucamanza ari bwo bufite inshingano n'ububasha bwo gusuzuma no kwemeza ko hari impamvu zifatika kandi zikomeye zatuma abashinzwe gukumira no kurwanya ibyaha bavogera uburenganzira bwa muntu ku bw'ituze rya rubanda n'inyungu rusange.

[19] Bakomeza bavuga ko uburenganzira buteganywa mu ngingo ya 41[3] n'iya 43[4] z'Itegeko Nshinga buhagarikwa gusa n'ibihe bidasanzwe, nabyo byemezwa hagendewe ku ihame ry'igihugu kigendera kuri demokarasi, ari nayo mpamvu bigomba gukorwa n'Urwego rw'Ubucamanza. Basanga ibikorwa by'isaka, kumviriza, kuvogera, kugenzura, gusaka ku mubiri no mu mubiri, gusaka mu rugo, ahakorerwa imirimo, ubucuruzi n'ibindi bikorwa byose bivugwa mu ngingo z'amategeko zaregewe, cyane cyane iyo bikozwe n'urwego Itegeko Nshinga ritagennye, bihagarika by'agateganyo uburenganzira bw'ukurikiranyweho icyaha busanzwe burengerwa n'ingingo ya 23[5] y'Itegeko Nshinga, ndetse bikavogera imibereho ye bwite n'iy'umuryango; ariyo mpamvu ingingo zaregewe ko zinyuranyije n'Itegeko Nshinga zigomba kuvanwaho.

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[3] Iyo ngingo iteganya ko mu gukoresha uburenganzira n'ubwisanzure, buri wese azitirwa gusa n'Itegeko rigamije kwemera no kubahiriza uburenganzira n'ubwisanzure by'abandi ndetse n'imyitwarire iboneye, ituze rusange rya rubanda n'imibereho myiza muri rusange biranga Igihugu kigendera kuri demokarasi.

[4] Iyo ngingo igira iti: "Ubutegetsi bw'Ubucamanza nibwo murinzi w'uburenganzira n'ubwisanzure bwa muntu. Iyo nshingano yubahirizwa mu buryo buteganywa n'iri Tegeko Nshinga n'andi mategeko".

[5] Iyo ngingo iteganya ibi bikurikira: imibereho bwite y'umuntu, iy'umuryango we, urugo rwe cyangwa ubutumwa yohererezanya n'abandi ntibishobora kuvogerwa mu buryo bunyuranyije n'amategeko; icyubahiro n'agaciro ke bigomba kubahirizwa. Urugo rw'umuntu ntiruvogerwa. Ntihashobora gukorwa isakwa mu rugo cyangwa kurwinjiramo kubera impamvu z'igenzura nyirarwo atabyemeye, keretse mu bihe no mu buryo biteganyijwe n'amategeko. Ibanga ry'amabaruwa n'iry'itumanaho ntirishobora kuzitirwa keretse mu bihe no mu buryo biteganywa n'amategeko.

[20] Bavuga ko Umucamanza Mbuyeseli Madlanga wo mu Rukiko rushinzwe kurinda Itegeko Nshinga muri Afurika y'Epfo, mu rubanza rwa "*Ngqukumba v Minister of Safety and security and Others ([2014] ZACC 14)*", yasobanuye ko nubwo hagomba kubahirizwa ingamba zo kurengera umutekano no kurwanya ibyaha, abakora isaka batemerewe kubangamira uburenganzira ku mibereho bwite y'umuntu n'iy'umuryango we.

[21] Bavuga ko mu rubanza Johnson yaburanaga na Leta Zunze Ubumwe za Amerika[6], urwo Katz yaburanaga na Leta Zunze Ubumwe za Amerika[7], urwo Mapp yaburanaga na Leta ya Ohio[8], urwo Minister of Police n'abandi baburanaga na Kunjana[9] n'urwo Société Colas Est n'abandi baburanaga n'Ubufaransa[10], inkiko zimaze kugaragaza uburemere bw'Itegeko Nshinga n'akamaro k'amasezerano mpuzamahanga, zemeje ko gusuzuma, kwemeza ndetse no gutanga urupapuro rw'isaka bikorwa n'Urukiko. Basanga hashingiwe ku biteganywa n'ingingo ya 43 y'Itegeko Nshinga, inkiko z'u Rwanda arizo zajya zitanga inyandiko y'isaka kuko zidafite aho zibogamiye.

[22] Basobanura ko iyo ibikorwa by'isaka bikomeje hatarengewe uburenganzira bwa muntu nk'umunyagitinyiro bishobora guhungabanya uwabikorewe n'umuryango we, kuko mu Rwanda abantu bafata ibintu uko biboneye batitaye ku kumenya impamvu zabyo, ku buryo iyo habaye isaka, abavandimwe, umuryango, abaturanyi na rubanda bafata uwasatswe nk'uwahamwe n'icyaha, we n'umuryango we bagashyirwa mu kato ku buryo byabahungabanya. Bavuga ko gutanga urupapuro rw'isaka bidakwiye gufatwa nk'umuhango kuko ubwarwo ari igikorwa cy'ingenzi mu butabera, ko bifashwe nk'umuhango abacamanza bakajya barusinya gusa hanyuma Ubushinjacyaha bukiyuzurizaho ibyo bushaka nk'uko bimeze mu bihugu bimwe na bimwe byatanzweho urugero na Leta y'u Rwanda, byaba bitakiri ubutabera, kuko ubutabera bugomba kureberwa ku ruhande rw'urega n'urw'uregwa.

[23] Bavuga ko kuba isaka rikorwa n'Umugenzacyaha cyangwa Umushinjacyaha bifite imbogamizi z'uko bashobora kuzimangatanya ibimenyetso byari kuzarengera ukekwaho icyaha, ariyo mpamvu inyandiko y'isaka igomba gutangwa n'Urukiko rumaze kugaragarizwa ibigiye gusakwa. Ibi babishingira ku kuba inshingano z'Ubushinjacyaha n'Ubugenzacyaha ari ugukora iperereza, izi nzego rero akaba atarizo zari zikwiye gufata icyemezo cyo gusaka kuko atari inshingano zazo, ko ahubwo izo nshingano ari iz'Urwego rw'Ubucamanza.

[24] Bavuga ko icyo basaba atari ugukuraho igikorwa cy'isaka cyangwa kwambura Ubushinjacyaha inshingano zabwo nk'uko ziteganywa n'ingingo ya 142 y'Itegeko Nshinga, ahubwo ari ukugira ngo urwandiko rw'isaka rugire aho rutangirira n'aho rugarukira kubera ko uburyo isaka rikorwamo binyuranyije n'ibiteganywa n'Itegeko Nshinga. Basaba uru Rukiko gukumira amakosa ashobora

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[6]Mu rubanza rwa Johnson v. United State (N° 329), 333U.S.10 (1948), Umucamanza yasobanuye urwego rwagombye gutanga urupapuro rw'isaka.

[7] Mu rubanza rwa Katz v. United States, 389U.S.347(1967), Urukiko rw'Ikirenga rwa Leta Zunze Ubumwe za Amerika rwagaragaje aho kumviriza ubutumwa byakozwe mu buryo bunyuranyije n'amategeko.

[8] Mu rubanza rwa Mapp v. Ohio, 367U.S.643 (1971) Mapp v. Ohio No.236 Argued March 29,1961 Decided June 19,1961 367U.S.643, Urukiko rw'Ikirenga rwa Leta Zunze Ubumwe za Amerika (Justice Thomas Campbell Clark) rwagaragaje uburemere buhabwa uburenganzira ku mibereho bwite ya muntu n'umuryango we no kugaragaza ko urupapuro rw'isaka rutanzwe n'urwego rubifitiye ububasha ari iby'ingenzi mu gutanga ubutabera buboneye.

[9] Mu rubanza rwa Minister of police and Others v Kunjana (CCT253/15) [2016] (9) BCLR 1237(CC); 2016(2) SACR 473(CC) (27 July 2016), Urukiko rwa Afrika y'Epfo rushinzwe kurinda Itegeko Nshinga rwagaragaje urwego rukwiye gutanga urupapuro rw'isaka ndetse rwemeza ko uburenganzira ku mibereho bwite y'umuntu n'iy'umuryango (*right to privacy of person and sancitity of a family and home and all his corespondences*) ari ingenzi kandi bukomoka ku gaciro gahabwa ikiremwa muntu. Muri urwo rubanza, hasobanuwe ubushishozi bukenerwa mu gutanga urupapuro rw'isakwa ndetse n'ibigomba kwitonderwa n'Urukiko rugiye kurutanga hashingiwe ku buremere bw'uburenganzira bwo kubaha imibereho bwite y'umuntu n'umuryango we.

[10] Mu rubanza rwa Société Colas Est and others v. France (Application no 37971/97) judgment Strasbourg 16 April 2002, mu gika cya 46, Urukiko rw'Uburayi rushinzwe uburenganzira bwa muntu (*European Court of Human Rights, Second Section*), rwerekanye urwego rugomba gutanga urupapuro rw'isaka runasobanura ko mu gihe atari rwo rwarutanze binyuranyije n'ingingo z'amasezerano y'ubumwe bw'uburayi zirengera imibereho bwite ya muntu n'umuryango we.

gukorwa n'Ubushinjacyaha n'Ubugenzacyaha, rukemeza ko amategeko agenga isaka yubahiriza amahame ateganywa n'Itegeko Nshinga, isaka rikajya rikorwa cyangwa ritangirwa uruhushyan'Inkiko nk'urwego rudafite aho rubogamiye.

[25] Ikindi Murangwa Edward n'abamwunganira bavuga, ni ukuba ingingo ya 10, igika cya mbere, agace ka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru, ariyo Ubugenzacyaha bushingiraho bugashyira ukekwaho icyaha mu itangazamakuru ngo agire ibyo aritangariza, nyamara ingingo ya 29, igika cya 2, y'Itegeko Nshinga iteganya ko ukurikiranyweho icyaha afatwa nk'umwere igihe cyose urubanza rutaramwemeza icyaha burundu. Iyo ngingo ya 10, igika cya mbere, agace ka 8, igira iti: hakurikijwe amategeko abigenga, RIB ifite ububasha bukurikira: […] 8° gutegeka umuntu gutanga amakuru no kubaza umuntu uwo ari we wese ukekwaho ko afite amakuru yafasha mu iperereza […].

[26] Bavuga ko mu rwego rwo gushyira mu bikorwa ingingo ya 29 y'Itegeko Nshinga, ingingo ya 73 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha yateganyije ko iperereza rikorwa mu ibanga; naho iya 107, igika cya 2, y'iryo Tegeko igateganya ko ukurikiranyweho icyaha akomeza kuba umwere igihe ataracirirwa urubanza rwa burundu rumuhamya icyaha, kandi ko muri icyo gihe nta nshingano afite zo gutanga ibimenyetso byo kwiregura. Basanga kandi guhatira ukurikiranyweho icyaha kuvugana n'itangazamakuru bibangamiye ihame ry'uko ntawutegetswe kwishinja icyaha kuko Ubugenzacyaha n'Ubushinjacyaha arizo nzego zifite inshingano zo kugenza ibyaha, kubishakira ibimenyetso ndetse no kubishinja.

[27] Basobanura ko uburenganzira ku butabera buboneye budatangirira imbere y'Urukiko, ko ahubwo butangira umuntu agitangira gukurikiranwa n'inzego z'ubutabera cyangwa agifatwa; ko rero umuntu ataba afatwa nk'umwere igihe icyaha kitaramuhama, ngo ahatirwe gutanga amakuru ku mikorere yacyo mu itangazamakuru. Bavuga ko Urwego rw'Ubugenzacyaha rukunze kwitwaza ingingo ya 10, igika cya mbere, agace ka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru rugashyira abakekwaho icyaha imbere y'itangazamakuru harimo na televiziyo zo kuri youtube, bakabazwa ku mikorere y'ibyaha bakekwaho bambaye amapingu cyangwa bahambiriye. Bavuga ko iyi migirire ituma itangazamakuru rihinduka nk'Urukiko n'imyumvire ya rubanda ikaba yagira ingaruka ku cyerekezo cy'Urukiko mu gihe cyo guca urubanza.

[28] Bakomeza bavuga ko ingingo ya 10, igika cya mbere, agace ka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru irimo ibirenze ibikenewe kuko, uretse kuba amagambo kubaza umuntu uwo ari we wese ukekwaho ko afite amakuru yafasha mu iperereza anyuranyije n'ihame ry'uburenganzira ku butabera buboneye, mu magambo "umuntu uwo ari we wese harimo n'ukekwaho icyaha ndetse n'Urukiko ku buryo umuntu yasabwa kwishinja icyaha cyangwa Urukiko akaba arirwo rusabwa amakuru ku muntu rufitiye dosiye.

[29] Bavuga ko mu rubanza Coetzee n'Abandi baburanaga na Leta ya Afurika y'Epfo, Urukiko rw'icyo Gihugu rushinzwe kurinda Itegeko Nshinga rwashimangiye ko uburenganzira bwo gufatwa nk'umwere no kudahatirwa kwishinja cyangwa gutanga amakuru ari ntayegayezwa[11]. Basaba uru Rukiko narwo kubona ko ingingo ya 10, igika cya mbere, agace ka 8, y'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo inyuranyije n'ingingo ya 29, igika cya mbere, agace ka 2°, y'Itegeko Nshinga; rukemeza ko ivuyeho ndetse rugategeka inzego za Leta zose zifite aho zihuriye n'iperereza kudashyira imbere y'itangazamakuru ukurikiranweho icyaha kugira ngo uburenganzira bwe ku butabera buboneye bwubahirizwe.

[11] S v Coetzee and Others (CCT50/95) [1997] ZACC 2; 1997 (4) BCLR 437; 1997 (3) SA 527 (6 March 1997).

[30] Bavuga na none ko mu gihe Urukiko rwasanga ingingo ya 10, igika cya mbere, agace ka 8, y'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo idakwiye kuvaho kuko itanyuranyije n'ihame ku butabera buboneye riteganywa n'ingingo ya 29 y'Itegeko Nshinga, rwakwemeza ko ijambo gutegeka" rivanywemo, naho amagambo umuntu uwo ari we wese akongerwamo usibye ukurikiranyweho icyaha" , kugira ngo harengerwe uburenganzira ku butabera buboneye.

[31] Basoza basaba Urukiko gushingira ku biteganywa n'ingingo ya 3 y'Itegeko Nshinga ivuga ko ingingo z'amategeko zinyuranyije naryo nta gaciro zigira, rukemeza ko ingingo ya 10, agace ka 3, a,b na c ndetse n'agace ka 5, aka 7 n'aka 8 y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo; n'ingingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70 z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, zinyuranyije n'ingingo ya 13, iya 14, iya 23, iya 24, iya 29, iya 43 n'iya 61 z'Itegeko Nshinga, bityo ko nta gaciro zifite, rukazivanaho zose cyangwa bimwe mu bice byazo bikavanwaho.

[32] Me Kabibi Spéçiose na Me Kayitesi Petronille bahagarariye Leta y'u Rwanda bavuga ko Murangwa Edward n'abamwunganira ntaho bagaragaza ko ingingo baregera zinyuranyije n'Itegeko Nshinga, ko bibanda ahanini ku miterere y'Ubushinjacyaha, bakabushyira mu Butegetsi Nyubahirizategeko ariko bakibagirwa ko bunafatwa nk'igice cy'Ubutegetsi bw'Ubucamanza. Bavuga ko kuba amategeko y'u Rwanda aha Ubushinjacyaha umwihariko wo gufata ibyemezo by'agateganyo bituma habaho ubwizerane n'ubwuzuzanye hagati y'Ubushinjacyaha n'Ubucamanza ku bijyanye n'ikurikiranacyaha.

[33] Bavuga ko itandukaniro ry'imikurikiranire y'icyaha mu Rwanda no mu bindi bihugu, ari uko mu Rwanda igenzura ry'inyandiko z'isaka rikorwa n'inkiko nyuma y'isaka (*contrôle a posteriori*), mu gihe mu bihugu nka Leta Zunze Ubumwe za Amerika, Ubwongereza, Ubufaransa, Ububiligi na Kameruni[12], urupapuro rw'isaka cyangwa urwo kumviriza itumanaho rushyirwaho umukono n'Umucamanza mbere y'uko rukoreshwa, ariko ko n'ubundi byagaragaye ko muri ibyo bihugu Urukiko rudashobora kwima Ubushinjacyaha izo mpapuro, ko hari n'aho Umucamanza asinya ku rupapuro noneho Ubushinjacyaha bukiyuzuriza andi makuru uko bubyifuza, ibintu bituma uruhare rw'Urukiko rufatwa nk'umuhango. Basanga uburyo bwa contrôle a priori bukoreshwa mu bihugu bimaze kuvugwa haruguru butarutishwa ubukoreshwa n'u Rwanda bworoshya imikorere n'imikoranire hagati y'inzego.

[34] Bavuga ko inyandiko z'isaka zitangwa mu Rwanda zitagereranywa n'izitangwa mu bindi bihugu kubera ko izitangwa mu Rwanda ari iz'agateganyo, bitewe n'uko nyuma yazo ukurikiranyweho icyaha agomba gushyikirizwa Urukiko vuba bishoboka kugira ngo nk'urwego rushinzwe kurinda uburenganzira n'ubwisanzure bwa muntu rubifateho icyemezo, ko ari n'uko bigenda ku byafatiriwe. Basobanura ko imiterere n'ububasha by'inzego z'ubutabera idatuma Umucamanza ava ku rukiko ngo ajye kugenza ibyaha, ko izo nshingano ari iz'Ubugenzacyaha n'Ubushinjacyaha, bityo ko n'ubwo uburyo u Rwanda rukoresha butaboneka mu bihugu byinshi aribwo bwiza kuko bukora neza, inzego zikuzuzanya kandi ko ntaho bubangamiye Itegeko Nshinga.

[35] Naho ku bijyanye n'iby'uko urwego rubarizwa mu Butegetsi Nyubahirizategeko rutakora ibikorwa bifatwa nk'iby'Ubutegetsi bw'Ubucamanza (*judicial acts*), bavuga ko mu ngingo ya 61 y'Itegeko Nshinga, u Rwanda n'Abanyarwanda bahisemo uburyo inzego z'ubutegetsi zikorana zikanuzuzanya, buri rwego mu bwigenge bwarwo. Basobanura ko kuba mu bihugu byavuzwe haruguru, Umucamanza ari we ushyira umukono ku mpapuro zitangiza ikurikiranacyaha bidakuraho ko muri ibyo

[12] www. lawreview-5693-miller (2).pdf (*Prosecution dominance of the warrant decision: A study of the current practice*), visited on 7/7/2022.

bihugu byose Umushinjacyaha Mukuru ari we ugena ikurikiranwa ry'uwakoze icyaha[13], ko mu Rwanda inshingano zo gutanga urwandiko rw'isaka zimuriwe mu Nkiko byaba bizinjije mu iperereza mbere y'uko ziregerwa, ibi bikaba byaburizamo ubwigenge n'ukutabogama (*independence and impatiality*) zisanganywe.

[36] Bavuga ko urubanza Johnson yaburanaga na Leta Zunze Ubumwe za Amerika n'urwo Katz yaburanaga na Leta Zunze Ubumwe za Amerika Murangwa Edward ashingiraho, zigarukira gusa ku kugaragaza ahagiye gusakwa n'igihe icyo gikorwa kiri bumare, ko ntaho zivuga ku muntu nyakuri ugiye gusakwa cyangwa niba koko ahagiye gusakwa hari ibimenyetso bifatika, ko kandi ibi byatewe n'uko inkiko zasanze inzego zishinzwe iperereza ziba zifitiwe icyizere ndetse hari n'uburyo inkiko zishobora gusuzumira mu rubanza ikitaragenze neza. Basobanura ko nta nyungu bwite Ubushinjacyaha buba bufite mu iperereza, ko inyungu zabwo ari ukugaragaza uburyo icyaha cyakozwe, kandi ko iyi ari inyungu rusange, ariyo mpamvu umukozi wese ushinzwe iperereza agomba gufatwa nk'indakemwa mu gihe ari mu mirimo ye.

[37] Basanga nta mpamvu zo kwimurira mu bucamanza inshingano z'iperereza, ahubwo ko inkiko zigomba kugumana ububasha bwo kugenzura niba ibyakozwe byarubahirije amategeko ku buryo n'ukekwaho icyaha uvuga ko yahungabanye ahabwa umwanya wo kubigaragariza ibimenyetso. Bavuga ko mu bihugu bimwe aho urwandiko rw'isaka rutangwa n'Urukiko, haba hari "*Juge d'Instruction*" na "*Juge de Détention*", aba bakaba batandukanye n'abacamanza basanzwe. Kuri bo, inshingano z'iperereza zihawe abacamanza byaba bivuze ko Ubushinjacyaha n'inkiko bigiye kujya bikora ikintu kimwe, ibi bikaba byakongera imanza n'ibirarane mu Nkiko ndetse hakabaho no gusesagura umutungo wa Leta.

[38] Bavuga ko iyo ingingo ya 23, igika cya gatatu, n'ingingo ya 43 z'Itegeko Nshinga zisomewe hamwe, zumvikanisha ko zafunguriye andi mategeko kuba yagena uburyo inyandiko zitandukanye zikoreshwa mu isaka cyangwa kumviriza ukurikiranyweho icyaha zitangwamo. By'umwihariko ingingo ya 23, igika cya 2, y'Itegeko Nshinga iteganya ko hadashobora gukorwa isakwa mu rugo cyangwa kurwinjiramo kubera impamvu z'igenzura nyirarwo atabyemeye, keretse mu bihe no mu buryo biteganyijwe n'amategeko, uyu murongo ukaba ari wo washyizwe mu buryo burambuye mu ngingo ya 38 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha igira iti: mu iperereza n'ikurikiranacyaha, iyo kugira ngo ukuri ku byaha bifitanye isano n'umutekano w'Igihugu, ibyaha bya ruswa n'ibyaha byo kunyereza umutungo wa Leta bikurikiranywe kugaragare, abayobozi b'inzego za Leta zishinzwe umutekano ziteganywa n'Itegeko Nshinga, Urwego rw'Umuvunyi n'Urwego rw'Igihugu rushinzwe Ubugenzacyaha, bashobora, babiherewe uruhushya rwanditswe n'Umushinjacyaha Mukuru, kumva, kumenya no gufata mu majwi cyangwa mu mashusho inyandiko, interineti, ibiganiro, telegaramu, amakarita y'iposita, itumanaho ry'ubuhanga buhanitse n'ubundi buryo bwose bwo gutumanaho kuri ibyo byaha igihe itumanaho ririmo gukorwa.

[39] Bavuga kandi ko ingingo ya 55[14], iya 56[15] n'iya 57[16] z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, zatanze ububasha ku nzego bireba ndetse ziteganya uburyo zizakora n'ibihe zizabukoresha nta guhungabanya uburenganzira n'ubwisanzure bwa muntu bibayeho. Basanga ingingo ya 23 n'iya 43 z'Itegeko Nshinga zarahaye

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[13] www.lawreview-5693-miller (1).pdf.

[14] Iyo ngingo iteganya ko iyo ukekwaho icyaha afatiwe mu cyuho cyangwa asa n'uwagifatiwemo, ibijyanye no kwitwaza uruhushya rw'isaka ku mugenzacyaha cyangwa kubahiriza amasaha y'isaka bishobora kutubahirizwa.

[15] Iyo ngingo iteganya ko mu ishakisha ry'ibimenyetso, isaka ryo ku mubiri cyangwa mu mubiri rishobora gukoreshwa n'Umugenzacyaha cyangwa Umushinjacyaha yifashishije umuntu ubifitiye ubumenyi cyangwa akoresheje ikoranabuhanga ryabugenewe, kandi igatanga imbibi ku buryo bwo gukora iryo saka.

[16] Iyo ngingo iteganya ko Umugenzacyaha cyangwa Umushinjacyaha ashobora gufatira ibintu cyangwa gutambamira umutungo utimukanwa aho byaba biri hose no mu buryo ubwo ari bwo bwose iyo bishobora kunyagwa mu buryo bwateganyijwe n'itegeko n'ibindi byose bishobora kuba ibimenyetso bihamya cyangwa birengera uregwa.

Umushingamategeko inshingano zo gushyiraho Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo, n'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, kugira ngoaya mategeko yombi agene ibindi bizakorwa mu buryo butateganyijwe n'Itegeko Nshinga, kubera ko Itegeko Nshinga ritarondora ibikenewe byose.

[40] Bakomeza bavuga ko ingingo ya 142 y'Itegeko Nshinga iteganya ko Ubushinjacyaha bushinzwe gukora iperereza no gukurikirana ibyaha mu gihugu hose bushaka ibimenyetso bishinja ndetse n'ibishinjura, bityo ko kuba isaka ari kimwe mu bikorwa by'iperereza rikorwa hagamijwe gushaka ibimenyetso, byumvikana ko Itegeko Nshinga ryabishyize mu bubasha bw'Ubushinjacyaha.

[41] Ku bijyanye n'isaka nta ruhushya, bavuga ko kuba Ubugenzacyaha cyangwa Ubushinjacyaha bwakora isaka nta ruhushya rw'isaka rwatanzwe kandi bigakorwa mu bihe biteganywa n'itegeko, cyane cyane mu ngingo ya 10, agace ka 3, a, b na c, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo, ndetse n'iya 55 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, atari umwihariko w'u Rwanda, ahubwo binakorwa no mu bindi bihugu. Batanga urugero rw'ingingo ya 22[17] y'Itegeko rya Afurika y'Epfo rigenga ikurikiranacyaha.

[42] Abahagarariye Leta y'u Rwanda basanga ibijyanye n'isaka nta ruhushya bitanyuranyije n'Itegeko Nshinga, haba mu ngingo yaryo ya 61 ndetse n'izindi zigaragazwa n'urega mu mwanzuro we. Basoza bavuga ko bidakwiye ko ingingo zaregewe zikurwaho, kuko Itegeko Nshinga ubwaryo ryateganyije ayo mategeko mu ngingo zaryo za 23 na 43, kugira ngo azateganye ku buryo burambuye ibyo ryo ritashoboraga guteganya hanagendewe ku busumbane bw'amategeko. Bavuga kandi ko hashingiwe ku biteganywa n'Itegeko Nshinga, cyane cyane mu ngingo yaryo ya 61, uruhare rw'Umucamanza mu gutanga inyandiko (*warrants*) rutasimbujwe, ahubwo Ubucamanza bworoherejwe akazi muri bwa budasa mu mikorere y'inzego z'ubutegetsi bw'u Rwanda yo gukora mu bwigenge n'ubwuzuzanye, ndetse ko mu bihugu bimwe na bimwe byateye imbere uru ruhushya rwo gusaka atari ngombwa, mu gihe mu bindi bihugu rutangwa n'Umucamanza bitewe n'uburyo itegeko ribigenga riteye.

[43] Ku byerekeye ibiteganywa n'ingingo ya 10, igika cya mbere, agace ka 8°, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha, rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo, abahagarariye Leta y'u Rwanda bavuga ko Murangwa Edward n'abamwunganira bayivugisha ibyo itavuga, kuko ntaho ivuga ko ukurikiranyweho icyaha ari we uhatirwa gutanga amakuru, ahubwo ko ivuga umuntu uwo ari we wese, ibyo bikaba bivuze undi muntu utari ukurikiranweho icyaha, bishaka kumvikanisha ko uwo muntu ari umutangabuhamya ubungezacyaha bukeka ko afite amakuru yabufasha mu iperereza.

[44] Bavuga ko bemeranywa na Murangwa Edward ko umuntu wese ukurikiranweho icyaha akomeza gufatwa nk'umwere kugeza igihe Urukiko rubifitiye ububasha rumuhamije icyaha, ariko ko umuntu uri imbere y'Urukiko akwiye gutandukanywa n'ukiri mu nzego z'iperereza aho ibimenyetso biba bicyegeranywa; bakaba basanga rero ingingo ya 29 y'Itegeko Nshinga yerekeye ubutabera buboneye ishyiraho amahame agomba kubahirizwa mu gihe cy'iburanisha gusa, bityo ikaba idakwiye gushingirwaho mu gihe cy'iperereza.

[17] "*A police official may without a search warrant search any person or container or premises for the purpose of seizing any article referred to in section 20: if the person concerned consents to the search for and the seizure of the article in question, or if the person who may consent to the search of the container or premises consents to such search and the seizure of the article in question; or if he on reasonable grounds believes:*
i. that a search warrant will be issued to him under paragraph (a) of section 21(1) if he applies for such warrant; and
ii. that the delay in obtaining such warrant would defeat the object of the search."

[45] Bavuga kandi ko ingingo ya 17 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ishyiraho inzego zishinzwe iperereza ndetse ko ariyo Umugenzacyaha ashingiraho agitangira iperereza ry'ibanze, ikaba iri no mu zimuha ububasha bwo kubaza uwo ari we wese akeka ko afite amakuru ku mikorere y'icyaha. Basobanura ko amagambo umuntu uwo ari we wese atavuze ukurikiranweho icyaha kubera ko mu iperereza ry'ibanze ukurikiranweho icyaha aba ataramenyekana, ko hari n'igihe umuntu atangira abazwa nk'umutangabuhamya bikarangira bigaragaye ko ari we ugomba gukurikiranwa.

[46] Basanga gutanga amakuru no kwishinja ari ibintu bibiri bitandukanye, ko kwishinja bishoboka gusa iyo wamenyeshejwe ibyaha uregwa, ugategekwa kubitangira ibisobanuro, naho gutanga amakuru bikaba bidakorwa gusa n'abaregwa, ko niyo bayatanze aba aribo babishatse. Basobanura ko amategeko ateganya uburyo amakuru ajyanye n'imikorere y'icyaha atangwa, ko umuntu wese wisobanura ku cyaha abanza kumenyeshwa ibyo aregwa, akagaragarizwa ko arimo kubazwa, akamenyeshwa n'uburenganzira bwe harimo n'ubwo guceceka, kutishinja ndetse no kubazwa yunganiwe.

[47] Bakomeza bavuga ko gutanga amakuru bitavuze kuyatangira imbere y'itangazamakuru cyangwa ko uyatanga agomba kuba ufunzwe, ahubwo ko icyangombwa ari uko mu gihe abajijwe amakuru ategetswe kuyatanga, kandi ko ibyo bitandukanye no kwishinja kubera ko amakuru atangwa mu rwego rwo gufasha mu iperereza. Basobanura ko intego y'amakuru atangwa mu gihe cy'iperereza atari ukugira ngo yohererezwe itangazamakuru ahubwo ari ukugaragaza imikorere y'icyaha n'abakigizemo uruhare.

[48] Basobanura ko ntaho ingingo iregerwa iteganya ko ukekwaho icyaha agomba kwiregurira imbere y'itangazamakuru, ndetse ko nta n'indi ngingo y'Itegeko Murangwa Edward agaragaza yaba ibiteganya ityo. Bakomeza bavuga ko nubwo Ubugenzacyaha bwitwararika bukabariza abantu ahantu hatuje kandi hatekanye, bitavanaho ko itangazamakuru rishobora kubutanga ahakorewe icyaha, bigatuma mu gihe cy'ibazwa, itangazamakuru rifata uwo muntu amajwi cyangwa n'amashusho Umugenzacyaha atabizi, ariko ko nabyo bidakwiye gufatwa nk'ikibazo cyatuma ingingo ya 10, igika cya mbere, agace ka 8°, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru iregerwa nk'inyuranyije n'ingingo ya 29 y'Itegeko Nshinga, kuko ari ikibazo cy'imikorere gishobora gukemurwa hataregewe ivanwaho ry'itegeko kuko rinyuranyije n'Itegeko Nshinga.

[49] Basoza bavuga ko ibijyanye n'icyifuzo cya Murangwa Edward cy'uko uru Rukiko rwategeka inzego za Leta zifite aho zihuriye n'iperereza kudashyira mu itangazamakuru umuntu ukurikiranyweho icyaha yambaye amapingu cyangwa ahambiriye kugira ngo ahatwe ibibazo bidakwiye gusuzumwa ngo bifatweho icyemezo kuko bidafitanye isano n'icyaregewe.

UKO URUKIKO RUBIBONA

[50] Ingingo z'amategeko Murangwa Edward asaba Urukiko kwemeza ko zinyuranyije n'Itegeko Nshinga zivuga ku bintu binyuranye, ariko ibyo yagarutseho mu bisobanuro yatanze ni ibirebana n'isaka, kimwe n'ibirebana no gutegeka umuntu gutanga amakuru no kubaza umuntu uwo ari we wese ukekwaho ko afite amakuru yafasha mu iperereza. Ibyo rero nibyo n'Urukiko rwibandaho mu gusuzuma ikirego yarugejejeho.

a. Ibyerekeye isaka

i) Ku bijyanye n' isaka rishingiye ku ruhushya rw'isaka

[51] Ingingo ya 10, igika cya mbere, igice cya mbere cy'agace ka gatatu, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo iteganya ko hakurikijwe amategeko abigenga, RIB (Rwanda Investigation Bureau) ifite ububasha bukurikira: […] gusaka umuntu, kwinjira mu nyubako

cyangwa ahantu hakekwaho kuba hafitanye isano n'amakuru ashakwa hashingiwe ku ruhushya rwo gusaka […].

[52] Ingingo ya 55, igika cya mbere n'icya kabiri, y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko Umugenzacyaha mu gihe asanga ibimenyetso akeneye bigizwe n'impapuro, inyandiko n'ibindi bintu bibitswe n'ukekwaho icyaha cyangwa se undi wese, ashobora kujya gusaka aho biherereye yitwaje uruhushya rwo gusaka ahabwa n'Ubushinjacyaha. Umushinjacyaha ushinzwe gutegura dosiye y'urubanza ashobora nawe kujya gusaka aho icyaha cyakorewe cyangwa ahandi hantu hose hashobora kuboneka ibimenyetso byatuma ukuri kujya ahagaragara. Umushinjacyaha ashobora gushinga iyo mirimo Umugenzacyaha.

[53] Ingingo ya 61 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 rimaze kuvugwa iteganya ko urwandiko rwo gusaka ari icyemezo gitangwa n'Umushinjacyaha bitangiwe uruhushya n'aba bakurikira:

1° Umushinjacyaha Mukuru;

2° Umushinjacyaha Mukuru wa Gisirikare ku bireba abasirikare n'uwo bafatanyije icyaha;

3° Umushinjacyaha ku Rwego rw'Igihugu;

4° Umushinjacyaha uyobora Ubushinjacyaha ku Rwego Rwisumbuye;

5° Umushinjacyaha ku Rwego rw'Ibanze.

Urwandiko ruvugwa mu gika cya mbere cy'iyi ngingo ruha ugomba kugishyira mu bikorwa uburenganzira bwo kujya ahantu hagenwe mu rwandiko, kugira ngo abe yatahura ibimenyetso cyangwa ibintu byagaragazaukuri kw'icyaha n'ugikekwaho.

[54] Urukiko rurasanga itegeko ubwaryo ridasobanura isaka icyo ari cyo. Abahanga mu mategeko yerekeye imiburanishirize y'imanza nshinjabyaha bavuga ko isaka ari uburyo urwego rubifitiye ububasha rukoresha imbaraga rukinjira mu nyubako cyangwa inkengero zayo, hubahirijwe uburyo buteganywa ndetse n'ibisabwa n'amategeko, kugira ngo hagaragazwe ikorwa ry'icyaha, hakusanywe ibimenyetso by'ikorwa ry'icyaha, hagire ibifatirwa cyangwa hafatwe abakekwaho icyaha cyangwa ibyitso byabo[18]. Basobanura ko isaka rikorwa iyo hari impamvu zifatika zituma habaho gukeka ko hari ikintu gifitwe n'umuntu runaka cyangwa giherereye ahantu runaka kandi gishobora kugaragaza ukuri mu rubanza nshinjabyaha[19]**.**

[55] Impamvu zifatika zituma habaho isaka (*reasonable grounds/probable cause*) zibaho iyo inzego zibifitiye ububasha, mu bwitonzi n'ubushishozi bwazo, zabonye amakuru yizewe yatuma zikeka ko hari ibimenyetso bijyanye n'ikorwa ry'icyaha byagaragazwa n'uko hakozwe isaka[20]. Mu yandi magambo, isaka rikorwa hagamijwe gushaka cyangwa kuzuza ibimenyetso mu rubanza nshinjabyaha. Ni igikorwa cy'iperereza, ibyo bikaba binemezwa n'umuhanga Michel Franchimont[21].

[56] Ingingo z'amategeko zavuzwe haruguru zumvikanisha ko igikorwa cyo gusaka nk'uko kimaze gusobanurwa, kiyoborwa n'Umugenzacyaha cyangwa Umushinjacyaha ariko hashingiwe ku ruhushya rw'isaka rwatanzwe n'Ubuyobozi bw'Ubushinjacyaha. Murangwa Edward yemera ko isaka rigomba

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[18] "*La perquisition est le moyen de coercition par lequel l'autorité compétente pénètre dans une demeure ou une dépendance de celle-ci, dans les conditions et les formes prévues par la loi, afin d'y constater une infraction, de rassembler les preuves relatives à une infraction, de procéder à des saisies ou d'arrêter les auteurs ou complices présumés de celle-ci*"; Michel Franchimont et les Autres, Manuel de procédure pénale, Bruxelles, Larcier,2012, p. 515.
[19] Etienne du Toit and Others, Commentary on the Criminal Procedure Act, Juta, Cape Town, 1996, p. 2-3.
[20] Probable cause exists when prudent and caustious police officers have trustworth information leading them to believe that evidence of crime might be obtained through a particular search; John M. Scheb and John M. Scheb, Criminal Law and Procedure, Toronto, Thomson and Wadsorth, 2005, p.380.
[21] La perquisition est un acte d'instruction […]; Michel Franchimont, Manuel de procédure pénale, Bruxelles, Larcier, 2012, p.516.

gukorwa n’Ubugenzacyaha cyangwa n’Ubushinjacyaha; icyo atemera, ari naho hashingiye ikirego cye, ni ukuba uruhushya rw’isaka rutangwa n’Ubushinjacyaha aho gutangwa n’Urukiko. Asobanura ko kuba uruhushya rw’isaka rudatangwa n’Urukiko bituma ingingo z’amategeko yaregeye zinyuranya n’ingingo ya 13, iya 14, iya 23, iya 24, iya 29, iya 43 n’iya 61 z’Itegeko Nshinga.

[57] Urukiko rurasanga nubwo Murangwa Edward afatira hamwe izi ngingo z’Itegeko Nshinga, ziri mu byiciro bitandukanye:

a. Icyiciro kirebana n’uburenganzira n’ubwisanzure;

b. Icyiciro kirebana no guteza imbere no kurinda uburenganzira n’ubwisanzure;

c. Icyiciro kirebana n’Inzego z’Ubutegetsi za Leta.

[58] Ingingo ya 13, iya 14, iya 23, iya 24 n’iya 29 ziri mu cyiciro kirebana n’uburenganzira n’ubwisanzure bwa muntu. By’umwihariko, ingingo ya 13 n’iya 14 zishyiraho uburenganzira bwo kudahungabanywa k’umuntu haba mu mutwe cyangwa ku mubiri. Ingingo ya 13 y’Itegeko Nshinga igira iti: umuntu ni umunyagitinyiro kandi ni indahungabanywa. Leta ifite inshingano zo kumwubaha, kumurinda no kumurengera. Naho ingingo ya 14 ikagira iti: umuntu wese afite uburenganzira bwo kudahungabanywa ku mubiri no mu mutwe. Ntawe ushobora kwicwa urubozo, gukorerwa ibibabaza umubiri cyangwa ngo akorerwe ibikorwa by’ubugome, ibikorwa bidakwiye umuntu cyangwa bimutesha agaciro. Ntawe ushobora gukorerwaho igerageza atabyiyemereye. Uburyo bwo kubyemera kimwe n’ubw’iryo gerageza bugenwa n’Itegeko.

[59] Ingingo ya 23 n’iya 24 igika cya mbere z’Itegeko Nshinga, zivuga ku burenganzira ku mibereho bwite, ubwisanzure n’umutekano bya muntu. Ingingo ya 23 igira iti: imibereho bwite y’umuntu, iy’umuryango we, urugo rwe cyangwa ubutumwa yohererezanya n’abandi ntibishobora kuvogerwa mu buryo bunyuranyije n’amategeko; icyubahiro n’agaciro ke bigomba kubahirizwa. Urugo rw’umuntu ntiruvogerwa. Ntihashobora gukorwa isakwa mu rugo cyangwa kurwinjiramo kubera impamvu z’igenzura nyirarwo atabyemeye, keretse mu bihe no mu buryo biteganyijwe n’amategeko. Ibanga ry’amabaruwa n’iry’itumanaho ntirishobora kuzitirwa keretse mu bihe no mu buryo biteganywa n’amategeko. Naho ingingo ya 24, igika cya mbere ivuga ko ubwisanzure n’umutekano bya muntu byubahirizwa na Leta...

[60] Ingingo ya 24, igika cya kabiri n’icya gatatu, ndetse n’ingingo ya 29 y’Itegeko Nshinga zishyiraho ihame ry’ubutabera buboneye. Ingingo ya 24, igika cya kabiri n’icya gatatu igira iti: ntawe ushobora gukurikiranwa, gufatwa, gufungwa cyangwa guhanirwa icyaha keretse mu gihe biteganywa n’amategeko akurikizwa mu gihe icyaha akurikiranweho cyakorewe. Ntawe ushobora gukorerwa igenzurwa keretse mu bihe no mu buryo buteganyijwe n’Itegeko kandi kubera impamvu zishingiye ku ituze rusange rya rubanda cyangwa ku mutekano w’igihugu.

[61] Ingingo ya 29 y’Itegeko Nshinga iteganya ko buri muntu wese afite uburenganzira ku butabera buboneye, burimo uburenganzira bwo:

1° Kumenyeshwa imiterere n’impamvu z’icyaha akurikiranweho, kwiregura no kunganirwa;

2° Gufatwa nk’umwere kugeza igihe Urukiko rubifitiye ububasha rumuhamije icyaha;

3° Kuburanira imbere y’Urukiko rubifitiye ububasha;

4° Kudakurikiranwa, kudafatwa, kudafungwa cyangwa kudahanirwa ibyo yakoze cyangwa atakoze, iyo amategeko y’Igihugu cyangwa amategeko mpuzamahanga atabifataga nk’icyaha igihe byakorwaga. Ibyaha n’ibihano bijyanye nabyo biteganywa n’amategeko.

5° kutaryozwa icyaha atakoze; uburyozwacyaha ni gatozi ku wakoze icyaha; […]

[62] Ingingo ya 43 y'Itegeko Nshinga yo iri mu cyiciro cyo guteza imbere no kurinda uburenganzira n'ubwisanzure bwa muntu, igira iti: ubutegetsi bw'Ubucamanza nibwo murinzi w'uburenganzira n'ubwisanzure bwa muntu. Iyo nshingano yubahirizwa mu buryo buteganywa n'iri Tegeko Nshinga n'andi mategeko. Naho ingingo ya 61, igika cya mbere n'icya kabiri, y'Itegeko Nshinga iri mu cyiciro cy'Inzego z'Ubutegetsi bwa Leta, igira iti: inzego z'Ubutegetsi bwa Leta ni izi zikurikira:

1° Ubutegetsi Nshingamategeko;

2° Ubutegetsi Nyubahirizategeko;

3° Ubutegetsi bw'Ubucamanza

Ubu butegetsi uko ari butatu buratandukanye kandi buri butegetsi burigenga, ariko bwose bukuzuzanya […].

[63] Urukiko rusanga ahari ipfundo ry'ikibazo, ari ukumenya niba kuba uruhushya rw'isaka rudatangwa n'Urukiko ahubwo rugatangwa n'Ubushinjacyaha, byaba binyuranyije na zimwe cyangwa ingingo zose z'Itegeko Nshinga zavuzwe haruguru nk'uko Murangwa Edward abivuga.

[64] Iyo icyaha gikozwe, inzego zibishinzwe ziba zigomba kwihutira gushaka no kwegeranya ibimenyetso byafasha gutahura uwagikoze. Muri uko gushaka no kwegeranya ibimenyetso, hakenerwa gukora isaka ahantu hose hakekwa ko byaboneka harimo aho abantu batuye, aho bakorera, n'ahandi. Ni igikorwa kiba kigomba kuba mu buryo bwihuse, kugirango hatabaho kurigisa cyangwa kwangiza ibimenyetso.

[65] Ingingo ya 23 y'Itegeko Nshinga ibuza kuvogera umuntu, mu buryo bunyuranyije n'amategeko, mu mibereho ye bwite, iy'umuryango we, urugo rwe, no mu butumwa yohererezanya n'abandi. Iyi ngingo yemera ariko ko hashobora kubaho isakwa mu bihe no mu buryo buteganywa n'itegeko. Ingingo ya 24 y'Itegeko Nshinga yongeraho ko igenzurwa (*mesures de sûreté*) rishobora kubaho mu bihe no mu buryo buteganyijwe n'Itegeko kandi kubera impamvu zishingiye ku ituze rusange rya rubanda cyangwa ku mutekano w'igihugu. Ibi bivuze ko ihame ryo kutavogerwa riteganywa n'izi ngingo atari ndakuka (*absolu*), ahubwo rifite imbibi rigarukiraho (*limitations*), ariko gusa mu bihe no mu buryo bugenwa n'itegeko. Izi ngingo kandi ntiziha ububasha bwo gusaka urwego runaka, cyangwa ngo zigene uburyo isaka rigomba gukorwamo, ahubwo ziha itegeko ububasha bwo kubigena.

[66] Mu rwego rwo gushyira mu bikorwa ibiteganyijwe mu ngingo za 23 na 24 zimaze kuvugwa, hashyizweho Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo, ndetse n'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha. Muri aya mategeko yombi, Umushingamategeko yasobanuye uburyo isaka rigomba gukorwamo, aha n'ububasha bwo gusaka inzego zishinzwe iperereza, ni ukuvuga Ubugenzacyaha n'Ubushinjacyaha hashingiwe ku biteganywa mu ngingo ya 9,2º y' Itegeko N° 12/2017 ryo ku wa 07/04/2017[22]; n'ingingo ya 17, igika cya 1 n'icya 2, y'Itegeko N° 027/2019 ryo ku wa 19/09/2019[23].

[67] Ubushinjacyaha nk'urwego rukuriye igikorwa cy'iperereza, nibwo itegeko ryahaye ububasha bwo gutanga uruhushya rwo gusaka. Mu bihugu uruhushya rwo gusaka rutangwa n'Umucamanza, hari ibigira Umucamanza wihariye uba ushinzwe gukora iperereza no gukurikirana ibikorwa by'iperereza bita "*juge d'instruction*", ukora ku madosiye aba yashyikirijwe n'Ubushinjacyaha. Uyu mucamanza

[22] Inshingano za RIB ni izi zikurikira:
1º […];
2º Gukora iperereza rigamije gushakisha,
guhagarika no kuburizamo ibyaha biri gukorwa […]
[23] Iperereza rikorwa n'Ubushinjacyaha bwifashishije Ubugenzacyaha.
Icyakora, iperereza ry'ibanze rikorwa n'Ubugenzacyaha bubyibwirije, buregewe cyangwa bubitegetswe n'Ubushinjacyaha.

ntajya mu iburanisha, kugirango hatabaho kubangikanya imirimo yo gukurikirana ibyaha no kubiburanisha, itagomba ubundi kubangikanywa. Urugero rw'ibyo bihugu ni nk'Ubwami bw'Ububiligi, Ubufaransa, Kameruni n'ibindi.

[68] Mu Bwami bw'Ububiligi, "*juge d'instruction*" nawe ubwe ashobora gusaka abisabwe cyangwa abyibwirije inyubako y'ukekwaho icyaha cyangwa ahandi hantu aho ariho hose kugira ngo afatire impapuro cyangwa ibindi ibintu byatuma hagaragazwa ukuri[24]. Ni ukuvuga ko muri icyo gikorwa juge d'instruction ari urwego rw'iperereza. Ibi ni nako bimeze mu Bufaransa, aho juge d'instruction akora cyangwa agakurikirana ibikorwa byose bijyanye n'iperereza (birimo n'igikorwa cyo gusaka)[25].

[69] Mu gihugu cya Kameruni, inyandiko y'isaka ishobora gutangwa n'Umushinjacyaha cyangwa na juge d'instruction[26], uyu akaba ashobora no gukora isaka ubwe[27]. Mu Bwami bw'Ububiligi naho Umushinjacyaha ashobora gusaka atagombye guhabwa uruhushya na juge d'instruction, igihe habayeho gufatirwa mu cyuho[28].

[70] Hari ibindi bihugu uruhushya rw'isaka rutangwa n'Urukiko, nko muri Afurika y'Epfo, muri Leta Zunze Ubumwe za Amerika, mu Bwongereza[29], muri Canada n'ahandi. Muri Afurika y'Epfo, ingingo ya 21, igika cya mbere, y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha (*Criminal Procedure Act, 1977*) ivuga ko uruhushya rw'isaka rushobora gutangwa n'Urukiko iyo, nyuma y'indahiro y'urusaba, Urukiko rugaragarijwe ko hari impamvu zifatika zituma habaho gukeka ko hari ikintu gifitwe cyangwa kigenzurwa n'umuntu runaka cyangwa giherereye mu nyubako iri mu ifasi yarwo. Iyi ngingo iteganya ko urwo ruhushya rushobora no gutangwa n'Umucamanza mu gihe cy'iburanisha iyo bimugaragariye ko ari ngombwa[30].

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[24] Article 87 du Code d'Instruction Criminelle mise à jour au 07/08/2018: "*Le juge d'instruction se transportera, s'il en est requis, et pourra même se transporter d'office dans le domicile [de l'inculpé], pour y faire la perquisition des papiers, effets, et généralement de tous les objets qui seront jugés utiles à la manifestation de la vérité. <L 10-07- 1967, art. 1, 52°>.*
Art. 88 du même code: Le juge d'instruction pourra pareillement se transporter dans les autres lieux où il présumerait qu'on aurait caché les objets dont il est parlé dans l'article précédent."

[25] Article 81, al.1, du Code de procédure pénale, édition 2016: "*Le juge d'instruction procède, conformément à la loi, à tous les actes d'information qu'il juge utiles à la manifestation de la vérité. Il instruit à charge et à décharge.*"

[26] Article 12 du Code de Procédure Pénale du 27 Juillet 2005: "(1) *Le Procureur de la République peut décerner:*
a) des mandats de comparution, d'amener, de perquisition et d'extraction;
b) […]
(2) Le Juge d'Instruction peut décerner mandat de comparution, d'amener, de perquisition, d'arrêt, de détention provisoire et d'extraction".
L'article 16 du même Code: "*Le mandat de perquisition est l'ordre donné à l'officier de police judiciaire par le Procureur de la République, le Juge d'Instruction ou la juridiction de jugement, de pénétrer dans tout lieu public ou privé, de le fouiller aux fins de rechercher et de saisir tous objets ou documents qui ont servi à la commission d'une infraction ou qui apparaissent comme le produit d'une infraction*".

[27] Article 177 du Code de Procédure Pénale du 27 Juillet 2005:(1) "*Le Juge d'Instruction peut se transporter sur toute l'étendue du ressort territorial de sa juridiction pour effectuer tous les actes d'information utiles à la manifestation de la vérité, et notamment procéder à des perquisitions et à des saisies*".

[28] Article 32 du Code d'Instruction Criminelle mise à jour au 07/08/2018: "*Dans tous les cas de flagrant délit, lorsque le fait sera de nature à entraîner une peine [criminelle], le [procureur du Roi] se transportera sur lieu, sans aucun retard, pour y dresser les procès-verbaux nécessaires à l'effet de constater le corps du délit, sont état, l'état des lieux, et pour recevoir les déclarations des personnes qui auraient été présentes, ou qui auraient des renseignements à donner.*
Le [procureur du Roi] donnera avis de son transport au juge d'instruction, sans être toutefois tenu de l'attendre pour procéder ainsi qu'il est dit au présent chapitre".

[29] Article 47 of the Criminal Procedure Rules & article 8 of the Police and Criminal Evidence Act 1984, 2023 version.

[30] *(1) Subject to the provisions of sections 22, 24 and 25, an article referred to in section 20 shall be seized only by virtue of a search warrant issued - (a) by a magistrate or justice, if it appears to such magistrate or justice from information on oath that there are reasonable grounds for believing that any such article is in the possession or under the control of or upon any*

[71] Muri Leta Zunze Ubumwe za Amerika, naho ingingo ya 41 b) ya "*Federal Rules of Criminal Procedure 2021*" iteganya ko uruhushya rw'isaka rutangwa n'Urukiko ku busabe bw'umukozi w'ubutabera ubifitiye ububasha[31]. Umucamanza utanga uruhushya rwo gusaka aba ari ako kazi ashinzwe (neutral and detached judge)[32].

[72] Mu Bwongereza, uruhushya rwo gusaka rutangwa habanje kubaho iburanisha ryitabirwa n'uwarusabye, ahibereye cyangwa binyuze mu buryo bw'iyakure, bigakorwa mu masaha y'akazi cyangwa nyuma yayo[33]. Abacamanza bagira umunyamategeko ushinzwe kubafasha, hakaba n'uduce tugira abacamanza cyangwa inkiko zishinzwe gusa ako kazi[34]. Kimwe mu bibazo byagaragajwe na Komisiyo ishinzwe kuvugurura amategeko muri icyo Gihugu, ni icyo kuba imirimo isanzwe y'inkiko ishobora kubangamirwa n'akazi ko gutanga impushya zo gusaka[35]; kandi gutinda kuzitanga bikaba bishobora gutuma hari ibimenyetso bibura[36].

[73] Urukiko rusanga imwe mu mpamvu zituma bimwe mu Bihugu byavuzwe haruguru biteganya ko isaka rigomba gutangirwa uruhushya n'Urukiko, harimo no kutizera ubunyamwuga bw'inzego nyubahiriza tegeko. Mu rubanza Park Ross yaburanaga na "*Director, Office for Serious Economic Offences*", Urukiko rushinzwe kurinda Itegeko Nshinga muri Afurika y'Epfo rwavuze ko akamaro ko guha Urukiko ububasha bwo gutanga uruhushya rw'isaka ari ukugira ngo ruhagarare hagati y'umuturage n'inzego z'iperereza, rusuzume niba koko impamvu zatanzwe n'urwego ruri gusaba uruhushya zifatika[37], hirindwe ko inzego z'iperereza zakwinjirira bikabije uburenganzira bw'umuturage[38].

[74] Mu rubanza McDonald yaburanaga na Leta Zunze Ubumwe za Amerika, Urukiko rw'Ikirenga rwasanze uburenganzira ku mibereho bwite ari ingenzi cyane ku buryo butaguma mu maboko

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person or upon or at any premises within his area of jurisdiction; or (b) by a judge or judicial officer presiding at criminal proceedings, if it appears to such judge or judicial officer that any such article in the possession or under the control of any person or upon or at any premises is required in evidence at such proceedings".

[31] *At the request of a federal law enforcement officer or an attorney for the government: "(1) a magistrate judge with authority in the district—or if none is reasonably available, a judge of a state court of record in the district—has authority to issue a warrant to search for and seize a person or property located within the district; (2) a magistrate judge with authority in the district has authority to issue a warrant for a person or property outside the district if the person or property is located within the district when the warrant is issued but might move or be moved outside the district before the warrant is executed; (3) a magistrate judge—in an investigation of domestic terrorism or international terrorism—with authority in any district in which activities related to the terrorism may have occurred has authority to issue a warrant for a person or property within or outside that district […]".*

[32] Urubanza Coolidge v. New Hampshire, 403 U.S. 443 (1971), para 1, https://supreme.justia.com/cases/federal/us/403/443/

[33] "*No search warrant can be granted without a private hearing in the presence of the applicant.*
An applicant need not be physically present: hearings may take place in person, by live link or over the telephone. These hearings will usually take place during court hours, but if the application is particularly urgent it can be heard outside court hours"; UK Law Commission Report No 396, search warrant, 7 October 2020, p.129, para 5.70.

[34] "*The Justices Clerks Society stated that in the South-East region applicants book themselves in for a hearing using an online diary and then email the application to the court. The application is then held by telephone with a justice supported by a legal adviser, who deal with no other types of business*"; ibidem, para 5.88.
"*The West London Magistrates' Bench informed us that West London has dedicated search warrant courts. A single magistrate hears applications from across London during 30-minute telephone slots which must be booked in advance. The magistrate will read emailed applications and question the applicant during a telephone conference in which a legal adviser also participates. The legal adviser can note additional information provided by the applicant and make minor amendments to the search warrant. The West London Magistrates' Bench commended the dedicated search warrant court model for saving police and court time*"; ibidem, para 5.87.

[35] "*[…] The second issue, as noted above, is the impact on the running of the courts. Court business may be disrupted and the courts may be put under pressure to deal with warrant applications with undue haste […]*"; ibidem, para 5.101.

[36] "*[…] The longer it takes to obtain and execute a search warrant, the higher the risk of evidence being lost and the longer the period of potential offending and therefore harm being caused to members of the public*"; ibidem, para 5.129.

[37] Park Ross v Director, Office for Serious Economic Offences 1995 (2) SA 148 (C) at 172, https://www.saflii.org/za/cases/ZACC/2000/12.pdf

[38] Urubanza National Unions of South African Students v Divisional Commissioner South African Police 1971 (2) SA 553 (C).

y'abashinzwe iperereza no gukurikirana abanyabyaha cyane cyane ko Polisi itizewe mu buryo ikoresha ububasha bwayo.[39] Naho mu rubanza Leta Zunze Ubumwe za Amerika zaburanaga na United States District Court, urwo Rukiko rwasanze kurekera ububasha bwo gutanga uruhushya rw'isaka mu maboko y'abashinzwe iperereza bishobora gutuma bashaka ibimenyetso bishinja gusa ndetse bikaba byatuma birengagiza ibyo kurengera uburenganzira ku mibereho bwite[40].

[75] Ikigaragara mu ngero z'ibikorwa mu Bihugu bitandukanye zatanzwe, ni uko buri Gihugu gishyiraho "*system*" kibona ikwiye, hashingiwe ku mikoro gifite, ku miterere y'inzego zishinzwe ubutabera, ku cyatuma igikorwa cyo kwegeranya ibimenyetso kihuta, ku cyizere gihabwa inzego zishinzwe iperereza no gukurikirana ibyaha, n'ibindi. Urukiko rusanga ingamba yo gutuma uruhushya rw'isaka rutangwa n'Urukiko igamije ahanini gukumira ko inzego z'iperereza zagira uburenganzira bw'umuturage zahungabanya. Ibi byumvikanisha ko, icy'ingenzi ari ukubahiriza uburenganzira bw'umuturage ugiye gusakwa, kugira ngo isaka ritaba urwitwazo cyangwa impamvu yo kuvogera uburenganzira ateganyirizwa n'Itegeko Nshinga; naho kuba uruhushya rwatangwa n'urwego runaka ubwabyo bikaba bitafatwa nk'uburenganzira usakwa ateganyirizwa n'Itegeko Nshinga. Mu yandi magambo, uruhushya rwatangwa n'Urukiko cyangwa n'urundi rwego, inshingano z'urwego rugiye gukora isaka ni ukwitwara kinyamwuga no kubahiriza amategeko.

[76] Urukiko rusanga kuba isaka ryemejwe n'Urukiko bitabuza byanze bikunze ugiye gukora isaka kuvogera uburenganzira bw'usakwa. Mu rubanza Ernest n'abandi baburanaga na Leta y'Ububiligi mu Rukiko rw'Ibihugu by'Uburayi rushinzwe uburenganzira bwa muntu, abarega bavugaga ko nubwo isaka bakorewe ryemejwe na juge d'Instruction, inzego z'iperereza zavogereye urugo rwabo ndetse ntizubahiriza uburenganzira bwabo ku mibereho bwite kuko hari amakuru bwite zafatiriye zitabanje kuyakorera urutonde, ntibamenyeshwa irengero ryayo n'icyo yari kuzazimarira. Urukiko rwasanze uruhushya rw'isaka rwaratanzwe hatabanje kugaragazwa icyaha cyakozwe cyangwa gikekwa kuba cyakozwe ngo binamenyeshwe abagomba gusakwa, rwandikwa mu mvugo rusange, ntirwavuga igihe ruzarangirira, aho isaka rizakorerwa n'ibigomba gufatirwa. Nubwo isaka ryari ryemejwe n'Umucamanza, Urukiko rwanzuye ko ritubahirije icyari kigambiriwe, bityo ko ryanyuranyije n'ingingo ya 8 y'Amasezerano y'Ibihugu by'Uburayi ku burenganzira bwa muntu[41].

[77] Urukiko rurasanga urubanza rumaze kuvugwa haruguru rushimangira ko kuba uruhushya rw'isaka rwatangwa n'Urukiko atari byo bituma mu ishyirwa mu bikorwa ryarwo hubahirizwa uburenganzira ugiye gusakwa asanzwe ateganyirizwa n'Itegeko Nshinga. Urukiko rurasanga ahubwo kugira ngo uburenganzira bw'ugiye gusakwa budahungabanywa, hagomba kubaho amategeko asobanura

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[39] "*It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrestof criminals. Power is a heady thing, and history shows that the police acting on their own cannot be trusted […]*"; McDonald v United States, 335 U.S. 451, 455-456, 69 S. Ct 191, 195-96, 93 L.Ed. 153, 158 (1948), https://supreme.justia.com/cases/federal/us/335/451/

[40] "*[…] unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy […]*"; United States v United States District Court, 407 U.S. at 317, 92 S. Ct 2136, 32 L.Ed. 2d at 766, https://www.law.cornell.edu/supremecourt/text/407/297.

[41] "*116 […] la Cour, rappelant qu'aucune infraction n'était reprochée aux requérants, se doit de constater que les différents mandats de perquisition étaient rédigés en termes larges […] En effet, le conseiller instructeur ordonna, le 23 juin 1995, la série des perquisitions « à l'effet d'y rechercher et d'y saisir tous documents et objets utiles à l'instruction » (paragraphe 13 ci-dessus), sans aucune limitation. Ces mandats de perquisition, qui ne donnaient aucune information sur l'instruction en cause, sur les lieux précis à visiter et sur les objets à saisir, octroyaient ainsi de larges pouvoirs aux enquêteurs […] Un grand nombre d'objets, dont des disquettes informatiques et des disques durs des ordinateurs des requérants, furent effectivement saisis; le contenu de certains documents et supports magnétiques fut copié. En outre, le Gouvernement admet que les requérants ne reçurent pas d'information sur les poursuites qui ont rendu l'opération nécessaire. Ils ont ainsi été laissés dans l'ignorance quant aux motifs concrets des perquisitions effectuées chez eux. 117. Au vu de tout ce qui précède, […] la Cour estime que les perquisitions n'ont pas été proportionnées aux buts légitimes recherchés. Il y a donc eu violation de l'article 8 de la Convention; Ernest et autres c. Belgique, (Requête no 33400/96), 15/10/2003, para 116-117*", https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-65779%22]}.

mu buryo bwumvikana ibigomba kubahirizwa. Hagomba kuba kandi harateganyijwe uburyo ayo mategeko ashyirwa mu bikorwa n'inzego zibishinzwe, ububasha bw'izo nzego, ndetse n'inzira umuturage yanyuramo agaragariza inkiko ko ibyo amategeko ateganya bitubahirijwe kugirango bikosorwe.

[78] Uyu murongo w'uko igikenewe mu isakwa ari amategeko asobanutse no gushyiraho ingamba z'uburyo yubahirizwa niwo Urukiko rw'Ibihugu by'Uburayi rushinzwe uburenganzira bwa muntu rwashimangiye mu rubanza Funke, Crémieux et Miaihle yaburanaga n'Ubufaransa aho rwagize ruti: ibihugu bihura n'ibibazo bikomeye bikomoka ku mikorere igoranye y'amabanki n'uburyo amafaranga ahererekanywa harimo n'imyishyuranire ku rwego mpuzamahanga, ibi byose bikoroshywa n'ibyuho bigaragara ku mipaka. Urukiko ruremera rero ko ibihugu bishobora gusanga ari ngombwa gushyiraho ingamba, nko gusaka amazu, gufatira, kugira ngo haboneke ibimenyetso by'ibyaha bijyanye n'ivunja ry'amafaranga no gukurikirana ababigizemo uruhare mu gihe ari ngombwa. Icyakora amategeko n'imigenzo y'uburyo ashyirwa mu bikorwa bigomba kuba birimo ingamba zikwiriye kandi zihagije zikumira kurengera[42].

[79] Uyu murongo wongeye gushimangirwa no mu zindi manza harimo urwo Ernest n'abandi baburanaga na Leta y'Ububiligi rwavuzwe haruguru[43], n'urwo Klass na bagenzi be baburanaga n'Ubudage[44]. Ingingo z'amategeko zigomba kuba zumvikana (*clear*), zirondora ibikenewe byose (detailed) kandi zishyiraho ingamba zikumira kurengera (safeguards against possible abuse)[45].

[80] Mu rubanza Colon yaburanaga n'Ubuholandi, Urukiko rw'Ibihugu by'Uburayi rushinzwe uburenganzira bwa muntu rwasanze kuba uruhushya rw'isaka rutangwa n'Ubushinjacyaha nk'uko bubyemererwa n'ingingo ya 52 ya Arms and Ammunitions Act atari ikibazo. Icy'ingenzi ni ukuba hari amategeko ajyanye n'ibigomba kubahirizwa igihe cy'isaka, kandi akaba yarashyizwe mu bikorwa, harimo no gusobanura impamvu uruhushya rutanzwe, uko ruzashyirwa mu bikorwa, kugena aho isaka rizakorerwa kandi urwo ruhushya ntirurenze igihe cyagenwe n'Itegeko[46]. Ikibazo Urukiko rwari rwagejejweho muri urwo rubanza, cyari icy'umuntu wavugaga ko mu gice cy'Umujyi wa Amsterdam kizwiho kurangwamo umutekano muke, Umushinjacyaha yahawe ububasha bwo kuvogera

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[42] *"[...] les États rencontrent de sérieuses difficultés résultant de l'étendue et de la complexité des réseaux bancaires et des circuits financiers ainsi que des multiples possibilités de placements internationaux, facilitées par la relative perméabilité des frontières. La Cour reconnaît donc qu'ils peuvent estimer nécessaire de recourir à certaines mesures, telles les visites domiciliaires et les saisies, pour établir la preuve matérielle de délits de change et en poursuivre le cas échéant les auteurs. Encore faut-il que leur législation et leur pratique en la matière offrent des garanties adéquates et suffisantes contre les abus [...]";* urubanza Crémieux c. France, Requête n° 11471/85, 25 février 1993, para 39, https://justice.pappers.fr/decision/ca6a962984423bde369ab76a694fb6cc?q=Cr%C3%A9mieux%20c.%20France,%20Requ%C3%AAte%20n%C2%B0%2011471/85, %2025%20f%C3%A9vrier%201993.

[43] Ibidem, para 114.

[44] Urubanza Klass et Autres c. Allemagne, Requête n° 5029/71), 6/09/ 1978, para 50, https://hudoc.echr.coe.int/fre?i=001-62068

[45] Urubanza Kruslin v. France, no 11801/05, 24 April 1990, para. 36, https://www.google.com/search?q=Kruslin+v.+France%2C+no+11801%2F05%2C+24+April+1990&rlz=1C1GCEU_en-GBRW1045RW1046&oq=Kruslin+v.+France%2C+no+11801; n'urubanza Petri Sallinen v. Finland, no 50882/99, 27 September 2005, para 90, https://www.stradalex.eu/en/se_src_publ_jur_eur_cedh/document/echr_50882-99.

[46] *In areas that have been designated by the Burgomaster as security risk areas in accordance with section 151b, subsection 1 of the Municipalities Act, the public prosecutor may order that any individual can be subjected to a search of his clothing to establish whether he has firearms, ammunition or offensive weapons in his possession. The public prosecutor's order shall describe the designated area and state the order's period of validity, which may not exceed twelve hours. The order shall also explain the facts and circumstances that form the basis for concluding that it is necessary to exercise the power to subject any individual to a search of his clothing to establish whether he has weapons or ammunition in his possession [...] given the legal framework surrounding such searches and above all the fact, as apparent, that they were effective for their intended purpose, the Court finds that the reasons given by the Government are "relevant" and "sufficient";* Colon v. Netherlands (dec.), n° 49458/06, 15/05/2012, para 93 & 95. https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=001-111347&filename=COLON%20v.%20THE%20NETHERLANDS.docx&logEvent=False.

uburenganzira bwe ku mibereho bwite atabanje kubiherwa uruhushya n'Umucamanza, bikaba binyuranyije n'ingingo ya 8 y'amasezerano y'Ibihugu by'Uburayi yerekeye uburenganzira bwa muntu[47].

[81] Muri urwo rubanza kandi, Urukiko rwagaragaje ko hari imanza zinyuranye rwagiye rwemeramo ko, n'ubwo ibyiza ari uko uruhushya rwo gusaka rutangwa n'Umucamanza mu gihe bibaye ngombwa kuvogera uburenganzira ku mibereho bwite, hari igihe bitashoboka; muri ibyo bihe, uruhushya rw'Umucamanza rukaba atari ngombwa, hapfa kuba haragenweizindi ngamba zihagije[48].

[82] Mu rubanza Delta Pekárny A.S. c. République Tchèque rwaciwe n'Urukiko rw'Ibihugu by'Uburayi rushinzwe uburenganzira bwa muntu, sosiyete irega yavugaga ko igenzura ryakorewe mu biro byayo bidatangiwe uruhushya n'Umucamanza ritubahirije uburenganzira bwayo ku mibereho bwite, buteganyijwe mu ngingo ya 8 y'amasezerano y'Ibihugu by'Uburayi yerekeye uburenganzira bwa muntu yavuzwe haruguru[49]. Urukiko rwasobanuye ko iyo amategeko y'ibihugu yemera ko hakorwa isaka bidatangiwe uruhushya n'Umucamanza, rugomba gushishoza n'ubwo ibihugu byemererwa kuba byareba igikwiye. Urwo Rukiko rwagaragaje ko mu manza zirebana no kurengera abantu ku bikorwa by'ubutegetsi bishobora kuvogera uburenganzira buteganywa n'ingingo ya 8 y'amasezerano y'Ibihugu by'Uburayi yerekeye uburenganzira bwa muntu, rwagiye rwemeza ko kuba nta ruhushya rwo gusaka rwatanzwe n'Umucamanza bidatera ikibazo igihe habayeho igenzura rikozwe nyuma n'Urukiko.[50]

[83] Nanone mu rubanza rwa Modestou n'Igihugu cy'Ubugereki, Umushinjacyaha yari yategetse abapolisi gusaka aho urega atuye n'ibiro bye biherereye ahantu hatandukanye, mu rwego rwo gushaka amakuru y'ibanze ku cyaha cyari cyakozwe[51]. Urega yavugaga ko isaka ryakorewe aho atuye n'aho akorera ritubahirije uburenganzira buteganywa mu ngingo ya 8 y'amasezerano y'Ibihugu by'Uburayi yerekeye uburenganzira bwa muntu[52]. Urukiko rw'Ibihugu by'Uburayi rushinzwe uburenganzira bwa muntu rwaregewe rwasanze uruhushya rwatanzwe n'Umushinjacyaha rwaranditswe mu magambo ari rusange, rugaragaza ko ariko mu bihe nk'ibyo, cyane cyane iyo amategeko y'igihugu adateganya igenzura rikozwe mbere n'Umucamanza, hagomba guteganywa ubundi buryo bwatuma ibitakozwe neza

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[47] "*The applicant complained that the public prosecutor had been given the power, within the part of Amsterdam city centre designated as a security risk area and for up to twelve hours at a time, to invade his privacy without any form of prior judicial control. He argued that this constituted a violation of Article 8 which, in its relevant part, provides as follows:*
1. Everyone has the right to respect for his private [...] life [...];
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others"; Ibidem, para 62.

[48] "The Court has accepted in past cases that prior judicial control, although desirable in principle where there is to be interference with a right guaranteed by Article 8, may not always be feasible in practice; in such cases, it may be dispensed with provided that sufficient other safeguards are in place"; Ibidem, para 75.

[49] "*La société requérante allègue que l'inspection effectuée dans ses locaux sans aucun contrôle judiciaire a enfreint notamment son droit au respect du domicile et de la correspondance tel que prévu par l'article 8 de la Convention […]*"; Delta Pekárny A.S. c. République Tchèque, no 97/11, 2 octobre 2014, para 62, https://hudoc.echr.coe.int/fre?i=001-146675

[50] "*Lorsque le droit national habilite les autorités à conduire une perquisition sans mandat judiciaire, la Cour doit redoubler de vigilance, et ce nonobstant la marge d'appréciation qu'elle reconnaît en la matière aux États contractants. Ainsi, dans les affaires concernant la protection des individus contre des atteintes arbitraires de la puissance publique aux droits garantis par l'article 8, elle a eu l'occasion d'affirmer que l'absence d'un mandat de perquisition peut être compensé par un contrôle judiciaire effectif, réalisé ex post facto […]*"; Ibidem, para 83.

[51] "*Le 23 septembre 2010, le procureur près la cour d'appel d'Athènes ordonna à la Direction de la police de l'Attique, dans le cadre d'une enquête préliminaire conduite dans une affaire concernant S.G. et I.G. ainsi que d'autres personnes qui n'étaient pas nommées, de procéder à des perquisitions à l'adresse de quinze résidences et bureaux situés dans différents endroits à Athènes et dans l'Attique, dont celle du requérant*"; Modestou c. Grèce, n[o] 1693/13, 16 mars 2017, para 7, https://hudoc.echr.coe.int/eng?i=001-171973.

[52] "*Le requérant allègue que la perquisition effectuée à son domicile privé et professionnel dans le cadre d'une enquête préliminaire a entraîné une violation de l'article 8 de la Convention*"; Ibidem, para 25.

mu itangwa n' iyandikwa ry'uruhushya rw'isaka bidatera ikibazo[53]. Ibi ni nabyo byemejwe mu rubanza Leotsakos yaregagamo Igihugu cy'Ubugereki[54].

[84] Mu rundi rubanza rwaciwe n'Urukiko rw'Ibihugu by'Uburayi rushinzwe uburenganzira bwa muntu, Gutsanovi yaregagamo Igihugu cya Bulgarie, hari hakozwe isaka mu rugo rw'urega nta ruhushya rwatanzwe n'Umucamanza, hashingiwe ku biteganywa n'amategeko agenga imiburanishirize y'imanza z'inshinjabyaha muri icyo Gihugu[55]. Urukiko rwasobanuye ko mu bihe nk'ibyo, impungenge z'uko nta ruhushya rwatanzwe n'Umucamanza zivanwaho n'igenzura rishobora gukorwa nyuma n'Urukiko ku bijyanye no kuba iryo saka ryari ngombwa kandi ko ryubahirije amategeko[56].

[85] Mu rubanza Heino yaburanaga na Finland, Urukiko rw'Ibihugu by'Uburayi rushinzwe uburenganzira bwa muntu rwasanze igishobora kubangamira uburenganzira bw'usakwa ari ukuba adashobora kwiyambaza Urukiko mbere cyangwa nyuma y'isaka. Kuba umuntu wasatswe adashobora kwiyambaza inkiko nyuma y'isaka kugira ngo agaragaze inenge ziri mu cyemezo cy'isaka cyangwa uburyo isaka ryakozwe, bituma uwo muturage atarengerwa bihagije n'itegeko nyamara ari uburenganzira bwe mu gihugu kigendera ku mategeko na demokarasi[57].

[86] Uyu murongo wongeye kwemezwa mu rubanza Zosymov yaburanaga na Ukraine, aho Urukiko rw'Ibihugu by'Uburayi rushinzwe uburenganzira bwa muntu rwasanze kuba itegeko ryerekeye imiburanishirize y'imanza nshinjabyaha rya Ukraine riteganya ko nta muntu wasatswe wemerewe kuregera icyemezo cy'isaka cyangwa uburyo isaka ryagenze adahuje ikirego cye n'icy'Ubushinjacyaha ku cyaha cyatumye isaka rikorwa binyuranyije n'uburenganzira umuturage ateganyirizwa n'ingingo ya 8 y'Amasezerano y'Ibihugu by'Uburayi yerekeye uburenganzira bwa muntu. Muri urwo rubanza, ikirego cy'umuntu wasatswe cyari cyanze kwakirwa kuko nyuma y'isaka Ubushinjacyaha bwamaze imyaka myinshi nta kirego buratanga, ari nabyo byaburijemo ikirego cy'uwari warasatswe wavugaga ko uburenganzira bwe bwavogerewe[58].

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[53] "*La Cour constate que le mandat litigieux était rédigé dans des termes généraux [….] Toutefois, dans de tels cas, et en particulier lorsque la législation nationale ne prévoit pas de contrôle judiciaire ex ante factum sur la légalité et la nécessité de cette mesure d'instruction, il devrait exister d'autres garanties, notamment sur le plan de l'exécution du mandat, de nature à contrebalancer les imperfections liées à l'émission et au contenu du mandat de perquisition*"; ibidem para 46 & 48.

[54] Arrêt Leotsakos c. Grèce, no 30958/13, 4 octobre 2018, para 49, https://www.dalloz-actualite.fr/sites/dalloz-actualite.fr/files/resources/2018/10/affaire_leotsakos_c._gr_ce.pdf.

[55] "*Dans la présente affaire la perquisition au domicile des quatre requérants a été effectuée sans l'autorisation préalable d'un juge. En effet l'article 161, alinéa 2, du CPP permet aux organes de l'enquête de procéder à de telles perquisitions dans des cas urgents où il existe un danger d'altération de preuves*"; Gutsanovi c. Bulgarie, nº 34529/10, 15 octobre 2013, para 221, https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=001-126982&filename=Case%20OF%20Gutsanovi%20v.%20 Bulgaria%20%5BExtracts%5D.docx&logEvent=False.

[56] "*La Cour a déjà eu l'occasion d'affirmer que, dans de telles situations, l'absence d'un mandat de perquisition peut être contrecarrée par un contrôle judiciaire ex post factum sur la légalité et la nécessité de cette mesure d'instruction*"; Ibidem para 222.

[57] *"[…] in the present case the applicant did not have any effective access, a posteriori, to a court to have both the lawfulness of, and justification for, the search warrant reviewed. The applicant's right to respect for her home was thus violated by the fact that there was no prior judicial warrant and no possibility to obtain an effective judicial review a posteriori of either the decision to order the search or the manner in which it was conducted […] The situation was aggravated by the fact that the search took place in an attorney's office. 46. The Court therefore concludes that, even if there could be said to be a general legal basis for the impugned measures in Finnish law, that law does not provide sufficient judicial safeguards either before the granting of a search warrant or after the search. The applicant was thus deprived of the minimum degree of protection to which she was entitled under the rule of law in a democratic society*"; urubanza Heino v. Finland, no 56720/09, 15 February 2011, para 45, https://hudoc.echr.coe.int/eng?i=001-103394.

[58] "*The applicant's efforts to obtain subsequent judicial review of the lawfulness of the measure were unsuccessful. In particular, as follows from the judgment of 24 December 2004 taken by the Court of Appeal, the relevant complaint could only be brought within the framework of the criminal trial of the case initiated by the police following the disputed visit, in the event that the investigative authority ever brought the case to that stage. In the meantime, by the time the applicant lodged the present application, the relevant criminal proceedings had remained stagnant for several years, and the applicant had not been able to obtain any procedural status in these proceedings, in spite of his numerous efforts. The Court notes that in*

[87] Mu bisobanuro bimaze gutangwa ku byo amategeko y'ibihugu binyuranye ateganya ku bijyanye n'urwego rufite ububasha bwo gutanga uruhushya rw'isaka, ndetse no ku byasobanuwe n'inkiko zinyuranye kuri icyo kibazo, Urukiko rusanga humvikanamo ibintu by'ingenzi bikurikira:

a. "*System*" z'ibihugu ziratandukanye; hari aho uruhushya rw'isaka rutangwa n'Umucamanza wihariye ushinzwe gukora no gukurikirana iperereza, hari aho rutangwa n'Urukiko, hari aho rutangwa n'Ubushinjacyaha, hari n'aho bikorwa byombi ni ukuvuga aho rutangwa n'Urukiko ndetse n'Ubushinjacyaha;

b. Kuba uruhushya rw'isaka rwatangwa n'urwego uru n'uru, ubwabyo ntacyo bibangamiyeho amahame ateganywa n'Itegeko Nshinga, ahubwo igikuru ni uko hashyirwaho uburyo butuma habaho kubahiriza uburenganzira bw'umuturage ugiye gusakwa;

c. Kugirango uburenganzira bw'ugiye gusakwa budahungabanywa, hagomba kubaho amategeko asobanura mu buryo bwumvikana ibigomba kubahirizwa, n'ingamba zikumira kurengera;

d. Hagomba kandi kubaho inzira umuturage yanyuramo kugirango agaragarize inkiko ibitubahirijwe mu byo amategeko ateganya, kugirango bikosorwe. By'umwihariko, mu bihugu bidateganya ko uruhushya rwo gusaka rutangwa n'Umucamanza (*contrôle a priori/ex ante factum*), hagomba kubaho igenzura rikozwe nyuma n'Urukiko (*contrôle a posteriori/ex post factum*).

[88] Mu Rwanda, urwego rw'Ubushinjacyaha Bukuru rwahawe ububasha bwo gukora iperereza no gukurikirana ibyaha mu gihugu hose, hashingiwe ku biteganywa mu ngingo ya 142, igika cya 1, y'Itegeko Nshinga. Nk'urwego rushinzwe gukora no gukurikirana ibikorwa by'iperereza, ni narwo amategeko yahaye ububasha bwo gutanga uruhushya rw'isaka nk'uko bigaragara mu ngingo ya 55, igika cya 1; n'iya 61 z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha.

[89] Mu rwego rwo kubahiriza uburenganzira bw'usakwa no kugirango hatabaho kurengera, Itegeko N° 027/2019 ryo ku wa 19/09/2019 rimaze kuvugwa ryasobanuye mu buryo bwumvikana ibigomba kubahirizwa n'uwahawe uruhushya rwo gusaka, birimo:

a. Kuba agomba kwerekana ikarita y'akazi igifite agaciro n'urupapuro rumuha uburenganzira bwo gukora iyo mirimo rushyizweho umukono n'umuyobozi ubifitiye ububasha (ingingo ya 60);

b. Kuba isaka ridashobora gukorwa mbere ya saa kumi n'ebyiri za mu gitondo na nyuma ya saa kumi n'ebyiri za nimugoroba (ingingo ya 55, igika cya 3);

c. Kuba isaka rikorwa hari abahagarariye ubuyobozi bw'inzego z'ibanze bw'aho icyo gikorwa kibera (ingingo ya 55, igika cya 4);

d. Kuba gusaka bikorwa imbere y'ukekwaho icyaha cyangwa se bene urugo uretse igihe badahari (ingingo ya 55, igika cya 5);

e. Kuba iyo isaka riri bukorerwe ahakorera umukozi ubarizwa mu mwuga wihariye, usakwa cyangwa umuhagarariye byemewe n'amategeko agomba kuba ahari, keretse iyo badashobora kuboneka (ngingo ya 55, igika cya 6);

f. Kuba iyo usakwa afite urugaga abarizwamo, iryo sakwa rikorwa hari uhagarariye urwo rugaga (ingingo ya 55, igika cya 7);

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its recent judgment in the case of Kotiy […] it has already found that a situation where the only possibility for the applicant to challenge the investigator's conduct had been under Article 234 of the CCP (after the criminal case against him had been committed for trial) was incompatible with Article 8… In particular, it concludes that domestic law did not provide requisite guarantees against arbitrariness in respect of the police's actions complained of and did not meet the requirement of quality of law for the purposes of the Convention"; urubanza Zosymov v. Ukraine, n° 4322/06, 7 July 2016; para 61, https://hudoc.echr.coe.int/eng?i=001- 164467.

g. Kuba, uretse igihe umuntu afatiwe mu cyuho, Umugenzacyaha cyangwa Umushinjacyaha adashobora gukoresha isaka umuntu yambitswe ubusa cyangwa mu mubiri atabiherewe uruhushya n'Umushinjacyaha uyobora urwego rw'Ubushinjacyaha akoreramo, kandi iryo saka rikaba rikorwa na muganga wenyine (ingingo ya 56, igika cya 2);

h. Kuba, umuntu ugomba gusakwa yambitswe ubusa cyangwa mu mubiri ashobora kwihitiramo umuherekeza w'umuganga, uwo bashyingiranywe cyangwa undi muntu wese mukuru yihitiyemo (ingingo ya 56, igika cya 3).

i. Kuba Umugenzacyaha cyangwa Umushinjacyaha umaze gukora isaka agomba gukora inyandikomvugo yaryo (ingingo ya 55, igika cya 8), kopi yayo igahabwa abarebwa n'icyo gikorwa (ingingo ya 64).

[90] Urukiko rurasanga ingamba zashyizweho n'ingingo za 55, 56, 60 na 64 z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru zisobanutse kandi zumvikana ku bijyanye no kubahiriza uburenganzira bw'umuturage ugiye gusakwa, no gukumira ko habaho kurengera. Ku bijyanye n'inzira umuturage yanyuramo kugirango agaragarize inkiko ibitubahirijwe mu byo amategeko ateganya, kandi asabe ko bikosorwa, ingingo ya 43 y'Itegeko Nshinga iha inkiko inshingano zo kuba umurinzi w'uburenganzira n'ubwisanzure bwa muntu, naho ingingo yaryo ya 23, igika cya kabiri, igateganya ko isaka rigomba gukorwa mu bihe no mu buryo biteganyijwe n'amategeko.

[91] Urukiko rusanga iyo hari ibiteganywa n'amategeko bitubahirijwe mu gihe cy'isaka, uwakorewe isaka ashobora kwiyambaza inkiko kugirango aharanire uburengazira bwe bwahungabanyijwe. Muri urwo rwego, ingingo ya 76,2º y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iha Umucamanza inshingano zo gusuzuma ibyakozwe mu gihe cy'iperereza bitubahirije amategeko, iyo asuzuma ikirego ku ifunga n'ifungurwa ry'agateganyo. Iyo ngingo iteganya ko Umucamanza uburanisha ibirego by'ifunga ry'agateganyo afite inshingano zirimo izo gusuzuma ko ibihe by'ifunga n'ubundi burenganzira bw'ukekwaho icyaha bwubahirijwe mu gihe cy'iperereza.

[92] Na none, uregwa ashobora kugaragariza Umucamanza uburanisha urubanza rwe mu mizi ibyo asanga bitarubahirije amategeko mu gihe cy'iperereza, harimo n'ibyerekeye isaka. Igihe Umucamanza asanze hari ibimenyetso byabonetse mu isaka ridakurikije amategeko, abitesha agaciro. Ku muntu waba warakorewe isaka, ariko ntakorerwe dosiye ngo agezwe imbere y'Umucamanza, aba afite uburenganzira bwo kuregera indishyi ku byaba byarakozwe mu buryo bunyuranyije n'amategeko mu rubanza mbonezamubano.

ii) Ku bijyanye n'isaka ritatangiwe uruhushya

[93] Ingingo ya 55, igika cya 4, y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko iyo ukekwaho icyaha afatiwe mu cyuho cyangwa asa n'uwagifatiwemo, ibijyanye no kwitwaza uruhushya rw'isaka ku mugenzacyaha cyangwa kubahiriza amasaha y'isaka bishobora kutubahirizwa. Buri gihe isaka rikorwa hari abahagarariye ubuyobozi bw'inzego z'ibanze bw'aho icyo gikorwa kibera. Naho ingingo ya 56, igika cya 2, y'iryo Tegeko ikagira iti: uretse igihe umuntu afatiwe mu cyuho, Umugenzacyaha cyangwa Umushinjacyaha ntashobora gukoresha isaka umuntu yambitswe ubusa cyangwa mu mubiri atabiherewe uruhushya n'Umushinjacyaha uyobora urwego rw'Ubushinjacyaha akoreramo. Iryo saka rikorwa na muganga wenyine.

[94] Ingingo ya 3 y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo iteganya ko Urwego rw'Ubugenzacyaha rushobora gusaka umuntu cyangwa ibintu, kwinjira mu nyubako cyangwa ahantu nta ruhushya rwo gusaka iyo hari impamvu zikurikira:

a. Impamvu zifatika zituma rukeka ko icyaha kirimo gukorwa cyangwa kigiye gukorwa;

b. Ibimenyetso bifatika byerekana ko mu nyubako cyangwa ahantu hari ikintu cyakoreshejwe mu gukora icyaha cyangwa gikenewe ku mpamvu z'iperereza;

c. Ibimenyetso bikomeye bigaragaza ko umuntu wakoze icyaha ari aho hantu kandi agomba guhagarikwa.

Muri icyo gihe, hakorwa inyandikomvugo y'isaka hakanakorwa raporo igaragaza impamvu iryo saka ryakozwe nta ruhushya rwo gusaka […].

[95] Urukiko rurasanga isaka nta ruhushya rigamije kwirinda ko gutinda kuruhabwa biburizamo icyo iryo saka ryari rigamije. Ntabwo Umushinjacyaha cyangwa Umugenzacyaha yarebera ikorwa ry'icyaha cyangwa ngo yirengagize ibimenyetso abonye by'uko hari icyaha cyakozwe cyangwa kigiye gukorwa. Ahubwo afite inshingano zo kwita ndetse no kuba yafatira ibimenyetso abonye atabiteganyaga bimugaragariza ko hari icyaha cyakozwe, kirimo gukorwa cyangwa kirimo gutegurwa.

[96] Urukiko rurasanga akenshi abagenzacyaha biyambazwa mu buryo bwihutirwa, hari nubwo basabwa guherekeza abapolisi bagiye gutabara ahantu runaka cyangwa gutegura imitego yatezwe n'abashaka gukora ibyaha. Ubwihutirwe bwa bene ibyo bikorwa nibwo bwatumye Umushingamategeko ateganya ko Umugenzacyaha cyangwa Umushinjacyaha ashobora kutabona umwanya wo kujya gusaba urwego rubishinzwe uruhushya rw'isaka iyo umuntu ugomba gusakwa afatiwe mu cyuho, asa n'ugifatiwemo cyangwa se iyo hari imwe mu mpamvu zivugwa mu ngingo ya 3 y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 zavuzwe haruguru.

[97] Urukiko rusanga mu rwego rwo gukumira ko uburenganzira bw'umuntu ugiye gusakwa nta ruhushya bwavogerwa, itegeko ryateganyije ko isaka iryo ariryo ryose rikorerwa inyandikomvugo[59]. Ku muntu ufatiwe mu cyuho cyangwa usa n'ugifatiwemo, isaka rigakorwa hari abayobozi b'inzego z'ibanze, Umugenzacyaha akaba agomba gukora raporo igaragaza impamvu zatumye isaka rikorwa nta ruhushya ritangiwe. Urukiko rusanga izi ngamba zashyizweho n'Umushingamategeko zigamije gukumira ko habaho kurengera kw'abashinzwe igikorwa cy'isaka, kandi nk'uko byasobanuwe harugu, igihe habayeho kutubahiriza amategeko, uwakorewe isaka aba afite uburenganzira bwo kwiyambaza inkiko.

[98] Hashingiwe ku mategeko yagaragajwe no ku bisobanuro byose byatanzwe, Urukiko rurasanga kuba uruhushya rw'isaka rudatangwa n'Urukiko ahubwo rugatangwa n'Ubushinjacyaha, cyangwa kuba harateganyijwe ibihe isaka rishobora gukorwa ritatangiwe uruhushya, bitanyuranyije n'ingingo ya 13, iya 14, iya 23, iya 24, iya 29, iya 43 n'iya 61 z'Itegeko Nshinga.

b. Ibyerekeye gutegeka umuntu gutanga amakuru no kubaza umuntu uwo ari we wese ukekwaho ko afite amakuru yafasha mu iperereza

[99] Ingingo ya 10, agace ka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo iteganya ko hakurikijwe amategeko abigenga, RIB ifite ububasha bwo gutegeka umuntu gutanga amakuru no kubaza umuntu uwo ari we wese ukekwaho ko afite amakuru yafasha mu iperereza.

[100] Naho ingingo ya 29, igika cya mbere, agace ka 2°, y'Itegeko Nshinga iteganya ko buri muntu wese afite uburenganzira ku butabera buboneye, burimo uburenganzira bwo: […] gufatwa nk'umwere kugeza igihe Urukiko rubifitiye ububasha rumuhamije icyaha.

[101] Urukiko rurasanga ihame ry'uburenganzira ku butabera buboneye ryaragarutsweho mu rubanza rwa Kabasinga Florida rwaciwe n'uru Rukiko ku wa 04/12/2019. Muri uru rubanza, Urukiko

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[59] Ingingo ya 55, igika cya 8, y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshijabyaha iteganya ko Umugenzacyaha cyangwa Umushinjacyaha umaze gukora isaka akora inyandikomvugo y'isaka.

rwasobanuye ko ibigize ubwo burenganzira bitarondowe byose mu ngingo ya 29 y'Itegeko Nshinga, ariko rugaragaza ko ubwo burenganzira buri mu byiciro bibiri:

a. Ubutabera buboneye bushingiye ku migendekere, ni ukuvuga uruhererekane rw'ibigomba kubahirizwa mu migenzo y'urubanza hashingiwe ku mahame ateganywa n'amategeko;

b. Ubutabera buboneye bushingiye ku biteganywa n'itegeko, ni ukuvuga ibuza ry'ishyirwaho ry'amategeko cyangwa izindi ngamba zidashyira mu gaciro zibangamira uburenganzira bw'umuturage[60].

[102] Urukiko rurasanga ingingo ya 29 y'Itegeko Nshinga idatandukanya ubwo bwoko bwombi bw'uburenganzira ku butabera buboneye n'igihe butangirira kubahirizwa. Abahagarariye Leta y'u Rwanda bavuga ko uburenganzira ku butabera buboneye butangirira imbere y'inkiko, ariko mu myanzuro yabo ntibagaragaza aho babishingira. Mu rubanza rwa Kabasinga Florida rwavuzwe haruguru, Urukiko rwasobanuye ko mu manza nshinjabyaha, uburenganzira ku butabera buboneye butangirana n'ibikorwa by'iperereza, bugakomereza ku bikorwa by'ikurikiranacyaha, iby'iburanisha n'itangwa ry'ibihano ku byaha biteganyijwe n'amategeko ahana[61].

[103] Urukiko rurasanga rero, uburenganzira ku butabera buboneye, cyane cyane ubwo kumenyeshwa imiterere n'impamvu z'icyaha umuntu akurikiranyweho, kwiregura no kunganirwa, n'ubwo gufatwa nk'umwere kugeza igihe Urukiko rubifitiye ububasha rumuhamije icyaha, bidatangirana no kuregerwa Urukiko nk'uko abahagarariye Leta y'u Rwanda bashaka kubyumvikanisha. Urukiko rurasanga ihame ryo gufatwa nk'umwere kugeza igihe Urukiko rubifitiye ububasha rufatiye icyemezo ndakuka, rigomba kubahirizwa mu migenzo yose y'urubanza kugeza igihe icyemezo ndakuka gifatiwe. Iri hame riha uruhande rurega inshingano zo kuba arirwo rugaragaza ibimenyetso byemeza icyaha nta shiti, rikaba rireba inzego zose[62] (harimo n'Ubushinjacyaha).

[104] Ku bijyanye n'uru rubanza, ikibazo kigomba gusubizwa ni icyo kumenya niba ibivugwa mu ngingo ya 10, agace ka 8, y'Itegeko No 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo, hari aho bibangamiye ihame ry'uburenganzira ku butabera buboneye rimaze gusobanurwa, by'umwihariko uburenganzira bwo gufatwa nk'umwere kugeza igihe Urukiko rubifitiye ububasha ruhamirije umuntu icyaha.

[105] Urukiko rurasanga, nubwo ijambo amakuru rivugwa mu ngingo ya 10, agace ka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru ryasemuwe mu cyongereza no mu gifaransa nka "*information*", ritagomba gufatwa ryonyine (*isolated*) kandi ngo rihabwe igisobanuro cy'ibanze cyangwa cya rusange (*generic definition*) kirihuza n'itangazamakuru cyangwa abanyamakuru. Ntabwo intego y'Umushingamategeko ubwo yashyiragaho iyo ngingo kwari ukugira ngo Urwego rw'Ubugenzacyaha ruzajye rushakira abanyamakuru ababaha inkuru ku mikorere y'ibyaha. Niyo mpamvu ijambo amakuru rigomba guhuzwa n'amagambo yafasha mu iperereza" nayo agaragara muri iyo ngingo.

[106] Urukiko rurasanga Ubugenzacyaha bumenya imikorere y'icyaha nibura mu buryo butatu: ibirego by'abahohotewe (*victims'complaints*), igenzura ry'Ubugenzacyaha (*investigation*) cyangwa amakuru yatanzwe n'uwo ari we wese (*denunciation*). Mu gihe cy'iperereza rishingiye kuri bumwe muri ubu buryo, Ubugenzacyaha bushobora kubona ko hari ahandi bwakura ibisobanuro byimbitse kurusha ibyo

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[60] Urubanza RS/INCONST/SPEC 00003/2019/SC rwa Kabasinga Florida, rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2019, igika cya 13.

[61] Ibidem, igika cya 14

[62] Urubanza Henrikas Daktaras v Lithuania, n° 42095/98, European Court of Human Rights (Third Section) sitting on 11 January 2000, para 6, https://hudoc.echr.coe.int/fre?i=001-5987
Michel Franchimont, Manuel de procédure pénale, Bruxelles, Larcier, 2012, p. 1132.

bufite, cyangwa ibimenyetso by'inyongera bishobora gutuma iperereza rigera ku ntego zaryo zo kugaragaza icyaha cyakozwe, abakigizemo uruhare, aho cyakorewe, igihe cyakorewe, abagikorewe cyangwa izindi ngaruka cyateye. Ibyo bisobanuro cyangwa ibyo bimenyetso bigamije kunoza iperereza ry'Ubugenzacyaha nibyo Umushingamategeko yise amakuru.

[107] Kuba urwego rushinzwe kugenza ibyaha rushobora kubaza uwo ariwe wese rukeka ko yarufasha kubona amakuru ku cyaha cyakozwe, si umwihariko w'u Rwanda. Ingingo ya 10, igika cya 4, y'Itegeko rigenga imiburanishirize y'imanza z'inshinjabyaha mu Gihugu cy'u Burundi, iteganya ko abagenzacyaha babaza abantu bakeka ko bafite amakuru ku cyaha cyakozwe[63]. Mu Gihugu cya Singapore, ingingo ya 22 y'Itegeko rigenga imiburanishirize y'imanza z'inshinjabyaha iha abashinzwe gukora iperereza ububasha bwo kumva umuntu wese ukekwaho kugira amakuru ku cyaha cyakozwe, kandi uwo muntu akaba ategetswe kuyatanga, keretse ayo abona ko ashobora kumushinja[64]. Ibi ni nako bimeze muri Burkinafaso[65], muri Côte d'Ivoire[66], no mu bindi bihugu bitarondowe aha.

[108] Urukiko rusanga nanone, amagambo uwo ariwe wese avugwa mu ngingo ya 10, agace ka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru, asobanura umuntu wese udakurikiranyweho icyaha waba ufite amakuru yafasha mu gikorwa cy'iperereza, akaba adasobanura ukurikiranyweho icyaha nk'uko Murangwa Edward ashaka kubyumvikanisha, kuko we abazwa n'Ubugenzacyaha nk'ugomba gutanga ibisobanuro ku byo akurikiranyweho. Ibi Umushingamategeko yabigaragaje neza mu ngingo ya 45 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha. Mu gika cyayo cya 2, iyo ngingo igira iti: umugenzacyaha cyangwa Umushinjacyaha abaza ukekwaho icyaha kandi agashyira mu nyandikomvugo ibisobanuro bye.

Ibazwa rikorwa mu rurimi ubazwa yumva neza; naho mu gika cyayo cya 3, igateganya ko Umugenzacyaha cyangwa Umushinjacyaha ashobora kandi kubaza umuntu wese akeka ko ashobora kugira ibisobanuro atanga no kumusaba gutanga ubuhamya amaze kurahira mu buryo buteganywa mu ngingo ya 47 y'iri Tegeko. Uwo muntu wese uvugwa muri iki gika, ni nawe uvugwa mu ngingo ya 10, agace ka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017.

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[63] Art. 10, al.4 du Code de Procédure Pénale (Loi no 1/09 du 11/05/2018): "*[…] Ils procèdent à l'audition des personnes susceptibles de donner des renseignements sur l'infraction et sur ses auteurs. Ils interrogent ces auteurs et recueillent leurs explications*".

[64] Art. 22 of the Criminal Procedure Code 2010: "*(1) In conducting an investigation under this Part, a police officer, or a forensic specialist acting in the course of his or her duty as such in accordance with the written authorisation of the Commissioner under the Police Force Act 2004 and the lawful directions of the police officer or law enforcement officer he or she assists, may examine orally any person who appears to be acquainted with any of the facts and circumstances of the case —*

(a) whether before or after that person or anyone else is charged with an offence in connection with the case; and

(b) whether or not that person is to be called as a witness in any inquiry, trial, or other proceeding under this Code in connection with the case.

(2) The person examined is bound to state truly what the person knows of the facts and circumstances of the case, except that the person need not say anything that might expose the person to a criminal charge, penalty or forfeiture".

Available on https://sso.agc.gov.sg/Act/CPC2010.

[65] Art. 251-10, al. 1 et 2, du Code de Procédure Pénale 2019: "*(1) L'officier de police judiciaire peut appeler et entendre toute personne susceptible de fournir des renseignements sur les faits ou sur les objets et documents saisis.*

(2) Les personnes convoquées par lui sont tenues de comparaître et de déposer. Si elles ne satisfont pas à cette obligation, avis en est donné au procureur du Faso qui peut les contraindre à comparaître par la force publique", https://sgbv-ihrda.uwazi.io/fr/entity/i41i84se8d?page=22.

[66] Art. 61 du Code de Procédure Pénale 2018: "*L'officier de police judiciaire procède à l' enquête. Il entend toute personne susceptible de fournir des renseignements sur les faits et toutes celles qui se prétendent lésées par l'infraction. Il procède aux constatations utiles*".

Art. 62 du même Code: "*La personne convoquée par l'officier de police judiciaire est tenue de comparaître et de déposer. Si la personne convoquée ne satisfait pas à cette obligation, avis en est donné au procureur de la République qui peut la contraindre à comparaître par la force publique*", https://www.caidp.ci/uploads/997a8149124ebaffe41282e96908d822.pdf.

[109] Mu gihe kandi ukekwaho icyaha abazwa n'Ubugenzacyaha cyangwa n'Ubushinjacyaha ku mikorere y'icyaha, mu burenganzira agomba kumenyeshwa buteganywa n'ingingo ya 54, 2º y' Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru, harimo ubwo kutagira icyo atangaza (*droit au silence/right to silence*); bivuga ko atari mu bategetswe gutanga amakuru bavugwa mu gace ka 8 k'ingingo ya 10 y' Itegeko Nº 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru.

[110] Urukiko rurasanga rero, mu gihe Ubugenzacyaha bwaba bushyikiriza abakekwaho icyaha itangazamakuru kugira ngo ribahate ibibazo ku mikorere y'icyaha bubakurikiranyeho, bukabikora bambaye amapingu nk'uko Murangwa Edward n'abamwunganira babivuga, butaba bubishingira ku ngingo ya 10, agace ka 8, y'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru kubera ko ntaho iyo ngingo ivuga ko Ubugenzacyaha bushobora gushyikiriza ukekwaho icyaha abanyamakuru kugira ngo abe aribo bamubaza ku mikorere y'icyaha akurikiranweho cyangwa abazwe amakuru yafasha mu iperereza. Iyo migirire (*pratique*) iramutse iriho, Urukiko rusanga itakosorerwa mu kwemeza ko ingingo imaze kuvugwa inyuranyije n'Itegeko Nshinga.

[111] Icyakora, Urukiko rwatanga inama ko mu gihe inzego zishinzwe iperereza zikorana n'itangazamakuru mu rwego rwo kumenyesha rubanda iby'iperereza ririmo gukorwa, zigomba gukora ibishoboka byose kugira ngo hubahirizwe ihame ry'uko umuntu afatwa nk'umwere igihe cyose icyaha kitaramuhama. Ibimaze kuvugwa byashimangiwe mu rubanza Allenet De Ribemont v. France, aho Urukiko rw'Ibihugu by'Uburayi rushinzwe uburenganzira bwa muntu rwagaragaje ko ihame ryo gufatwa nk'umwere ritabuza abayobozi kumenyesha rubanda iby'iperereza ririmo gukorwa, ariko ko bagomba kubikora bitwararitse kugirango batarenga ku ihame ryo gufatwa nk'umwere igihe umuntu atarahamwa n'icyaha[67].

[112] Ku bijyanye n'ibyo Murangwa Edward n'abamwunganira bavuga ko n'ubwo uru Rukiko rwasanga ingingo ya 10, agace ka 8, y'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru itanyuranyije n'Itegeko Nshinga, rwategeka ko ijambo "gutegeka" rivanwa muri iyo ngingo, naho amagambo umuntu uwo ari we wese akongerwamo usibye ukurikiranweho icyaha kugira ngo harengerwe uburenganzira ku butabera buboneye, Urukiko rurasanga iki atari ikibazo kirebana no gusuzuma ko itegeko rinyuranyije n'Itegeko Nshinga, ahubwo ari ikibazo kirebana no kugena ibijya mw'itegeko, bikaba bitategekwa n'uru Rukiko kuko bitari mu nshingano zarwo. Ibyagiye bikorwa n'uru Rukiko rubyibwirije mu zindi manza, byababaga ari ukuziba icyuho cyasigara mu ngingo y'itegeko igihe hari igice cyayo kivanyweho[68], cyangwa gutanga inama gusa ku bikwiye kwitabwaho cyangwa kunozwa mu ngingo y'itegeko igihe rwababaga rusanga ari ngombwa, ariko ntirubitegeke[69].

[113] Ntabwo rero umuburanyi ashobora kuregera Urukiko rushinzwe kurinda Itegeko Nshinga arusaba guhindura, kuvana cyangwa kongera amagambo mu ngingo y'Itegeko, bitewe n'uko atamunyuze cyangwa kuri we ayagombaga gukoreshwa atariyo Umushingamategeko yakoresheje.

[114] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ibivugwa mu ngingo ya 10, agace ka 8, y'Itegeko No 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo ntaho

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[67]"*Freedom of expression, guaranteed by Article 10 (art. 10) of the Convention, includes the freedom to receive and impart information. Article 6 para. 2 (art. 6-2) cannot therefore prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected*"; Allenet de Ribemont v. France (Application no. 15175/89), 10 February 1995, para 38, https://hudoc.echr.coe.int/eng?i=001-57914.

[68] Urugero reba urubanza RS/INCONST/SPEC 00002/ 2018/SC rwa Mugisha Richard, rwaciwe n'Urukiko rw'ikirenga ku wa 24/04/2019, ibika bya 55 na 132; kimwe n'urubanza RS/Inconst/Pén.0001/08/CS rwa Murorunkwere Spéciose, rwaciwe n'Urukiko rw'Ikirenga ku wa 26/09/2008, igika cya 31.

[69] Urugero reba urubanza RS/INCONST/SPEC 00001/ 2019/SC rwa Murangwa Edward, rwaciwe n'Urukiko rw'Ikirenga ku wa 29/11/2019, igika cya 105.

bibangamiye ihame ry'uburenganzira ku butabera buboneye riteganywa n'ingingo ya 29, igika cya mbere, agace ka 2°, y'Itegeko Nshinga.

[115] Urukiko rurasanga ingingo ya 10, agace ka 3, a,b na c ndetse n'agace ka 5, aka 7 n'aka 8 y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo; n'ingingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70 z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, zitanyuranyije n'ingingo ya 13, iya 14, iya 23, iya 24, iya 29, iya 43 n'iya 61 z'Itegeko Nshinga rya Repubulika y'u Rwanda.

II.2. Kumenya niba amagambo impamvu zifatika, ibimenyetso bifatika n'ibimenyetso bikomeye yakoreshejwe mu ngingo ya 10, agace ka 3, a, b na c y'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu Rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo, akwiriye gutangwaho umurongo mu nyungu z'Itegeko

[116] Murangwa Edward n'abamwunganira bavuga ko amagambo "impamvu zifatika, ibimenyetso bifatika n'ibimenyetso bikomeye" ari mu ngingo ya 10, agace ka 3 a, b na c z'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru yanditswe mu buryo bwa rusange ku buryo uyakoresha bimugora kumenya icyo avuze, ndetse akaba yarabaye urwitwazo ku nzego z'Ubugenzacyaha n'Ubushinjacyaha rwo gukora isaka nta rupapuro rw'isaka (*warrantless search*). Basanga ayo magambo agomba gusobanurwa mu buryo bwumvikana hakamenyekana impamvu zifatika izo arizo, ibimenyetso bifatika ibyo aribyo, ndetse n'ibimenyetso bikomeye ibyo aribyo.

[117] Bavuga ko rimwe mu mahame Leta y'u Rwanda yiyemeje kugenderaho no kubahiriza riboneka mu ngingo ya 10, igika cya kane, y'Itegeko Nshinga ari ukugendera ku mategeko no kubaka ubutegetsi bwa demokarasi, ko ntacyakazitiye uburenganzira bw'umuturage kereka mu buryo no mu nzira biteganywa n'ingingo ya 41 y'iryo Tegeko Nshinga, ivuga ko uburenganzira bwa muntu buzitirwa gusa n'uburenganzira n'ubwisanzure by'abandi, imyitwarire iboneye, ituze rusange rya rubanda n'imibereho myiza muri rusange biranga Igihugu kigendera kuri demokarasi.

[118] Bakomeza bavuga ko icyo bagamije atari ugusaba uru Rukiko kwemeza ko amagambo "impamvu zifatika, ibimenyetso bifatika n'ibimenyetso bikomeye ari mu ngingo ya 10, agace ka 3, a, b na c y'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 yibukijwe haruguru atuma iyo ngingo inyuranya n'Itegeko Nshinga, ahubwo ko bifuza ko mu gihe Umushingamategeko atarahindura iyo ngingo, Urukiko rwashingira ku biteganywa n'ingingo ya 73 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, rugaha ibisobanuro ayo magambo kugira ngo uyikoresha yirinde kugenekereza no kurengera.

[119] Bavuga ko umurongo watangwa n'Urukiko rw'Ikirenga mu nyungu z'itegeko wagira akamaro gakomeye mu rwego rwo kurengera uburenganzira ku mibereho bwite n'umuryango ndetse n'uburenganzira ku butabera buboneye by'ukurikiranyweho icyaha. Bakomeza bavuga ko batirengagiza ko uburenganzira bushobora kugabanywa cyangwa guhagarikwa iyo ari ngombwa, ariko ko Itegeko Nshinga n'Amasezerano Mpuzamahanga u Rwanda rwashyizeho umukono biteganya ko nabyo bikorwa hubahirizwa isura y'igihugu kigendera kuri demokarasi.

[120] Basobanura ko ijambo umurongo riri mu ngingo ya 73 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru rigomba kumvikana nk'irivuga ibikorwa (practice), ari nayo mpamvu basaba uru Rukiko kwemeza ko imikorere iranga inzego z'iperereza, Ubugenzacyaha n'Ubushinjacyaha mu gihe cy'isaka ritatangiwe uruhushya bivanwaho. Basaba uru Rukiko kwifashisha imirongo ikurikira yemejwe n'inkiko z'ahandi kugira ngo rubashe guha ibisobanuro bikwiye amagambo avugwa mu ngingo ya 10, agace ka 3, a, b na c y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru:

a. Gusuzuma niba ingingo z'itegeko ziteganya isaka rikozwe nta ruhushya zitanditse mu buryo bwa rusange ku buryo byagira ingaruka ku burenganzira bw'imibereho bwite ya muntu n'umuryango we no kureba niba ku bintu bimwe na bimwe ari ngombwa ko isaka rikorwa nta ruhushya[70];

b. Gushyiraho igipimo ngenderwaho hagati y'uburenganzira ku mibereho bwite n'inshingano za Leta zo kurinda ituze rya rubanda no kurwanya ibyaha[71];

c. Gusuzuma niba kuvogera uburenganzira ku mibereho bwite n'agaciro ka muntu bishingiye ku mpamvu zisobanutse kandi zumvikana mu gihugu kigendera kuri demokarasi. Muri icyo gihe, Urukiko rugomba kwita ku ngamba eshanu zikurikira: 1) ubwoko bw'uburenganzira bugiye kuvogerwa, 2) akamaro ko kubushyiriraho irengayobora, 3) aho irengayobora rigarukira, 4) isano riri hagati y'iryo rengayobora n'intego igamijwe, 5) kumenya niba gushyiraho irengayobora aribwo buryo bwonyine buhari kugira ngo intego igamijwe igerweho[72].

[121] Basoza bavuga ko Urukiko rw'Ikirenga rufite ububasha bwo gutanga umurongo mu nyungu z'itegeko kandi ko amagambo impamvu zifatika, ibimenyetso bifatika ndetse n'ibimenyetso bikomeye ari mu ngingo ya 10, agace ka 30 a, b na c y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo yanditse mu buryo bwa rusange ku buryo ikoreshwa ryayo rishobora gutuma uburenganzira bw'umuturage buteganywa n'Itegeko Nshinga buvogerwa, ari yo mpamvu basaba uru Rukiko, rushingiye ku mirongo yatanzwe haruguru, gutanga umurongo ugaragaza uburyo ayo magambo agomba kumvikana.

[122] Abahagarariye Leta y'u Rwanda bavuga ko ibijyanye no guhindura umurongo mu nyungu z'itegeko bisobanurwa mu ngingo ya 65 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko kandi ko umurongo ugomba kumvikana nk'icyemezo cy'Urukiko aho rwasesenguye ikibazo rwashyikirijwe. Basobanura ko nta murongo uriho ku buryo waregerwa guhindurwa, ndetse ko batabona n'aho Murangwa Edward watanze iki kirego ashingira ububasha bwo kugitanga kuko itegeko riteganya ko gitangwa n'Urugaga rw'Abavoka cyangwa n'Ubushinjacyaha Bukuru. Basaba uru Rukiko kwemeza ko iyi ngingo itagomba kwakirwa ngo isuzumwe kuko yatanzwe mu buryo bunyuranyije n'amategeko.

UKO URUKIKO RUBIBONA

[123] Ingingo ya 65 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, irebana n'ibirego byerekeranye no guhindura umurongo wafashwe n'inkiko mu nyungu z'Itegeko, mu gika

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[70] Gaertner and Others v Minister of Finance and Others (CCT 56/13) [2013] ZACC 38; 2014 (1) SA 442 (CC); 2014 (1) BCLR 38 (CC) (14 November 2013); Mistry v Interim National Medical and Dental Council and Others (CCT13/97) [1998] ZACC 10; 1998 (4) SA 1127; 1998 (7) BCLR 880 (29 May 1998). "*To sum up: irrespective of legitimate expectations of privacy which may be intruded upon in the process, and without any predetermined safeguards to minimise the extent of such intrusions where the nature of the investigations makes some invasion of privacy necessary, section 28(1) gives the inspectors carte blanche to enter any place, including private dwellings, where they reasonably suspect medicines to be, and then to inspect documents which may be of the most intimate kind*".

[71] Tinto v Minister of Police (EL18/2012, ECD 318/2012) [2013] Zaecellc 8; 2014 (1) Sacr 267 (ECG) (15 October 2013). [i] "*in determining whether an individual's right to privacy has been infringed a balance must be struck between the protection of that right on the one hand and the State's constitutionally mandated task of prosecuting crime on the other*"; Van der Merwe v Minister of Police and Another (2530/2018) [2019] Zafshc 118 (11 July 2019).

[72] Minister of Police and Others v Kunjana (CCT253/15) [2016] ZACC 21; 2016 (9) BCLR 1237 (CC); 2016 (2) SACR 473 (CC) (27 July 2016): "*[…] it must be assessed whether the infringement of the rights to privacy and dignity is reasonable and justifiable in an open and democratic society… Section 36 of the Constitution governs the situations in which constitutional rights may be limited*".

"*It enjoins a court to balance five relevant factors, which are: the nature of the right; the importance of the purpose of the limitation; the nature and extent of the limitation; the relation between the limitation and its purpose; and whether there are less restrictive means to achieve the purpose*".

cyayo cya mbere n'icya kabiri, iteganya ko Urukiko rw'Ikirenga rufite ububasha bwo gusubiramo umurongo wafashwe n'inkiko ku manza zarangije inzira z'ubujurire hagamijwe kurengera itegeko no gutanga umurongo ngenderwaho rubisabwe n'Urugaga rw'Abavoka cyangwa Ubushinjacyaha Bukuru. Mu mwanzuro utanga ikirego, uhagarariye Urugaga rw'Abavoka mu Rwanda cyangwa Ubushinjacyaha Bukuru agaragaza umurongo anenga wafashwe n'Urukiko n'impamvu ashingiraho asaba ko wahinduka.

[124] Ingingo ya 73 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko igira iti: ikirego gisaba guhindura umurongo mu nyungu z'Itegeko kiburanishwa hashingiwe ku nyandiko Urukiko rwashyikirijwe.

Icyakora, mu gihe Urukiko rusanze hari amakuru rukeneye kurushaho rushobora gutumiza uwatanze ikirego cyangwa undi uwo ari wese kugira ngo agire ibyo arugaragariza. Urukiko kandi rushobora kwemerera impuguke zinyuranye zibisabye kuba mu rubanza nk'inshuti y'Urukiko.

Icyemezo cy'Urukiko kigaragaza ikibazo kigaragara mu murongo wari usanzweho, kikanatanga umurongo mushya ngenderwaho.

[125] Murangwa Edward avuga ko asaba ko mu gihe Umushingamategeko atarahindura ingingo ya 10, agace ka 3, a, b na c, y'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru, Urukiko rwashingira ku biteganywa n'ingingo ya 73 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, rugaha ibisobanuro amagambo avugwa mu duce tumaze kuvugwa tw'ingingo ya 10, kugira ngo uyikoresha yirinde kugenekereza no kurengera.

[126] Urukiko rurasanga ibyo asaba ntaho bihuriye n'ibivugwa mu ngingo ya 73, isobanura imiburanishirize y'ibirego bivugwa mu ngingo ya 65 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 ryavuzwe hejuru, kuko umurongo uvugwa muri izo ngingo ari uwafashwe n'inkiko mu manza. Uretse n'ibyo kandi, Urukiko rusanga ibirego bijyanye no guhindura umurongo wafashwe n'inkiko mu nyungu z'itegeko, bivugwa mu ngingo za 65 na 73 zimaze kuvugwa, ari ibirego byihariye bifite inzira binyuramo, bitangwa n'inzego zigenwa n'itegeko, bikaba bitasuzumirwa mu kirego gisaba kwemeza ko itegeko cyangwa ingingo zaryo binyuranye n'Itegeko Nshinga. Mu rubanza RS/INCONST/RCOM 00001/2022/SC rwa Fast Truck Interior and Hardware Ltd, rwaciwe ku wa 19/05/2023, uru Rukiko rwasobanuye ko ikiba kigamijwe mu birego bisaba gukuraho ingingo z'itegeko bivugwa ko rinyuranyije n'Itegeko Nshinga, ari ukugira ngo mu gihe Urukiko rusanze koko iryo tegeko rinyuranyije n'Itegeko Nshinga, rivanweho[73]. Ntabwo rero ikiba kigamijwe ari ugusobanura amagambo ari mu itegeko.

[127] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ibyo Murangwa Edward asaba ntaho bihuriye n'ikirego gisaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga, bikaba rero bitakwiririrwa bisuzumwa.

III. ICYEMEZO CY'URUKIKO

[128] Rwemeje ko ikirego cya Murangwa Edward gisaba kwemeza ko ingingo ya 10, agace ka 3, agaka ka a, b, c n'agace ka 5, aka 7, n'aka 8, y'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo ; n'ingingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70 z'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, zinyuranyije n'ingingo ya 13, iya 14, iya 23, iya 24, iya 29, iya 43 n'iya 61 z'Itegeko Nshinga rya Repubulika y'u Rwanda, nta shingiro gifite.

[73] Urubanza RS/INJUST/INCONST/RCOM 00001/2022/SC rwa FAST TRUCK INTERIOR AND HARDWARE LTD, rwaciwe n'Urukiko rw'Ikirenga ku wa 19/05/2023, igika cya 28.

[129] Rwemeje ko ingingo ya 10, agace ka 3, agaka ka a, b, c n'agace ka 5, aka 7, n'aka 8, y'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo ; n'ingingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70 z'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, zitanyuranyije n'ingingo ya 13, iya 14, iya 23, iya 24, iya 29, iya 43 n'iya 61 z'Itegeko Nshinga rya Repubulika y'u Rwanda.

[130] Rwemeje ko ikirego cya Murangwa Edward gisaba gutanga umurongo mu nyungu z'itegeko ku magambo impamvu zifatika, ibimenyetso bifatika n'ibimenyetso bikomeye yakoreshejwe mu ngingo ya 10, agace ka 3, a, b na c y'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo, kidakwiye gusuzumwa.