SANJU KILIMANOOR SASIDHARAN NAIR v. UBUSHINJACYAHA

[Rwanda URUKIKO RW'UBUJURIRE – RADA 00011/2018/CA – (Karimunda, P.J.) 22 Ukwakira 2018]

Kohererezanya ukurikiranyweho icyaha (extradition) – Ubusabe bwi gihugu n'ubwa Polisi Mpuzamahanga (INTERPOL) ko umuntu ushakishwa afatwa – Ubusabe bwi gihugu n'ubwa Polisi Mpuzamahanga (INTERPOL) ko umuntu ushakishwa afatwa (International Arrest Warrant), ubwabyo ntabwo ari ubusabe bwo kumwohereza mu gihugu yakoreyemo ibyaha (extradition).

Ububasha bw'inkiko – Urukiko rufite ububasha bwo gufata icyemezo ku ifunga n'ifungurwa by'agateganyo by'umuntu usabirwa kwoherezwa – Umunyamahanga usabirwa kwoherezwa aho yakoreye icyaha ashobora gufatwa byihutirwa, agafungwa by'agateganyo kugirango adatoroka icyo gihe iryo funga ry'agateganyo ndetse n'uburyo bwo kurijuririra biba bigengwa n'amategeko agenga imiburanishyirize y'imanza z'inshinjabyaha n'ububasha bw'inkiko by'igihugu arimo, – Urukiko rw'Ibanze ari rwo rufite ububasha bwo gusuzuma ishingiro ry'ifunga n'ifungurwa by'agateganyo.

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Ikirego cyihutirwa – Ikirego cyihutirwa kigomba kuba gishamikiye ku kirego cy'iremezo, kuba ababuranyi ari bamwe ubwabyo bitihagije kugira ngo cyakirwe.

Incamake y'ikibazo: Ku busabe bwa Polisi Mpuzamahanga (INTERPOL) kandi hashingiwe no kuri International Arrest Warrant yatanzwe na United Arab Emirates, SANJU Kilimanoor Sasidharan Nair yafatiwe ku kibuga cy'indege ikanombe, maze ashyikirizwa Polisi y'u Rwanda nayo imushikiriza Ubushinjacyaha nabwo bumuregera Urukiko rw'Ibanze rwa Nyarugenge busaba ko afungwa by'agateganyo mu gihe hagitegerejwe ko imihango yo kumuhererekanya irangira kugirango yoherezwe muri United Arab Emirates kurangiza ibihano yakatiwe ku byaha byo gutanga sheki itazigamiye ya 8.818.000 AED (amafaranga akoreshwa muri icyo gihugu) no kunyereza umutungo wa sosiyete yayoboraga nka Managing Director. Urwo rukiko rwasanze ashakishwa na United Arab Emirates, bityo rwanzura ko kumufunga by'agateganyo ariyo nzira yoroshye yatuma aboneka igihe cyo kumwohereza kurangiza igihano yakatiwe kigeze.

Nyuma y'icyo cyemezo cyaje no kwemezwa n'Urukiko Rwisumbuye rwa Nyarugenge mu bujurire, SANJU Kilimanoor Sasidharan Nair yatanze ikirego cyihariye mu Rukiko Rukuru, Urugereko ruburanisha imanza z'ubutegetsi, asaba urwo Rukiko kutemera ubusabe bwo kumwohereza mu mahanga (extradition). Ikirego cye kimaze kwakirwa yahise atanga ikirego cyihutirwa, avuga ko gishamikiye kuri icyo cy'iremezo, asaba ko ibyakozwe byose mu rubanza N° RDP 00125/2018/TB/NYGE rwaciwe n'Urukiko rw'Ibanze rwa Nyarugenge ndetse bigashimangirwa n'Urukiko Rwisumbuye rwa Nyarugenge ku bijyanye n'ifunga ry'agateganyo biteshwa agaciro kuko yafunzwe n'Urukiko rutabifitiye ububasha. Urwo Rukiko rwasanze urega atagaragaza isano iri hagati y'ikirego cy'iremezo n'ikirego cyihutirwa ndetse atanasobanura aho ashingira ubwihutirwe bwacyo, maze rwanzura ko ikirego cyihutirwa kitakiriwe kuko kidafite kamere y'ikirego cyihutirwa iteganywa n'itegeko.

Urega yajuririye icyo cyemezo mu Rukiko rw'Ubujurire, avuga ko ibirego byose birebana no kohererezanya abakurikiranyweho ibyaha harimo n'ifunga ryabo ry'agateganyo biregerwa mu Rukiko Rukuru nk'uko biteganywa n'ingingo ya 27 y'Itegeko N° 69/2013 ryo ku wa 02/09/2013 ryerekeye kohererezanya ukurikiranyweho icyaha, bisobanuye ko yafunzwe n'Urukiko rw'Ibanze mu buryo bunyuranyije n'amategeko kuko rutari rubifitiye ububasha.

Akavuga ko isano iri hagati y'ibirego byombi ari uko yashakaga ko Urukiko Rukuru rudaha ishingiro ubusabe bwo kumwohereza muri United Arab Emirates kandi ubwo busabe aribwo bwashingiweho afatirwa icyemezo cyo gufungwa by'agateganyo.

Ubushinjacyaha buvuga ko ingingo ya 26 y'Itegeko N^{o} 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko iteganya ko Urukiko rw'Ibanze ari rwo rufite ububasha bwo gufata icyemezo ku ifunga n'ifungurwa by'agateganyo, ko Urukiko Rukuru nta bubasha rufite ku bijyanye n'ifunga n'ifungurwa by'agateganyo, kuko igikorwa n'Urukiko Rukuru ari ukwemeza ko ukurikiranyweho icyaha yoherezwa mu mahanga aho kuba gufunga by'agateganyo.

Kubirebana ni sano hagati y'ikirego cy'iremezo n'ikirego cyihutirwa buvuga ko nta kirego cy'iremezo Ubushinjacyaha bwatanze mu Rukiko Rukuru, ariko urega akaba yarasabye ko icyo kirego kiburizwamo kitaratangwa,bityo mu gihe kitaratangwa, bivuze ko nta rubanza ruhari, ibyo bikaba bisobanuye ko nta n'isano cyangwa ubwihutirwe buhari hagati y'icyo abarega bita ikirego cy'iremezo n'ikirego cyihutirwa.

Incamake y'icyemezo: 1. Ubusabe bwi gihugu n'ubwa Polisi Mpuzamahanga (INTERPOL) ko umuntu ushakishwa afatwa, ubwabyo ntabwo ari ubusabe bwo kumwohereza mu gihugu yakoreyemo ibyaha (extradition), iyo afashwe haba hagamije ko hakorwa ibyo amategeko ateganya; asabwe kandi yoherezwe. Bityo ibi byumvikanisha ko ifatwa n'ifunga bye by'agateganyo bitagengwa n'itegeko ryerekeye kohererezanya ukurikiranweho icyaha (law on extradition) kuko igihe cyo gushingira kuri iryo tegeko kiba kitaragera kuko ubusabe bw'igihugu aribwo butuma ritangira gukurikizwa..

2. Umunyamahanga usabirwa kwoherezwa aho yakoreye icyaha ashobora gufatwa byihutirwa, agafungwa by'agateganyo kugirango adatoroka icyo gihe iryo funga ry'agateganyo ndetse n'uburyo bwo kurijuririra biba bigengwa n'amategeko n'amategeko agenga imiburanishyirize y'imanza z'inshinjabyaha n'ububasha bw'inkiko by'igihugu arimo, bityo hashingiwe ku biteganywa n'amategeko agenga imiburanishirize y'imanza z'inshijabyaha n'agena ububasha bw'inkiko, Urukiko rw'Ibanze ari rwo rufite ububasha bwo gusuzuma ishingiro ry'ifunga n'ifungurwa by'agateganyo.

3. Ikirego cyihutirwa kigomba kuba gishamikiye ku kirego cy'iremezo, kuba ababuranyi ari bamwe ubwabyo bitihagije kugira ngo cyakirwe.

Ubujure nta shingiro bufite.

Amategeko yashingiweho:

Itegeko N^{o} 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 26, 47(2) na 185

Itegeko N^{o} 69/2013 ryo ku wa 02/09/2013 ryerekeye kohererezanya ukurikiranweho icyaha, ingingo ya 13, 27

Itegeko ryerekeye kohererezanya ukurikiranweho icyaha ryo mu gihugu cyu Bwongereza (Extradition Act 2003), ingingo ya 4(3)(6),6(2)(a)(8), na 7(1)(a)(6)(8)

United Nations Model Treaty on Extradition of 14 December 1990, UNDOC, AA/RES/45/116

Imanza zifashishijwe:

Ben Benzinge v. *Natural Resources Development Rwanda Ltd*, RCOM 0011/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 10/1/2013

Ibitekerezo by'abahanga byifashishijwe:

Charles Doyle, *Extradition between the United States and Great Britain: The 2003 Treaty*, CRS Report for Congress, The Library of Congress, 2006.

Michel Franchimont *et alii*, *Manuel de procedure pénale*, Bruxelles: Larcier, 2012, pp.1482-1483.

Colin Warbrick, "Extradition", 1989 (38) 2 *The International and Comparative Law Quarterly* 424-430.

I. IMITERERE Y'URUBANZA

[1] Ku busabe bwa Polisi Mpuzamahanga (INTERPOL) kandi hashingiwe no kuri International Arrest Warrant yatanzwe na United Arab Emirates, SANJU Kilimanoor Sasidharan Nair yafatiwe ku kibuga cy'indege i Kanombe ku itariki ya 11/7/2018, ashyikirizwa Polisi y'u Rwanda kugirango hakorwe ibisabwa yoherezwe muri United Arab Emirates kurangiza ibihano yakatiwe ku byaha byo gutanga sheki itazigamiye ya 8.818.000 AED (amafaranga akoreshwa muri icyo gihugu) no kunyereza umutungo wa sosiyete yitwa ESSJAY CONTRATY Ltd yayoboraga nka Managing Director hagati ya 2009 na 2016.

[2] SANJU Kilimanoor Sasidharan Nair yashikirijwe Ubushinjacyaha nabwo bumuregera Urukiko rw'Ibanze rwa Nyarugenge busaba ko afungwa by'agateganyo mu gihe hagitegerejwe ko imihango yo kumuhererekanya irangira.

[3] Mu cyemezo N° RDP 00125/2018/TB/NYGE cyo ku wa 02/08/2018, Urukiko rw'Ibanze rwa Nyarugenge rwasanze SANJU Kilimanoor Sasidharan Nairashakishwa na United Arab Emirates kugirango ajye kurangiza igihano yakatiwe ku byaha byo gutanga sheki itazigamiye no kunyereza umutungo wa sosiyete yayoboraga, rwanzura ko kumufunga by'agateganyo ariyo nzira yoroshye yatuma aboneka igihe cyo kumwohereza kurangiza igihano yakatiwe kigeze.

[4] Nyuma y'icyo cyemezo cyaje no kwemezwa n'Urukiko Rwisumbuye rwa Nyarugenge mu bujurire, SANJU Kilimanoor Sasidharan Nair yatanze ikirego cyihariye mu Rukiko Rukuru, Urugereko ruburanisha imanza z'ubutegetsi, asaba urwo Rukiko kutemera ubusabe bwo kumwohereza mu mahanga (extradition), ikirego gihabwa numero RAD 0010/2018/HC/KIG. Ikirego cye kimaze kwandikwa yatanze ikirego cyihutirwa, avuga ko gishamikiye kuri icyo cy'iremezo, asaba ko ibyakozwe byose mu rubanza № RDP 00125/2018/TB/NYGE rwaciwe n'Urukiko rw'Ibanze rwa Nyarugenge ndetse bigashimangirwa n'Urukiko Rwisumbuye rwa Nyarugenge ku bijyanye n'ifunga ry'agateganyo biteshwa agaciro kuko yafunzwe n'Urukiko rutabifitiye ububasha.

[5] Mu rubanza № RAD 00011/2018/HC/KIG rwaciwe ku wa 01/10/2018, Urukiko Rukuru rwasanze SANJU Kilimanoor Sasidharan Nair atagaragaza isano iri hagati y'ikirego cy'iremezo n'ikirego cyihutirwa ndetse atanasobanura aho ashingira ubwihutirwe bwacyo, rwanzura ko ikirego cyihutirwa kitakiriwe kuko kidafite kamere y'ikirego cyihutirwa iteganywa n'itegeko.

[6] SANJU Kilimanoor Sasidharan Nair yajuririye icyo cyemezo mu Rukiko rw'Ubujurire, avuga ko ibirego byose birebana no kohererezanya abakurikiranyweho ibyaha harimo n'ifunga ryabo ry'agateganyo biregerwa mu Rukiko Rukuru nk'uko biteganywa n'ingingo ya 27 y'Itegeko N° 69/2013 ryo ku wa 02/09/2013 ryerekeye kohererezanya ukurikiranyweho icyaha, bisobanuye ko yafunzwe n'Urukiko rw'Ibanze mu buryo bunyuranyije n'amategeko kuko rutari rubifitiye ububasha, kutabyemeza gutyo akaba ari amakosa akomeye yakozwe n'Urukiko Rukuru, asaba ko yakosorwa n'uru Rukiko.

[7] Urubanza rwaburanishijwe mu ruhame ku wa 18/10/2018, SANJU Kilimanoor Sasidharan Nair yunganiwe na Me Rwagatare Janvier, Me Niyomugabo Christophe na Me Rugaza David, naho Ubushinjacyaha buhagarariwe na Ndibwami Rugambwa, Umushinjacyaha ku rwego rw'Igihugu.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. Kumenya Urukiko rufite ububasha bwo gufata icyemezo ku ifunga n'ifungurwa by'agateganyo by'umuntu usabirwa kwoherezwa

[8] Me RWAGATARE Janvier, Me NIYOMUGABO Christophe na Me RUGAZA David bavuga ko SANJU Kilimanoor Sasidharan Nair yafunzwe mu buryo bunyuranije n'amategeko bitewe n'uko

Urukiko Rukuru ari rwo rufite ububasha bwo gufunga by'agateganyo umuntu ugomba kwoherezwa kurangiza igihano yakatiwe mu mahanga. Basobanura ko Ubushinjacyaha bwamufashe nk'uwakoreye icyaha mu Rwanda bushingiye ku Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha rikoreshwa gusa ku byaha byakorewe mu Rwanda, nyamara kuri we atari uko bimeze, bakaba basanga ku banyamahanga bakoreye ibyaha mu mahanga hagomba gukoreshwa Itegeko ryerekeye kohererezanya ukurikiranweho icyaha kuko ari itegeko rihariye (lex specialis). Bakaba basanga kurishingiraho ntacyo byica ku Itegeko rigenga ububasha bw'Inkiko rivuga ko ibijyanye n'ifunga ry'agateganyo biri mu bubasha bw'Urukiko rw'Ibanze kuko ari ibisanzwe ko amategeko yihariye ashyiraho irengayobora ku mategeko rusange.

[9] Uhagarariye Ubushinjacyaha avuga ko ingingo ya 26 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko iteganya ko Urukiko rw'Ibanze ari rwo rufite ububasha bwo gufata icyemezo ku ifunga n'ifungurwa by'agateganyo, ko Urukiko Rukuru nta bubasha rufite ku bijyanye n'ifunga n'ifungurwa by'agateganyo, kandi ko nta cyitwa "détention administrative" kibaho. Asobanura ko igikorwa n'Urukiko Rukuru ari ukwemeza ko ukurikiranyweho icyaha yoherezwa mu mahanga aho kuba gufunga by'agateganyo, ariyo mpamvu asanga nta makosa yakozwe n'Urukiko rw'Ibanze rwa Nyarugenge ndetse n'Urukiko Rwisumbuye rwa Nyarugenge. Avuga ko iby'uko Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha rikoreshwa gusa ku byaha byakorewe mu Rwanda ataribyo kuko rishobora gukoreshwa no mu irangiza ry'imanza zaciwe n'inkiko zo mu mahanga kandi ko ari uko bimeze kuri SANJU Kilimanoor Sasidharan Nair.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 13, igika cya mbere, y'Itegeko N° 69/2013 ryo ku wa 02/09/2013 ryerekeye kohererezanya ukurikiranweho icyaha iteganya ko "Mbere yo gusaba ko ukurikiranweho icyaha yoherezwa, igihugu gisaba gishobora kubanza gusaba ko umuntu ushakishwa aba afunzwe by'agateganyo…." Naho ingingo ya 27, igika cya mbere, y'iryo Tegeko ikavuga ko "Urukiko Rukuru [ari] rwo ruburanisha ibirego byose byerekeranye n'iyoherezwa ry'ukurikiranweho icyaha.Ubushinjacyaha cyangwa ukurikiranyweho icyaha usabirwa iyoherezwa nibo bonyine bemerewe gutanga ikirego n'inyandiko zose zijyanye n'iyoherezwa mu Rukiko Rukuru."

[11] Ingingo ya 47, igika cya 2, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko "Urukiko Rukuru ruburanisha ibirego bijyanye no kohereza ikindi gihugu abanyamahanga bacyekwaho icyaha." Naho ingingo ya 26, igika cya 2, y'iryo Tegeko ikavuga ko Inkiko z'Ibanze arizo ziburanisha ibirego byerekeye ifunga n'ifungurwa by'agateganyo ku rwego rwa mbere.

[12] Dosiye y'urubanza irimo *International Arrest Warrant* yatanzwe na Leta ya Dubai ku wa 22/10/2017, isaba ko SANJU Kilimanoor Sasidharan Nair afatwa agafungwa agashyikirizwa inkiko z'igihugu cyangwa inkiko mpuzamahanga, harimo kandi inyandiko yitwa *Interpol Red Notice* yo ku wa 14/03/2018 igaragaza ko SANJU Kilimanoor Sasidharan Nair yahanishijwe igifungo cy'imyaka itatu kubera gutanga sheki itazigamiwe, izo nyandiko zikaba zisaba ko afatwa agafungwa nk'uko biteganywa n'amategeko y'igihugu cyangwa amasezerano mpuzamahanga, yamara gufatwa bakabimenyeshwa kugirango ahite asabwa yohererezwe igihugu yakoreyemo icyaha nk'uko biteganywa n'amategeko y'igihugu cyangwa amasezerano mpuzamahanga.

[13] Urukiko rurasanga kuba Leta ya Dubai na Polisi Mpuzamahanga (INTERPOL) byarasabye ko SANJU Kilimanoor Sasidharan Nair afatwa, ubwabyo ntibisobanuye ko yahise asabirwa kwoherezwa mu gihugu yakoreyemo ibyaha (extradition), ahubwo nkuko byasobanuwe haruguru, yafashwe hagamijwe ko hakorwa ibyo amategeko ateganya, asabwe kandi yoherezwe, byumvikanisha ko ifatwa n'ifunga bye by'agateganyo bitagengwa n'itegeko ryerekeye kohererezanya ukurikiranweho icyaha (*loi sur l'extradition*) kuko igihe cyo gushingira kuri iryo tegeko cyari kitaragera. Ibi kandi nibyo

bigaragara mu ngingo ya 13, igika cya mbere, y'Itegeko Nº 69/2013 ryo ku wa 02/09/2013 ryerekeye koherezanya ukurikiranweho icyaha iteganya ko " *Mbere yo gusaba ko ukurikiranweho icyaha yoherezwa*, igihugu gisaba gishobora kubanza gusaba ko umuntu ushakishwa aba afunzwe by'agateganyo….", bikaba bitakumvikana uburyo ifunga ry'agateganyo ryashingira kuri iryo tegeko ryerekeye kohererezanya ukurikiranweho icyaha kandi riba ritaratangira gukurikizwa kuko ubusabe bw'igihugu aribwo butuma ritangire gukurikizwa.

[14] Urukiko rurasanga uyu murongo ari nawo ushimangirwa n'amategeko y'ibindi bihugu nkaho mu Bwongereza ingingo ya 4(3), ya *Extradition Act 2003* iteganya ko ukurikiranweho icyaha ashobora gufatwa n'umupolisi yaba afite cyangwa adafite inyandiko imufata, ariko ukurikiranweho icyaha agashikirizwa Urukiko rubifitiye ububasha mu gihe cya vuba gishoboka,[1] iryo tegeko risobanura ko muri *England* na *Wales* Urukiko ruba rufite ububasha nk'ubw'Urukiko rusanzwe (Magistrates Court) iyo rwumva ibirego byihutirwa bishingiye ku Itegeko ryerekeye imiburanishyirize y'imanza z'inshinjabyaha, muri *Scotland*, Urukiko rukaba rufite ububasha nk'ubw'Urukiko ruri gusuzuma ikirego cyihutirwa ku cyaha cyakozwe n'ushaka kwoherezwa, naho muri Irelande y'Amajyaruguru (*Northern Ireland*), Urukiko rukagira ububasha nk'ubw'Urukiko rwaregewe icyaha cyakozwe n'ushaka kwoherezwa mu mahanga,[2] nabyo byumvikanisha ko ifunga n'ifungurwa by'agateganyo by'ukurikiranweho icyaha ugomba kwoherezwa bishingira ku mategeko asanzwe agenga imiburanishyirize y'imanza z'inshinjabyaha n'ububasha bw'inkiko by'igihugu arimo.

[15] Urukiko rurasanga kandi abahanga Michel Franchimont, Ann Jacobs na Adrien Masset basobanura ko mu Bubiligi, umunyamahanga usabirwa kwoherezwa aho yakoreye icyaha ashobora gufatwa byihutirwa, agafungwa by'agateganyo kugirango adatoroka, kandi ko ibyo ari uburyo bwo gutuma imikoranire y'ibihugu mu guhererekanya abanyabyaha igera ku ntego zayo, ko icyo gihe ifunga ry'agateganyo ndetse n'uburyo bwo kurijuririra biba bigengwa n'amategeko asanzwe ajyanye n'ifunga ry'agateganyo,[3] umuhanga Colin Warbrick avuga ko ibyo biterwa n'uko inzira ijyanye no kwohereza ukurikiranweho icyaha iba itaratangira, iyo nzira ikaba itangizwa n'ubusabe bw'uhagarariye igihugu uwo munyamahanga azoherezwamo,[4] naho Charles Doyle akavuga ko icyo gufungwa by'agateganyo bisobanuye ari ugufata ukurikiranweho icyaha ugomba koherezwa mbere y'uko haboneka ibyangombwa byose byatuma inzira yo kumwohereza itangira,[5] byose bishimangira ko ifunga n'ifungura by'agateganyo mbere yo gusaba ko ukurikiranweho icyaha yoherezwa, bigengwa n'amategeko agenga imiburanishyirize y'imanza z'inshinjabyaha n'ububasha bw'inkiko by'igihugu arimo.

[1] The person must be brought as soon as practicable before the appropriate judge." Reba ingingo ya 4 (6), iya 6(2) (a), iya 6(8) n'iya 7(1) (a).

[2] Somera hamwe ingingo ya 7 (6), (7), na (8) ya Extradition Act 2003: " 7 (6), In England and Wales, the judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the summary trial of an information against the person; 7(7) In Scotland—
(a) the judge has the same powers (as nearly as may be) as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by the person; but (b) in his making any decision under subsection (2) evidence from a single source shall be sufficient; 7 (8), In Northern Ireland, the judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the hearing and determination of a complaint against the person "

[3][L'arrestation d'urgence ou la mise sous mandat d'arrêt provisoire]… est en réalité la procédure la plus suivie… L'étranger recherché peut être arrêté provisoirement …sur l'exhibition d'un mandat d'arrêt … et motivé sur base d'un avis officiel donné … par les autorités du pays où l'étranger aura été condamné ou pousuivi: l'interressé est alors sous mandat d'arrêt provisoire… L'étranger ainsi détenu ne voit pas sa détention soumise à un contrôle périodique et automatique mais il a le droit de déposer une requête de mise en liberté dont le régime est à trouver dans les articles 22 à 23 de la loi du 20 juillet 1990 relative à la détention préventive, avec les voies de recours organisées dans le cadre de cette loi." Reba Michel Franchimont et alii, Manuel de procedure pénale, Bruxelles: Larcier, 2012, pp.1482-1483.

[4] "The extradition process begins with a request from a diplomatic representative of the requesting State…" Reba Colin Warbrick, "Extradition", 1989 (38) 2 The International and Comparative Law Quarterly 424-430, at 428.

[5] "Provisional arrest refers to the authority to arrest the individual sought for extradition before receiving the full documentation required to initiate extradition proceedings." Reba Charles Doyle, Extradition between the United States and Great Britain: The 2003 Treaty, CRS Report for Congress, The Library of Congress, 2006.

[16] Urukiko rurasanga na none Umuryango w'Abibumbye warateganyije mu Masezerano Mpuzamahanga y'icyetegererezo ku kohererezanya ukurikiranweho icyaha aho mu ngingo ya 9, igika cya mbere, ateganya ko iyo byihutirwa, igihugu gishaka ukurikiranweho icyaha gishobora gusaba ko aba afunzwe by'agateganyo mu gihe hagitegerejwe ko ubusabe bwoherezwa. Naho igika cya gatatu cy'iyo ngingo kikavuga ko igihugu ukurikiranweho icyaha arimo gisuzuma icyo cyifuzo ku ifunga ry'agateganyo hashingiwe ku mategeko yacyo kandi ko kigomba kumenyesha igihugu gisaba ukurikiranweho icyaha icyemezo cyafashwe, [6] byose bigaragaza ko ibyo abunganira SANJU Kilimanoor Sasidharan Nair bavuga ko ibirego byose bijyanye n'iyoherezwa ry'ukurikiranweho icyaha biregerwa mu Rukiko Rukuru,Urugereko ruburanisha imanza z'ubutegetsi, bityo ko n'ifunga n'ifungurwa rye by'agateganyo ariho byagombaga kuregerwa nta shingiro bifite, kuko ibikorwa bijyanye n'ifunga n'ifungurwa by'agateganyo mbere y'ubusabe bw'igihugu yakoreye cyangwa yakoreyemo ibyaha bibanziriza inzira yo kumwohereza (extradition), ariyo mpamvu hashingiwe ku biteganywa n'amategeko agenga imiburanishirize y'imanza z'inshijabyaha n'agena ububasha bw'inkiko, Urukiko rw'Ibanze ari rwo rufite ububasha bwo gusuzuma ishingiro ry'ifunga n'ifungurwa by'agateganyo.

[17] Urukiko rurasanga ububasha bw'Urukiko Rukuru, Urugereko rujyanye n'imanza z'ubutegetsi buteganywa mu ngingo ya 47, igika cya 2, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko butangizwa n'ubusabe bw'uhagarariye igihugu umunyamahanga asabirwa kwoherezwamo, ubwo busabe n'inkurikizi zabwo akaba aribyo bigengwa (champ d'application) n'Itegeko N° 69/2013 ryo ku wa 02/09/2013 ryerekeye kohererezanya ukurikiranweho icyaha, byumvikanisha iyo ubwo busabe butaraba ntaho Urukiko rwahera rukoresha iryo tegeko, nabyo bigaragaza ko ibyo abunganira SANJU Kilimanoor Sasidharan Nair bavuga ko icyemezo ku infunga rye ry'agateganyo cyari gufatwa n'Urukiko Rukuru nta shingiro bifite.

B. Kumenya niba hari isano iri hagati y'ikirego cy'iremezo n'ikirego cyihutirwa.

[18] Me RWAGATARE Janvier, Me NIYOMUGABO Christophe na Me RUGAZA David, baburanira SANJU Kilimanoor Sasidharan Nair, bavuga ko basabye Urukiko Rukuru kudaha ishingiro ubusabe bwo kumwohereza muri *United Arab Emirates* kuko bwakozwe mu buryo bunyuranyije n'amategeko, kandi ko ubwo busabe aribwo bwashingiweho SANJU Kilimanoor Sasidharan Nair afatirwa icyemezo cyo gufungwa by'agateganyo, ariyo mpamvu basanga Urukiko Rukuru rwarakoze amakosa mu bika bya 10 na 12 by'urubanza rujuririrwa, aho rwavuze ko nta sano iri hagati y'ibyo birego byombi. Bashimangira ko ibirego byose bijyanye no kwohereza ukurikiranweho icyaha bishingra ku biteganywa n'ingingo ya 27 y'Itegeko N° 69/2013 ryo ku wa 02/09/2013 ryerekeye kohererezanya ukurikiranweho icyaha.

[19] Uhagarariye Ubushinjacyaha avuga ko nta kirego cy'iremezo Ubushinjacyaha bwatanze mu Rukiko Rukuru, SANJU Kilimanoor Sasidharan Nair akaba yarasabye ko icyo kirego kiburizwamo kitaratangwa. Asobanura ko mu gihe kitaratangwa, bivuze ko nta rubanza ruhari, ibyo bikaba bisobanuye ko nta n'isano cyangwa ubwihutirwe buhari hagati y'icyo abarega bita ikirego cy'iremezo n'ikirego cyihutirwa.

UKO URUKIKO RUBIBONA

[20] Ingingo ya 185 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "*Iyo hari ikirego*

[6] Reba UNDOC, AA/RES/45/116, United Nations Model Treaty on Extradition of 14 December 1990 " In case of urgency the requesting State may apply for the provisional arrest of the person sought pending the presentation of the request for extradition […] 3. The requested State shall decide on the application in accordance with its law and communicate its decision to the requesting
State without delay"

cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihuta ku rubanza rwaregewe urukiko rutaraburanishwa, ikirego cyihutirwa gishikirizwa umucamanza ushinzwe kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara."

[21] Urukiko rurasanga abunganira SANJU Kilimanoor Sasidharan Nair bavuga ko basabye Urukiko Rukuru kudaha ishingiro ubusabe bwo kumwohereza muri *United Arab Emirates* kuko bwakozwe mu buryo bunyuranyije n'amategeko, ikirego cyabo mu Rukiko Rukuru gihabwa no RAD 00010/2018/HC/KIG, aba aricyo bashingiraho batanga ikirego cyihutirwa gisaba ifungurwa ry'agateganyo, nyamara ikirego cy'iremezo n'icyubutegetsi kandi cyatanzwe mu buryo bwihariye (independent) no mu Rukiko rwihariye, ku buryo kitafatwa nk'ubujurire bukomoka ku rubanza no RDP 000125/2018/TB/NYGE rwemeje ifunga ry'agateganyo rya SANJU Kilimanoor Sasidharan Nair, ndetse n'igisabwa mu kirego cyihutirwa si uko hafatwa icyemezo cy'agateganyo mu buryo bwihuta ku rubanza rwaregewe Urukiko Rukuru rutaraburanishwa nk'uko biteganywa n'ingingo ya 185 y'Itegeko № 22/2018 ryo ku wa 29/04/2018, ahubwo harasabwa gutesha agaciro ibyemezo by'urundi Rukiko bigaragara ko rudahuje kamere n'urwaregewe ikirego cy'iremezo.

[22] Urukiko rurasanga nk'uko biteganywa n'ingingo ya 185 y'Itegeko № 22/2018 ryo ku wa 29/04/2018 yibukijwe haruguru kandi byagiye bigarukwaho n'Urukiko rw'Ikirenga mu manza zitandukanye harimo n'urwo Ben Benzinge yaburanaga na *Natural Resources Development Rwanda Ltd*[7], ikirego cyihutirwa kigomba kuba gishamikiye ku kirego cy'iremezo, byumvikanisha ko iyo ikirego cyihutirwa cyaje nk'ikirego cyigenga kuko kidafitanye isano n'ikirego cy'iremezo kiba kitujuje ibisabwa kugirango cyakirwe kuko kuba ababuranyi ari bamwe ubwabyo bitihagije, byumvikanisha ko nta makosa Urukiko Rukuru, Urugereko ruburanisha imanza z'ubutegetsi rwakoze rwemeza ko ikirego cya SANJU Kilimanoor Sasidharan Nair kitakiriwe.

[23] Urukiko rursanga mu gihe icyo kirego kitagombaga kwakirwa, nta mpamvu yo gusuzuma niba cyari gifite ubwihutirwe.

III. ICYEMEZO CY'URUKIKO

[24] Rwemeje ko ubujure bwa SANJU Kilimanoor Sasidharan Nair nta shingiro bufite;

[25] Rwemeje ko nta gihindutse ku mikirize y'urubanza N° RAD 00011/2018/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 01/10/2018

[26] Ruvuze ko amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.

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7 Reba urubanza N° RCOM 0011/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 10/1/2013, igika cya 12.