# KANYARWANDA v AKARERE KA NYARUGURU

[Rwanda URUKIKO RUKURU, URUGEREKO RWA NYANZA – RADA 00006/2022/HC/NYZ – (Ndagijimana, J. P.) 28 Mata 2023]

*Amategeko agenga imanza z'umurimo – Amasezerano y'umurimo – Uburyozwe bw'icyaha – Ibihano mu rwego rw'akazi – Kuba igikorwa kitakurikiranwa ngo gihanwe mu rubanza nshinjabyaha ubwabyo ntibihagije mu kugaragaza ko kitaba ikosa ryahanwa mu rwego rw'imyitwarire.*

**Incamake y'ikibazo**: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyamagabe, Kanyarwanda wari Umunyamabanga Nshingwabikorwa w'Umurenge wa Kivu mu Karere ka Nyaruguru akurikiranyweho n'Akarere amakosa anyuranye ndetse aregwa mu rubanza nshinjabyaha rwemeza ko adahamwa n'ibyaha yari akurikiranyweho. Yaratakambye nyuma aza kuregera Urukiko asaba ibintu binyuranye birimo ko icyemezo cy'Akarere kimwirukana burundu mu bakozi ba Leta giteshwa agaciro ashingiye ku mpamvu ebyiri (2) z' uko amakosa yashinjwaga yayaburanye Inkiko zikamugira umwere n'uko icyo cyemezo cyafashwe mu bihe no mu buryo budakurikije amategeko.

Akarere ka Nyaruguru ko kabonaga kuba Kanyarwanda yaba umwere mu rubanza nshinjabyaha bidakuraho gukurikiranwaho ikosa mu rwego rw'ubutegetsi, kubyerekeranye no kuvuga ko yamenyeshejwe icyemezo cyo kumwirukana bitinze, ntacyo byamwangirije na gito ku buryo yabihererwa indishyi.

Urwo rubanza rwaraburanishijwe, Urukiko Rwisumbuye rwemeza ko Kanyarwanda yirukanywe burundu mu bakozi ba Leta mu buryo bukurikije amategeko. Uyu Kanyarwanda yajuririye urwo rubanza avuga ko Urukiko rwashingiye ku makosa yaburanishijwe mu manza nshinjabyaha kandi yarayagizweho umwere, rwemeje ko yamenyeshejwe impitagihe icyemezo kimwirukana burundu mu bakozi ba Leta no kuba rwarashingiye kuri raporo Akarere kashingiyeho kamwirukana itari ikwiye gushingirwaho, rwanga gutegeka ko asubizwa mu kazi.

Akarere ko kakomeje imiburanire isa n'iyo ku rwego rwa mbere kavuga ko kuba yagirwa umwere mu rubanza nshinjabyaha bidakuraho ko yakurikiranwa ho amakosa yakoze mu kazi ke. Bivuze ko ibikorwa yirukaniwe bishobora kutaba ibyaha ariko bikaba amakosa, bityo ibisobanuro atanga akaba ari nta shingiro byahabwa kuko katamwirukanye kubera ko yakoze icyaha ahubwo kubera amakosa.

Ku kibazo Urega avuga ko yamenyeshejwe impitagihe icyemezo kimwirukana burundu mu bakozi ba Leta, Akarere kavuga ko ntacyo Urega yagaragarije Urukiko kijyanye n'ingaruka Umushingamategeko yaba yarategenyije zijyanye no kumenyeshwa atinze icyo cyemezo. Bityo iyi ngingo ye ikaba itahabwa ishingiro. Ikindi ni uko icyemezo cy'Akanama gashinzwe imyitwarire y'abakozi cyo cyonyine gihagije mu kugirango umukozi ahanwe, ko iby' uko agomba kwisobanura imbere yako ntaho biteganyijwe mu rwego rw' amategeko, ko kandi n'ibijyanye n'uko yirukanywe hashingiwe ku bimenyetso byashatswe mu buryo budakurikije amategeko kimwe n' ibindi bisobanuro byose atanga bigamije kugaragza ko nta makosa yakoze, cyangwa se ko niba yaranayakoze nta buremere afite, gasanga iyo ngingo itasuzumwa mu rwego rw'ubujuire kubera ko ibirebana nayo atigeze abiregera mu rwego rwa mbere.

**Incamake y'icyemezo**: Kuba igikorwa kitakurikiranwa ngo gihanwe mu rubanza nshinjabyaha ubwabyo ntibihagije mu kugaragaza ko kitaba ikosa ryahanwa mu rwego rw'imyitwarire. Bityo, Kanyarwanda Eugene yirukaniwe amakosa yo mu rwego rw'akazi yakoraga nubwo ibyaha yaregwaga yabigizweho umwere bigahanirwa abandi bareganwaga.

**Ubujurire nta shingiro bufite.**
**Imikirize y'urubanza rwaciwe n'Urukiko Rwisumbuye rwa Nyamagabe ihindutse kuri bimwe.**
**Amagarama aherera ku isanduku ya Leta.**

**Amategeko yashingiweho:**

Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y' imanza z' imbonezamubano, iz' ubucuruzi, iz' umurimo n' iz' ubutegetsi, ingingo ya 12, 111, 148, 150 n'iya 154.

Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

Iteka rya Perezida N° 021/01 ryo ku wa 24/02/2021 rigena imyitwarire mbonezamurimo ku bakozi ba Leta, ingingo ya 33.

Iteka rya Perezida N°065/01 ryo ku wa 04/3/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta, ingingo ya 4, 14, 15, 17, 19, 22, 31 n'iya 32.

**Imanza zifashishijwe:**

Ngangare na Mukankuranga, RCAA 0022/13/CS rwaciwe n'Urukiko rw' Ikirenga ku wa 25 Nyakanga 2014.

NAEB v. SINFOTEC, RADA 0025/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 25 Mata 2014.

**Inyandiko z'abahanga zifashishijwe:**

Negrin (J.P.), Contentieux de l'excès de pouvoir et contentieux de pleine juridiction. De la dualité ou de l'unité du contentieux administratif français, PUAM, 1976, p. 462.

# Urubanza

## I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyamagabe, Kanyarwanda Eugène wari Umunyamabanga Nshingwabikorwa w'Umurenge wa Kivu mu Karere ka Nyaruguru akurikiranyweho n'Akarere amakosa anyuranye ndetse aregerwa inzego z'ikurikiranacyaha ariko mu gihe Inkiko zari zitarafata ibyemezo aza kwirukanwa ku kazi ku wa 12/10/2020, mu rubanza RP/ECON 00021/2020/TGI/NYBE rwaciwe n'Urukiko Rwisumbuye rwa Nyamagabe ku wa 15/02/2021 yari akurikiranywemo urwo Rukiko rwemeje ko adahamwa n'ibyaha yari akurikiranyweho,bituma atakambira inzego zinyuranye avuga ko yirukanywe mu buryo bunyuranye n'amategeko, akaba yararegeye Urukiko asaba ko icyemezo cy'Akarere kimwirukana burundu mu bakozi ba Leta giteshwa agaciro agasubizwa mu kazi kandi akanagenerwa indishyi zinyuranye, ashingiye ku mpamvu ebyiri (2) z'uko amakosa yashinjwaga yayaburanye Inkiko zikamugira umwere n' uko icyo cyemezo cyafashwe mu bihe no mu buryo budakurikije amategeko.

[2] Akarere ka Nyaruguru ko ko kabonaga kuba Kanyarwanda yaba umwere mu rubanza nshinjabyaha ari rwo RP/ECON 00021/2020/TGI/NYBE bidakuraho gukurikiranwaho ikosa mu rwego rw'ubutegetsi n'uko kubyerekeranye no kuvuga ko yamenyeshejwe icyemezo cyo kumwirukana bitinze, ntacyo byamwangirije na gito ku buryo yabihererwa indishyi ko kandi nta mategeko ari ho avuga ko kumenyeshwa icyemezo nyuma y'iminsi itanu (5) bihita bivuga ko icyo cyemezo kivanyweho, ko gusaba ko icyemezo kimwirukana gikurwaho bitahabwa agaciro kuko gikurikije amategeko kubw' ibyo nta n'indishyi akwiye akaba atanasubizwa ku kazi.

[3] Urwo rubanza rwaraburanishijwe, Urukiko Rwisumbuye rwemeza ko Kanyarwanda Eugène yirukanywe burundu mu bakozi ba Leta mu buryo bukurikije amategeko, ko Akarere ka Nyaruguru kimye Kanyarwanda Eugène icyemezo cy'imirimo yakozwe nta mpamvu, ko Kanyarwanda Eugène atsinze kuri bimwe n'Akarere ka Nyaruguru gatsinze ku bindi, rutegeka Akarere ka Nyaruguru kwishyura Kanyarwanda Eugène Frws 1.081.293 y'indishyi, Frws 500.000 y'igihembo cy'avoka no kumusubiza ½ cy'ingwate y'amagarama yatanze kingana na Frws 10.000, yose hamwe akaba Frws 1.591.293, runategeka Akarere ka Nyaruguru gaha Kanyarwanda Eugène icyemezo cy'imirimo yakoze.

[4] Kanyarwanda Eugène yajuririye urwo rubanza avuga ko Urukiko rwashingiye kumakosa yaburanishijwe mu manza nshinjabyaha kandi yarayagizwe umwere n'uko rwemeje ko Kanyarwanda yamenyeshejwe impitagihe icyemezo kimwirukana burundu mu bakozi ba Leta no kuba rwarashingiye kuri raporo Akarere kashingiyeho kamwirukana itari ikwiye gushingirwaho, rwanga gutegeka ko asubizwa mu kazi, Akarere ka Nyaruguru ko kagakomeza imiburanire isa n'iyo kurwego rwa mbere kavuga ko kuba yagirwa umwere mu rubanza nshinjabyaha bidakuraho ko yakurikiranwa ho amakosa yakoze mu kazi ke n'uko icyemezo kimwirukana burundu mu bakozi ba Leta kitavanwaho n'uko yakimenyeshejwe nyuma y'iminisi itanu(5), ko ibindi aburanisha bitigeze bisuzumwa ku rwego rwa mbere.

[5] Ibibazo bisuzumwa muri uru rubanza ni ukumenya niba:

- Kuba Kanyarwanda yaragizwe umwere mu rubanza nshinjabyaha byari gutuma adakurikiranwa mu rubanza rw' Ubutegetsi.
- Kuba Urukiko Rwisumbuye rwaremeje ko Kanyarwanda yamenyeshejwe impitagihe icyemezo kimwirukana burundu mu bakozi ba Leta ntibishingirweho no kuba rwarashingiye kuri raporo Akarere kashingiyeho kamwirukana asanga itari ikwiye gushingirwaho
- Ibijyanye n'indishyi zisabwa ku mpande zombi.

## II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

### 1. Kumenya niba kuba Kanyarwanda Eugène yaragizwe umwere mu rubanza nshinjabyaha byari gutuma adakurikiranwa mu rubanza rw'Ubutegetsi

[6] Kanyarwanda Eugène na Me Kalinganire Ignace Stiven umwunganira bavuga atishimiye imikirize y'urubanza rwaciwe n'Urukiko Rwisumbuye rwa Nyamagabe rujuririrwa, ko mu bika byarwo bya 20, 21 na 22 Urukiko rwanzuye ko Kanyarwanda nubwo yagizwe umwere mu rubanza nshinjabyaha ariko mu rwego rw'akazi yahanwe bikurikije amategeko rushingiye kungingo ya 14 na 15 z'Iteka rya Prezida ryo muri 2014 ruvuga ko Kanyarwanda yirukaniwe amakosa akomeye yakoze ariyo kwiba ibirayi akabitwara iwe ndetse no kuba umuyobozi w'Akarere ka Nyaruguru yarashingiye kuri raporo z'inzego zibifitiye ububasha, ko kuri iyo ngingo basanga Urukiko Rukuru rukwiye gukosora ayo makosa yakozwe n'Urukiko Rwisumbuye, ko impamvu bashingiraho basaba ko Urukiko Rukuru rwakosora ayo makosa ari uko mu rubanza RPA RP/ECON 00021/2020/TGI/NYBE ndetse na RPA/ECON 00030/2021/HC/NYZ izo Nkiko zaremeje ko nta cyaha cyo kunyereza umutungo gihama Kanyarwanda Eugène, bityo n'Urukiko ruburanisha imanza z'Ubutegetsi rukaba rutari rukwiye kumuhamya ikosa, kuko nta zindi mpamvu cyangwa ibindi bimenyetso byabonywe nyuma y'icibwa ry'urubanza nshinjabyaha.

[7] Bakomeza bavuga ko kuba amakosa yegeretswe kuri Kanyarwanda Eugène atarayisobanuyeho imbere y'urwego urwo arirwo rwose, kuba uburyozwe bw'ikosa ry'akazi bwagaragaje ko agomba kwirukanwa ku kazi, byagaragajwe mu ibaruwa nimero 1905/07.02.03.08/MD.02.1/2020 yo ku wa 12/10/2020 y'Umuyobozi w'Akarere ka Nyaruguru ashingiye kuri Raporo ya DASSO "*adhoc committee*" mu gihe hari abakozi bashinzwe ubugenzuzi bw'Akarere,kubera amakosa menshi n'iburabubasha,ubumenyi badafite ndetse nta "*responsibilité"* bagira mugihe bakoze amakosa ariko Umuyobozi w'Akarere akarenga agashingira kuri iyo Raporo, basanga binyuranye n'ibiteganywa n'ingingo ya ingingo ya 22 y'Iteka rya Perezida N°065/01 ryo ku wa 04/3/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta.

[8] Basobanura ko hari byinshi byashingiweho atari ukuri, ko umushinga w'amaterasi uvugwa Kanyarwanda atari awufitemo "*responsabilité"* n'imwe yari awufitemo, ko kandi byanemejwe ko wari uteguye nabi bituma ishyirwa mu bikorwa ryawo rigorana, na raporo zose Akarere kashingiyeho zirimo

iyo yakozwe na “*internal auditors”* n’iyakozwe na DASSO zivuguruzanya kubera ko ugereranyije raporo ya DASSO yo ku wa 26/05/2020 yateweho kashe y’Akarere na raporo ya “*internal auditor”s* yo ku wa 13/07/2020 ababajijwe bagiye bavuga ibinyuranye, ko iyo raporo y’abagenzuzi Akarere ka Nyaruguru katigeze kagira aho kayishingiraho mu gufata ibyemezo, kandi yari yamaze gukorwa ku wa 13/07/2020 kimwe n’andi makosa nko kuba nta nahamwe Kanyarwanda yigeze ahabwa umwanya ngo agire ibyo asobanura, ko nko ku rupapuro rwa mbere (1), bagaragajeko imbuto yageze mu Murenge wa Kivu ari nke ugereranyije na “*bon de commande”* yatanzwe, …ko na raporo ya “*discipline”e* ivugwa ko yashingiweho nta “*copy”* yayo igaragara,bagasaba ko kubw’ibyo n’ibindi basobanuye ku buryo burambuye mu myanzuro byirengagijwe yarenganurwa.

[9] Me Mbonigaba Eulade uburanira Akarere ka Nyaruguru avuga ko impamvu z’ubujurire za Kanyarwanda Eugène nta shingiro zahabwa, ko agace ka 5 k’ingingo ya 4 y’Iteka rya Perezida N°065/01 ryo kuwa 04/3/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta kavuga ko ikosa cyangwa igihano byo mu kazi bitabangikanywa cyangwa ngo bibangamirwe n’uburyozwe n’uburyo bwo gukurikirana icyaha cyangwa n’amategeko ahana cyangwa agenga uburyoze bw’indishyi; ko kubijyanye no kuvuga ko icyemezo kimwirukana burundu mu bakozi ba Leta cyaba cyarafashwe hashingiwe kubimenyetso byashatswe muburyo budakurikije amategeko nko kuba umuyobozi w’Akarere yarashingiye icyemezo cye kumyanzuro yafashwe kuwa 21/05/2020 (Raporo y’aba DASSO), ko ibyo atari ukuri kubera ko ibirebana n’imikorere y’ikosa n’uko ryakurikiranywe atigeze abiregera mu rwego rwa mbere,bikaba bitaraburanyweho ku bw’ibyo bikaba bitaba impamvu y’ubujurire hashingiwe ku gace ka 5 nk’ingingo ya 150 y’Itegeko ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi kavuga ko mu bujurire hagaragazwa urutonde rw’inenge z’urubanza zisabirwa gukosorwa n’ibindi bibazo bigomba gusuzumwa, bikaba byumvikana ko izo nenge zidashobora kubaho mu bintu bitaburanywe mbere, ndetse no ku ngingo ya 154 y’iryo Tegeko ibuzwa ry’ibirego bishya mu rwego rw’ubujurire.

[10] Akomeza avuga ko ku byashingiweho yirukanwa nka raporo y’Akanama gashinzwe gukurikirana amakosa yakozwe mu kazi, ko mu ibaruwa imwirukana nta hantu hagaragaramo ko Akarere ka Nyaruguru kashingiye kuri raporo ya DASSO, ko ibijyanye n’amaraporo yose atandukanye kimwe n’andi makuru uburyo yaba yarabonetsemo ubwo ari bwo bwose ari bimwe mu byo ako Kanama gashingiraho gakora raporo yako nk’uko bikubiye mu ingingo ya 19 y’Iteka rya Perezida N° 65/01 ryo ku wa 04/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi ivuga ko Akanama gashinzwe ikurikirana ry’amakosa gafite inshingano zijyanye no gukora iperereza ryo mu rwego rw’akazi ku ikosa umukozi akekwaho hagamijwe gusesengura uburyo ikosa ryabayemo, ingaruka zaryo, ndetse no kugaragaza no gutanga inama ku gihano cyafatirwa umukozi no gushyikiriza umuyobozi ufite ububasha bwo guhana raporo y’iperereza, ko ibindi avuga bijyanye no kwisobanura, na kashe yatewe kuri raporo y’ako gatsinda nta Tegeko ryishwe abigaragariza.

[11] Anavuga ko hari ibyarigishijwe byemejwe n’Urukiko mu rubanza RP/ECON 00021/2020/TGI kubera ko icyaha cyo kubirigisa cyahamye abareganwaga na Kanyarwanda Eugène ari bo Mayira Jean na Nyandwi Joseph, ko kandi ibikorwa Kanyarwanda yirukaniwe bishobora kutaba ibyaha ariko bikaba amakosa , bityo imibare yose avuga n’ibindi bisobanuro biyiherekeje akaba ari nta shingiro byahabwa, ko Akarere ka Nyaruguru katamwirukanye kubera ko yakoze icyaha ahubwo yirukanwe kubera amakosa, ko kandi no mu mirongo ya nyuma y’igika cya 24 cy’urubanza RP/ECON 00021/2020/TGI/NYBE Urukiko rwavuze ko ibikorwa Kanyarwanda yakoze byari bigize amakosa asanzwe y’akazi ku buryo ari byo yagombye kuba abazwa.

## UKO URUKIKO RUBIBONA

[12] Ingingo ya 4 y’iryo Teka rya Perezida N°65/01 ryo ku wa 04/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa yo mu kazi ivuga ku mahame agenga uburyo bwo

guhana ikosa ryo mu kazi iteganya ko …5° ikosa cyangwa igihano byo mu kazi ntibibangamira cyangwa ngo bibangamirwe n'uburyozwe n'uburyo bwo gukurikirana icyaha cyangwa ikosa biteganywa n'amategeko ahana cyangwa agenga uburyoze bw'indishyi …"[1]. Rusuzumye ibiteganywa n'iyi ngingo, rusanga ibivugwa na Kanyarwanda Eugène ko kuva yaragizwe umwere mu rubanza nshinjabyaha atagombaga gukurikiranwaho amakosa y'akazi nta shingiro byahabwa, kuko nk'uko iyo ngingo ibivuga ibyo bihano n' ayo makosa bitabangamirana.

[13] Ibyo ingingo ya 22 y'iri Teka rya Perezida N°065/01 ryo kuwa 04/3/2014 rivuzwe, iburanishwa na Kanyarwanda Eugène iteganya, rusanga ntacyo bivuguruzaho ibivuzwe haruguru kuko yo ivuga ibijyanye no gukurikirana no guhana ikosa iteganyako iyo umukozi ukekwaho ikosa atanze ibisobanuro byumvikana, gukurikiranwa bihagarara na dosiye yari akurikiranyweho igashyingurwa burundu umuyobozi ubifitiye ububasha agahita asaba akanama gashinzwe gukurikirana amakosa, gukurikirana iryo kosa kugira ngo karitangeho raporo, ikaba ntaho rero igaragaza ko n'urubanza rwagize umwere umukozi ukurikiranywe rwahinduka ibisobanuro byumvikana bivugwa muri iyi ngingo.

[14] Kuba rero Urukiko Rwisumbuye rwarasobanuye mu gika cyarwo cya 22 ko uburyozwe bw'ikosa ry'akazi bwagaragaje ko uwo mukozi wa Leta agomba kwirukanwa ku kazi, nk'uko biteganywa n'ingingo ya 33 igika cya mbere y'Iteka rya Perezida N°021/01 ryo ku wa 24/02/2021 rigena imyitwarire mbonezamurimo ku bakozi ba Leta, rugashingira ku makosa yashingiweho Kanyawanda Eugène yirukanwa burundu ku kazi, kabone nubwo yaba yarabaye umwere mu rubanza RP/ECON 00021/2020/TGI/NYBE ndetse na RPA/ECON 00030/2021/HC/NYZ, uru Rukiko rusanga nta kosa urwo Rukiko Rwisumbuye rwakoze, dore ko kuba igikorwa kitakurikiranwa ngo gihanwe mu rubanza nshinjabyaha ubwabyo bidahagije mu kugaragaza ko kitaba ikosa ryahanwa mu rwego rw'imyitwarire uko byasobanuwe.

[15] Uru Rukiko rwemeza ibyo kubera kandi ko n' ubwo ikigamijwe mu mategeko nshinjabyaha n'ay'ubutegetsi ari uguhana amakosa ariko ikosa ryo mu rwego rw'ubutegetsi rituruka ku kuba ryaragenwe gutyo muri sitati igenga umukozi,kandi n'abakuriye umukozi mu kazi bakaba bafite ububasha bwo kumufatira ibihano byo mu rwego rw'imyitwarire, iryo kosa rero rikaba rishobora gufatwa no kwemerwa ku buryo bunyuranye bitewe n'uko ubisuzuma aherereye mu bijyanye n'imanza nshinjabyaha cyangwa iby'imyitwarire uko bisobanurwa gutyo n'inyandiko z'abahanga mu mategeko nka Elie Ghazo mu rurimi rw'igifaransa ko "*La poursuite disciplinaire puise sa source dans le principe hiérarchique mais aussi et surtout dans la conception statutaire de la fonction publique. Cela revient en quelques sortes à dire que le fonctionnaire peut faire l'objet d'une sanction disciplinaire en ce sens que le statut qui le régit en a décidé ainsi et que l'Administration, telle qu'elle est organisée, investit certaines autorités d'un pouvoir de sanction. Cette sanction suppose l'existence d'une faute imputable au fonctionnaire. Le droit pénal organise la poursuite des individus pénalement responsables d'un comportement contraire à une règle du droit. L'idée de la faute est aussi présentée en matière disciplinaire et constitue le fondement de la repression. Ainsi, en l'absence d'une faute, il n'y a pas lieu à avoir de repression. L'élément commun aux deux types de poursuites repressives est donc celui de la volonté de punir une faute qui a pu être commise. L'appréciation de cette faute pouvant être différente*

---

[1] Ingingo ya 4 y' iryo Teka rya Perezida N°65/01 ryo ku wa 04/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa yo mu kazi ivuga ku mahame agenga uburyo bwo guhana ikosa ryo mu kazi iteganya ko gukurikirana ikosa no guhana umukozi warikoze bigomba kubahiriza amahame akurikira: 1° umukozi ukurikiranyweho ikosa akomeza kubahirwa uburenganzira bwe ntayegayezwa nk'umuntu; 2° gukurikirana ikosa ry'umukozi no kumuhana bikorwa mu nyandiko; 3° nta kosa na rimwe umukozi ashobora guhanirwa atabanje guhabwa umwanya wo kuryisobanuraho mu nyandiko; 4° ikosa ryo mu kazi rihanwa hashingiwe ku buremere bwaryo; 5° ikosa cyangwa igihano byo mu kazi ntibibangamira cyangwa ngo bibangamirwe n'uburyozwe n'uburyo bwo gukurikirana icyaha cyangwa n'amategeko ahana cyangwa agenga uburyoze bw'indishyi; 6° nta mukozi ushobora guhanirwa inshuro irenze imwe ikosa rimwe yakoze rimwe mu rwego rw'akazi.7° uburyozwe bw'ikosa ryo mu kazi ni gatozi ku warikoze; 8° gukurikirana ikosa no guhana umukozi bikorwa mu mucyo, nta kubogama cyangwa gutonesha uko ari ko kwose.

*selon que l'on se trouve dans le domaine disciplinaire ou penal"*[2]. Ku bw'ibyo impamvu y'ubujurire kuri iyi ngingo ikaba nta shingiro ifite.

2. **Kumenya niba Urukiko Rwisumbuye rwaremeje ko Kanyarwanda yamenyeshejwe impitagihe icyemezo kimwirukana burundu mubakozi ba Leta ntibishingirweho no kuba rwarashingiye kuri raporo Akarere kashingiyeho kamwirukana asanga itari ikwiye gushingirwaho, rwanga gutegeka ko asubizwa mu kazi**

[16] Kanyarwanda Eugène n'umwunganira bavuga ko mu gika cya 12 cy'urubanza rujuririrwa, Umucamanza yemeje ko Kanyarwanda Eugène yamenyeshejwe atinze icyemezo kimwirukana burundu mu bakozi ba Leta kandi ko binyuranyije n'ibiteganywa n'ingingo ya 22 y'Iteka rya Perezida N° 065/01 ryo ku wa 04/3/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, mu gika cyaryo cya 3, ko we yanenze Akarere ka Nyaruguru kuba aho kumenyeshwa mu minsi itanu (5) yamenyeshejwe mu minsi mirongo itatu n'icyenda (39) ariko Kanyarwanda akaba ataragaragarije Urukiko ko kuba iyi minsi itanu (5) itarubahirijwe hari izindi ngaruka Umushingamategeko yateganyije byagira ku cyemezo yamenyeshejwe nyuma y'iminsi 5, ko bitavuze ko icyemezo kimwirukana kimwirukana burundu mu bakozi ba Leta cyarafashwe mu bihe no mu buryo budakurikije amategeko.

[17] Bakavuga ko rero basanga ubutabera bwatanzwe bufite inenge nyinshi kuko n'iyo Urukiko rubibona ukundi rwari kumugenera umushara w'iyo minsi atari yakamenyeshejweho icyemezo yafatiwe, ko inenge z'icyo cyemezo ari uko Umushingamategeko yatanze igihe ntarengwa kingana n'iminsi itanu (5) y'akazi,ariko Akarere ka Nyaruguru yaba mu kumuhagarika by'agateganyo (18 *days*) ndetse no kumwirukana burundu (39 *days*) bigaragaza ko amategeko atubahirijwe kuko icyemezo amenyeshejwe impitagihe kigomba gutakaza agaciro kacyo maze agasubizwa mukazi cyangwa se akagenerwa indishyi nkuko yari yazisabye, ko kuba Urukiko rwaravuze ko nta "*prejudices*" byamuteye basanga ari ukwirengagiza nkana kuko kwica amategeko ubwabyo bihagije kwemeza ko akababaro n'agasiragiro kuwabikorewe kagomba kubaho kandi ibyo bagomba gukora barabyubahirije.

[18] Bavuga kandi ko kuba icyemezo ubwacyo cyamwirukanye burundu mubakozi ba Leta yarakimenyeshejwe impitagihe cyaranafashwe hashingiwe kubimenyetso byafashwe muburyo budakurikije amategeko, ko kuba umuyobozi w'Akarere yarashingiye icyemezo cye kuri raporo y' aba Dasso yafashwe ku wa 21/05/2020 , kandi abo bafashe icyo cyemezo bagize agatsinda "*Ad hoc committee*" kagizwe na DASSO n'abandi batari abanyamwuga mubugenzuzi kandi atari urwego ruzwi na Leta rwashingirwaho mugufatira igihano cyo kurwego rwa nyuma (Kwirukanwa burundu) umukozi nk'Umunyamabanga Nshingwabikorwa w'Umurenge, ko bitangaje kuba Akarere kazima gafite inzezgo zose zuzuye kashyiraho agatsinda ko kwirukana umukozi mu gihe "*service"* y'Ubugenzuzi bwite bw'Akarere ihari kandi biri munshingano zirimo gucukumbura imikoreshereze y'umutungo wa Leta.

[19] Bavuga nanone ko hari n'izindi nzego nk'umugenzuzi mukuru w'imari ya Leta ndetse n'urwego rw'umuvunyi nk'inzego zifite ububasha n'ubushobozi ndetse zikoresha abakozi b'abanyamwuga muri iyo domaine, aho gushyiraho agatsinda kadafite expertise yo gukora igenzuro (*audit*) , ko izo nzego zabugenewe zikora kinyamwuga kandi zifite ubuhanga ndetse n'iyo bakoze nabi izo nshingano nabo babibazwa (*accountability*),mugihe byumvikana ko iryo tsinda rigizwe ahanini n'aba DASSO n'amakosa bakora ntawayabaryoza kuko atari inshingano zabo ndetse n'ubumenyi bwabwo butaganisha mubugenzuzi bwa kinyamwuga, ko izo nenge zigaragara muri Raporo ya DASSO yashingiweho n'igereranya ryiyo Raporo n'iyakozwe n'ubugenzuzi bwite bw'Akarere n'ubwo ntaho ivugwa mucyemezo cyo kwirukana burundu Kanyarwanda Eugène mu bakozi ba Leta.

---

[2] Elie Ghazo. Les relations entre les actions disciplinaires et pénales à l'encontre du fonctionnaire civil en France et au Liban. Droit. Université de Rennes, 2017. Français. Ffnnt: 2017REN1G014ff. fftel-02997197, P.42.

[20] Bavuga kandi ko nk’uko babivuze Kanyarwanda Eugène atahawe umwanya wo kwisobanura imbere y’ako gatsinda, imbere y’abagenzuzi n’imbere ya komite inshinzwe imyitwarire no kuri raporo y’ako gatsinda yarateweho kashe y’Akarere kandi ari agatsinda kadafite ibiro mu buryo buri wese yakwibaza uwateyeho iyo kashe nk’urwego ruzwi ruteganywa n’itegeko, kuba Raporo y’ubugenzuzi bwite bw’Akarere n’iya Aba DASSO zivuguruzanya kumakosa avugwa dore ko iyo raporo ntaho ivugwa, ko kubindi harebwa uko abatangabuhamya bavuga ko babonye imbuto, imvaruganda n’ishwagara mu kugaragaza ko yabwiwe aba DASSO itandukanye n’iyabwiwe abagenzuzi.

[21] Me Mbonigaba Eulade uburanira Akarere ka Nyamagabe avuga ko mugika cya 12 Umucamanza yavuze ko Kanyarwanda Eugène yamenyeshejwe atinze icyemezo kimwirukana burundu mubakozi ba Leta, ariko uyu akaba ataragaragarije Urukiko ko kuba iyi minsi itarubahirijwe hari izindi ngaruka Umushingamategeko yateganyije byagira ku cyemezo yamenyeshejwe nyuma y’iminsi itanu (5), ko icyemezo kimwirukana burundu mu bakozi ba Leta gishobora kuvanwaho n'uko yakimenyeshejwe nyuma y’ iminsi itanu (5), cyangwa ngo kivanweho n'uko umwanzuro watanzwe n'Akanama gashinzwe gukurikirana amakosa yayimenyeshejwe nyuma y'iminsi itanu (5), ko iyo habayeho gutinda, uregwa aba ashobora kubisabira indishyi iyo agaragaje ko hari icyo byamwangirije, bityo ko Akarere gasanga iyo mpamvu y'ubujurire nta shingirio ifite.

[22] Avuga nanone ko ku birebana no kuba Kanyarwanda Eugène avuga ko atahawe umwanya wo kwisobanura imbere y’ako gatsinda, imbere y’abagenzuzi n’imbere ya komite inshinzwe imyitwarire, nk’uko yabisobanuye ikigomba kurebwa ari imikorere y’Akanama gashiznwe gukurikirana amakosa n’uburyo gakoramo kuko icyemezo cyako cyo cyonyine gihagije mu kugirango umukozi ahanwe, ko iby’uko agomba kwisobanura imbere yako ntaho biteganyijwe mu rwego rw’amategeko, ko kandi n’ibijyanye n’uko avuga ko yirukanywe hashingiwe ku bimenyetso byashatswe mu buryo budakurikije amategeko kimwe n’ibindi bisobanuro byose atanga bigamije kugaragza ko nta makosa yakoze, cyangwa se ko niba yaranayakoze nta buremere afite, Akarere gasanga iyo ngingo itasuzumwa mu rwego rw'ubujuire kubera ko ibirebana nayo atigeze abiregera mu rwego rwa mbere uko byavuzwe hashingiwe ku biteganywa n’ ingingo ya 154 y’Itegeko N$^{o}$ 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, bityo ko impamvu y'ubujurire ye itasuzumwa.

[23] Asoza avuga ko ku bijyanye n’indishyi zisabwa na Kanyarwanda zingana na 71.075021 Frw ziri mu mwanzuro asaba guhabwa mu gihe yaba adasubijwe mu kazi, ko iyo ngingo nayo itasuzumwa n’Urukiko kubera ko itari mu mpamvu z’ubujure bwatanzwe, kuko ari ingingo yatanzwe nyuma cyane y’ibihe byo kujurira bityo ikaba idashobora gusuzumwa nk’uko byatanzweho umurungo ndetse n’ingingo ya 148 na 156 CPCCSA, uretse ko n’iyo bajya kuba barazijuriye zitari kuzahabwa ishingiro kuko nta bimenyetso zatangiwe, ko kandi nk’uko byasobanuwe uretse n’uko kumenyeshwa icyemezo impitagihe nta tegeko ribiteganya nta n’ubwo urega yatanze ibimenyetso by’uko yamenyeshejwe iyirukanwa impitagihe.

## UKO URUKIKO RUBIBONA

[24] Ingingo ya 3 y’Itegeko N$^{o}$ 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri kw’ibyo aburana naho iya 12 y’Itegeko N$^{o}$ 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi igateganya ko urega agomba kugaragaza ibimenyetso by’ibyo aregera, ko iyo abibuze uwarezwe atsinda. Iby’uko buri muburanyi agomba kugaragaza ukuri kw’ibyo aburana n’uko urega ari we ugomba kugaragaza ukuri kw’ibyo aburana yabibura uwarezwe

akamutsinda ni na byo byemejwe mu manza zinyuranye zaciwe n'Urukiko rw'Ikirenga nk'urubanza RADA 0025/12/CS rwo ku wa 25 Mata 2014[3].

[25] Ingingo ya 22 y'Iteka rya Perezida N°065/01 ryo ku wa 04/3/2014 ryavuzwe, mu gika cyaryo cya 3, iteganya ko haseguriwe ibivugwa mu ngingo ya 17 y'iri Teka, Umuyobozi ubifitiye ububasha amenyesha Umukozi mu nyandiko umwanzuro yafatiwe mu gihe kitarenze iminsi itanu (5) y'akazi uhereye igihe yaboneyeho inama abigirwaho n'akanama gashinzwe gukurikirana amakosa cyangwa Minisitiri.

[26] Mu gusuzuma iki kibazo, Urukiko Rwisumbuye rwa Nyamagabe mu gika cya 12 rwavuze ko rusanga nkuko Kanyarwanda yabivuze ko ingingo ya ingingo ya 22 y'Iteka rya Perezida N° 065/01 ryo ku wa 04/3/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, mu gika cyaryo cya 3, ko haseguriwe ibivugwa mu ngingo ya 17 y'iri Teka, Umuyobozi ubifitiye ububasha amenyesha Umukozi mu nyandiko umwanzuro yafatiwe mu gihe kitarenze iminsi itanu (5) y'akazi uhereye igihe yaboneyeho inama abigirwaho n'akanama gashinzwe gukurikirana amakosa cyangwa Minisitiri, we akaba yaranenze Akarere ka Nyaruguru kuba aho kumenyeshwa mu minsi itanu (5) yaramenyeshejwe mu minsi mirongo itatun' icyenda (39) ariko uyu Kanyarwanda akaba ataragaragarije Urukiko ko kuba iyi minsi itanu (5) itarubahirijwe hari izindi ngaruka Umushingamategeko yateganyije byagira ku cyemezo yamenyeshejwe nyuma y'iminsi itanu (5), bityo ko bitavuze ko icyemezo kimwirukana burundu mu bakozi ba Leta cyarafashwe mu bihe no mu buryobudakurikije amategeko.

[27] Rusesenguye ibiteganywa n'iyi ngingo yashingiweho ku rwego rwa mbere n'ibyasobanuwe kuri urwo rwego, rugasanga n'ubwo koko urwo Rukiko rwasanze ibyo bihe bitarubahirijwe ariko , nta kosa rwakoze kuko ntacyo Itegeko riteganya mu gihe ibyo bihe bitubahirijwe kandi ukutabyubahiriza rukaba rusanga bitatesha ireme ku buryo bugaragara icyemezo cyafashwe, kubera ko uru Rukiko runasanga mu rwego rw'amategeko nta burenganzira uko kumumenyesha iyirukanwa impitagihe byamuvukije, dore ko n'ibyo Kanyarwanda Eugène avuga yari kugenerwa muri icyo gihe bijyanye n'umushahara atagaragaje ko atabihawe kandi atanabisabye ku buryo ubwo ari bwo bwose biramutse bigaragariye Urukiko ukundi.

[28] Ibivuzwe muri iki gika bikaba binahura n'ibyemejwe n'Urukiko ruburanisha imanza z'Ubutegetsi rw'Ubujurire rwa Bordeau mu gihugu cy'Ubufaransa rwasobanuye mu rubanza rwaciye ku wa 07/07/2020 umukozi yasabagamo gukuraho icyemezo cyamufatiwe ko rwabonye koko ikosa ryarakozwe ariko ritari gutuma habaho gukuraho icyemezo kirukana umukozi yari yaregeye, kuko rwasanze uko kutubahiriza amategeko arebana n' imihango ikurikizwa (*erreur de procédure*) bitaragize uburenganzira bibuza umukozi cyangwa ngo bihindure icyo cyemezo n'ibyashingiweho gifatwa uko rwabisobanuye mu rurimi rw' Igifaransa ko "*La Cour Administrative d'Appel de Bordeau avait jugé, dans un Arrêt du 7 juillet 2020 qu'une irrégularité avait été certe commise, mais ne pouvait aboutir en l'espèce à l'annulation de la décision de révocation contestée par l'agent. Rappellant la Jurisprudence DANTHONY (CE, assemblée, 23 décembre 2011, no 335033), la Cour Administrative d'Appel avait estimé que ce qu'elle identifiait comme un vice de procédure n'avait pas en l'espèce privé l'Agent d'une quelconque garantie ni modifié le sens de la décision, de sorte qu'elle ne pouvait entrer en voie de censure de la décision querellée"*.[4]

[29] Byongeye kandi, rugasanga n'ubwo Kanyarwanda Eugène agaruka ku mikorere y'amakosa yashingiweho yirukanwa avuga uko yakurikiranywe n'uko yirukanywe muburyo bunyuranyije n'amategeko, ariko nanone ntabwo rubona ko iryo menyeshwa ry'impitagihe hari icyo ryahindura kubyakozwe mu rwego rwo kumukurikirana hashingiwe ku mahame ajyanye n'uko yasabwe

---

[3] Icyegeranyo cy' ibyemezo by' Inkiko, Vol.2, 2015, P. 3.
[4] https://www.axiojuris.com/categories/publications-du-cabinet-11734/articles/fonctions-publiques- quelle-sanction-en-cas-de-notification-tardive-de-lavis-du-conseil-de-discipline-2873.htm, consulte ce 24/04/2023.

kwisobanura mu nyandiko, arisobanura, akanama gashinzwe gukurikirana amakosa gakora iperereza, habaho kugisha inama mbere yo kumusezerera, amaze gusezererwa ku kazi hashingiwe ku makosa ako kanama kavuze ko kabonye arajurira, hashingiwe ku biteganywa n'amategeko harimo ingingo ya 4 y'Iteka rya Perezida N° 65/01 ryo kuwa 04/03/2014 ryavuzwe, n'iya 19, iya 31 na 32 z'iryo Teka[5], kubera ko ku wa 29/05/2020 Kanyarwanda yasabwe kwisobanura, asubiza ku wa 01/06/2020, ku wa 03/06/2020 amenyeshwa ko nta shingiro ibisobanuro yatanze bifite, ko ashyikirijwe akanama gashinzwe gukurikirana amakosa y'abakozi mu Karere, nyuma y'uko gatanga iyo raporo, Minisiteri y'Abakozi ba Leta itanga inama yo kumwirukana burundu, amaze gusezererwa ku kazi ku wa 12/10/2020 , aratakamba aza no kujurira ku rwego rwa kabiri (2), maze ku wa 30/06/2021 amenyeshwa n'Umunyamabanga Nshingwabikorwa wa Komisiyo y'Igihugu ishinzwe Abakozi ba Leta ko ubujurire bwe nta shingiro kuko yahawe ibihano bihwanye n'amakosa yakozwe .

[30] Kubijyanye n'impamvu z'ubujurire zirebana n'uko Kanyarwanda avuga ko yirukanwe hashingiwe ku bimenyetso byafashwe mu buryo budakurikije amategeko ndetse n'ibindi bisobanuro byose atanga bigamije kugaragaza ko nta makosa yakoze, cyangwa se ko niba yaranayakoze nta buremere afite, ibirebana n'imikorere y'ikosa n'uko ryakurikiranywe , kuvuga ko Akarere kashingiye kuri rapport zakozwe n'abantu batabifitiye ububasha n'ubumenyi kimwe n'ibirebana n'indishyi zingana na 71.075021 frw yahabwa mu gihe Urukiko rwabibona ukundi, uru Rukiko rusuzumye ibikubiye muri dosiye y'urubanza rujuririrwa, rusanga izi ngingo agaragaza zitaraburanyweho ku rwego rwa mbere.

[31] Ibivuzwe mu gika kibanziriza iki binashimangirwa n' uko ku rwego rwa mbere hasuzumwe ingingo ebyiri (2) z'ingenzi zijyanye no guhanirwa ibikorwa byaburanyweho mu rubanza nshinjabyaha no kumenyeshwa iyirukanwa impitagihe uru Rukiko rwasanze impamvu z'ubujurire kuri izo ngingo nta shingiro zifite, bityo rushingiye ku biteganywa n'ingingo ya 154 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 ku rwego rw'ubujurire hadashobora gutangirwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu Rukiko rw'ubujurire, ko icyakora, ababuranyi bashobora kwaka inyungu, ibyishyuwe ku bukode n'ibindi bintu by'inyongera byabonetse kuva aho urubanza rwaciriwe n'indishyi z'igihombo umuburanyi yagize kuva urubanza ruciwe, ko bitabujijwe ariko mu rwego rw'ubujurire gutanga ibisobanuro bishya cyangwa ibimenyetso bishya bigamije kumvikanisha kurushaho ibyari byaraburanishijwe mu rwego rwa mbere.

[32] Ibivuzwe haruguru bikaba binahura n'inyandiko z'abahanga mu mategeko nka Negrin usobanura ko ababuranyi batahora bahindagura ubuziraherezo ikirego n'ibigaragaza ko imiburanire yabo ifite ishingiro, ko ikiregerwa kigomba gusuzumwa uko cyagenwe n'ababuranyi urubanza rutangira, uko abivuga mu magambo arambuye mu rurimi rw'Igifaransa ko *"Si le principe d'immutabilité s'explique avant tout par des raisons pratiques qui commandent que les parties ne*

[5] Ingingo ya 19 y'Iteka rya Perezida N° 65/01ryo ku wa 04/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi ivuga iteganya ko Akanama gashinzwe ikurikirana ry'amakosa gafite inshingano zikurikira:1° gukora iperereza ryo mu rwego rw'akazi ku ikosa umukozi akekwaho hagamijwe gusesengura uburyo ikosa ryabayemo, ingaruka zaryo, ndetse no kugaragaza 2° Gutanga inama kugihano cyafatirwa umukozi no gushyikiriza umuyobozi ufite ububasha bwo guhana raporo y'iperereza,; ingingo ya 31 yaryo ivuga ko umukozi wa Leta utishimiye igihano yahawe mu rwego rw'akazi, afite uburenganzira bwo kujuririra inzego z'ubuyobozi, iya 32 y' iryo Teka igateganya ko mu gihe kitarenze iminsi itanu (5) y'akazi amenyeshejwe icyemezo yafatiwe, umukozi wahanwe iyo atishimiye igihano yahawe, ajuririra mu nyandiko ku rwego rwa mbere umuyobozi wamufatiye igihano, agahabwa igisubizo mu gihe kitarenze iminsi cumi n'itanu (15) y'akazi uhereye umunsi ubujurire bwakiriwe n'umuyobozi wamufatiye igihano naho iya 33 igateganya ko iyo icyemezo cy'umuyobozi wahannye umukozi ku bujurire yagejejweho kitanyuze umukozi, umukozi wahanwe ajuririra Komisiyo ishinzwe Abakozi ba Leta, mu rwego rwa nyuma, mu gihe kitarenze iminsi itanu (5) y'akazi uhereye ku munsi yaherewe igisubizo. Komisiyo itanga umwanzuro mu gihe kitarenze iminsi mirongo itandatu (60) y'ingengaminsi. Icyemezo cya Komisiyo ntikijuririrwa mu rundi rwego rw'ubuyobozi. Abakozi ba Komisiyo ishinzwe Abakozi ba Letabajuririra ku rwego rwa mbere n'urwa nyuma Inama y'Abakomiseri ya Komisiyo.

*puissent pas indéfiniment moduler l'objet de leur demande et le fondement de leurs prétentions, il traduit en revanche une conception fondamentale du procès à l'égard du juge, lequel ne peut en principe modifier les limites de l'instance telles qu'elles sont fixées. Ainsi, et de manière générale, le « principe d'immutabilité de la demande prescrit que le litige soit étudié tel qu'il a été fixé à l'origine par les parties".*[6]

[33] Rukanasanga ibijyanye no kugaruka ku mikorere y'amakosa yashingiweho Kanyarwanda yirukanwa, hanasuzumwa ibimenyetso byashingiweho n'indishyi zingana na 71.075021 frw asaba ko yahabwa aramutse adasubijwe mu kazi, bitafatwa kandi nk'aho ari ibisobanuro cyangwa ibimenyetso bishya bigamije kumvikanisha kurushaho ibyari byaraburanishijwe mu rwego rwa mbere, kubera ko, uru Rukiko rusanga ari indi ngingo yiyongera ku zindi ngingo ebyiri (2) z'ingenzi Kanyarwanda Eugène we yahisemo kuburanaho ku rwego rwa mbere zavuzwe ari zo: gusuzuma niba yari guhanwa hashingiwe ku makosa yagizweho umwere mu rubanza nshinjabyaha n'uko yamenyeshejwe impitagihe icyemezo kimwirukana burundu, harebwe uko ibi bibazo byasobanuwe bikanasubizwa n'uru Rukiko kubera ko ibisubizo byatanzwe birebana ahanini n'icyo amategeko ateganya.

[34] Ibivuzwe haruguru bikaba bishimangirwa n'uko imiburanire yagenze ku rwego rwa mbere nk'uko ibibazo bivuzwe haruguru byashyizwe mu ngingo ebyiri (2) zavuzwe uko bigaragara mu gika cya 3 cy'urubanza rujuririrwa mbere y'uko bigibwaho impaka, ndetse no mu nama ntegurarubanza uretse ibijyanye n'indishyi no gusubizwa mu kazi hakaba haraburanywe ibijyanye n'uko Kanyarwanda arega yavugaga ko asaba Urukiko ko icyemezo kimwirukana cyateshwa agaciro agasubizwa mu mirimo, kuko ibyo bashingiragaho bamwirukana yabigizweho umwere, ko byongeye icyo cyemezo cyagiye gifatwa mu bihe no mu buryo budakurikije amategeko (*procedure*). Ku bw'ibyo impamvu y'ubujurire kuri iyi ngingo ikaba nta shingiro ifite.

**3. Ku bijyanye n' indishyi z' ikurikiranarubanza**

[35] Me Mbonigaba Eulade uburanira Akarere ka Nyaruguru avuga ko Kanyarwanda yajuriye nta mpamvu, bityo rero hashingiwe ku ngingo ya 111 y'Itegeko ryerekeye imiburanishirize y' imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi akaba agomba kwiregera ikiguzi cy'urubanza ku mpande zombi, akishyura Akarere ka Nyaruguru indishyi z'ikurikiranarubanza zingana na 1,000,000 Rwf.

[36] Kanyarwanda Eugène n' umwunganira bavuga ko indishyi zisabwa n'Akarere ka Nyaruguru nta shingiro zifite kuko ari ko nyirabayazana w'imanza zose baburanye kugeza ubu ahubwo bakaba basaba ko bahabwa indishyi basabye.

## UKO URUKIKO RUBIBONA

[37] Ingingo ya 111 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 ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza, ko ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo, naho ingingo ya 152 y' iryo Tegeko igateganya ko uregwa mu Rukiko rujuririrwa ashobora na we kugira ibyo asaba yiregura. Kuba kandi hari ibyo uregwa yatakaje mu manza agomba guherwa indishyi zigenwe mu bushishozi bw'Urukiko binahura n'ibyemejwe mu rubanza RCAA 0022/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 25 Nyakanga 2014 haburana Ngangare na Mukankuranga[7].

---

[6] Negrin (J.P.), Contentieux de l'excès de pouvoir et contentieux de pleine juridiction. De la dualité ou de l'unité du contentieux administratif français, PUAM, 1976, p. 462.
[7] Icyegeranyo cy' ibyemezo by' Inkiko, V.1, Mutarama 2015, P. 69.

[38] Rushingiye kubimaze gusobanurwa, rugasanga indishyi z'ikurikiranarubanza Akarere ka Nyaruguru gasaba kazikwiye kuko kashowe mu manza atari ngombwa gusa kuko izisabwa ari nyinshi zikaba zigomba kugenwa mu bushishozi bwarwo, kakagenerwa ibihumbi magana atanu (500.000 Frws), ku bw'ibyo urubanza RAD 00007/2021/TGI/NYBE rwaciwe ku wa 21/07/2022 n'Urukiko Rwisumbuye rwa Nyamagabe ikaba igomba guhinduka ku bijyanye n'indishyi z'ikurikiranarubanza ziyongereye mu bujurire.

# III. ICYEMEZO CY'URUKIKO

[39] Rwemeje ko ubujurire bwatanzwe na Kanyarwanda Eugène nta shingiro bufite.

[40] Rwemeje imikirize y'urubanza RAD 00007/2021/TGI/NYBE rwaciwe ku wa 21/07/2022 n'Urukiko Rwisumbuye rwa Nyamagabe ihindutse kubijyanye n'indishyi zigenwe mu bujurire.

[41] Rutegetse Kanyarwanda Eugène kwishyura Akarere ka Nyaruguru indishyi zingana n'amafaranga y'u Rwanda ibihumbi magana atanu (500.000 Frws), akayishyura kuva uru rubanza rubaye ndakuka, bitaba ibyo agakurwa mu bye ku ngufu za Leta.

[42] Rutegetse ko amafaranga y'u Rwanda ibihumbi mirongo ine (40.000 Frws) yatanzweho ingwate mu kujurira ahwanye n'ibyakozwe muri uru rubanza, akaba aheze mu isanduku ya Leta.