Re URUGAGA RW'ABAVOKA MU RWANDA

[Rwanda URUKIKO RW'IKIRENGA – RS/SPEC/00001/2017/SC – [(Rugege, P.J., Mugenzi, Kayitesi R., Kanyange, Mukamulisa, Gatete, Ngagi, Karimunda na Muhumuza, J.) 28 Mata 2017]

Itegeko Nshinga – Isobanurampamo ry'amategeko – Iyakirwa ry'ikirego – Ibishingirwaho mu busabe bw'isobanurampamo – Uwatanze ikirego cy'isobanurampamo agomba kubanza kugaragaza inyungu rimufitiye ku giti cye, kubo ahagarariye badashobora kwitangira ikirego cyangwa ko abikoze mu nyungu rusange, kugaragaza ko hari imanza cyangwa ibyemezo by'ubutegetsi kandi bireba inyungu rusange bivuguruzanya ku bisobanuro by'ingingo y'Itegeko cyangwa hagaragajwe ko hari amagambo ari mu Itegeko atera urujijo ku buryo yahabwa ibisobanuro bivuguruzanya kandi bikaba biri mu nyungu rusange ko ayo magambo asobanuka.

Itegeko nshinga – Isobanurampamo ry'amategeko – Kutakira ikirego – Ikirego cy'isobanurampamo ntigishobora kwakirwa iyo kiri mu rubanza rutararangira kuburanishwa cyangwa rutarangiza inzira zisanzwe z'ijurira.

Itegeko Nshinga – Isobanurampamo ry'amategeko – Itumizwa rya Leta mu rubanza rw'isobanurampamo ry'itegeko – Iyo hari ubusabe bw'isobanurampamo ry'itegeko ni ngombwa ko Leta ihamagazwa kugira ngo igire icyo ivuga kuri ubwo busabe.

Itegeko Nshinga – Isobanurampamo ry'amategeko – Itegeko rikurikizwa mu rubanza rw'isobanurampamo ry'amategeko – Ibiteganywa n'Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2002 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, mu ngingo zaryo zirebana n'imiburanishirize y'ibirego byerekeranye no kwemeza ko amasezerano mpuzamahanga cyangwa itegeko binyuranyije n'Itegeko Nshinga nibyo bigomba kwifashishwa.

Itegeko Nshinga – Isobanurampamo ry'amategeko – Ingaruka zaryo – Iyo hakozwe isobanurampamo ry'itegeko, icyemezo gifashwe ntikireba gusa uwasabye ko itegeko risobanurwa ahubwo kireba buri wese harimo n'abataratanze ikirego, kandi cyanashingirwaho mu bihe bizaza bitabaye ngombwa kongera gusaba Urukiko gukora isobanurampamo ry'itegeko ryamaze kurikorerwa.

Itegeko Nshinga – Isobanurampamo ry'amategeko – Uruhare rw'Urugaga rw'Abavoka mu Rwanda – Urugaga rw'Abavoka mu Rwanda rufite ububasha bwo gusuzuma ubusabe rwashyikirijwe, rugafata icyemezo ko isobanurampamo rikenewe cyangwa ridakenewe, ryaba rikenewe ubwo busabe bibaye ngombwa rukabukorera ubugororangingo, rukabushyikiriza Urukiko rw'Ikirenga kandi uruhare rwa rwo rugomba gukomeza kugeza Urukiko ruburanishije icyo kirego – Itegeko Nshinga ryo muri 2003 ryavuguruwe muri 2015, ingingo ya 96(3).

Itegeko Nshinga – Isobanurampamo ry'amategeko – Icyemezo cy'Urugaga rw'Abavoka mu Rwanda – Icyemezo cy'Urugaga rw'Abavoka mu Rwanda kubijanye n'ubusabe bw'isobanurampamo ry'amategeko bwanyujijwe kuri urwo Urugaga ntikijuririrwa.

Itegeko nshinga – Isobanurampamo ry'amategeko – Ibigomba gugaragazwa n'Urukiko mu gutanga isobanurampamo y'amategeko – Rugomba kugaragaza niba ishyirwa mu bikorwa ry'Itegeko rishobora gutuma ryumvikana mu buryo butandukanye, niba hajya habaho gutandukira mu gusobanura itegeko no kurikoresha ku buryo bidahura n'icyatumye rijyaho cyangwa ntirishobore gukemura ikibazo ryari rigamije gukemura kandi Urukiko rugomba

gutanga ibisobanuro by'itegeko cyangwa ingingo zaryo mu gihe imyandikire yaryo itera urujijo, kwagura ibisobanuro by'itegeko mu gihe hagaragara ko hari ibyo ritavuze hakagaragara icyuho mu ishyirwa mu bikorwa ryaryo.

Incamake y'ikibazo: Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 rimaze kuvugururwa muri 2015, ryahaye Urukiko rw'Ikirenga ububasha bwo gukora isobanurampamo ry'amategeko, rinagena ko Umuntu wese ubifitemo inyungu ashobora gusaba isobanurampamo abinyujije ku Rugaga rw'Abavoka. Bityo Urugaga rwagiye rushyikiriza Urukiko rw'Ikirenga ubusabe bw'abaturage burebana n'isobanurampamo ry'amategeko, maze uru Urukiko rukahamagaza Urugaga kurusobanurira ibijyanye n'ubwo busabe.

Urugaga rwasabye Urukiko ko iryo buranisha ryaba risubitswe kugira ngo Urukiko rw'Ikirenga rubanze rutange isobanurampamo ry'ingingo ya 96, igika cya 3 y'Itegeko Nshinga ryo muri 2003 ryavuguruwe muri 2015 mu rwego rwo kumenya uruhare rw'Urugaga rw'Abavoka mu itangwa n'iburanisha ry'ibirego bisaba isobanurampamo. Urukiko rw'Ikirenga rwakiriye ubusabe bw'Urugaga, kandi rutumiza Leta y'u Rwanda mu iburanisha.

Leta y'u Rwanda yifuje ko habanza gusuzumwa ishingiro ryo kuyitumiza mu manza zirebana n'isobanurampamo kuko ntaho amategeko yigeze ateganya ko ihamagazwa muri bene izo manza.

Mu gusobanura ingingo isabirwa isobanurampamo, Rugaga ruvuga ko iyo ingingo itera urujujo ku buryo ishobora gufatwa mu buryo bubiri. Ku ruhande rumwe iyo ngingo ishobora kumvikana nk'aho Urugaga ari inzira yo kunyuzamo ikirego gisaba isobanurampamo ry'amategeko nta kindi cyitaweho, icyo gihe bikaba bivuze ko Urugaga rudashobora kwanga gushyikiriza Urukiko ubusabe bw'urega.

Ku rundi ruhande, iyo ngingo ishobora kumvikanisha ko Urugaga rugomba kugira uruhare mu busabe rwanyujijweho hagatangwa gusa ubusabe ku ngingo zaba zirimo ikibazo cy'imyumvire, byaba na ngombwa rukagira inama abarunyujijeho ubusabe bw'isobanurampamo mu gihe rusanga ridakenewe.

Ku ruhande rwa Leta, icyifuzo cyayo ni uko mu isobanurampamo ry'igika cya 3 cy'iyo ngingo, Urukiko rw'Ikirenga rwakwemeza ko Urugaga rufite ububasha bwo kwemera, kwanga cyangwa kugorora ubusabe rwagejejweho, rukajya ruhamagarwa rugatanga ibisobanuro.

Incamake y'icyemezo: 1. Iyo hari ubusabe bw'isobanurampamo ry'itegeko ni ngombwa ko Leta ihamagazwa kugira ngo igire icyo ibivugaho, kuko ni nayo iri mu mwanya mwiza wo kumenya icyari kigamijwe itegeko rijyaho, kandi kuyitumiza mw'iburanisha ntibyafatwa nko kuyigira umuburanyi ahubwo ni mu rwego rwo gutanga ibitekerezo byafasha Urukiko mu gutanga isobanurampamo ry'itegeko.

2. Kubera akamaro n'uburemere bw'ibirego byerekeranye n'isobanurampamo, mu gihe nta tegeko rirateganya uko izo manza ziburanishwa, hagomba kwifashishwa ibiteganywa n'Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2002 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, mu ngingo zaryo zirebana n'imiburanishirize y'ibirego byerekeranye no kwemeza ko amasezerano mpuzamahanga cyangwa itegeko binyuranyije n'Itegeko Nshinga kuko bene izi manza zose zihuriyeho ku kuba ko zose zireba inyungu rusange kandi zikaba zicibwa ku rwego rwa mbere n'urwa nyuma mu Rukiko rw'Ikirenga.

3. Iyo hakozwe isobanurampampo ry'itegeko, icyemezo gifashwe ntikireba gusa uwasabye ko itegeko risobanurwa ahubwo kireba buri wese harimo n'abataratanze ikirego, kandi cyanashingirwaho mu bihe bizaza bitabaye ngombwa kongera gusaba Urukiko gukora isobanurampamo ry'itegeko ryamaze kurikorerwa.

4. Urugaga rw'Abavoka mu Rwanda rufite ububasha bwo gusuzuma ubusabe rwashyikirijwe, rugafata icyemezo ko isobanurampamo rikenewe cyangwa ridakenewe, ryaba rikenewe ubwo busabe bibaye ngombwa rukabukorera ubugororangingo rukabushyikiriza Urukiko rw'Ikirenga kandi uruhare rwa rwo rugakomeza kugeza Urukiko ruburanishije icyo kirego kandi icyemezo cy'Urugaga kubirebana n'iyakirwa ry'ubwo busabe ntikijuririwa.

5. Mu gutanga ikirego cy'isobanurampamo, uwagitanze agomba kubanza kugaragaza inyungu isobanurampamo rimufitiye ku giti cye, kubo ahagarariye badashobora kwitangira ikirego cyangwa ko abikoze mu nyungu rusange, ko hari imanza cyangwa ibyemezo by'ubutegetsi kandi bireba inyungu rusange bivuguruzanya ku bisobanuro by'ingingo y'Itegeko cyangwa hagaragajwe ko hari amagambo ari mu Itegeko atera urujijo ku buryo yahabwa ibisobanuro bivuguruzanya kandi bikaba biri mu nyungu rusange ko ayo magambo asobanuka.

6. Ikirego cy'isobanurampamo ntigishobora kwakirwa iyo kiri mu rubanza rutararangiza kuburanishwa cyangwa rutararangiza inzira zisanzwe z'ijurira.

7. Mu gutanga isobanurampamo y'amategeko Urukiko rugomba kugaragaza niba ishyirwa mu bikorwa ry'itegeko rishobora gutuma ryumvikana mu buryo butandukanye, niba hajya habaho gutandukira mu gusobanura itegeko no kurikoresha ku buryo bidahura n'icyatumye rijyaho cyangwa ntirishobore gukemura ikibazo ryari rigamije gukemura kandi Urukiko rugomba gutanga ibisobanuro by'itegeko cyangwa ingingo zaryo mu gihe imyandikire yaryo itera urujijo, kwagura ibisobanuro by'itegeko mu gihe hagaragara ko hari ibyo ritavuze hakagaragara icyuho mu ishyirwa mu bikorwa ryaryo.

Ikirego gifite ishingiro.

Amategeko yashingiweho:

Itegeko Nshinga rya Republika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 96(3).

Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo za 53 kugeza ku ya 61.

Itegeko Nº83/2013 ryo kuwa 11/09/2013 rishyiraho Urugaga rw'Abavoka mu Rwanda, rikanagena imitunganyirize n'imikorere byarwo, ingingo ya 2(1).

Imanza zifashishijwe:

Ishyaka riharanira demokarasi no kurengera ibidukikije mu Rwanda (DGPR) v. Leta y'u Rwanda, RS/SPEC/0002/15/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 8/10/2015.

Inyandiko z'abahanga:

Reginald Parker, Administrative Interpretations, University of Miami Law School, 5U. Miami L. Rev.533 (1951).

Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Cuba 27 /8/- 7/9/1990.

John M. Huels, Classifying Authentic Interpretations of Canon Laws, The Jurist 72 (2012).

John F. McCarthy, The canonical meaning of the recent authentic interpretation of canon 230.2 regarding female altar servers, Organ of the Roman Theological Forum, January 1995.

Urubanza

I. INCAMAKE Y'IKIBAZO

[1] Urugaga rw'Abavoka mu Rwanda rwagiye rushyikiriza Urukiko rw'Ikirenga ubusabe bw'abaturage bwanyuzwaga ku Rugaga bujyanye n'isobanurampamo rya zimwe mu ngingo z'amategeko nk'uko biteganywa n'ingingo ya 96, igika cya 3, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 nk'uko ryavuguruwe mu 2015. Nyuma, Urugaga rwaje kwakira inyandiko z'Urukiko rw'Ikirenga ziruhamagaza kuza gusobanurira Urukiko ibijyanye n'ubwo busabe bw'isobanurampamo mu manza zari ziteganyijwe ku tariki ya 31/01/2017.

[2] Ni muri urwo rwego, Urugaga rwandikiye Perezida w'Urukiko rusaba ko iburanisha ku busabe bw'isobanurampamo bwari bwaratanzwe n'abaturage babunyujije ku Rugaga rw'Abavoka mu Rwanda ryari riteganyijwe tariki ya 31/01/2017 ryaba risubitswe kugira ngo Urukiko rw'Ikirenga rubanze rutange isobanurampamo ry'ingingo ya 96, igika cya 3, y'Itegeko Nshinga ryo muri 2003 ryavuguruwe muri 2015 mu rwego rwo kumenya uruhare rw'Urugaga rw'Abavoka mu itangwa, n'iburanisha ry'ibirego bisaba isobanurampamo.

[3] Ikirego cyasuzumwe mu iburanisha ryo kuwa 05/04/2017, Urugaga rw'Abavoka mu Rwanda ruhagarariwe na Me Bagabo Faustin na Me Basomingera Alberto naho Leta y'u Rwanda ihagariwe na Me Rubango K. Epimaque. Mbere yuko urubanza rutangira, Me Rubango yifuje ko habanza gusuzumwa ishingiro ryo gutumiza Leta mu manza ku isobanurampamo.

II. IBIBAZO BISUZUMWA MU RUBANZA N'ISESENGURA RYABYO

Kumenya niba Leta y'u Rwanda itaragombaga gutumizwa muri uru rubanza.

[4] Me Rubango Epimaque, uburanira Leta y'u Rwanda, avuga ko ntaho amategeko yigeze ateganya ko Leta ihamagazwa mu isuzuma ry'ibibazo bijyanye n'isobanurampamo ry'amategeko. Akomeza avuga ko ihamagazwa mu isuzuma ry'ibibazo biri mu bubasha budasanzwe bw'Urukiko rw'Ikirenga rikorwa gusa mu gihe hasuzumwa ibirego byerekeranye no kwemeza ko amategeko anyuranye n'Itegeko Nshinga. Avuga ko n'igihe isobanurampamo ryakorwaga n'Inteko Ishinga Amategeko, Leta itasabwaga kugira ibitekerezo itanga.

UKO URUKIKO RUBIBONA

[5] Nk'uko Intumwa ya Leta ibivuga, ntahateganyijwe mu Itegeko Nshinga ryo mu 2003 ryavuguruwe mu 2015, no mu Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga ko Leta ihamagazwa mu iburanisha ry'imanza zirebana n'isobanurampamo ry'amategeko. Nyamara guhamagazwa kwa Leta mu manza zifite umwihariko birasanzwe, n'ubwo byaba bidateganyijwe mu itegeko. Urugero ni

mu manza zisaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga. Mbere y'ivugurura ryo mu 2015 ry'Itegeko Nshinga, ntaho byari biteganyijwe ko Leta itumizwa muri bene izo manza. Urukiko rw'Ikirenga rwafashe umwanzuro wo kujya rutumiza Leta kubera uruhare igira mu gutegura no gushyira mu bikorwa amategeko no kuba yumva neza icyo ayo mategeko aba yarashyiriweho.[1]

[6] Hakurikijwe uruhare rwa Leta ruvugwa haruguru, Urukiko rusanga ari ngombwa ko mu gihe hari uwasabye ko hatangwa isobanurampamo ry'itegeko, Leta ihamagazwa kugira ngo igire icyo ivuga kuri ubwo busabe, kuko ari nayo iri mu mwanya mwiza wo kumenya icyari kigamijwe itegeko rijyaho. Kuyitumiza, ntibigomba gufatwa nko kuyigira umuburanyi ku rwego rw'urega, uwagobotse, uwagobokeshejwe, cyangwa rw'uregwa, ahubwo ni mu rwego rwo gutanga ibitekerezo byafasha Urukiko mu gutanga isobanurampamo ry' itegeko. Urubanza ku isobanurampamo ry'amategeko, ni urubanza rwihariye, iryo sobanurampamo rikaba riri mu nyungu rusange, n'ibitekerezo by'Intumwa ya Leta bikaba byaba ingirakamaro.

[7] Urukiko rurasanga atari ibirebana gusa n'ihamagazwa rya Leta mu manza z'isobanurampamo ridateganyijwe mu mategeko, n'inzira yo kuburanisha izo manza ntaho iteganyijwe. Igihe nta tegeko rirateganya uko izo manza ziburanishwa, Urukiko rurasanga, kubera akamaro n'uburemere bw'ibirego byerekeranye n'isobanurampamo, hagomba kwifashishwa ibiteganywa n'Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2002 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, mu ngingo zaryo zirebana n'imiburanishirize y'ibirego byerekeranye no kwemeza ko amasezerano mpuzamahanga cyangwa itegeko binyuranyije n'Itegeko Nshinga.

[8] Icyo bene izi manza zose zihuriyeho, n'uko zireba inyungu rusange kandi zikaba zicibwa ku rwego rwa mbere n'urwa nyuma mu Rukiko rw'Ikirenga. Kimwe n'imanza zisuzuma ibijyanye no gukuraho itegeko cyangwa ingingo y'itegeko kuko binyuranyije n'Itegeko Nshinga, iyo hakozwe isobanurampamo ry'itegeko, icyemezo gifashwe ntikireba gusa uwasabye ko itegeko risobanurwa. Icyo cyemezo kireba buri wese harimo n'abataratanze ikirego, kandi cyanashingirwaho mu bihe bizaza bitabaye ngombwa kongera gusaba Urukiko gukora isobanurampamo ry'itegeko ryamaze kurikorerwa. Iki gitekerezo gihura n'ibyavuzwe na Reginald Parker muri aya magambo: "[…..] The court, in deciding a question of law which lends itself to several constructions, interprets the law with binding force, not only for the parties involved in the litigation that gave rise to the decision, but also for the future"[2] . Isobanurampamo risobanura ikibazo burundu rigatanga umurongo ngenderwaho.

Kumenya uruhare rw'Urugaga rw'Abavoka mu Rwanda mu itangwa ry'ibirego bisaba isobanurampamo ruba rwanyujijweho.

[9] Mu gusobanura ingingo isabirwa isobanurampamo, Me Basomingera, uhagarariye Urugaga rw'Abavoka mu Rwanda, asobanura ko ingingo ya 96, igika cya 3, y'Itegeko Nshinga ryo mu 2003 ryavuguruwe mu 2015, itera urujujo ku buryo ishobora gufatwa mu buryo bubiri. Asobanura ko ku ruhande rumwe iyo ngingo ishobora kumvikana nk'aho Urugaga rw'Abavoka mu Rwanda ari inzira yo kunyuzamo ikirego gisaba isobanurampamo ry'amategeko nta kindi cyitaweho. Icyo gihe byaba bivuze ko Urugaga rudashobora kwanga gushyikiriza

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[1] Reba nk'urubanza RS/SPEC/0002/15/CS rurebana no gusobanura ingingo y'Itegeko Nshinga rwaciwe n'uru Rukiko ku wa 8/10/2015.

[2] Reginald Parker, Administrative Interpretations, University of Miami Law School, 5U. Miami L. Rev.533 (1951) at http://repository.law.miami.edu/umir

Urukiko ubusabe bw'umuntu urusabye kumugereza ku rukiko ubusabe bwe. Muri icyo gihe Urugaga nta bubasha rwaba rufite bwo kugira uruhare mu isuzumwa ry'ubusabe bw'isobanurampamo rikorwa n'Urukiko rw'Ikirenga.

[10] Ku rundi ruhande, avuga ko iyo ngingo ishobora kumvikanisha ko Urugaga rugomba kugira uruhare mu busabe rwanyujijweho hagatangwa gusa ubusabe ku ngingo zaba zirimo ikibazo cy'imyumvire, byaba na ngombwa rukagira inama abarunyujijeho ubusabe bw'isobanurampamo mu gihe rusanga ridakenewe bitewe nuko itegeko iryo saba rishingiyeho ryaba risobanutse bihagije.

[11] Me Basongera yatanze urugero rw'ubusabe Urugaga rwagejejweho na Banki y'Abaturage y'u Rwanda (BPR Ltd), aho rwakoze incamake y'ikibazo rwari rwagejejweho ndetse rugaragaza n'uburyo ikibazo kigomba gusuzumwa. Asoza asaba ko Urukiko rw'Ikirenga rwabanza rugasobanura ku buryo butaziguye *(direct*) uruhare rw'Urugaga rw'Abavoka mu Rwanda muri iyo nzira y'isobanurampamo.

[12] Me Bagabo Faustin, nawe uhagarariye Urugaga rw'Abavoka mu Rwanda, avuga ko Urugaga rwahamagajwe kuburana kandi umuntu aburana ibyo yemera ashobora gusobanura, ikibazo kikaba kumenya igihe umuntu ahaye Urugaga ikibazo kandi rwo rwumva ingingo isobanutse, niba rufite ububasha bwo kubyanga, naho rwashingira rubyanga. Yakomeje yibaza niba umuturage ushyikirije ubusabe bwe Urugaga rukabyanga, rukavuga ko rusanze bisobanutse nta mpamvu yo kubishyikiriza Urukiko rw'Ikirenga, azaba afite inzira y'ubujurire.

[13] Avuga ko mu bibazo byashyikirijwe Urugaga rw'Abavoka mu Rwanda, abantu benshi bagaruka ku manza baburanye kandi mu myumvire y'Urugaga ntabwo isobanurampamo ryagombye gusabwa ari uko habaye urubanza kuko isobanurampamo atari inzira y'ubujurire ahubwo ari ikibazo kireba abantu muri rusange.

[14] Asoza avuga ko mu gihe Urukiko rwemeje ko Urugaga rufite ububasha bwo kubanza gusuzuma ibibazo rwagejejweho, rugafata icyemezo cyo kwanga cyangwa kwemera ubusabe, icyo cyemezo rufashe kitajuririrwa kuko kiramutse kijuririwe byaba bibaye urubanza ndetse n'inzira y'uko bene ibyo birego bica mu Rugaga rw„Abavoka yaba iteshejwe agaciro.

[15] Me Rubango avuga ko abagize Urugaga bafite imyumvire itandukanye ku ngingo isabirwa isobanurampamo, bamwe bavuga ko Urugaga rudafite ububasha bwo kwanga ikibazo rwagejejweho n'umuturage naho abandi bavuga ko impamvu Umushingamategeko yateganyije ko bene ibyo bibazo bigomba kubanza kunyuzwa ku Rugaga, ari uko yasanze nk'urwego rurimo abanyamwuga rugomba, kubanza kureba niba ikibazo rwanyujijweho ari ngombwa ko gishyikirizwa Urukiko rw'Ikirenga, rukabyanga cyangwa se rukaba rwagira ibyo rukosora.

[16] Akomeza avuga ko icyifuzo cya Leta y'u Rwanda aruko mu isobanurampamo ry'ingingo ya 96, igika cya 3, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, Urukiko rw'Ikirenga rwakwemeza ko Urugaga rw'Abavoka mu Rwanda rufite ububasha bwo kwemera, kwanga cyangwa kugorora ubusabe rwagejejweho, rukajya ruhamagarwa rugatanga ibisobanuro. Ku rundi ruhande, mu gihe Urukiko rw'Ikirenga ruramutse rwemeje ko Urugaga rutagomba guhindura cyangwa kwanga ubusabe, byaba bitumvikana ukuntu rwahamagarwa gusobanura ibyo rushobora kuba rutemera. Yavuze kandi ko mu busesenguzi bakoze, basanze nyuma yaho ubusabe ku isobanurampamo

ry'amategeko riherewe Urukiko rw'Ikirenga, ibibazo bizaba byinshi kuko abantu bashobora no kubyifashisha batinza imanza.

UKO URUKIKO RUBIBONA

[17] Ibyerekeye isobanurampamo ry'amategeko bikubiye mu ngingo ya 96 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015. Iyi ngingo iteganya ko: "Isobanurampamo ry'amategeko rikorwa n'Urukiko rw'Ikirenga. Iryo sobanurampamo rishobora gusabwa na Guverinoma cyangwa Urugaga rw'Abavoka. Umuntu wese ubifitemo inyungu ashobora gusaba isobanurampamo abinyujije ku Rugaga rw'Abavoka. Iyo itegeko ritumvikanye kimwe mu ndimi ryatangajwemo mu Igazeti ya Leta, hitabwa ku rurimi iryo tegeko ryatowemo".

[18] Urugaga ruvuga ko ingingo ivugwa mu gika kibanziriza iki, itera urujijo rwo kumenya uruhare rwarwo mu busabe bw„isobanurampamo ruba rwanyujijweho n'undi muntu wese ufitemo inyungu. Nk'uko bigaragara mu ngingo ya 96 y'Itegeko Nshinga yavuzwe, umuntu wese ubifitemo inyungu afite ububasha bwo gusaba isobanurampamo, ariko akabinyuza ku Rugaga rw'Abavoka. Ntabwo umuntu ku giti cye yemerewe kugeza ubusabe bwe ku Rukiko rw'Ikirenga. Icyo Urugaga rushaka gusobanukirwa, ni ukumenya uruhare rwarwo mu gihe hari usaba isobanurampamo abinyujije ku Rugaga rw'Abavoka. Uruhare rw'Urugaga mu busabe bugezwa ku Rukiko rw'Ikirenga rugomba kureberwa mu nshingano z'abarugize nk'uko ziteganywa n'Itegeko rishyiraho Urugaga ndetse zikanashimangirwa n'andi mahame agenga umwuga w'Abavoka, hakanasuzumwa icyari kigamijwe mu guha Urugaga rw'Abavoka inshingano yo kwakira ubusabe bw'abaturage no kubushyikiriza Urukiko rw'Ikirenga.

[19] Ingingo ya 2(1°) y'Itegeko Nº83/2013 ryo kuwa 11/09/2013 rishyiraho Urugaga rw'Abavoka mu Rwanda, rikanagena imitunganyirize n'imikorere byarwo isobanura ko Umwavoka ari umunyamwuga w'amategeko ufasha ubutabera, ushinzwe guhagararira, kunganira no kuburanira abantu mu nzego z'ubutegetsi, iz'ubucamanza n'izindi zose zifata ibyemezo. Ashobora gutegura umwanzuro no gufata ijambo imbere y'izo nzego. Ashobora kandi kugishwa inama, kunga no gukora inyandiko zose abaje bamugana bakeneye mu rwego rw'amategeko [……]. Ibi bihuje n'ibyavuzwe n'akanama k'Umuryango w'Abibumbye gashinzwe ikumirwa ry'ibyaha no gushyiraho uburyo abakoze ibyaha bafatwa. Mu nama yako ya 8 yabereye Havana, Cuba, kashyizeho Amahame y'ibanze agenga Abavoka (Basic Principles on the Role of Lawyers). By'umwihariko, mu gace ka 13 k'ayo mahame, hemejwe ko Abavoka bafite inshingano yo kugira inama ababagana ku burenganzira n'inshingano bafite, no gusobanurirwa inzira banyuramo zirebana n'ubwo burenganzira n'inshingano bafite.[3]

[20] Urugaga runyuzwaho ubusabe n'umuntu wese ubifitemo inyungu bitewe nuko ari urwego rugizwe n'abanyamwuga b'amategeko. Uruhare rw'Urugaga kuri ubwo busabe, rugomba kujyana n'ubwo bunyamwuga mu mategeko bw'abarugize hagamijwe gufasha ubutabera n'abagana Urugaga. Ntabwo rero, Urugaga rwafatwa nk'urwego rugomba kunyuzwaho ubusabe gusa nkaho ari ikigo gishinzwe kwakira no kugeza ubutumwa aho

[3] The duties of lawyers towards their clients shall include: Advising their clients as to their legal rights and obligations and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients". Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Cuba 27 /8/- 7/9/1990.

bugomba kujya (iposita), ngo hirengagizwe iyo nshingano yarwo y'ibanze yo gufasha ubutabera.

[21] Rukurikije ibikubiye mu ngingo ya 96, igika cya 3, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, Urukiko rurasanga ntacyo byaba bimaze ubusabe buramutse bunyujijwe ku Rugaga, uru ntirubashe kugira icyo rubukoraho. Ibyo byaba bisa nko kureka buri wese ubishaka agasaba isobanurampamo mu Rukiko rw'Ikirenga. Bigenze gutyo, byaba binyuranyije n'icyari kigamijwe hagenwa ko ubusabe bunyuzwa ku Rugaga, ndetse byaba bihaye icyuho abashobora gusaba isobanurampamo ritari ngombwa hagamijwe gutinza imanza cyangwa bikaba uburyo buziguye bwo kujurira, cyangwa rigasabwa mu buryo butari ubwa kinyamwuga ku buryo byagorana mu isesengura ry'ikibazo.

[22] Urukiko rw'Ikirenga rurasanga mu gihe hari uwanyujije ubusabe bw'isobanurampamo ry'Itegeko ku Rugaga rw'Abavoka, rugomba gusuzuma niba iryo sobanurampamo rikenewe koko, rukayungurura, rwasanga ibyo rwagejejweho bisobanutse ku buryo bidakeneye gusobanurwa, rukabimenyesha uwatanze ubusabe, rukaba rwanamugira inama. Mu gihe Urugaga rufashe icyemezo cyo kwanga ubusabe, icyo cyemezo ntikijuririrwa. Nk'Urwego rugizwe n'abanyamwuga mu mategeko, Urugaga rusanze ubusabe bufite ishingiro, bibaye ngombwa rumaze gukora ubugororangingo, rwageza ubwo busabe ku Rukiko rw'Ikirenga kugirango ruzasuzume ikibazo kigaragara kandi cyumvikana. Uruhare rw'Urugaga kandi ntirugomba kugarukira aho, rugomba gukomeza kugeza Urukiko ruburanishije icyo kirego rukaza gutanga igitekerezo cyarwo.

[23] Urukiko rw'Ikirenga rurasanga hashingiwe ku bisobanuro byatanzwe mu bika bibanziriza iki, Urugaga rw'Abavoka mu Rwanda rufite ububasha bwo gusuzuma ubusabe rwashyikirijwe, rugafata icyemezo ko isobanurampamo rikenewe cyangwa ridakenewe, ryaba rikenewe ubwo busabe rukabushyikiriza Urukiko rw'Ikirenga.

Ibikwiye gushingirwaho hasuzumwa ubusabe bw'isobanurampamo.

[24] Isobanurampamo ry'amategeko no gusobanura amategeko mu buryo busanzwe biratandukanye. Isobanurampamo ry'amategeko rikorwa mu buryo bwihariye, rigakorwa n'ababifitiye ububasha bahabwa n'amategeko, hakagaragazwa ibisobanuro by'itegeko ritumvikana neza. Ibi ni byo John M. Huels yavuze muri aya magambo: "[….] there is a special form of interpretation that officially and authoritatively resolves the meaning of a doubtful law. This is called "authentic interpretation and may only be made by the legislator or one to whom he has entrusted the power to interpret the law authentically […][4]". Naho John F. McCarthy, avuga ko isobanurampamo ry'amategeko, ari ugusobanura amategeko bikozwe mu nzira zagenwe kandi bigakorwa n'ubifitiye ububasha. Abivuga muri aya magambo: "[….] an authentic interpretation is an interpretation that is imposed in an obligatory manner, or authoritatively, by a public person possessing this power[5]". Ibi ntibyagereranywa n'isobanura ry'amategeko mu buryo busanzwe kuko byo bishobora gukorwa n'umucamanza uhuye n'ikibazo mu rubanza hatagombye gutangwa ikirego kihariye.

[25] Kubera imiterere y'isobanurampamo nkuko byasobanuwe mu bika bibiri bibanziriza iki, Urukiko rw'Ikirenga rurasanga ari ngombwa ko rutanga imirongo migari (*guidelines*)

[4] John M. Huels, Classifying Authentic Interpretations of Canon Laws, The Jurist 72 (2012), accessed on http://heinonline.org/HOL/LandingPage?handle=hein.journals/juristcu72&div=29&id=&page

[5] John F. McCarthy, The canonical meaning of the recent authentic interpretation of canon 230.2 regarding female altar servers, Organ of the Roman Theological Forum, January 1995.

izafasha ushaka gutanga ubusabe bw'isobanurampamo ndetse ikiyambazwa n'Urugaga cyangwa Urukiko mu gusuzuma ubwo busabe. Iyo mirongo n'iyi ikurikira:

Uwatanze ikirego cy'isobanurampamo agomba kubanza kugaragaza inyungu isobanurampamo rimufitiye ku giti cye, kubo ahagarariye badashobora kwitangira ikirego cyangwa ko abikoze mu nyungu rusange.

Agomba kugaragaza ko hari imanza cyangwa ibyemezo by'ubutegetsi kandi bireba inyungu rusange, bivuguruzanya ku bisobanuro by'ingingo y'Itegeko.

Ikirego gishobora kwakirwa na none iyo ugitanze agaragaza ko hari amagambo ari mu Itegeko atera urujijo ku buryo yahabwa ibisobanuro bitandukanye bivuguruzanya kandi bikaba biri mu nyungu rusange ko ayo magambo asobanuka.

Icyakora, ikirego ntigishobora kwakirwa iyo kiri mu rubanza rutararangiza kuburanishwa cyangwa rutararangiza inzira zisanzwe z'ijurira.

[26] By'umwihariko, mu gutanga isobanurampamo y'amategeko bitewe n'icyasabwe gusobanurwa, Urukiko rugomba kugaragaza: a) niba ishyirwa mu bikorwa ry'itegeko rishobora gutuma ryumvikana mu buryo butandukanye, b) niba hajya habaho gutandukira mu gusobanura itegeko no kurikoresha ku buryo bidahura n'icyatumye rijyaho cyangwa ntirishobore gukemura ikibazo ryari rigamije gukemura. Urukiko kandi rugomba a) gutanga ibisobanuro by'itegeko cyangwa ingingo zaryo mu gihe imyandikire yaryo itera urujijo, b) kwagura ibisobanuro by'itegeko mu gihe hagaragara ko hari ibyo ritavuze hakagaragara icyuho mu ishyirwa mu bikorwa ryaryo.

III. ICYEMEZO CY'URUKIKO

[27] Urukiko rw'Ikirenga rwemeye kwakira ikirego rwashyikirijwe n'Urugaga rw'Abavoka.

[28] Rwemeje ko hashingiwe ku ngingo ya 96, igika cya 3, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, Urugaga rw'Abavoka mu Rwanda rufite ububasha bwo kwemera, kwanga cyangwa gukora ubugororangingo ku busabe rwagejejweho. Rukaba rugomba no guhamagazwa mu Rukiko kugirango rugire ibisobanuro rutanga.

[29] Rwemeje ko Leta y'u Rwanda ihamagazwa mu manza zijyanye n'isobanurampamo.

[30] Rwemeje ko mu gusuzuma iyakirwa ry'ubusabe bw'isobanurampamo hazajya hakurikizwa imirongo ivugwa mu bika bya 25 na 26 by'uru rubanza.