Re KAMANZI

[Rwanda SUPREME COURT – RS/INCONST/SPEC 00002/2022/SC – (Mukamulisa, J. P., Nyirinkwaya, Cyanzayire, Muhumuza and Hitiyaremye, J.) March 31, 2023]

Constitution – Principle of equality before the law – Differentiation of persons – Although persons are treated equally before the law, without any distinction or discrimination of any kind, and the newly enacted law must treat equally the persons for whom it is enacted, differentiation or categorisation does not always amount to discrimination, as long as it is done for a rational and legitimate purpose.

Constitution – Right to equality before the law and protection against discrimination – The fact that genocide suspects and other persons accused of crimes against humanity are subject to some exceptional limitations in their defence, limitations that are not imposed on other suspects, should not be construed as discrimination or inequality before the law done to them because they constitute a special category and because of the nature of the crimes of which they are accused.

Constitution – Fair justice – Fair justice consists of a set of requirements for the trial of cases in accordance with the principles laid down in the law, as well as fair administration of justice, which does not allow the enactment of irrational laws or the adoption of inappropriate policies that violate people's rights.

Constitution – Right to fair justice – The fact that in the course of the trial of criminal cases, different grounds have been provided for convicts of Gacaca courts and other convicts of ordinary courts in matters relating to the review of cases, does not mean a lack of fair justice, while each category must be given special treatment in accordance with the court concerned and the nature of their crimes.

Facts: Kamanzi filed a petition with the Supreme Court asking it to declare paragraph 4 of Article 197 of Law nº 027/2019 of 19/09/2019 relating to Criminal Procedure inconsistent with Articles 15, 16 and 29 of the Constitution of the Republic of Rwanda.

He explains that the fact that the above-mentioned paragraph provides that Gacaca court convicts may apply for a review of the case upon proof that the people they are accused of murdering are still alive, discriminates against them and does not treat them equally before the law, as other grounds for such a procedure are provided for convicts of other ordinary courts. He adds that the fact that a convicted person who finds additional evidence that could lead to a review of the verdict of the Gacaca court, but who is denied by law the use of this procedure, violates his/her right to a fair trial as guaranteed by the Constitution, since he/she is not given the opportunity to prove the injustice he/she has suffered.

The representative of the Government of Rwanda in this case states that Kamanzi's allegation that the provisions of paragraph 4 of the aforementioned Law nº 027/2019 of 19/09/2019 are inconsistent with Articles 15 and 16 of the Constitution is unfounded, as the provisions of these articles should be analysed when comparing persons belonging to the same category. He points out that the fact that the contested article gives reasons for the review of cases on the basis of the courts that have heard those cases does not constitute discrimination, especially since the

categorisation of persons does not discriminate them if it is done for a clear, rational and legitimate purpose and is based on a reason of public interest.

He goes on to say that the existence of the controversial paragraph is so necessary because the review of cases decided by the Gacaca courts for any reason could be interpreted as a lack of respect for the work done by these courts, and this can lead to conflicts among Rwandans. In his conclusion, he states that the disputed paragraph 4 of article 197 of the aforementioned Law was enacted with the intention of filling the gap whereby convicts of Gacaca courts used to appeal to ordinary courts to review their cases, with the intention of disproving those courts, regardless of the nature of the commission of the crime of genocide.

With regard to the principle of non-discrimination and equality before the law examined in the present case, it was explained that it is lawful to differentiate persons for a clear, rational and legitimate purpose by means of procedures appropriate to that purpose.

The Court noted that suspects of genocide and other crimes against humanity have been placed in a special category, special courts have been established for them, and they have been tried in accordance with a special procedure in line with the intended purpose. The fact that their trial procedure is different from the normal procedures for the trial of other suspects of other ordinary crimes, thus subjecting them to some limitations specific to them, is due to the nature of the commission of the crime of genocide, therefore, the Court found that this does not constitute discrimination against them or non-equal treatment before the law, since they constitute a special category, and the same Court therefore ruled that paragraph 4 of article 197 of the aforementioned Law n^{o} 027/2019 is not inconsistent with articles 15 and 16 of the Constitution.

With regard to the right to fair justice, it was explained that fair justice is based on the provisions of the law that prohibit the enactment of irrational laws or the adoption of inappropriate policies that violate people's rights without a clear and rational reason. There is also fair justice, which is based on the fair administration of justice, which is based on a set of requirements for the trial process, based on legal principles or international treaties.

The Court found that those convicted by the Gacaca courts enjoyed all the rights provided for in Article 29 of the Constitution, as well as the rights provided for in international covenants, during their trial. The same Court also found that paragraph 4 of Article 197 of the aforementioned Law n^{o} 027/2019 of 19.09.2019, in the context of the present petition, does not in any way deprive or violate the rights of the suspect of the crime of genocide for his trial proceedings.

Held: 1. Although persons are treated equally before the law, without any distinction or discrimination of any kind, and the newly enacted law must treat equally the persons for whom it is enacted, differentiation or categorisation does not always amount to discrimination, as long as it is done for a rational and legitimate purpose.

2. The fact that genocide suspects and other persons accused of crimes against humanity are subject to some exceptional limitations in their defence, limitations that are not imposed on other suspects, should not be construed as discrimination or inequality before the law done to them because they constitute a special category and because of the nature of the crimes of which they are accused.

3. Fair justice consists of a set of requirements for the trial of cases in accordance with the principles laid down in the law, as well as fair administration of justice, which does not allow the enactment of irrational laws or the adoption of inappropriate policies that violate people's rights.

4. The fact that in the course of the trial of criminal cases, different grounds have been provided for convicts of Gacaca courts and other convicts of ordinary courts in matters relating to the review of cases, does not mean a lack of fair justice, while each category must be given special treatment in accordance with the court concerned and the nature of their crimes.

The petition for a declaration that a provision of a law is inconsistent with the Constitution is unfounded.

Statutes and statutory instruments referred to:

The Constitution of the Republic of Rwanda of 2003 revised in 2015, articles 15, 16 and 29;

Organic law n° 03/2012 of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, article 86;

Organic Law n°16/2004 of 19/06/2004 determining organization, competence and functioning of Gacaca Courts;

Organic Law nº 40/2000 of 26/01/2001 establishing the organisation, competence and functioning of Gacaca courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994;

United Nations Universal Declaration of Human Rights 1948, article 7, 10 and 11.

African Charter on human and People's rights, Article 7;

International Covenant on Civil and political Rights of 1966, article 26;

The European Convention on Human Rights, articles 6 and 14;

Law nº 027/2019 of 19/09/2019 relating to criminal procedure, article 197;

Organic Law n° 11/2007 of 16/03/2007 concerning transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from other States, article 1;

Cases referred to:

Ngendahayo Kabuye, RS/INCONST/SPEC 00004/2021/SC rendered by the Supreme Court on 10/02/2023;

Re Murangwa, RS/INCONST/SPEC 00001/2022/SC rendered by the Supreme Court on 16/12/2022;

Re Kabasinga, RS/INCONST/SPEC 00003/2019/SC rendered by the Supreme Court on 04/12/2019;

Murangwa Edward, RS/INCONST/SPEC 00001/ 2019/SC rendered by the Supreme Court on 29/11/2019;

Akagera Business Group, RS/SPEC/0001/16/CS rendered by the Supreme Court on 23/09/2016;

Bimenyimana André, RS/INCONST/PEN/0001/13/CS rendered by the Supreme Court on 04/10/2013;

Kamanzi Anaclet, rendered by Gacaca Court in Kigasha sector on 21/11/2006;

Kamanzi Anaclet, RMP 3119/AM/KGL/NZF/98-RP 0019/CG-CS/99 rendered by the Military Court on 18/03/1999;

L/Cpl Banamwana Alfred, RMP 3119/AM/KGL/NZF/98-RP 0019/CG-CS/99 rendered by the Military Court;

Case of Thlimmenos v. Greece (Application number 34369/97), Strasbourg 6 April 2000, §44;

Case of Coertzee v. the Government of the Republic of South Africa 1995 (4) SA 631 (CC);

Case of Carson and others v. The United Kingdom (Application number 42184/05), §61;

Case of Inze v. Austria (Application number 8695/79), Strasbourg 28 October 1987, &41.

Authors quoted:
National Service of Gacaca courts, Gacaca courts closing report, Kigali, June 18, 2012, p. 77.

Judgment

BACKGROUND OF THE CASE

[1] On 07/05/2022, Kamanzi Anaclet petitioned the Supreme Court to strike down paragraph 4 of Article 197 of the Law no 027/2019 of 19/09/2019 relating to Criminal Procedure on the grounds that it is inconsistent with Articles 15, 16 and 29 of the Constitution of the Republic of Rwanda of 2003, as revised in 2015 (hereinafter referred to as the Constitution).

[2] He claims that on 21 November 2006, he was found guilty of the crime of genocide by the Gacaca Appeal Court in the Kigasha sector, which found that he had participated in the attack that killed the family of Munyengango Augustin in the Kigasha sector, Ngarama commune, Byumba prefecture.

[3] He states that after his conviction, on 25 April 2002, he found the following evidence, which could lead him to request a review of the judgment rendered by the Gacaca court:

- Acopy of the judgment RMP 3119/AM/KGL/NZF/98 – RP 0019/CG- CS/99 rendered by the Military Court 18/03/1999;
- Various documents in the casefile.

[4] He further states that the said documents indicate that the crime of which he was convicted and for which he was sentenced to 25 years' imprisonment was committed by soldiers who were camped in the barracks located in the Kigasha sector, and that one of these soldiers, L/Cpl Banamwana Alfred, admitted the charges both during the investigation and at the hearing, confirming that such a crime was committed by them as soldiers and that no civilian was involved.

[5] He explains that paragraph 4 of article 197 of the aforementioned Law no 027/2019 of 19 September 2019 stipulates that, with regard to cases heard by a Gacaca court, a review of the case is only accepted if the convicted person establishes that the person he or she is accused of killing is alive, and that the other five grounds referred to in paragraph 1 of this article apply only to persons who have suffered injustice by decisions of ordinary courts, and that victims of injustice by Gacaca courts are not entitled to use these grounds.

[6] He states that in his personal interest and in the interest of the general public, as a Rwandan trying to fight for fair justice and the development of the legal system, he filed this petition to have the Supreme Court annul the last paragraph (4) of Article 197 of the aforementioned Law n° 027/2019 of 19/09/2019 on the grounds that it is inconsistent with the Constitution in its subsequent articles:

- article 15 providing that all people are equal before the law;

- article 16 prohibiting discrimination of any kind;
- article 29 entitling right to fair justice to everybody.

[7] The hearing was held in public on 18 January 2002, with Kamanzi Anaclet represented by Counsel Kayitana Evode and the Government represented by Counsel Batsinda Aline, and the Court first considered issues relating to Kamanzi Anaclet's interest in the case.

[8] After hearing from Counsel Kayitana Evode, representing Kamanzi Anaclet, who stated that he, like any other Rwandan, had an interest in maintaining respect for the Constitution and other legal instruments, but in particular, as a convict of the Gacaca court, he was violated by the disputed provision.

[9] Having heard Counsel Batsinda Aline, representing the Government of Rwanda, who stated that Kamanzi Anaclet had no particular interest in the case, given the wording of Article 197 of the aforementioned Law no 027/2019 of 19/09/2019, which concerns all Rwandans in general;

[10] On the bench, the Court ruled as follows: based on the decision of the preliminary judgment RS/INCONST/SPEC 00001/2022/SC rendered on 16/12/2022[1], whereby this Court held that if one of the following conditions is met, it suffices for the Court to confirm that the applicant has an interest in the case:

- If the law alleged to be inconsistent with the Constitution concerns the petitioner or his/her category in particular, to the extent that he/she has a personal interest in the petition;
- If the law alleged to be inconsistent with the Constitution concerns all persons in general, in so far as such a law infringes their rights, and thus everyone who will be affected by that law has an interest in petitioning for its inconstitutionality;
- If the petitioner is a practitioner, and in the interest of justice, he/she is entitled to petition in order to contribute to the development of legal systems or to protect the rights of persons affected by that law, even if he/she has no interest to protect in the petition.

[11] With regard to the present case, the Court noted that the file contained the judgment of the Gacaca court of the Kigasha sector, which sentenced Kamanzi Anaclet to 25 years' imprisonment for his role in the death of the family of Munyengango Augustin during the genocide against the Tutsis. The same file also contains the judgement of the military court which convicted L/Cpl Banamwana Alfred of being an accomplice in the murder of the family of Munyengango Augustin.

[12] On the basis of the foregoing documents and the aforementioned position adopted by this Court, this Court finds that Kamanzi Anaclet has a direct and personal interest in challenging Article 197, paragraph 4, of the aforementioned Law n° 027/2019 on the grounds that it does not

[1] in this case, Murangwa Edward petitioned the for the repeal of some articles of the Law nº 12/2017 of 07/04/2017 establishing Rwanda Investigation Bureau and determining its responsibilities, competence, organisation and functioning, and some articles of the Law nº 027/2019 of 19/09/2019 relating to criminal procedure, on grounds that those articles are inconsistent with the Constitution.

allow him to apply for a review of the judgment which allegedly convicted him of the same offence for which the court convicted another person who did not accuse the petitioner of being his accomplice.

[13] The Court resumed the hearing and the following issues were analysed:

- Whether the paragraph 4 of article 197 of the Law nº 027/2019 of 19/09/2019 relating to criminal procedure is inconsistent with articles 15 and 16 of the Constitution;
- Whether the paragraph 4 of article 197 of the Law nº 027/2019 of 19/09/2019 relating to criminal procedure is inconsistent with article 29 of the Constitution;

II. ANALYSIS OF LEGAL ISSUES

- **1. Whether the paragraph 4 of article 197 of the Law nº 027/2019 of 19/09/2019 relating to criminal procedure is inconsistent with articles 15 and 16 of the Constitution**

[14] Counsel Kayitana Evode assisting Kamanzi Anaclet states that article 15 of the Constitution provides that all persons are equal before the law and they are entitled to equal protection of the law. He further states that International covenants ratified by Rwanda also provides for this right of equality before the law and prevention of any kind of discrimination. He gives an example of article 26 of International Covenant on Civil and Political Rights (*Pacte international relatif aux droits civils et politiques*) provides that all persons are equal before the law and are entitled without any discrimination to equal protection of the law. The same article further provides that in this respect, the law must prohibit all discrimination and guarantee all persons equal and effective protection against discrimination.

[15] He states that the fact that article 197, paragraph 1, of the above-mentioned Law no 027/2019 provides that convicts of Gacaca courts are not allowed to request a review of their case, as is the case for convicts of ordinary courts, constitutes an injustice against them, since the law does not treat them in the same way as convicts of ordinary courts. He considers that the aforementioned article is incompatible with Article 16 of the Constitution, which provides that all Rwandans are born and remain equal in rights and freedoms, because Kamanzi Anaclet does not enjoy the same right to case review as others.

[16] Counsel Kayitana Evode admits that discrimination can be allowed by the law for serious grounds, and this has been upheld by the Supreme Court in the judgment RS/INCONST/PEN 0005/12/CS. He elucidates that this case was based on the decision of ICTR (International Criminal Tribunal for Rwanda) for the transfer of Uwinkindi Jean to be tried by Rwandan courts, where he had to be tried by the High Court at the first instance as per article one of the Law n° 11/2007 of 16/03/2007 concerning transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from other States. Uwinkindi Jean immediately petitioned the Supreme Court to repeal the said article on the grounds that it is inconsistent with the Constitution, stating that such an article will lead to injustice and that he will be tried by the High Court in the first instance, thus depriving him of the right to appeal as is the case for others.

[17] He adds that the Court has held that a distinction between persons is not discriminatory unless it is neutral and is made for a rational purpose. The Court stated this as follows: The categorisation of persons is not discriminatory, especially if these categories are established to achieve a reasonable puprpose, which is visible to everyone, is based on the law and is valid in the public interest.

[18] He explains that matters relating to possible differentiation of persons by the law were also reiterated by the United Nations Human Rights Committee, in its resolution of the meeting of 37, where this Committee, on this matter of differentiating persons by the law, stated that *"...the committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the covenant".*

[19] He stated that, in his opinion, the provisions of paragraph 4, article 197 of the aforementioned Law nº 027/2019 of 19/09/2019 can be justified, since there is no single reason that can justify allowing some people to have their injustice examined by the courts and depriving others of the same right.

[20] He goes on to explain that foreign countries have a say in matters relating to the right to equality before the law and equal protection of the law. He cited the example of Canada, where section 15 of the Canadian Charter of Rights and Freedoms states that all persons are equal before the law and are entitled to equal protection of the law without discrimination. He states that in defining the said equality before before the law and equal protection of the law, the Canadian Supreme Court, in the case of "*Andrews v. Law Society of British Columbia"*, upheld that, as a principle, equal protection means that people in similar circumstances must be treated equally.

[21] With regard to the meaning of discrimination, he states that the very Court defined it as follows: "*Discrimination is a distinction which, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, has an effect which withholds or limits access to advantages available to other members of society*."

[22] In his conclusion, he states that, as mentioned in paragraph 4 of Article 197 of the aforementioned Law, a paragraph which is the subject of the request for repeal, the Law provides for two categories of persons without any intention to treat persons in each category equally, but rather the intention was to grant a right to one category and to deprive another category of such a righ He explains that those convicted in ordinary courts have the right to request a review of their case, while those convicted in Gacaca courts have no such right. He concludes by arguing that this constitutes discrimination because, in addition to unequal legal protection, some people do not have even the slightest protection.

[23] Counsel Batsinda Aline, representing the Government of Rwanda, states that Kamanzi Anaclet's contention that the provisions of paragraph 4 of Article 197 of the aforementioned Law no 027/2019 of 19/09/2019 are inconsistent with Articles 15 and 16 of the Constitution is unfounded, as such provisions should be analysed for the purpose of comparing a person with those in the same category.

[24] She submits that article 197 of the above-mentioned Law n° 027/2019 of 19/09/2019 provides for two categories of cases that may be the subject of a request for review, namely: cases heard by ordinary courts may be reviewed in accordance with the provisions of paragraphs 1, 2 and 3, and cases heard by Gacaca courts may be reviewed in accordance with the provisions of paragraph 4 of the same article.

[25] She further states that the principles provided for in Articles 15 and 16 of the Constitution can be respected by comparing what convicts of ordinary courts are allowed to do with each other for case review, or comparing what convicts of Gacaca courts are allowed to do with each other for case review, and this can be done by considering the grounds provided for in Article 197 of the aforementioned Law no 027/2019 of 19/09/2019.

[26] She elucidates that the fact that the said article provides for the grounds for requesting a review of the case on the basis of the courts that have heard the case does not constitute discrimination, and that this has been confirmed in the above-mentioned judgment RS/INCONST/PEN 0005/12/CS, paragraph 16, where the Supreme Court ruled that the fact that the law provides for litigants sued for similar offences to be tried in different courts does not constitute discrimination, but may be done for a rational purpose in order to provide fair justice.

[27] She further states that the categorisation of persons does not imply discrimination, especially when that categorisation is made for a rational, obvious and legitimate purpose and that it is made in the interest of the public, and this confirms that paragraph 4, article 197 of the aforementioned Law no 027/2019 of 19/09/2019 does not contradict articles 15 and 16 of the Constitution on matters relating to special categories.

[28] The Counsel adds that this paragraph is necessary because the review of cases tried by the Gacaca courts, for whatever reason, can be seen as a lack of respect for the work done by these courts, which then leads to disputes and conflicts among Rwandans, as in some cases a conspiracy has been identified behind the review of cases tried by these courts with the intention of releasing those convicted by them.

[29] The counsel further explains that the purpose of the contested paragraph 4 of Article 197 of Law no 027/2019 is that, during the period of the Gacaca courts, a compromise was made between those convicted of a crime of genocide, whereby a person accused of killing many people would add another victim whom he didn't kill, with the intention of covering up the crime committed by someone else. She states that if one analyses the way a crime of genocide is committed, it is clear that the death of a victim involves many people, for example, a person who participated in barricade activities and it is not easy to know the exact number of people who were killed there, or if that person is convicted of an offence of incitement to kill, conspiracy or participation in the attacks, you find that the death of the victim in that period involves many people because all the said acts were aimed at killing that person. In this case, she states, the real killer of the victim cannot be punished alone and let his/her accomplices feel no guilt, and it is in this framework that the Organic Law governing Gacaca Courts puts people in different categories based on how they committed crimes, and all this aims to justify why convicts of Gacaca Courts should not base on the same grounds as those based by convicts of ordinary courts in applying for case review.

[30] The representative of the Government of Rwanda added that prior to the inclusion of paragraph 4 of the said article in the Law, some cases heard by the Gacaca courts and reviewed by the ordinary courts had declared those convicted of the crime of genocide not guilty or even released them unjustly, disregarding the specificity and nature of the Gacaca courts. She explains that in some cases, ordinary courts have overturned judgements handed down by Gacaca courts on the grounds that there is another person convicted of the same crime who has confessed to having committed it, ignoring the fact that one person could be killed in an attack involving many people, as explained above.

[31] She cites an example of two cases referred to by Kamanzi Anaclet, namely the case heard by Gacaca court of Kigasha sector on 21/11/2006, and the case RMP 3119/AM/KGL/NZF/98-RP 0019/CG-CS/99 decided by the Military Court on 18/03/1999, in which he was convictef of crimes related to those convicted to L/Cpl Banamwana Alfred in the judgment RMP 3119/AM/KGL/NZF/98-RP 0019/CG-CS/99.

[32] In her conclusion, she states that paragraph 4 of article 197 of the aforementioned Law no 027/2019 of 19/09/2019 was introduced to fill the gap whereby convicts of Gacaca courts used to turn to ordinary courts to review their cases, with the intention of overturning the verdicts against them, without taking into account the specificity of the commission of the crime of genocide.

DETERMINATION OF THE COURT

[33] Article 15 of the Constitution of the Republic of Rwanda provides that all persons are equal before the law and that they are entitled to equal protection of the law, and article 16 of the same Constitution reads that all Rwandans are born and remain equal in rights and freedoms. Discrimination of any kind or its propaganda based on, inter alia, ethnic origin, family or ancestry, clan, skin colour or race, sex, region, economic categories, religion or faith, opinion, fortune, cultural differences, language, economic status, physical or mental disability or any other form of discrimination are prohibited and punishable by law.

[34] Article 197 of the Law nº 027/2019 of 19/09/2019 relating to criminal procedure, paragraph 4 under application for repeal on grounds that it is inconsistent with articles 15 and 16 of the Constitution, stipulates that regarding cases heard by a Gacaca Court, case review is accepted only if the convicted person identifies that the person he or she is alleged to have killed is a live. This means that any grounds other than those provided for in this article2 are inadmissible for the review of the case of the person convicted by the Gacaca courts.

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[2] A case can be reviewed due to one of the following grounds:
1° if a person convicted of homicide and later, sufficient evidence is discovered to confirm that the person the convict is alleged to have killed is alive;
2° if, after the accused is convicted of an offence, and it is subsequently found that there is a judgment sentencing another person for the same offence, so that the contradiction between both judgments shows that one of the convicted persons is innocent;
3° if the court finds that corruption was involved in the case and had effects on the judgment;
4° if the judgment was rendered on the basis of documents, testimonies or oaths which later turn out to be or are subsequently declared false by the court after the judgment;
5° if, after the judgment, new conclusive evidence sufficiently showing injustice caused by judgment subject to review is revealed;

[35] The principle of equality before the law and non-discrimination is not only enshrined in the Rwandan Constitution, but also in the international covenants ratified by Rwanda. For instance, Article 7 of the Universal Declaration of Human Rights of 1948 reads that: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against discrimination in violation of this Declaration and against any incitement to such discrimination". There is also article 26 of the International Covenant on Civil and Political Rights, 1966 which reads that: "All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status".

[36] With regard to the interpretation of Articles 15 and 16 of the Constitution, the Court explained this in its judgment RS/SPEC/0001/16/CS of 23/09/20163. The Court stated that Articles 15 and 16 of the Constitution are closely related to each other so that they cannot be interpreted in isolation from each other. The Court explained that Article 15, which states that all persons are equal before the law and are entitled to equal protection of the law, means that any discrimination that results in unequal protection of the law or deprivation of the right to which one is entitled is unconstitutional, while Article 16, as a continuation of Article 15, states how differentiation between persons can be considered discrimination and that such discrimination is unconstitutional. These two articles can be considered as containing a principle of equality of persons in what they are allowed or forbidden to do, with the intention of excluding some persons from the right to which they are entitled. The very Court further upheld this in the judgment RS/INCONST/SPEC 00004/2021/SC[4.]

[37] As noted above, the principle of equality before the law means that people are treated equally before the law, without inequality or discrimination, and that the law should treat those affected equally. There may be an exception to this principle if there are reasonable grounds based on a legitimate or reasonable purpose, as the applicant acknowledges, which was confirmed by this Court in case RS/INCONST/SPEC 00001/2019 /SC, decided on 29/11/20195. In this case, the Court, relying on the words of legal expert Erwin Hemerinsky, stated that things that are alike should be treated alike, and things that are unalike should be treated unalike in proportion to their unalikeness. In other words, people should be treated equally, but regardless of their class, so that people from different classes are not treated the same.

[38] This principle that people within the same category must be treated differently and without reasonable justification in order for it to be considered discrimination or non-discrimination was also reiterated in the case of Thlimmenos vs. Greece decided by by the European Court of Human Rights, which said that for a country to be found in breach of Article 14 of the Convention against discrimination6, it must have treated people in the same category differently without a rational and

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6° if the judgment is based on the proceedings conducted on behalf of a person who did not explicitly or implicitly grant permission to do so or prove or confirm such proceedings.

[3] Judgment RS/SPEC/0001/16/CS, Akagera Business Group, paragraph 15

[4] RS/INCONST/SPEC 00004/2021/SC rendered on 10/02/2023, Ngendahayo Kabuye, paragraph 36.

[5] Judgment RS/INCONST/SPEC 00001/ 2019/SC, Murangwa Edward rendered on 29/11/2019, p.12, paragraph 35.

[6] The article 14 of European Convention on Human Rights reads: *The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion,*

legitimate reason. The Court stated this as follows: "The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification".[7]

[39] In the case of Carson and Others v. The United Kingdom, the European Court of Human Rights has confirmed, on the basis of other cases, that differentiation falls within the definition of Article 14 if it is based on certain characteristics. Furthermore, for this to be considered as discrimination, those people who are not treated equally must be in the same category, and it must be done without a rational purpose or when there is no connection between such a difference and the purpose sought to be realised. The Court stated this as follows: "The Court has established in its case-law that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14. Moreover, in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations. Such a difference in treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. […][8]

[40] In the Inze vs. Austria case, the Court also confirmed that, in the context of Article 14, discrimination occurs when people are treated differently without a clear and reasonable justification, without a legitimate aim, or in a way that is unrelated to the aim to be achieved. The Court said that countries have the right to analyse when it is necessary not to treat people equally under the law, taking into account their history. The Court stated this as follows: "For the purposes of Article 14, a difference of treatment is discriminatory if it "has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised". The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law; the scope of this margin will vary according to the circumstances, the subject-matter and its background."[9]

[41] In its report, the United Nations Human Rights Committee stated as follows: […] "The Committee reiterates its constant jurisprudence that the right to equality before the law and to equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26)."[10]

[42] Following the general explanations on the definition of unequal treatment before the law and discrimination, the Court finds that unequal treatment does not always imply discrimination prohibited by law, and the remaining question to be analysed is whether paragraph 4 of Article 197 of Law no 027/2019 of 19/09/2019 on criminal proceedings contains unequal treatment before

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political or other opinion, national or social origin, association with a national minority, property, birth or other status.

[7] Case of Thlimmenos v. Greece (Application number. 34369/97), Strasbourg 6 April 2000, §44.

[8] Case of Carson and others v. The United Kingdom (Application number. 42184/05), §61.

[9] Case of Inze v. Austria (Application number. 8695/79), Strasbourg 28 October 1987, &41.

[10] Muller and Engelhard v. Namibia, Communication number 919/2000, adopted on 26 March 2002, para. 6.7.

the law and discrimination, as alleged by the applicant. As elucidated above, the very article explains that regarding cases heard by a Gacaca Court, case review is accepted only if the convicted person identifies that the person he or she is alleged to have killed is a live, whereas there exist other grounds provided under the same article for convicts of other courts to apply for case review.[11]

[43] Article 197 of the aforementioned Law Nº 027/2019 of 19/09/2019 contains two categories : the category of those tried and convicted by ordinary courts; and the category of those tried and convicted of Gacaca courts. The category of persons alleged by the applicant to have been discriminated against and subjected to unequal treatment before the law is that of those tried and convicted by the Gacaca courts as compared to the category of those convicted by the ordinary courts. The applicant submits that the purpose of the law in providing for these two categories of persons was not to treat them equally, but rather to grant some rights to one category by depriving the other category of such rights, since those convicted by ordinary courts are entitled to apply for a review of the case, while those convicted by Gacaca courts are not.

[44] In order to better understand the issue in this case, it is better to first examine the rationale behind the establishment of Gacaca courts, their purpose and how they function differently from ordinary courts. After the end of the genocide against the Tutsi in 1994, which claimed the lives of more than one million people, one of the most pressing issues was to bring to justice those suspected of having participated in the genocide so that the victims could receive justice. This was not an easy task, given the large number of suspects to be tried, with more than 120,000 suspects in provisional detention, and the fact that the justice sector had been severely damaged by the genocide.[12]

[45] Although the Government of Rwanda had done much to bring cases relating to the genocide against the Tutsi to trial, it was noted that at the rate at which these cases were being tried at the time, it could take many years to try at least those in provisional detention, although there were still other wanted suspects[13]. In this context, it was considered necessary to resort to another special procedure to deal with the issue, and then Gacaca courts were established, which functioned

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[11] See article 197, paragraph one, of the Law Nº 027/2019 of 19/09/2019 relating to criminal procedure, which reads that a case can be reviewed due to one of the following grounds:

1° if a person convicted of homicide and later, sufficient evidence is discovered to confirm that the person the convict is alleged to have killed is alive;

2° if, after the accused is convicted of an offence, and it is subsequently found that there is a judgment sentencing another person for the same offence, so that the contradiction between both judgments shows that one of the convicted persons is innocent;

3° if the court finds that corruption was involved in the case and had effects on the judgment;

4° if the judgment was rendered on the basis of documents, testimonies or oaths which later turn out to be or are subsequently declared false by the court after the judgment;

5° if, after the judgment, new conclusive evidence sufficiently showing injustice caused by judgment subject to review is revealed;

6° if the judgment is based on the proceedings conducted on behalf of a person who did not explicitly or implicitly grant permission to do so or prove or confirm such proceedings.

[12] The National Service of Gacaca Courts, Gacaca jurisdictions in Rwanda, June 2012, page 13.

[13] National Service of Gacaca courts, Gacaca courts closing report, Kigali, June 18, 2012, p. 77.

differently from ordinary courts, because these courts were also meant to deal with a special issue[14].

[46] Considering the rationale of Organic Law n° 16/2004 of 19/06/2004 establishing the organisation, competence and functioning of Gacaca courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994 [15], such courts had the following goals:

- Establishing truth about what happened;
- Accelerate the legal proceedings for those accused of Genocide Crimes;
- Eradicating the culture of impunity;
- Reconciling Rwandans and reinforcing their unity;
- Showing the capacities of Rwandan society to deal with its problems through a justice-based Rwandan custom.

Based on those goals, the Legislator created a special category for suspects of the crime of genocide and other crimes against humanity, and also established a special procedure for their trial compared to other suspects in ordinary courts for ordinary crimes.

[47] The peculiarity of the aforementioned Organic Law establishing the Gacaca Courts, which has been subject to repeal and amendment, compared to other penal codes and criminal procedures, is that such an organic law itself defines the organisation, functioning and jurisdiction of the Gacaca Courts, crimes, suspects and penalties. In other words, the Gacaca courts, in deciding cases under their jurisdiction, respected the special procedure provided for in the organic law establishing them, a procedure different from that for ordinary cases.

[48] Returning to the issue in the present case, in which the applicant alleges that those convicted by the Gacaca courts are discriminated against and do not enjoy the same protection as those convicted by ordinary courts because they are entitled to apply for a review of their case only if they manage to prove that the person they are accused of killing is still alive, whereas other convicts have other grounds for applying for a review of their case, the Court finds, as explained above, that this allegation is unfounded, since they are suspected of crimes belonging to different categories. On the one hand, we have suspects of ordinary crimes and, on the other, suspects of genocide and other crimes against humanity. The purpose of the legislator was to establish a different procedure for such crimes, taking into account the objectives presented in paragraph 46 of the present case, and this explains the reason why, in matters relating to the review of cases, special grounds have been established for each category to be authorised to apply for the review of cases.

[49] The Court also finds that the same issue as that in the present case, namely the procedure for reviewing the cases of those in the category of convicts of Gacaca courts, as distinct from those

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[14] Organic Law nº 40/2000 of 26/01/2001 establishing the organisation, competence and functioning of Gacaca courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994.

[15] This Law repealed the one of 2001.

convicted in ordinary courts, is not a new issue before this Court. In Judgment RS/INCONST/PEN/0001/13/CS of 04/10/2013, in which Bimenyimana André filed a petition requesting the repeal of Article 86, last paragraph, of Organic Law no 03/2012 of 13/06/2012 on the Organisation, Functioning and Jurisdiction of the Supreme Court, which provides that matters relating to the review of judgments for injustice do not concern cases decided by Gacaca courts, be repealed because it is inconsistent with Article 16 of the Constitution of the Republic of Rwanda of 04/06/2003, as revised at the time the petition was filed[16]. The same court explained that there was no discrimination because, in enacting Article 86 of the aforementioned Organic Law no 03/2012 of 13/06/2012, the legislator relied, inter alia, on the grounds of the establishment of Gacaca courts, their rationale and purpose.[17] The same motivation is also given in the present case with regard to the reasons for inserting the fourth paragraph of Article 197 of Law no 027/2019 of 19/09/2019 on criminal procedure, which establishes a speciality for cases decided by Gacaca courts.

[50] Based on the foregoing elucidations, the Court finds the petition filed by Kamanzi Anaclet requesting the repeal of paragraph 4 of article 197 of the Nº 027/2019 of 027/2019 relating to criminal procedure, for being inconsistent with articles 15 and 16 of the Constitution of the Republic of Rwanda, lacks merit.

2. Whether the paragraph 4 of article 197 of the Law nº 027/2019 of 19/09/2019 relating to criminal procedure is inconsistent with article 29 of the Constitution

[51] Counsel Kayitana Evode representing Kamanzi Anaclet states that article 29 of the Constitution of the Republic of Rwanda reads that" Everyone has the right to due process of law (…), which includes the right to be presumed innocent. He states that this article does not provide all the details on the content of due process of law, that subsection five (5°) of this article states that no one shall be held liable for an offence which he or she has not committed, that this is the basis for giving the person convicted by the court the right to request a review of his or her case in order to be declared innocent and not liable for a crime which he or she has not committed.

[52] He submits that the definition and content of due process of law have been explained by the Supreme Court in the judgment RS/INCONST/SPEC 00003/2019/SC of the Supreme Court of 4 December 2014, in which the Court explained that due process of law consists of criteria to be followed in judicial proceedings based on legal provisions that are based on the principles of procedural due process and fair administration of justice, which prohibits the adoption of inappropriate legal instruments or other measures that violate people's rights (substantive due process).

[53] He states that the remaining issue to be analysed is "whether the authorisation to apply for a review of the case" is part of the content of due process of law. He submits that in the above-mentioned judgment RS/INCONST/SPEC 00003/2019/SC, the Supreme Court stated that in criminal cases, the due process of law begins with the investigation, prosecution and then the trial and sentencing of the offences provided for in the Criminal Codes. This means, he says, that issues

[16] This article provides that all persons are equal before the law and that they are entitled to equal protection of the law.
[17] Urubanza RS/INCONST/PEN/0001/13/CS, Bimenyimana André, paragraph 17.

relating to the right to appeal and case review are part of the trial process, which is also part of due process.

[54] Counsel Kayitana Evode also argues that the fact that there are legitimate reasons for reviewing a case in order to ensure the fair administration of justice, but that these reasons are disregarded simply because the person has been convicted by a Gacaca court, violates the principle of due process of law. He requests that paragraph 4 of Article 197 of the above-mentioned Law no 027/2019 of 19/09/2019 be repealed so that Kamanzi Anaclet, as well as other persons who feel that they have been wronged by the Gacaca courts, enjoy the same rights as other Rwandans who have evidence that they have been wronged by the courts and that the law includes this among the grounds for reviewing the case.

[55] He submits that there is nothing to prevent the Supreme Court from repealing any legal provision or part of it if it is inconsistent with the Constitution, as ruled in judgment RS/INCONST/PEN0001/07/CS, since this cannot have any effect on the statute. He adds that this position is similar to that adopted by other foreigh courts, such as the case of Coertzee v. the Government of the Republic of South Africa 1995 (4) SA 631 (CC) rendered by the Supreme Court of South Africa, where the very Court stated that "the bad and the good may be separated without prejudice to the main objective of the statute and the purpose of legislature."

[56] In conclusion, Counsel Kayitana Evode states that Kamanzi Anaclet did not receive due process of law as he received new evidence that allowed him to have his case reviewed, but he was prevented by the law from presenting the injustice he suffered.

[57] Counsel Batsinda Aline, representing the Government of Rwanda, argues that the due process of law provided for in Article 29 of the Constitution has nothing to do with the right that Kamanzi Anaclet claims to have been deprived of, namely the right to appeal and the right to review. It states that the petitioner had the right of appeal and the right of review when he was tried by the Gacaca courts, in accordance with the Organic Law N° 16/2004 of 19 June 2004 determining the organisation, functioning and jurisdiction of the Gacaca courts, as revised and supplemented by various organic laws, and that he exercised these rights before the Gacaca courts.

[58] With regard to the right to a review of the case provided for in paragraph 4 of Article 197 of Law no 027/2019 of 19/09/2019 on Criminal Procedure, Counsel Batsinda Aline submits that Kamanzi Anaclet can exercise this right once he manages to prove that it is provided for in the said paragraph, and therefore this paragraph is in no way inconsistent with Article 29 of the Constitution.

DETERMINATION OF THE COURT

[59] Article 29 of the Constitution of the Republic of Rwanda highlights some of the elements of due process to which everyone is entitled. Those are the following:

- The right to be informed of the nature and cause of charges and the right to defence and legal representation;

- To be presumed innocent until proved guilty by a competent Court;
- to appear before a competent Court;
- not to be subjected to prosecution, arrest, detention or punishment on account of any act or omission which did not constitute an offence under national or international law at the time it was committed. Offences and their penalties are determined by law;
- not to be held liable for an offence he or she did not commit. Criminal liability is personal;
- not to be punished for an offence with a penalty that is severer than the penalty provided for by the law at the time that offence was committed;
- not to be imprisoned merely on the ground of inability to fulfil a contractual obligation;
- not to be prosecuted or punished for a crime which has reached its statute of limitations. However, the crime of genocide, crimes against humanity and war crimes are not subject to statute of limitations. […].

[60] In terms of what should be respected to ensure due process of law, in addition to the Constitution, it can be found in the following international covenants:

- International Covenant on Civil and Political Rights where its article 14 enumerates the rights entitled to a suspect;[18]
- Universal Declaration of Human Rights, where its articles 10 and 11 provides on the rights entitled to a suspect;[19]

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[18]Article 14 stipule:

1. *"Tous sont égaux devant les tribunaux et les cours de justice. […]*
2. *Toute personne accusée d'une infraction pénale est présumée innocente jusqu'à ce que sa culpabilité ait été légalement établie.*
3. *Toute personne accusée d'une infraction pénale a droit, en pleine égalité, au moins aux garanties suivantes:*
   a) *A être informée, dans le plus court délai, dans une langue qu'elle comprend et de façon détaillée, de la nature et des motifs de l'accusation portée contre elle;*
   b) *A disposer du temps et des facilités nécessaires à la préparation de sa defense et à communiquer avec le conseil de son choix;*
   c) *A être jugée sans retard excessif;*
   d) *A être présente au procès et à se défendre elle-même ou à avoir l'assistance d'un défenseur de son choix; si elle n'a pas de défenseur, à être informée de son droit d'en avoir un, et, chaque fois que l'intérêt de la justice l'exige, à se voir attribuer d'office un défenseur, sans frais, si elle n'a pas les moyens de le rémunérer;*
   e) *A interroger ou faire interroger les témoins à charge et à obtenir la comparution et l'interrogatoire des témoins à décharge dans les mêmes conditions que les témoins à charge;*
   f) *A se faire assister gratuitement d'un interprète si elle ne comprend pas ou ne parle pas la langue employée à l'audience;*
   g) *A ne pas être forcée de témoigner contre elle-même ou de s'avouer coupable." […]*

[19] Article 10 states: *"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. And Article 11 reads: Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. 2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed."*

- African Charter on Human and Peoples'Rights, where its article 7 provides on how the suspect should be treated;[20]
- European Convention on Human Rights, where its article 6 provides on how the suspect should be treated.[21]

[61] In defining the due process of law, in the judgment RS/INCONST/SPEC 00003/2019/SC[22], the Supreme Court provided such a definition in two ways: substantive due process and procedural due process. Substantive due process prevents the enactment of unreasonable laws and measures that violate people's rights without a rational purpose, while procedural due process is based on due process of law, i.e. criteria to be followed in judicial proceedings based on legal provisions based on the principles of due process of law and fair administration of justice provided for in statutes or international covenants. This is what was explained by a legal scholar Professor Erwin Chemerinsky in the following words: *"Substantive due process asks the question of whether the government's deprivation of a person's life, liberty or property is justified by a sufficient purpose. Procedural due process, by contrast, asks whether the government has followed the proper procedures when it takes away life, liberty or property. Substantive due process looks to whether there is a sufficient substantive justification, a good enough reason for such a deprivation".*[23]

[62] In light of the petitioner's submissions, the Court finds that the issue in the present case is to determine whether paragraph 4 of Article 197 of the aforementioned No. 027/2019 of 19 September 2019 prohibits convicts of Gacaca courts from receiving substantive due process, as alleged by the petitioner. In other words, the question is whether this paragraph prohibits those convicted by the Gacaca courts from receiving due process of law in their trials.

[63] Also on the basis of the petitioner's submissions, the Court finds that his second concern in relation to the right to equality or equal treatment before the Court, since he alleges that the disputed paragraph prevents convicts of Gacaca courts from receiving due process, since such convicts are only entitled to apply for a review of their case if they are able to prove that the person they are accused of killing is still alive, whereas convicts of ordinary courts benefit from other grounds for applying for such a review of their case.

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[20] Article 7 of the Charter stipulates: *"1 Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his Fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in Force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal. 2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender."*

[21] Article 6.1 of the Convention reads: *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."*

[22] RS/INCONST/SPEC 00003/2019/SC, Kabasinga Florida, paragraph 13.

[23] Professor Erwin Chemerinsky, Substantive Due Process, Touro Law Review: Vol. 15: No. 4, Article 15, P. 1. Available at: https://digitalcommons.tourolaw.edu/lawreview/vol15/iss4/15.

[64] In order for a law or its article to violate due process of law, in the light of the aforementioned definition by the legal scholar Erwin Chemerinsky, the Court finds that such a law must deprive, without clear justification, all of the aforementioned rights to which a person is entitled under the Constitution or international covenants.

[65] With regard to paragraph 4 of Article 197 of Law nº 027/2019 of 19/09/2019, which the applicant claims prevents some persons from receiving due process of law, in the light of the criteria to be followed for the judicial proceedings of the suspect, the Court finds that nowhere in the disputed paragraph is it mentioned that the convicts of the Gacaca courts were deprived of what they were entitled to in their judicial proceedings in order to receive due process of law, or that some restrictions were imposed on them, such as the presumption of innocence or not being held liable for crimes he/she did not commit, as alleged by the petitioner.

[66] Regarding equal treatment before the court, the Court finds that this issue is similar to the one explained above on matters relating to the right to equality before the law and equal protection by the law. The principle of equality before the Court of Justice means that all persons before the Court should enjoy the same rights. This means that people appearing before different courts, depending on the nature of the offences at hand, are not necessarily meant to be treated equally. This has been upheld by the UN Human Rights Committee, when explaining article 14,1° of the International covenant on civil and political rights in relation to due processs of law. The Committee stated that equality before the courts should be understood as the rights of persons appearing before the same court. The Committee gave the example of the existence of special crimes that require special judicial procedures or the establishment of special courts, but this must be based on a rational justification. The Committee stated this as follows: "*Equality before courts and tribunals also requires that similar cases are dealt with in similar proceedings. If, for example, exceptional criminal procedures or specially constituted courts or tribunals apply in the determination of certain categories of cases, objective and reasonable grounds must be provided to justify the distinction.*"[24]

[67] As explained above in relation to issues of equality before the law, the Court finds that the establishment of Gacaca courts with a mandate to try suspects of genocide and other crimes against humanity, which is a special category distinct from that of suspects of other ordinary crimes before ordinary courts, is legitimate. The fact that some rights are granted in one category and not in the other does not constitute a lack of due process of law, since each category should be examined independently of the other, depending on the court hearing the case and also on the nature of the crime.

[68] As explained above, it is legitimate for the legislator to provide for two categories, i.e. that of suspects of genocide and other crimes against humanity and that of suspects of ordinary crimes. What is important is that there is a legitimate reason for the establishment of these categories and that in their judicial proceedings the rights to which they are entitled by the law have been respected. This is confirmed by the judgment of the European Court of Human Rights in the case of Taxquet C. v. Belgium, where the Court held that States have the full right to decide how their

[24] Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007). §14.

courts comply with the provisions of Article 6[25]. For that Court, the Court's task is to ascertain whether the course followed by a State in judicial proceedings has led to results compatible with the Convention, taking into account the nature and complexity of the proceedings. In short, the Court must examine whether the procedure as a whole was fair. That Court stated it as follows in French: "*En effet, les Etats contractants jouissent d'une grande liberté dans le choix des moyens propres à permettre à leur système judiciaire de respecter les impératifs de l'article 6. La tâche de la Cour consiste à rechercher si la voie suivie a conduit, dans un litige déterminé, à des résultats compatibles avec la Convention, eu égard également aux circonstances spécifiques de l'affaire, à sa nature et à sa complexité. Bref, elle doit examiner si la procédure a revêtu, dans son ensemble, un caractère équitable.*"[26]

[69] To conclude, the fact that Article 197 of the Law N° 027/2019 of 19/09/2019 relating to criminal procedure provides for different grounds for convicted persons of Gacaca courts and convicted persons of ordinary courts to be entitled to apply for a review of the case, where its paragraph 4 reads that in cases heard by a Gacaca court, a review of the case shall be accepted only if the convicted person establishes that the person he or she is alleged to have killed is alive, while those convicted by ordinary courts have additional grounds allowing them to apply for a review of the case, the Court finds that this does not constitute an obstacle to the due process of law. What is important is that their rights as provided for in Article 29 of the Constitution, as well as international covenants, have been respected in their judicial proceedings.

[70] Based on all the foregoing elucidations, it is in the finding of the Court that paragraph 4 of article 197 of the Law Nº 027/2019 of 19/09/2019 relating to criminal procedure is not inconsistent with article 29 of the Constitution of the Republic of Rwanda of 2003 revised in 2015.

III. DECISION OF THE COURT

[71] Holds that the petition filed by Kamanzi Anaclet requesting declaration that paragraph 4 of article 197 of the Law Nº 027/2019 of 19/09/2019 relating to criminal procedure is inconsistent with article 15, 16 and 29 of the Constitution of the Republic of Rwnda of 2003 revised in 2015, lacks merit;

[72] Decides that the contested paragraph is in no way inconsistent with articles 15, 16 and 29 of the Constitution.

[25] This is a provision of the European Convention on Human Rights which provides for elements of a due process of law.
[26] Affaire Taxquet c. Belgique (Requête nimero 926/05), §84