# KARANGIRA v. IYABURUNGA

[Rwanda URUKIKO RW'IKIRENGA – RPA0076/15/CS (Hatangimbabazi, P.J., Karimunda na Gakwaya, J.) 6 Ugushyingo 2015]

*Amategeko mpanabyaha – Ifungwa rinyuranyije n'amategeko – Irangizwa ry'ibihano ku manza zitandukanye zifite ibihano bitadukanye – Uwahawe ibihano ku byaha bitandukanye ntabwo arangiriza igihano mu kindi ahubwo arindira ko kimwe kirangira agatangira ikindi – Itegeko-Ngenga N°01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'Amategeko Ahana, ingingo ya 40(7).*

**Incamake y'ikibazo:** Karangira Jean de Dieu yareze Iyaburunga Innocent, Umuyobozi wa Gereza ya Mpanga kumufunga binyuranije n'amategeko avuga ko yagombaga kurekurwa ku wa 17/04/2015 ariko ntibyakorwa nyamara yarafashwe n'Ubugenzacyaha ku wa 17/05/2009 akurikiranweho icyaha cya ruswa ari nacyo yaje guhanirwa n'Urukiko Rwisumbuye rwa Gasabo, mu rubanza RP503/09/TGI/GSBO rwaciwe ku wa 14/08/2009 agakatirwa igihano cy'igifungo cy'imyaka itandatu (6 ans).

N'ubwo urega yasabaga ko yafungurwa nyuma yo kurangiza igihano cya mbere, byagaragaraga ko hari imanza eshatu zitandukanye kuri we; urwo ku wa 27/11/2009 rwamuhanishije igifungo cy'imyaka itandatu (6 ans), rukurikirwa n'urwo ku wa 21/04/2010 rumuhanisha igifungo cy'imyaka itatu (3 ans) hagaheruka urwo ku wa 31/01/2013 rumuhanisha igifungo cy'imyaka itandatu (6 ans). Urega yavugaga ko niyo haba hari imanza zategetswemo ibindi bihano, bikwiye gufatwa ko ibyo bihano byarangiranye n'igihano cya mbere kubera ko aricyo cyari kirekire ariko uregwa n'umwunganira bo bakavuga ko ibyo binyuranyije n'amategeko.

Urukiko Rukuru rwaregewe, rwasanze kuba Karangira Jean de Dieu yarakatiwe ibihano birenze kimwe kandi akiri mu irangizwa ryabyo, igifungo cya kabiri kigomba gutangira ku italiki igifungo cya mbere kirangiriyeho, bityo ko ifungwa rye ritanyuranyije n'amategeko.

Urega yajuririye Urukiko rw'Ikirenga ku mpamvu z'uko ku Itegeko-Teka N°21/77 ryo ku wa 18 Kanama 1977 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga icyo gihe, ntaho riteganya mu buryo buziguye uko impurirane y'ibihano byatanzwe ku byaha bitandukanye no mu bihe bitandukanye irangizwa, ariko isesengura ry'ingingo ya 36 n'iya 37 zaryo ndetse n'umuco wa za Gereza mu Rwanda bikaba bigaragaza ko ari ibisanzwe kubarira ibihano bito mu gihano kirekire umugororwa yakatiwe ndetse yongeraho ko kudasubira inyuma kw'itegeko mpanabyaha rishya uretse igihe riri mu nyungu z'uregwa ari ihame rusange ry'amategeko bityo ko ingingo ya 40, igika cya 7 y'Itegeko-Ngenga N°21/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'Amategeko ahana itagombaga gukoreshwa muri uru rubanza. Iyaburunga n'umwunganira bo bavuga ko gufungwa kwe bikurikije amategeko. Uhagarariye ubushinjacyaha we avuga ko Karangira avugisha amategeko ibyo atavuga kuko ingingo avuga hejuru zitavuguruzanya.

**Incamake y'icyemezo:** Uwakatiwe ibihano kubyaha bitandukanye ntabwo arangiriza igihano mu kindi ahubwo arindira ko kimwe kirangira agatangira ikindi. Bityo nta fungwa rinyuranyije n'amategeko ryabayeho ku wareze.

**Ubujurire nta shingiro bufite.**
**Nta gihindutse ku rubanza rwajuririwe.**

**Uwajuriye agomba kwishyura uwarezwe indishyi.**
**Amagarama y'urubanza aherera ku isanduku ya Leta.**

**Amategeko yashingiweho:**

Itegeko-Ngenga N°01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'Amategeko Ahana, ingingo ya 40(7).

Itegeko-Teka N°21/77 ryo ku wa 18 Kanama 1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 36 n'iya 37.

**Nta manza zifashishijwe.**

**Inyandiko z'abahanga:**

Michel Franchimont et alii, *Manuel de procédure pénale*, Bruxelles, Larcier, 2eme édition, 2006, p.735.

# Urubanza

# I. IMITERERE Y'URUBANZA

[1] Imbere y'Urukiko Rukuru, Urugereko rwa Nyanza, rwaregewe, Karangira Jean de Dieu yakurikiranyeho Iyaburunga Innocent, Umuyobozi wa Gereza ya Mpanga kumufunga binyuranije n'amategeko avuga ko yagombaga kurekurwa ku wa 17/04/2015 ariko ntibyakorwa nyamara yarafashwe n'Ubugenzacyaha ku wa 17/05/2009 akurikiranweho icyaha cya ruswa ari nacyo yaje guhanirwa n'Urukiko Rwisumbuye rwa Gasabo, mu rubanza RP503/09/TGI/GSBO rwaciwe ku wa 14/08/2009 agakatirwa igihano cy'igifungo cy'imyaka itandatu (6 ans), bivuze ko igihano yakatiwe cyarangiye guhera ku wa 17/04/2015, kandi ko mu gihe haba hari imanza zategetswemo ibindi bihano, bikwiye gufatwa ko ibyo bihano byarangiranye n'igihano cya mbere kubera ko aricyo cyari kirekire.

[2] Mu rubanza RP0004/15/HC/NYA rwaciwe ku wa 29/05/2015, Urukiko Rukuru rwasanze kuba Karangira Jean de Dieu yarakatiwe ibihano birenze kimwe kandi akiri mu irangizwa ryabyo, igifungo cya kabiri kigomba gutangira ku italiki igifungo cya mbere kirangiriyeho, bityo ko ifungwa rye ritanyuranyije n'amategeko.

[3] Karangira Jean de Dieu ntiyishimiye icyo cyemezo akijuririra mu Rukiko rw'Ikirenga.

[4] Iburanisha mu ruhame ryabaye ku wa 05/10/2015, Karangira Jean de Dieu ahari kandi yunganiwe na Me Mbaga Tuzinde Mbonyimbuga, Iyaburunga Innocent nawe yitabye kandi yunganiwe na Me Munyemana Pascal naho Ubushinjacyaha buhagarariwe na Bunyoye Grâce, Umushinjacyaha ku rwego rw'Igihugu.

# II. IKIBAZO KIGIZE URU RUBANZA N'ISESENGURA RYACYO

**II.1. Kumenya niba mu gihe mu manza zitandukanye zabaye ndakuka hatanzwe ibihano bitandukanye, ibihano bito bibarirwa mu gihano kirekire cyagenwe na rumwe muri izo manza.**

[5] Karangira Jean de Dieu avuga ko kuva yafungwa ku wa 17/05/2009 atarafungurwa kandi ko ahanwa hashingiwe ku Itegeko-Teka N°21/77 ryo ku wa 18 Kanama 1977 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga icyo gihe, iryo Tegeko-Teka rikaba ntaho riteganya mu buryo buziguye uko impurirane y'ibihano byatanzwe ku byaha bitandukanye no mu bihe bitandukanye irangizwa, ariko isesengura ry'ingingo ya 36 n'iya 37 zaryo ndetse n'umuco wa za Gereza mu Rwanda bikaba bigaragaza ko ari ibisanzwe kubarira ibihano bito mu gihano kirekire umugororwa yakatiwe, kandi ko ari uko biteganywa n'amategeko y'ahandi nko mu Bufaransa, akaba asanga kuba Urukiko Rukuru rwarabirenzeho rwitwaje icyuho kiri mu Itegeko-Teka ryavuzwe haruguru, rugategeka ko arangiza buri gihano yakatiwe rushingiye ku ngingo ya 40, igika cya 7 y'Itegeko-Ngenga N°01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'Amategeko Ahana kandi iri Tegeko-Ngenga ryaraje amaze imyaka itanu afunze ari uguhonyanga uburenganzira bwe bwo kudacibwa urubanza hashingiwe ku Itegeko rishya iyo ritari mu nyungu z'uregwa.

[6] Akomeza avuga ko kudasubira inyuma kw'itegeko mpanabyaha rishya uretse igihe riri mu nyungu z'uregwa ari ihame rusange ry'amategeko riteganywa kandi n'ingingo ya 765 y'Itegeko-Ngenga N°01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru, ingingo ya 15 y'Amasezerano Mpuzamahanga yerekeranye n'uburenganzira mbonezamubano n'ubwa politiki, ndetse n'ingingo ya 20 y'Itegeko Nshinga ryo ku wa 04/06/2003 nk'uko ryahinduwe kandi ryujujwe kugeza ubu, byose bigaragaza ko Urukiko Rukuru, Urugereko rwa Nyanza rwishe amategeko, akaba asaba uru Rukiko gukosora amakosa yakozwe, akarenganurwa.

[7] Me Mbaga Tuzinde Mbonyimbuga umwunganira avuga ko ihame rusange rikubiye mu ngingo ya 36 n'iya 37 z'Itegeko-Teka N°21/77 ryo ku wa 18 Kanama 1977 ryavuzwe haruguru ryakoreshwaga Karangira Jean de Dieu ahanwa ni uko ibihano bito bibarirwa mu gihano kirekire kandi ko mu bisanzwe itegeko mpanabyaha ribanza kumenyesha mbere yo guhana, bivuze ko iyo ingingo ya 40, igika cya 7 y'Itegeko-Ngenga N°21/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru iba itariho, Karangira Jean de Dieu aba yararekuwe, bityo kuba iyo ngingo yarashingiweho agakomeza gufungwa kandi yaraje nyuma bikaba binyuranije n'amategeko kandi bihonyanga uburenganzira bwe.

[8] Iyaburunga Innocent avuga ko Karangira Jean de Dieu yahaniwe ibyaha bitatu kandi afite amarangizarubanza y'ibyo bihano yahaniwe, ayo marangizarubanza bakaba bayashyira mu bikorwa uko bayashyikirijwe kuko inshingano zabo muri Gereza ari ukubahiriza ibyemezo by'Inkiko, akaba asanga nta kosa yakoze agumisha Karangira Jean de Dieu muri Gereza kubera ko atari gusohoka atararangiza ibihano yakatiwe.

[9] Me Munyemana Gatsimbanyi Pascal wunganira Iyaburunga Innocent avuga ko nta mpamvu n'imwe y'ifunga mu buryo bunyuranije n'amategeko iteganywa n'ingingo ya 90, igika cya 4 y'Itegeko N°30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha Karangira Jean de Dieu agaragaza, ko yafunzwe n'imanza zaciwe mu bihe bitandukanye, rumwe rukaba rwaraciwe ku wa 21/11/2009, urundi rugacibwa ku wa 31/01/2013, bigaragaza ko urubanza ruheruka rwaciwe nyuma y'uko Itegeko-Ngenga N°21/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru ritangajwe mu Igazeti ya Leta, bityo hakaba nta cyabuzaga ko iryo Tegeko-Ngenga rikurikizwa.

[10] Uhagarariye Ubushinjacyaha avuga ko Karangira Jean de Dieu avugisha ingingo ya 36 n'iya 37 z'Itegeko-Teka N°21/77 ryo ku wa 18 Kanama 1977 rishyiraho Igitabo cy'amategeko ahana icyo zitavuga kuko nta tandukanyirizo riri hagati yazo n'ingingo ya 40, igika cya 7 y'Itegeko-Ngenga N°01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'Amategeko Ahana, bivuze ko mu gihe nta ngingo y'Itegeko afite ashingiraho ikirego cye,

ingingo ya 40, igika cya 7 y'Itegeko-Ngenga N°01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru ariyo ikwiye gukurikizwa kuko atavuga ko imuremereye mu gihe atagaragaza imworohereza.

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[11] Ingingo ya 36 y'Itegeko-Teka N°21/77 ryo ku wa 18 Kanama 1977 rishyiraho Igitabo cy'amategeko ahana ryakoreshwaga Karangira Jean de Dieu ahanwa iteganya ko "Igihe cy'igifungo cyose kibarwa kuva ku munsi urubanza ruhana umuntu rwaciriweho kandi rutagisubiwemo". Naho ingingo ya 37 y'iri Tegeko -Teka iteganya ko "Igihe umuntu amaze mu gifungo cy'agateganyo, uko cyakabaye, kivanwa mu gihe cy'igihano urubanza rwategetse".

[12] Ingingo ya 40, igika cya 7, y'Itegeko-Ngenga N°01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, iteganya ko "igihe umuntu akatiwe ibihano by'ibifungo bibiri bikurikirana, igifungo cya kabiri gitangira ku itariki igifungo cya mbere kirangiriyeho".

[13] Dosiye y'urubanza igaragaza ko mu rubanza N° RP0503/09/TGI/GSBO rwaciwe ku wa 14/08/2009, Karangira Jean de Dieu yakurikiranweho icyaha cya ruswa, icyaha kiramuhama, ahanishwa igifungo cy'imyaka itandatu (6 ans) n'ihazabu y'amafaranga y'u Rwanda miliyoni imwe (1.000.000Frw). Karangira Jean de Dieu n'Ubushinjacyaha bajuririye icyo cyemezo mu Rukiko Rukuru, ku cyicaro cyarwo i Kigali narwo ruca urubanza RPA10891130/09/HC/KIG ku wa 27/11/2009 rwemeza ko urubanza rwajuririwe rudahindutse (cotes 11 na 18).

[14] Karangira Jean de Dieu yongeye na none gukurikiranwaho icyaha cy'inyandiko-mpimbano mu Rukiko Rwisumbuye rwa Gasabo. Urwo Rukiko rwemeza ko icyaha kimuhama, ahanishwa igifungo cy'imyaka itatu (3 ans). Karangira Jean de Dieu yajuririye icyo cyemezo, noneho mu rubanza N° RPA0140-0318/10/HC/KIG rwaciwe ku wa 21/04/2010, Urukiko Rukuru rusanga ubujurire bwe nta shingiro bufite, bityo ko nta gihindutse ku mikirize y'urubanza rwajuririwe (cote 24).

[15] Karangira Jean de Dieu yakurikiranwe kandi imbere y'Urukiko Rwisumbuye rwa Gicumbi ku byaha by'inyandiko–mpimbano n'ubufatanyacyaha mu gutangira ubusa ibya Leta. Urwo Rukiko rwaciye urubanza N° RPA0198 - 1130/09/TGI/GIC ku wa 19/02/2010, rwemeza ko ari umwere ku cyaha cy'inyandiko-mpimbano ariko ko ahamwa n'icyaha cy'ubuhemu n'ubufatanyacyaha mu cyaha cyo gutangira ubusa ibya Leta ahanishwa igifungo cy'imyaka itanu (5 ans) n'ihazabu y'amafaranga ibihumbi makumyabiri (20.000Frw). Karangira Jean de Dieu n'Ubushinjacyaha bajuririye urwo rubanza mu Rukiko Rukuru, narwo ruca urubanza no RPA0252 - 0303/HC/KIG ku wa 31/01/2013, rwemeza ko ahamwa n'icyaha cyo gukoresha inyandiko-mpimbano n'icyaha cy'ubuhemu, rumuhanisha igifungo cy'imyaka itandatu (6 ans) (cotes 25-46).

[16] Urukiko rurasanga urubanza rwa mbere ruhana Karangira Jean de Dieu ari urwo ku wa 27/11/2009 rwamuhanishije igifungo cy'imyaka itandatu (6 ans), rukurikirwa n'urwo ku wa 21/04/2010 rumuhanisha igifungo cy'imyaka itatu (3 ans) hagaheruka urwo ku wa 31/01/2013 rumuhanisha igifungo cy'imyaka itandatu (6 ans), buri rubanza rukaba rwihariye kuko yahaniwe ibyaha bitandukanye, mu Nkiko zitandukanye no mu bihe bitandukanye, ibihano biheruka bisanga atararangiza ibya mbere, bivuze ko atashoboraga guhita

abyubahiriza kandi bidashobora kuvanwa mu bihano byatanzwe mbere kubera ko, hashingiwe ku ngingo ya 37 y'Itegeko-Teka N°21/77 ryo ku wa 18 Kanama 1977 ryavuzwe haruguru, igishobora kuvanwa mu gihano ari igifungo cy'agateganyo gihabwa umuntu ugikurikiranwa n'Inkiko ushobora no kuba umwere kandi ufatwa nk'umwere buri gihe cyose atarahamwa n'icyaha, igifungo cy'agateganyo kikaba kitakwitiranwa n'igihano cyatanzwe mu rubanza rwabaye ndakuka nk'uko Karangira Jean de Dieu na Me Mbaga Tuzinde Mbonimbuga bashaka kubyumvikanisha.

[17] Urukiko rurasanga hashingiwe ku ngingo ya 36 y'Itegeko-Teka N°21/77 ryo ku wa 18 Kanama 1977 ryavuzwe haruguru kandi ryakoreshwaga Karangira Jean de Dieu ahanwa, igihano cy'imyaka itandatu (6 ans) yakatiwe ku wa 31/01/2013 kizategereza ko abanza kurangiza icy'imyaka itatu (3 ans) yakatiwe ku wa 21/04/2010, iki nacyo kigategereza ko abanza kurangiza icy'imyaka itandatu (6 ans) yakatiwe ku wa 27/11/2009 kubera ko atarangiriza igihano mu kindi.

[18] Urukiko rurasanga uyu murongo uhuye n'ibiteganywa n'amategeko y'ahandi nk'aho mu Bufaransa ingingo ya 3, igika cya 2 y'Itegeko N°2005-1549 ryo ku wa 12/12/2005 iteganya ko "ibihano byatanzwe ku byaha byasanze uregwa hari ibindi byaha yahaniwe bivangwa n'ibihano bya mbere hatitawe ku ngano yabyo kandi bidashoboka ko ibihano bitanzwe nyuma bivanwa mubyatanzwe mbere"[1] kandi bishimangirwa n'abahanga mu mategeko bemeza ko "iyo umugororwa afungiwe impamvu iyi n'iyi, irangizagihano ririmurwa kugeza igihe azarangiriza igihano yakatiwe mbere"[2] byose bigaragaza ko Karangira Jean de Dieu agomba kurangiza buri gihano yakatiwe mbere yo kurekurwa.

[19] Urukiko rurasanga ingingo ya 40, igika cya 7 y'Itegeko-Ngenga N°01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'Amategeko Ahana idakwiye gufatwa nk'iyashyizeho ihame rishya mu byerekeranye n'irangiza ry'impurirane ry'ibihano ahubwo yarasobanuye kurushaho ihame ryari risanzwe riri mu ngingo ya 36 y'Itegeko-Teka N°21/77 ryo ku wa 18 Kanama 1977 ryavuzwe haruguru, uku kudasobanuka neza kw'iyi ngingo ya 36 kukaba gushobora kuba ariko kwateraga imigirire (*pratique*) itandukanye muri za Gereza nk'uko Karangira Jean de Dieu abivuga, bivuze ko n'iyo Urukiko Rukuru rutari gushingira ku itegeko rishya, ntibyari kurubuza kugera ku mwanzuro rwagezeho, bityo ibyo Karangira Jean de Dieu aburanisha by'uko uburenganzira bwe bwo kudaciribwa urubanza hashingiwe ku itegeko mpanabyaha rishya iyo ritari mu nyungu ze bwahonyanzwe bikaba nta shingiro bifite.

[20] Hashingiwe ku byasobanuwe mu bika bibanziriza iki, Urukiko rurasanga Karangira Jean de Dieu afunzwe hashingiwe ku byemezo by'Inkiko byabaye ndakuka, kandi mu gihe ari kurangiza ibihano byatanzwe mu buryo bukurikije amategeko hagendewe ku byaha byamuhamye, atahindukira ngo avuge ko afunzwe mu buryo bunyuranije n'amategeko.

**II.2. Kumenya niba Iyaburunga Innocent yahabwa indishyi asaba.**

[1] "Les peines prononcées pour l'infraction commise en réitération se cumulent sans limitation de quantum et sans possibilité de confusion avec les peines définitivement prononcées lors de la condamnation précédente". Article 3, alinéa 2, Loi no 2005-1549 du 12 décembre 2005.

[2] "Si le condamné est déjà détenu pour une ou d'autres causes, l'execution de la peine est reportée dans le temps après qu'il ait purgé la première peine". Michel Franchimont et alii, *Manuel de procédure pénale*, Bruxelles, Larcier, 2eme édition, 2006, p.735.

[21] Iyaburunga Innocent avuga ko asaba indishyi z'ibyo yatanze k'umwunganira mu Rukiko rw'Ikirenga n'iz'uko yashowe mu manza nta mpamvu, zose hamwe akaba asaba miliyoni eshatu z'amafaranga y'u Rwanda (3.000.000Frw).

[22] Karangira Jean de Dieu avuga ko nta ndishyi zikwiye guhabwa Iyaburunga Innocent mu gihe ariwe uri mu karengane.

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[23] Urukiko rurasanga kuba Iyaburunga Innocent yararezwe mu Rukiko bigatuma ashaka umwunganira mu mategeko (avoka) byaratumye agira ibyo atakaza, bityo indishyi z'ibyo yatakaje mu rubanza akaba akwiye kuzihabwa hashingiwe ku ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, iteganya ko "igikorwa cyose cy'umuntu cyangirije undi, gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse".

[24] Urukiko rurasanga nta kimenyetso Iyaburunga Innocent arugaragariza cyerekana amafaranga yumvikanye n'umwunganira ko ariyo azamuhemba, bityo n'ubwo akwiriye indishyi z'ibyo yatakaje biturutse kuri uru rubanza, miliyoni eshatu z'amafaranga y'u Rwanda (3.000.000Frw) Iyaburunga Innocent yasabye akaba ari umurengera, akaba ahawe indishyi zingana n'amafaranga ibihumbi magana inani (800.000Frw), agenwe mu bushishozi bw'Urukiko.

## III. ICYEMEZO CY'URUKIKO

[25] Rwemeje ko ubujurire bwa Karangira Jean de Dieu nta shingiro bufite;

[26] Rwemeje ko nta gihindutse ku mikirize y'urubanza N° RP0004/15/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 29/05/2015;

[27] Rutegetse Karangira Jean de Dieu kwishyura Iyaburunga Innocent indishyi zingana n'ibihumbi magana inane (800.000Frw) y'igihembo cya Avoka;

[28] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.