MHAYIMANA v URUGAGA RW'ABAVOKA

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RAD 00002/2022/SC – (Ntezilyayo, J. P., Nyirinkwaya, Cyanzayire, Hitiyaremye na Karimunda, J.) 17 Gashyantare 2023]

Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Imbibi z'ikiburanwa – Ibirego bishya bitari mu byaburanywe mu rubanza rusubirishwamo ntibyakirwa mu rubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane.

Amategeko agenga urugaga rw'Abavoka – Imyitwarire y'Abavoka – Komisiyo ishinzwe imyitwarire – Ibihe byo kuregera komisiyo ishinzwe imyitwarire – Iyo Umukuru w'Urugaga amenye amakosa Avoka aregwa kandi ari mu bubasha bwa Komisiyo ishinzwe imyitwarire, abiregera iyo Komisiyo mu mezi atatu uhereye igihe yamenyeye amakosa.

Amategeko agenga urugaga rw'Abavoka – Imyitwarire y'abavoka – Komisiyo ishinzwe imyitwarire – Ifatwa ry'icyemezo – Iyo komisiyo ishinzwe imyitwarire y'Abavoka iteranye mu rwego rwo guhana, quorum isabwa kugirango iterane kandi ifate icyemezo iba 2/3 by'umubare w'abayigize bagenwa n'Itegeko.

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Indishyi – Indishyi z'akababaro – Itangwa ry'indishyi z'akababaro – Akababaro gashingiye ku kuba icyemezo cyarafashwe mu buryo bunyuranyije n'amategeko ntigatangirwa indishyi ahubwo gasubizwa no kuba icyemezo cyafashwe kivanyweho keretse igihe urega ashoboye kugaragaza ko gashobora gutandukanywa n'amakosa yatumye icyemezo kivanwaho.

Incamake y'ikibazo: Me Mhayimana yareze Urugaga rw'Abavoka mu Rwanda, asaba Urukiko gukuraho icyemezo cya Komisiyo Ishinzwe Imyitwarire y'Abavoka mu Rwanda, kimuhanisha guhagarikwa amezi 3 kubera uko yitwaye ubwo Umwanditsi w'Urukiko Rwisumbuye rwa Nyarugenge yamumenyeshaga icyemezo cyo kumuca ihazabu mbonezamubano bitewe no gutinza urubanza.

Urubanza rwatangiriye mu Rukiko Rukuru, Me Mhayimana aratsindwa bituma asaba ko urubanza rusubirwamo ku mpamvu z'akarengane, ubusabe bwe burakirwa. Asaba ko icyemezo kimuhagarika cyakurwaho kuko cyafashwe n'abatabifitiye ububasha, aho cyafashwe n'abantu babiri gusa kandi kigomba gufatwa na 2/3 by'abantu cumi n'umwe bagize Komisiyo ishinzwe imyitwarire y'Abavoka mu Rwanda. Ikindi ni uko hirengagijwe ko habayeho ubuzime bwo gukurikirana ikosa yarezwe ndetse ntibahe agaciro amategeko n'ibimenyetso bigaragaza ko icyemezo yafatiwe kitubahirije imihango yo gukurikirana ikosa iteganywa n'itegeko.

Urugaga rw'Abavoka ruvuga ko urubanza rwaciwe n'Urukiko Rukuru rudakwiye guhinduka kubera ko icyemezo cyo guhagarika Urega mu gihe cy'amezi atatu cyafashwe mu buryo bukurikije amategeko. Rusobanura ko kuba icyemezo kigomba gufatwa mu gihe kitarenze amezi 2, biba mu bihe bisanzwe kubera ko icyo cyemezo yafatiwe cyafashwe mu gihe cya COVID-19 kandi ingamba zagendaga zishyirwaho mu rwego rwo kurwanya icyo cyorezo ntizatumaga akazi gakorwa nk'uko bisanzwe. Kuvuga ko ikurikirana ry'ikosa riba imfabusa iyo ibihe birenze ni ukuvugisha itegeko ibyo ritavuze.

Ikibazo nyamukuru cyasuzumwe mu rubanza, ni ukumenya niba icyemezo cyafashwe na Komisiyo Ishinzwe Imyitwarire y'Abavoka mu Rwanda cyakurwaho kubera impamvu zinyuranye zatanzwe n'Urega. Muri izo mpamvu, harimo kuba *quorum* y'abagize Komisiyo ishinzwe imyitwarire itari yuzuye igihe yateranaga igafata icyemezo.

Incamake y'icyemezo: 1. Ibirego bishya bitari mu byaburanywe mu rubanza rusubirishwamo ntibyakirwa mu rubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane.

2. Iyo Umukuru w'Urugaga amenye amakosa Avoka aregwa kandi ari mu bubasha bwa Komisiyo ishinzwe imyitwarire, abiregera iyo Komisiyo mu mezi atatu uhereye igihe yamenyeye amakosa.

3. Iyo komisiyo ishinzwe imyitwarire y'Abavoka iteranye mu rwego rwo guhana, *quorum* isabwa kugirango iterane kandi ifate icyemezo iba 2/3 by'umubare w'abayigize bagenwa n'Itegeko. Bityo,

quorum yasabwaga kugirango Me Mhayimana Isaïe afatirwe icyemezo yagombaga kuzura hari abagize Komisiyo nibura 7 kuri 11 bateganywa n'itegeko, aho kuba 6/9 hashingiye ko hari imyanya itarimo abantu.

4. Akababaro gashingiye ku kuba icyemezo cyarafashwe mu buryo bunyuranyije n'amategeko ntigatangirwa indishyi ahubwo gasubizwa no kuba icyemezo cyafashwe kivanyweho keretse igihe urega ashoboye kugaragaza ko gashobora gutandukanywa n'amakosa yatumye icyemezo kivanwaho. Bityo, Mhayimana Isaie ntiyahabwa indishyi z'akababaro kuberako atagaragaje ko akababaro yagize kaba gashingiye ku mihangayiko yaba yaratewe no gukurikirana uburenganzira bwe cyangwa ibindi.

Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane, gifite ishingiro.

Amategeko yashingiweho:
Itegeko N° 83/2013 ryo ku wa 11/09/2013 rishyiraho Urugaga rw'Abavoka mu Rwanda rikanagena imitunganyirize n'imikorere byarwo, ingingo ya 25, 29, 31, 74, 75 n'iya 78.

Imanza zifashishijwe:
Tabaruka Dieudonné n'Akarere ka Gicumbi, RS/INJUST/RAD 00003/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 20/05/2022.
Nditiribambe Samuel na Gatera Jason et Crts, RS/INJUST/RC 00007/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 13/03/2020.
Me Nduwamungu Jean Vianney n'Urugaga rw'Abavoka mu Rwanda, RCA 00280/2016/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 12/01/2017.
Arrêt du Tribunal de la Fonction Publique de l'Union Européenne (troisième chambre), FS vs Comité économique et social européen (CESE), 12 Mai 2016, para 59.
Arrêt du Tribunal de la Fonction Publique de l'Union Européenne (deuxième chambre), 8 Octobre 2015, para 105 & 107-108.
Arrêt du Tribunal de la Fonction Publique de l'Union Européenne (Première Chambre), Simona Murariu vs Autorité européenne des assurances et des pensions professionnelles (AEAPP), 16 Juillet 2015, para 152.
Judgment of the court (second chamber) of 9 July 1987. Ingfried Hochbaum and Edward Rawes v Commission of the European Communities, Official - annulment of appointment, Joined cases 44/85, 77/85, 294/85 and 295/85, para 22.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 20/05/2021, Komisiyo ishinzwe imyitwarire y'Abavoka mu Rwanda (Komisiyo ishinzwe imyitwarire muri uru rubanza) yafashe icyemezo nimero 008/CD/2021, gihanisha Me Mhayimana Isaïe guhagarikwa gukora umwuga w'ubwavoka mu gihe cy'amezi 3 kubera imyitwarire yamuranze ubwo yamenyeshwaga n'Umwanditsi w'Urukiko Rwisumbuye rwa Nyarugenge icyemezo cyo kumuca ihazabu ku mpamvu zo gutinza urubanza.

[2] Me Mhayimana Isaïe yatanze ikirego mu Rukiko Rukuru asaba gukuraho icyo cyemezo ashingiye ku mpamvu zikurikira:

- Kuba cyarafashwe n'abatabifitiye ububasha;
- Kuba abagifashe badashobora kugaragaza ko bari bagize Komisiyo ishinzwe imyitwarire y'Abavoka mu Rwanda kuko muri icyo gihe manda yabo yari yararangiye;
- Kuba icyemezo cyarafashwe harabayeho ubuzime bw'ikurikirana ry'ikosa;
- Kuba imihango yo gukurikirana ikosa iteganywa n'itegeko itarakurikijwe;

- Kuba Komite yararegewe n'umuntu utabifitiye ububasha n' inyungu.

[3] Urukiko Rukuru, mu rubanza RAD 00017/2021/HC/KIG rwaciwe ku wa 28/10/2021, rwemeje ko ikirego cyatanzwe na Me Mhayimana Isaïe kidafite ishingiro, ko icyemezo nimero 008/CD/2021 cya Komisiyo ishinzwe imyitwarire y'Abavoka mu Rwanda cyo ku wa 20/05/2021 kidateshejwe agiciro kuko kitanyuranyije n'amategeko, rutegeka Me Mhayimana Isaïe guha Urugaga rw'Abavoka mu Rwanda 1.000.000 Frw akubiyemo igihembo cy'Avoka n'ikurikiranarubanza.

[4] Me Mhayimana Isaïe yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza RAD 00017/2021/KIG rusubirwamo ku mpamvu z'akarengane, nawe amaze kubisuzuma yandikira Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rusubirwamo. Perezida w'Urukiko rw'Ikirenga amaze gusuzuma raporo yashyikirijwe, yemeje ko urubanza rwavuzwe haruguru ruburanishwa n'Urukiko rw'Ikirenga, rwandikwa kuri RS/INJUST/RAD 00002/2022/SC.

[5] Urubanza rwashyizwe kuri gahunda y'iburanisha ku wa 21/11/2022, ariko kuri iyo tariki iburanisha mu mizi ntiryaba kuko Me Mhayimana Isaïe yihannye umwe mu bacamanza bagize inteko, iburanisha rigahita rihagarara kugira ngo habanze gusuzumwa ibirebana n'ubwo bwihane. Icyemezo ku bwihane cyafashwe ku wa 30/11/2022, Urukiko rwemeza ko ikirego cya Me Mhayimana Isaïe kigamije kwihana umucamanza kitakiriwe.

[6] Iburanisha ry'urubanza ryasubukuwe ku wa 16/01/2023, ababuranyi bose bitabye, Me Mhayimana Isaïe yunganiwe na Me Abijuru Emmanuel, Me Basomingera Albert na Me Rwigema Vincent; naho Urugaga rw'Abavoka mu Rwanda ruhagarariwe na Me Nizeyimana Boniface, Me Uwanyirigira Delphine na Me Rushikama Niyo Justin.

[7] Me Mhayimana Isaïe n'abamwunganira basobanuye ko akarengane gashingiye ku mpamvu zikurikira:

- Kuba icyemezo asaba ko gikurwaho cyarafashwe n'abatabifitiye ububasha kuko cyafashwe n'abantu babiri gusa kandi kigomba gufatwa na 2/3 by'abantu cumi n'umwe bagize Komisiyo ishinzwe imyitwarire y'Abavoka mu Rwanda;
- Kuba icyemezo asaba ko gikurwaho cyarafashwe n'abavuga ko bagize Komisiyo ishinzwe imyitwarire y'Abavoka mu Rwanda nyamara batari bagifite ububasha (manda yabo yararangiye);
- Kuba haririrengagijwe ko habayeho ubuzime bwo gukurikirana ikosa yarezwe kandi byari impamvu ituma icyo cyemezo giteshwa agaciro;
- Kudaha agaciro amategeko n'ibimenyetso bigaragaza ko icyemezo yafatiwe kitubahirije imihango yo gukurikirana ikosa iteganywa n'itegeko.

[8] Abahagarariye Urugaga bo bavuga ko urubanza rwaciwe n'Urukiko Rukuru rudakwiye guhinduka kubera ko icyemezo cyo guhagarika Me Mhayimana Isaïe mu gihe cy'amezi atatu cyafashwe mu buryo bukurikije amategeko.

[9] Ibibazo byasuzumwe muri uru rubanza ni ibi bikurikira:

- Kumenya niba icyemezo nimero 008/CD/2021 cyafashwe na Komisiyo ishinzwe imyitwarire ku wa 20/05/2021 cyakurwaho:
  - Kumenya niba harabayeho ubuzime bw'ikurikirana ry'ikosa;
  - Kumenya niba Komisiyo ishinzwe imyitwarire yararegewe n'utabifitiye inyungu n'ububasha;
  - Kumenya niba icyemezo nimero 008/CD/2021 cyarafashwe n'abatabifitiye ububasha**:**
    - Kuba cyarafashwe na Perezida wa Komisiyo ishinzwe imyitwarire hamwe n'Umunyamabanga wayo;

- Kuba *quorum* y'abagize Komisiyo ishinzwe imyitwarire itari yuzuye.
- Kuba manda y'abagize Komisiyo ishinzwe imyitwarire yari yararangiye;

- Kumenya niba imihango irebana n'ikurikirana ry'ikosa yarubahirijwe;
- Kumenya niba Me Mhayimana Isaïe yarahanishijwe igihano kidateganyijwe n'amategeko kandi nta mpamvu gishingiyeho.

- Ibijyanye n'indishyi.

[10] Ku bindi Me Mhayimana Isaïe yasabaga ko Urukiko rwategeka Urugaga rw'Abavoka mu Rwanda kuzatangaza icyemezo cyarwo mu gihe yaramuka atsinze, Urukiko rwamenyesheje ababuranyi ko bitasuzumwa kubera ko bitari mu byaburanywe mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane; ibyo bikaba byarafashweho umurongo mu manza zinyuranye zaciwe n'Urukiko rw'Ikirenga[1].

[11] Ababuranyi bamaze kujya impaka ku bibazo byemejwe ko aribyo bisuzumwa, Urukiko rwapfundikiye iburanisha rumenyesha ababuranyi ko urubanza ruzasomwa ku wa 17/02/2023.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba icyemezo nimero 008/CD/2021 cyafashwe na Komisiyo ishinzwe imyitwarire y'Abavoka mu Rwanda ku wa 20/05/2021 cyakurwaho

- **Kumenya niba harabayeho ubuzime bw'ikurikirana ry'ikosa**

[12] Me Mhayimana Isaïe n'abamwunganira bavuga ko habayeho ubuzime bw'ikurikirana ry'ikosa bashingiye ku mpamvu zikurikira:

- Umukuru w'Urugaga yashingiye ikirego cye kuri *e-mail* yo ku wa 16/12/2020 yandikiwe n'Umugenzuzi Mukuru w'Inkiko, ashyikiriza ikibazo Komisiyo ishinzwe imyitwarire ku wa 23/12/2020, ayisaba gukurikirana Me Mhayimana Isaïe. Uyu yahamagajwe kwitaba ku wa 12/03/2021, ku wa 25/03/2021 no ku wa 30/04/2021, icyemezo gifatwa ku wa 20/05/2021.
- Ashingiye ku ngingo ya 78, igika cya 2, y'Itegeko N° 83/2013 ryo ku wa 11/09/2013 rishyiraho Urugaga rw'Abavoka mu Rwanda, rikanagena imitunganyirize n'imikorere byarwo, iteganya iminsi ntarengwa yo gufataho icyemezo[2], asanga amezi abiri ateganyijwe n'iyo ngingo yararangiye ku wa 22/02/2021, kandi kuri iyo tariki akaba yari atarahamagarwa kuko yahamagawe bwa mbere ku wa 12/03/2021, bikaba bigaragara ko ikurikirana ry'ikosa ryari ryarazimye.
- Kwitwaza ko habayeho ibihe bidasanzwe bitewe n'icyorezo cya Covid-19 nta shingiro bifite kuko bidateganyijwe n'amategeko ko ibihe bishobora kongerwa kubera ibihe bidasanzwe, byongeye kandi guma mu rugo (*Lockdown*) yarangiye ku wa 07/02/2021, bikaba atari igisobanuro cyo kuba ku wa 02/03/2021 ari bwo yashyikirijwe ubutumire bwo kuzitaba Komisiyo ku wa 12/03/2021.
- Ibihe byo gushaka amakuru no gukora iperereza biteganyijwe mu ngingo ya 74 y'Itegeko ryavuzwe haruguru ni ndemyagihugu, kuko iyo ngingo iteganya ko gushaka amakuru no gukora iperereza bigomba {shall/doivent} kuba byarangiye mu gihe kitarenze ukwezi

[1] Urubanza RS/INJUST/RAD 00003/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 20/05/2022 haburana Tabaruka Dieudonné n'Akarere ka Gicumbi (igika cya 9); n'urubanza RS/INJUST/RC 00007/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 13/03/2020 haburana Nditiribambe Samuel na Gatera Jason et Crts (igika cya 66).

[2] Komisiyo ishinzwe imyitwarire iterana hari nibura bibiri bya gatatu (2/3) by'abayigize. Komisiyo ishinzwe imyitwarire igomba kuba yafashe icyemezo mu gihe kitarenze amezi abiri (2) uhereye ku munsi yagejejweho ikirego. Ifata icyemezo kandi ku bwiganze bwa bibiri bya gatatu (2/3) by'abitabiriye inama. Umwanditsi w'Urugaga amenyesha Avoka uregwa icyemezo cyose cyafashwe mu rubanza cyerekeye ibihano by'amakosa y'umwuga mu gihe cy'iminsi cumi n'itanu (15) hakoreshejwe uburyo bw'imenyesha ry'ibyemezo bukurikizwa mu mategeko agenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'ubutegetsi n'iz'umurimo.

kumwe. Iyi ngingo ikaba igomba kubahirizwa uko iteye kuko itegeka, yaba itubahirijwe imihango yo guhana ikaba imfabusa nk'uko biteganyijwe n'ingingo ya 172 y'amategeko ngengamikorere y'Urugaga[3]; ibi kandi akaba ari nako byagenze mu rubanza RCA 00280/2016/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 12/01/2017 haburana Me Nduwamungu Jean Vianney n'Urugaga rw'Abavoka mu Rwanda mu gika cya 28.

[13] Abahagarariye Urugaga bavuga ko ibyo Me Mhayimana Isaïe avuga nta shingiro bifite kubera impamvu zikurikira:

- Kuba icyemezo kigomba gufatwa mu gihe kitarenze amezi 2 biba mu bihe bisanzwe, kandi ingamba zagendaga zishyirwaho mu rwego rwo kurwanya icyorezo cya Covid-19 ntizatumaga akazi gakorwa nk'uko bisanzwe. Ibyo bishimangirwa n'uko ku wa 18/01/2021, bitewe n'uko ubwandu bwa Covid-19 bwagendaga bwiyongera mu Gihugu, hashyizweho amabwiriza ashyira Umujyi wa Kigali muri guma mu rugo (*Lockdown*);
- Itegeko ntiryigeze rivuga mu buryo butaziguye ko niba amezi 2 atubahirijwe ibyakozwe bihita bita agaciro hakabaho ubuzime;
- Kuvuga ko ikurikirana ry'ikosa riba imfabusa iyo ibihe birenze ni ukuvugisha itegeko ibyo ritavuze, no mu mategeko asanzwe niba Umushingamategeko yaravuze ko ikirego cyihutirwa kigomba kuburanishwa mu gihe runaka, iyo icyo gihe kirenze ntabwo bikuraho gufata icyemezo cyangwa ngo icyemezo gifashwe muri icyo gihe gite agaciro, keretse itegeko ribaye ariko ryabiteganyije.

UKO URUKIKO RUBIBONA

[14] Ubuzime busobanurwa nk'uburyo bwo gutuma habaho kuzima k'uburenganzira bitewe n'uko uwari ufite ubwo burenganzira (cyangwa ububasha) ntacyo yakoze mu gihe runaka[4]. Ubuzime butangira kubarwa kuva igihe ufite uburenganzira yamenyeye cyangwa yagombaga kuba yaramenye ibikorwa bituma abukoresha[5].

[15] Ingingo ya 22 y'Amategeko Ngengamikorere y'Urugaga rw'Abavoka mu Rwanda yo ku wa 16/09/2014 (Amategeko Ngengamikorere muri uru rubanza), igika cya 2, agace ka 3, iteganya ko Umukuru w'Urugaga afite ubushobozi bwo kohereza Avoka muri Komisiyo ishinzwe imyitwarire, iyo abona ko ibyo Avoka aregwa bishobora gutuma hafatwa ibihano byo mu rwego rw'imyitwarire kandi birenze ububasha bwe.

[16] Ingingo ya 171 y'ayo Mategeko Ngengamikorere yerekeye uburyo bwo gushaka no gukurikirana amakosa, igaragagaza inzego zitandukanye zikurikirana amakosa y'imyitwarire harimo n'Umukuru w'Urugaga; mu gace kayo ka (c), igateganya ko amakosa ashobora gukurikiranwa bisabwe n'umuntu wese ubifitemo inyungu. Icyo gihe, ikirego kigomba gutangwa mu mezi atatu (3) uhereye igihe uwo muntu yamenyeye amakosa, cyangwa uhereye igihe iperereza ryarangiriye. Iyo ngingo ikomeza ivuga ko iki gihe aricyo gisabwa iyo Umukuru w'Urugaga cyangwa umwe mu bagize Inama y'Urugaga ari we waregeye Komisiyo ishinzwe imyitwarire.

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[3] Urwego rubifitiye ububasha rugomba kumenyesha Avoka uregwa ibyo akurikiranyweho, kandi rukamutumira kuza kwiregura mu gihe cy'iminsi kuva kuri irindwi (7) kugeza kuri cumi n'ine (14), bitaba ibyo, imihango yose ijyanye no guhana ikaba impfabusa.
Iyo dosiye isaba ko hakorwa iperereza ku myitwarire, Umukuru w'Urugaga cyangwa Komisiyo ihoraho ishinzwe imyitwarire bashobora gushyiraho ukora iperereza.

[4] Moyen d'éteindre un droit par non-usage ; JuriBistro Edictionnaire, Dictionnaire de droit québécois et canadien, 2016, https://dictionnairereid.caij.qc.ca/, consulté le 15/02/2023.
Un mode d'extinction d'un droit résultant de l'inaction de son titulaire pendant un certain laps de temps, Ooreka Droit, 2023, p.2, https://justice.ooreka.fr/, consulté le 15/02/2023.
[5] L'article 2224 du Code civil dispose que, *les actions personnelles ou mobilières se prescrivent par 5 ans à compter du jour où le titulaire d'un droit a connu, ou aurait dû connaître, les faits lui permettant de l'exercer. Cette prescription est considérée comme celle de droit commun. Elle est donc la règle par principe*; Ooreka Droit, ibidem p. 2.

[17] Ibiteganyijwe mu ngingo za 22 na 171 z'Amategeko Ngengamikorere zimaze kuvugwa, ni nabyo bigaragara mu ngingo ya 75 y'Itegeko Nº 83/2013 ryo ku wa 11/09/2013 rishyiraho Urugaga rw'Abavoka mu Rwanda, rikanagena imitunganyirize n'imikorere byarwo (Itegeko rigenga Urugaga muri uru rubanza).[6]

[18] Ibivugwa mu ngingo zavuzwe byumvikanisha ko, iyo Umukuru w'Urugaga amenye amakosa Avoka aregwa kandi ari mu bubasha bwa Komisiyo ishinzwe imyitwarire, abiregera iyo Komisiyo mu mezi atatu uhereye igihe yamenyeye amakosa.

[19] Muri uru rubanza, inyandiko zigize dosiye zigaragaza ko ku wa 16/12/2020, Umugenzuzi Mukuru w'Inkiko yohereje *e-mail* Mugabe Victor (Umunyamabanga Nshingwabikorwa w'Urugaga rw'Abavoka), amumenyesha imyitwarire ya Me Mhayimana Isaïe, agenera kopi Umukuru w'Urugaga kuri *e-mail julien@ksolutions-law.com*. Bigaragara na none ko ku wa 23/12/2020, Umukuru w'Urugaga yandikiye Komisiyo ishinzwe imyitwarire ibaruwa ifite nimero Let.211/Bat./KJG/12/2020, ayisaba gusuzuma imyitwarire ya Me Mhayimana Isaïe.

[20] Ikigaragara mu nyandiko zavuzwe mu gika kibanza, ni uko Umukuru w'Urugaga uhabwa n'amategeko ububasha bwo kuregera Komisiyo ishinzwe imyitwarire, yamenye amakuru y'imyitwarire ya Me Mhayimana Isaïe ku wa 16/12/2020, akaregera Komisiyo ku wa 23/12/2020, ni ukuvuga mu gihe cy'iminsi 7. Urukiko rukaba rusanga igihe cy'amezi 3 giteganywa n'amategeko cyo gukurikirana amakosa y'Avoka bikozwe n'Umukuru w'Urugaga cyarubahirijwe.

[21] Urukiko rusanga rero, hashingiwe ku bisobanuro bimaze gutangwa, Ibivugwa na Me Mhayimana Isaïe ko habaye ubuzime bw'ikurikirana ry'ikosa nta shingiro bifite.

- **Kumenya niba Komisiyo ishinzwe imyitwarire y'Abavoka mu Rwanda yararegewe n'utabifitiye inyungu n'ububasha**

[22] Me Mhayimana Isaïe n'umwunganira bavuga ko uwatanze ikirego nta nyungu n'ububasha yari afite babishingiye ku mpamvu zikurikira:

- Ikirego Komisiyo ishinzwe imyitwarire yashyikirijwe cyatanzwe n'Umugenzuzi Mukuru w'Inkiko, nawe agishingira ku ikosa avuga ko ryakorewe Umwanditsi w'Urukiko, nyamara Umugenzuzi Mukuru w'Inkiko akaba atari we wakorewe ikosa ntabe ari nawe uyobora urwego Umwanditsi w'Urukiko abarizwamo.
- Umugenzuzi Mukuru w'Inkiko yagejeje ikibazo kuri Victor kuri *e-mail adress* ye bwite, aho kukimwohereza nk'Umunyamabanga Nshingwabikorwa w'Urugaga, ngo nawe akigeze ku Mukuru w'Urugaga, mbere y'uko kiregerwa Komisiyo ishinzwe imyitwarire.

[23] Kuri iki kibazo, abahagarariye Urugaga batanga ibisobanuro bikurikira:

- Ikirego cyo gukurikirana Me Mhayimana Isaïe cyatanzwe n'Umukuru w'Urugaga rw'Abavoka mu Rwanda nk'uko bigaragara mu ibaruwa yandikiye Komisiyo ishinzwe imyitwarire ku wa 23/12/2020; kuvuga rero ko uwatanze ikirego nta bubasha n'inyungu yari afite bikaba nta shingiro bifite.
- Ingingo ya 171 y'Amategeko Ngengamikorere iteganya ko inzego zikurikirana ikirego zibyibwirije, cyangwa hari uwatanze ikirego, cyangwa bisabwe n'umuntu wese ubifitemo inyungu. Kuba hari uwatanze ikirego ariwe Umugenzuzi Mukuru w'Inkiko birahagije kugira ngo Komisiyo ishobore kugikurikirana. Umwuga w'Abavoka ni umwuga ufitiye abantu bose akamaro barimo n'Umugenzuzi Mukuru w'Inkiko, cyane cyane ko hari Urwego

[6] Komisiyo ishinzwe imyitwarire y'Urugaga iburanisha ibirego by'amakosa y'Abavoka. Iregerwa n'Umukuru w'Urugaga, umwe (1) mu bagize Komisiyo ishinzwe imyitwarire cyangwa undi muntu wese ubifitemo inyungu.
Iyo umwe (1) mu bavugwa mu gika cya mbere cy'iyi ngingo abona ko Avoka agomba gukurikiranwa, amurega mu gihe kitarenze amezi atatu (3) abarwa uhereye igihe ubifitemo inyungu amenyeye amakuru cyangwa uhereye igihe iperereza risorejwe.

rw'Ubutabera ahagarariye, ku buryo uwo ari wese wabona Avoka yitwara nabi ashobora kubigeza ku nzego zibishinzwe.

Uregwa siwe ugena niba uwamureze afite inyungu cyangwa atayifite, kuko adashobora kwihanganira uwatumye amakosa yakoze amenyekana.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 22 y'Amategeko Ngengamikorere, igika cya 2, agace ka 3, iteganya ko Umukuru w'Urugaga afite ubushobozi bwo kohereza Avoka muri Komisiyo ishinzwe imyitwarire, iyo abona ko ibyo Avoka aregwa bishobora gutuma hafatwa ibihano byo mu rwego rw'imyitwarire kandi birenze ububasha bwe. Ingingo ya 75 y'Itegeko rigenga Urugaga nayo igateganya ko Komisiyo ishinzwe imyitwarire iburanisha ibirego by'amakosa y'Abavoka; ikaregerwa n'Umukuru w'Urugaga, umwe mu bagize Komisiyo ishinzwe imyitwarire cyangwa undi muntu wese ubifitemo inyungu.

[25] Mu myanzuro yashyikirijwe Urukiko, urega n'abamwunganira bavuga ko Umukuru w'Urugaga yashingiye ikirego cye kuri e-mail yo ku wa 16/12/2020 yandikiwe n'Umugenzuzi Mukuru w'Inkiko, ashyikiriza ikibazo Komisiyo ishinzwe imyitwarire ku wa 23/12/2020, ayisaba gukurikirana Me Mhayimana Isaïe. Mu kugaragaza ariko ko Komisiyo ishinzwe imyitwarire yaregewe n'utabifitiye ububasha, bakavuga ko ikirego Komisiyo yashyikirijwe cyatanzwe n'Umugenzuzi Mukuru w'Inkiko, bikaba bivuguruza ibyo bari bavuze mbere.

[26] Mu cyemezo nimero 008/CD/2021 gisabirwa kuvanwaho, havugwamo ko Umukuru w'Urugaga yanditse ibaruwa nimero Let.211/Bat/KJG/12/2020 ku wa 23/12/2020, asaba Komisiyo gusuzuma imyitwarire ya Me Mhayimana Isaïe. Urukiko rusanga ikirego Komisiyo ishinzwe imyitwarire yashyikirijwe, kitaratanzwe n'Umugenzuzi Mukuru w'Inkiko nk'uko urega abivuga, ahubwo cyaratanzwe n'Umukuru w'Urugaga, kandi akaba ahabwa ubwo bubasha n'amategeko.

[27] Kuba Umukuru w'Urugaga yarahereye kuri *e-mail* Umugenzuzi Mukuru w'Inkiko yandikiye Umunyamabanga Nshingwabikorwa kuri aderesi ye bwite, nawe akamugenera kopi, Urukiko rusanga nta kibazo kirimo kuko icyo Umugenzuzi Mukuru w'Inkiko yakoze ari ukubagezaho amakuru.

[28] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga Komisiyo ishinzwe imyitwarire yararegewe n'ubifitiye inyungu n'ububasha.

- **Kumenya niba icyemezo nimero 008/CD/2021 cyarafashwe n'abatabifitiye ububasha**

  - **Kuba cyarafashwe na Perezida wa Komisiyo ishinzwe imyitwarire hamwe n'Umunyamabanga wayo**

[29] Me Mhayimana Isaïe n'abamwunganira bavuga ko nta ngingo n'imwe y'itegeko iha Perezida wa Komisiyo ishinzwe imyitwarire n'Umunyamabanga wayo ububasha (*délégation*) bwo gushyira umukono ku nyandiko za Komisiyo bonyine, ndetse n'uwasinye nk'Umunyamabanga wa Komisiyo akaba ntaho ateganyijwe mu mategeko agenga imyitwarire y'Abavoka mu Rwanda.

[30] Bavuga kandi ko ibisobanuro bitangwa n'abahagarariye Urugaga ko ingingo ya 79 y'Amategeko Ngengamikorere yemerera Perezida wa Komisiyo ishinzwe imyitwarire n'Umunyamabanga wayo gusinya ku cyemezo ari ukuvugisha iyo ngingo icyo itavuga, kuko icyemezo gihana kidakwiye kugereranywa n'inama yabaye. Bavuga ko n'iyo habayeho guhabwa ububasha bitangirwa impamvu, ko ariko iyo ubonye icyemezo cyafatiwe Me Mhayimana Isaïe usanga nta mpamvu yatanzwe yatumye gisinywaho na Perezida wa Komisiyo ishinzwe imyitwarire n'Umunyamabanga wayo gusa.

[31] Abahagarariye Urugaga bireguye mu buryo bukurikira:

- Icyemezo cyafashwe gisinywaho na Perezida n'Umunyamabanga wa Komisiyo ishinzwe imyitwarire, ntabwo abagifashe bose bagaruka ngo bagisinyeho kuko atari urubanza ruba rwabayeho ku buryo rusinywaho n'abaruburanishije bose.

- Ingingo ya 44 y'Amategeko Ngengamikorere irebana n' imitunganyirize ya Komisiyo ishinzwe imyitwarire iteganya ko buri raporo, inyandikomvugo cyangwa indi nyandiko y'iyo Komisiyo ishyirwaho umukono na Perezida w'inama n'Umwanditsi, ibyemezo bya Komisiyo bikaba biri mu nyandiko zivugwa, bivuze ko kuba icyemezo cyarashyizweho umukono na Perezida ndetse n'Umwanditsi nta kibazo biteye.

- **Kuba quorum y'abagize Komisiyo ishinzwe imyitwarire itari yuzuye**

[32] Me Mhayimana Isaïe n'abamwunganira batanga ibisobanuro bikurikira:

- Igihe Me Mhayimana Isaïe yitabaga Komisiyo ishinzwe imyitwarire mu nama ya nyuma hari abayigize 6 gusa batujuje *quorum*, kandinta n'ikigaragaza ko aribo bafashe icyemezo kuko batagishyizeho imikono yabo, ahubwo kigasinywaho n'abantu babiri bakitirira Komisiyo.
- Ingingo ya 29 y'Itegeko N° 83/2013 ryo ku wa 11/09/2013 rishyiraho Urugaga rw'Abavoka mu Rwanda rikanagena imitunganyirize n'imikorere byarwo[7] iteganya ko umubare w'abagize Komisiyo ishinzwe imyitwarire ari 11, naho ingingo ya 78 igateganya ko iyo Komisiyo iterana hari nibura 2/3 by'abayigize kandi igafata ibyemezo ku bwiganze bwa 2/3 by'abitabiriye inama[8]. Icyemezo cyari kuba cyubahirije amategeko, iyo gishyirwaho umukono n'abantu 8 nibura kuri 11 bagize Komisiyo, kuko ari bwo 2/3 byaba byuzuye.
- *Quorum* iteganywa mu ngingo ya 31 y'Itegeko rigenga Urugaga rw'Abavoka mu Rwanda[9] iburanishwa n'uhagarariye Urugaga ijyanye n'uburyo Komisiyo ishinzwe imyitwarire ifata ibyemezo, ariko mu bibazo bitajyanye no guhana Avoka ukurikiranyweho amakosa y'umwuga. Iyo yateranye kugirango ihane Avoka, hakurikizwa *quorum* ivugwa mu ngingo ya 78 y'Itegeko rimaze kuvugwa.
- Inyandiko yashyizwe muri dosiye yometse ku cyemezo cyahannye Me Mhayimana Isaïe, ni urutonde rw'abitabiriye inama ku munsi yahanweho kandi banyuranye n'abafashe icyemezo. Me Mhayimana Isaïe yitabye Komisiyo ishinzwe imyitwarire ku wa 20/05/2021 agiye

[7] Komisiyo ishinzwe imyitwarire igizwe n'aba bakurikira:
1° umwavoka uri mu nama y' Urugaga urusha abandi uburambe mu mwuga;
2° abavoka batandatu (6) batorwa n'Inama Rusange.
3° uhagarariye amashami y'amategeko ya za Kaminuza zemewe mu Rwanda uri ku rutonde rw'abavoka utorwa na bagenzi be;
4° ukuriye ubuyobozi bukuru bw'Ikigo cyo Kwigisha no Guteza imbere Amategeko cyangwa umuhagarariye;
5° uhagarariye Komisiyo y'Igihugu ishinzwe uburenganzira bwa Muntu;
6°uhagarariye Intumwa Nkuru ya Leta w'Umwavoka.
Komisiyo ishinzwe imyitwarire ishobora gutumira mu nama yayo undi muntu wese ibona wayigirira akamaro bitewe na dosiye iri ku murongo w'ibyigwa. Icyakora, uwatumijwe mu nama muri ubu buryo, ntiyemerewe gutora mu gihe cyo gufata ibyemezo.
Umuntu wese wagenwe n'urwego ngo aruhagararire muri Komisiyo ishinzwe imyitwarire abikora ku buryo buhoraho keretse habaye impamvu zikomeye zituma urwego rwamugennye rumusimbura.
Abagize Komisiyo ishinzwe imyitwarire bavugwa mu gace ka 3° n'aka 6° tw'igika cya mbere cy'iyi ngingo batorerwa manda y'imyaka itatu (3) ishobora kongerwa inshuro imwe (1).

[8] Komisiyo ishinzwe imyitwarire iterana hari nibura bibiri bya gatatu (2/3) by'abayigize.
Komisiyo ishinzwe imyitwarire igomba kuba yafashe icyemezo mu gihe kitarenze amezi abiri (2) uhereye ku munsi yagejejweho ikirego. Ifata icyemezo kandi ku bwiganze bwa bibiri bya gatatu (2/3) by'abitabiriye inama.
Umwanditsi w'Urugaga amenyesha umwavoka uregwa icyemezo cyose cyafashwe mu rubanza cyerekeye ibihano by'amakosa y'umwuga mu gihe cy'iminsi cumi n'itanu (15) hakoreshejwe uburyo bw'imenyesha ry'ibyemezo bukurikizwa mu mategeko agenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'ubutegetsi n'iz'umurimo.

[9] Inama ya mbere ya Komisiyo ishinzwe imyitwarire itumizwa n'Umukuru w'Urugaga mu gihe kitarenze ukwezi, uhereye igihe iri tegeko ritangarijwe mu Igazeti ya Leta ya Repubulika y'u Rwanda kugira ngo yitoremo Perezida, Visi Perezida n'Umunyamabanga bayo.
Inama ya Komisiyo ishinzwe imyitwarire iterana buri gihe cyose bibaye ngombwa itumijwe na adahari cyangwa se bisabwe nibura na kimwe cya gatatu (1/3) cy'abayigize.
Iterana mu buryo bwemewe iyo yitabiriwe nibura na kimwe cya kabiri (1/2) cy'abayigize igafata icyemezo ku bwumvikane busesuye bw'abayigize bahari. Iyo bidashoboka mu kubona umubare wa ngombwa kugirango iterane, inama yongera gutumizwa mu gihe kitarenze iminsi irindwi (7) abayitabiriye bagafata ibyemezo hatitawe ku mubare w'abayitabiriye.

kwisobanura ku kirego cy'uwitwa Mitali Calvin, urutonde rw'abitabiriye inama yize kuri icyo kibazo akaba arirwo bashyize ku cyemezo cyamuhannye kandi ari ibibazo bibiri binyuranye.

[33] Abahagarariye Urugaga bavuga ko icyemezo gifatwa quorum yari yuzuye nk'uko biteganywa n'ingingo ya 31 y'Itegeko rigenga Urugaga[10], na Me Mhayimana Isaïe akaba yaremeye kwisobanura kuko yabonaga quorum yuzuye.

[34] Basobanura ko Komisiyo yari igizwe n'abantu 9 kuko hari imyanya itarimo abantu, bivuze ko quorum bari abantu 6, kandi bakaba aribo bamufatiye icyemezo, kigashyirwaho umukono na Perezida n'Umwanditsi nk'uko ingingo ya 44 y'Amategeko Ngengamikorere ibisobanura[11].

- **Kuba manda y'abagize Komisiyo ishinzwe imyitwarire yari yararangiye**

[35] Kuri iki kibazo, Me Mhayimana Isaïe n'abamwunganira batanga ibisobanuro bikurikira:

- Ingingo ya 25 y'Itegeko N° 83/2013 ryo ku wa 11/09/2013 rishyiraho Urugaga rw'Abavoka mu Rwanda rikanagena imitunganyirize n'imikorere byarwo, iteganya ko manda y'abagize Komisiyo ishinzwe imyitwarire ari imyaka itatu. Ubwo icyemezo kiburanwa cyafatwaga, umunani mu bayigize bari bararangije manda yabo ku wa 01/03/2021, kuko bashyizweho n'Inteko Rusange y'Urugaga yateranye ku wa 02/03/2018.

Urugaga rwaburanye rwemera ko manda y'abagize Komisiyo ishinzwe imyitwarire yari yararangiye, ko ariko kubera ibibazo byatewe n'icyorezo cya Covid-19 abari baratowe bagumye mu mirimo yabo kugeza igihe abababasimbura bazatorerwa.

- Ibihe by'icyorezo cya Covid-19 ntibyemereraga Komisiyo ishinzwe imyitwarire yarangije manda gukomeza gukora, ahubwo Urugaga rwagombaga gukora ibiteganywa n'amategeko kugira ngo hashyirweho abandi bayigize cyangwa se abari bayisanzwemo bongererwe manda, nk'uko byagenze ku zindi nzego z'Igihugu zigendera kuri manda nk' Urwego rw'Abunzi cyangwa Inzego z'Ibanze. Bongeraho ko dosiye yagombaga kuba isubitswe, inzego zemewe n'amategeko zamara kujyaho ikabona gukurikiranwa.
- Ibihe by'icyorezo cya Covid-19 byababaye urwitwazo, kuko Urugaga rwakoresheje inama y'Inteko Rusange yateranye ku wa 12/11/2021, hatorwa Umukuru w'Urugaga wasimbuye uwari warangije manda, hamwe n'abasimbura abagize Inama y'Urugaga (*Conseil de l'Ordre*), nyamara gusimbura abagize Komisiyo ishinzwe imyitwarire bikaba bitarakozwe kandi nta cyabibuzaga, kuko n'ubusanzwe abagize izo nzego zombi batorerwaga mu iteraniro rimwe ry'Inteko rusange.
- Urugaga rwagombaga gukoresha inama rusange ku buryo bw'ikoranabuhanga nk'uko rwabigenje ku bindi bikorwa harimo n'amahugurwa, ndetse nk'uko izindi nzego zagiye zibikora, rukaba rudashobora gutanga ibimenyetso by'uko bitari gushoboka.

[36] Abahagarariye Urugaga batanze ibisobanuro bikurikira:

- Ibibazo byatewe n'icyorezo cya Covid-19 byatumye Inteko Rusange y'Abavoka 1.500 itabasha guterana imbonankubone, ngo hakorwe amatora nk'uko Amategeko Ngengamikorere abiteganya mu ngingo ya 56 na 61.

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[10] Inama ya mbere ya Komisiyo ishinzwe imyitwarire itumizwa n'Umukuru w'Urugaga mu gihe kitarenze ukwezi, uhereye igihe iri tegeko ritangarijwe mu Igazeti ya Leta ya Repubulika y'u Rwanda kugira ngo yitoremo Perezida, Visi Perezida n'Umunyamabanga bayo.
Inama ya Komisiyo ishinzwe imyitwarire iterana buri gihe cyose bibaye ngombwa itumijwe na Perezida wayo cyangwa Visi Perezida iyo Perezida adahari cyangwa se bisabwe nibura na kimwe cya gatatu (1/3) cy'abayigize.
Iterana mu buryo bwemewe iyo yitabiriwe nibura na kimwe cya kabiri (1/2) cy'abayigize igafata icyemezo ku bwumvikane busesuye bw'abayigize bahari. Iyo bidashoboka mu kubona umubare wa ngombwa kugirango iterane, inama yongera gutumizwa mu gihe kitarenze iminsi irindwi (7) abayitabiriye bagafata ibyemezo hatitawe ku mubare w'abayitabiriye.
[11] Uretse igihe Inama y'Urugaga yabyemeje ukundi, buri Komisiyo, mu nama yayo ya mbere nyuma y'ishyirwaho ry'abayigize, yitoramo Perezida, Visi Perezida n'Umwanditsi. Umwanditsi ashinzwe kwandika raporo yose n'inyandikomvugo by'inama ya Komisiyo. Buri raporo na buri nyandikomvugo igomba gushyirwaho umukono n'uwayoboye inama n'Umwanditsi.

- Inama y'Abaminisitiri yateranye ku wa 19/02/2021 yemeje ko inama zihuza abantu imbonankubone zitemewe, iyo myanzuro akaba ari nayo yakurikizwaga igihe Me Mhayimana Isaïe yafatirwaga icyemezo kimuhagarika.
- Ibyo gukoresha ikoranabuhanga ngo hakorwe amatora nabyo ntibyari gushoboka, kuko binyuranye n'ibiteganywa n'amategeko agenga Urugaga.
- Ingingo ya 33 y'Amategeko Ngengamikorere iteganya uko bigenda mu gihe hari icyuho mu bagize Komisiyo[12], akaba ari muri urwo rwego Umukuru w'Urugaga yasabye abari bagize Komisiyo ishinzwe imyitwarire gusuzuma ikibazo cya Me Mhayimana Isaïe, nk'uko bigaragara mw'ibaruwa yandikiye iyo Komisiyo, kuko byari mu bihe bidasanzwe.
- Kuba harabaye Inteko Rusange yatorewemo Umukuru w'Urugaga n'abagize Inama y'Urugaga, si ingingo yaburanishwa kuko byabaye nyuma y'ikizwa ry'urubanza, bikaba ntacyo byahindura. Nyuma y'uko icyorezo cya Covid-19 kigenjeje make, Inama y'Urugaga yasanze ari ngombwa ko inzego nkuru z'Urugaga zibanza gutorwa, kuko arizo ziri hejuru ugereranyije na Komisiyo akaba ari nazo zagombaga gutegura amatora ya Komisiyo ishinzwe imyitwarire.
- Manda y'abagize Inzego z'Ibanze na Komite y'Abunzi ntikwiye kugereranywa n'iy'Inzego z'Urugaga, kuko izo nzego zidafatwa kimwe.

UKO URUKIKO RUBIBONA

- **Ku bijyanye no kuba icyemezo gihagarika Me Mhayimana Isaïe cyarafashwe na Perezida wa Komisiyo ishinzwe imyitwarire n'Umunyamabanga wayo**

[37] Igika cya 1 cy'ingingo ya 29 y'Amategeko Ngengamikorere (yerekeye imitunganyirize ya Komisiyo ishinzwe imyitwarire) giteganya ko mu nama yayo ya mbere ikurikira ishyirwaho ry'abayigize, Komisiyo yitoramo Perezida, Visi Perezida n'Umwanditsi. Naho mu gika cyayo cya 2, iyo ngingo igateganya ko Umwanditsi ashinzwe kwandika raporo, inyandikomvugo z'inama ndetse n'izindi nyandiko zoherezwa na Komisiyo. Buri raporo, inyandikomvugo cyangwa indi nyandiko ya Komisiyo igomba gushyirwaho umukono na Perezida w'inama n'Umwanditsi.

[38] Icyumvikana muri izi ngingo zombi, ni uko mu nama ya mbere Komisiyo ishinzwe imyitwarire yitoramo uyiyobora, umwungirije n'umwanditsi. Izo ngingo zikagaragaza noneho inshingano z'umwanditsi uba watowe arizo gutegura raporo, inyandikomvugo n'izindi nyandiko za Komisiyo; zigasoza zigaragaza abagomba gusinya kuri izo nyandiko zitegurwa n'Umwanditsi.

[39] Urukiko rusanga raporo, inyandikomvugo n'izindi nyandiko zivugwa muri izi ngingo, zitareba inama ya mbere, ahubwo harashatswe kugaragazwa muri rusange inyandiko zigomba gutegurwa n'umwanditsi wa Komisiyo uba watowe, n'uburyo zishyirwaho umukono. Urukiko rurasanga kandi, icyemezo gihana cyumvikana mu zindi nyandiko za Komisiyo, Itegeko ngengamikorere ritashatse kurondora.

[40] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga Perezida wa Komisiyo ishinzwe imyitwarire n'Umwanditsi wayo bari bafite ububasha bwo gusinya ku cyemezo gihana cyafatiwe Me Mhayimana Isaïe.

- **Ku bijyanye no Kuba quorum y'abagize Komisiyo ishinzwe imyitwarire itari yuzuye**

[41] Ababuranyi bemeranywa ko abagomba kuba bagize Komisiyo ishinzwe imyitwarire ari 11 hakurikijwe ibiteganywa mu ngingo ya 29 y'Itegeko rigenga Urugaga, uretse ko abahagarariye Urugaga bavuga ko mu gihe Me Mhayimana Isaïe yafatirwaga igihano, abayigize bari 9 kuko hari imyanya itarimo

[12] Iyo hari umwanya utarimo umuntu muri Komisiyo ishinzwe imyitwarire, Umukuru w'Urugaga afata ingamba za ngombwa kugira ngo azibe icyo cyuho; ashobora gutegura amatora uwo muntu agatorwa n'Inama Rusange y'Urugaga, cyangwa agasaba Urwego bireba gushyiraho umusimbura.

abantu. Bemeranywa kandi ko inama ya nyuma Me Mhayimana Isaïe yitabyemo Komisiyo ishinzwe imyitwarire, yari yitabiriwe n'abagize komisiyo 6.

[42] Ingingo ya 31 y'Itegeko rigenga Urugaga, yerekeye inama za Komisiyo ishinzwe imyitwarire, igira iti: Inama ya mbere ya Komisiyo ishinzwe imyitwarire itumizwa n'Umukuru w'Urugaga mu gihe kitarenze ukwezi, uhereye igihe iri tegeko ritangarijwe mu Igazeti ya Leta ya Repubulika y'u Rwanda kugira ngo yitoremo Perezida, Visi Perezida n'Umunyamabanga bayo.

Inama ya Komisiyo ishinzwe imyitwarire iterana buri gihe cyose bibaye ngombwa itumijwe na Perezida wayo cyangwa Visi Perezida iyo Perezida adahari cyangwa se bisabwe nibura na kimwe cya gatatu (1/3) cy'abayigize.

Iterana mu buryo bwemewe iyo yitabiriwe nibura na kimwe cya kabiri (1/2) cy'abayigize igafata icyemezo ku bwumvikane busesuye bw'abayigize bahari. Iyo bidashoboka kubona umubare wa ngombwa kugirango iterane, inama yongera gutumizwa mu gihe kitarenze iminsi irindwi (7) abayitabiriye bagafata ibyemezo hatitawe ku mubare w'abayitabiriye.

[43] Ingingo ya 78, igika cya 1, y'Itegeko rigenga Urugaga iteganya ko Komisiyo ishinzwe imyitwarire iterana hari nibura bibiri bya gatatu (2/3) by'abayigize. Igika cya 2 kigateganya ko Komisiyo ishinzwe imyitwarire igomba kuba yafashe icyemezo mu gihe kitarenze amezi abiri (2) uhereye ku munsi yagejejweho ikirego. Ifata icyemezo kandi ku bwiganze bwa bibiri bya gatatu (2/3) by'abitabiriye inama.

[44] Abahagarariye Urugaga bavuga ko ingingo ya 31 ariyo igomba gukurikizwa mu gusuzuma niba *quorum* yari yuzuye igihe Komisiyo ishinzwe imyitwarire yafatiraga Me Mhayimana Isaïe icyemezo gisabirwa kuvanwaho. We n'abamwunganira bakavuga ko ingingo ya 31 ijyanye n'uburyo Komisiyo ifata ibyemezo, ariko mu bibazo bitajyanye no guhana Avoka ukurikiranyweho amakosa y'umwuga, ko iyo yateranye kugirango ihane Avoka, hakurikizwa *quorum* ivugwa mu ngingo ya 78.

[45] Ingingo ya 31 iri mu gice cy'Itegeko kirebana n'imikorere ya za Komisiyo zihoraho, naho ingingo ya 78, ikaba mu gice kirebana n'imyitwarire (*discipline*), by'umwihariko ahavugwa imiburanishirize y'ikirego kijyanye n'amakosa Avoka aregwa (*procédure*). Ingingo ya 78 yerekeye ifatwa ry'icyemezo, iza ikurikira ingingo zivuga ku buryo Avoka ahamagarwa, n'imyiregurire imbere ya Komisiyo.

[46] Urukiko rurasanga, hakurikijwe ibice izi ngingo ziherereyemo mu Itegeko rigenga Urugaga, bigaragara ko ingingo ya 31 irebana n'ifatwa ry'ibyemezo igihe Komisiyo ishinzwe imyitwarire yateranye mu mirimo isanzwe, ariko mu gihe ari uguhana, hagakurikizwa ibiteganywa n'ingingo ya 78.

[47] Urukiko rurasanga rero, *quorum* yasabwaga kugirango Me Mhayimana Isaïe afatirwe icyemezo ari 2/3 by'abagize Komisiyo ishinzwe imyitwarire, kandi hakurikijwe ibiteganywa n'ingingo ya 29 y'Itegeko rigenga Urugaga, abagize iyo Komisiyo ni 11 nk'uko n'ababuranyi babyemeranywaho. Bivuga rero ko *quorum* yagombaga kuzura hari abagize Komisiyo nibura 7, nyamara hakaba hari 6 hakurikijwe inyandiko abahagarariye Urugaga bashyikirije Urukiko ndetse n'ibyo impande zombi zemeranywaho.

[48] Ibivugwa n'abahagarariye Urugaga ko *quorum* igomba kubarirwa ku bantu 9 kubera ko hari imyanya itarimo abantu, Urukiko rusanga nta shingiro byahabwa kuko bidahuye n'ibiteganywa n'itegeko.

[49] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga icyemezo gihana Me Mhayimana Isaïe cyarafashwe *quorum* isabwa n'amategeko kugirango Komisiyo ishinzwe imyitwarire iterane kandi ifate ibyemezo ituzuye, bityo icyemezo nimero 008/CD/2021 iyo Komisiyo yamufatiye ku wa 20/05/2021 cyo guhagarikwa amezi 3, kikaba kigomba gukurwaho.

[50] Urukiko rurasanga atari ngombwa gusuzuma izindi ngingo Me Mhayimana Isaïe yagejeje ku Rukiko agamije gusaba ko icyemezo nimero 008/CD/2021 cyafashwe na Komisiyo ishinzwe imyitwarire y'Abavoka mu Rwanda ku wa 20/05/2021, cyakurwaho.

2. Ibijyanye n’indishyi

[51] Me Mhayimana Isaïe n’abamwunganira bavuga ko Urukiko Rukuru rwamutegetse kwishyura 1.000.000 Frw, kandi ikirego cyavuyemo ikosa ry’umwuga ryatumye ahanishwa guhagarikwa gukora amezi atatu kitaragombaga kwakirwa ku mpamvu z’inenge cyari gifite. Avuga ko n’iyo cyakirwa, nta kosa yakoze asubiza e-mail itaravugishaga ukuri yari yahawe abacamanza b’inkiko zose zo mu Rwanda.

[52] Basobanura ko yahanwe mu buryo budakurikije amategeko, hagamijwe kumwumvisha no kumubabaza kuko igihano yahawe cyarangiye ku wa 26/08/2022, ariko Urugaga rukanga kumusubiza ku rutonde rw’Abavoka. Bavuga ko n’ubwo Urugaga rwagombaga kwibwiriza rukamusubiza ku rutonde, byageze ku munsi yatanzeho ikirego cy’akarengane atarasubizwaho, kandi yarandikiye Umunyamabanga w’Urugaga n’Umukuru warwo yibutsa. Ibyo ngo byatumye ajya mu nkiko bakanga kumuha ijambo, akaba yarasubijwe ku rutonde hashize hafi umwaka.

[53] Bavuga ko gukurikiranwa by’amaherere byatumye yitaba Komisiyo incuro zinyuranye ajya kwisobanura, afata ku gihe yari gukoramo imirimo yindi imubeshejeho, afatirwa icyemezo cyo guhagarikwa adakora ku makosa atakoze, bimutesha agaciro imbere y’abakiriya asanganywe ndetse n’abateganya kumugana, akaba abisabira indishyi zingana na 40.000.000 Frw kubera igihombo birimo kumutera, ndetse n’indishyi z’akababaro zingana na 10.000.000 Frw. Basobanura ko mu buryo bugenekereje, Me Mhayimana Isaïe abara agasanga yarinjizaga 5.000.000 Frw buri kwezi, yakuba n’amezi 8 yamaze adakora bikaba 40.000.000 Frw.

[54] Me Mhayimana Isaïe n’abamwunganira bavuga ko kubera gushorwa muri uru rubanza nta mpamvu, yari yasabye Urukiko Rukuru gutegeka Urugaga kumwishyura indishyi zingana na 1.580.000 Frw harimo gusubizwa ingwate y’igarama yatanze arega (40.000 Frw), ibihembo by’abahesha b’inkiko bamenyesheje Urugaga ikirego n’amahamagara (40.000 Frw), indishyi z’ikurikiranarubanza (500.000 Frw), rukaba rwarazimwimye ku bw’akarengane.

[55] Abahagarariye Urugaga bavuga ko indishyi zategetswe n’Urukiko Rukuru zitakurwaho kuko ari ingaruka z’urubanza Me Mhayimana Isaïe yatangije.

[56] Bavuga ko ibindi bisabwa na Me Mhayimana Isaïe nta shingiro bifite, kuko yakoze amakosa y’umwuga kandi akaba yaragombaga kuyabazwa mu rwego rwo guhesha umwuga agaciro. Basobanura ko iyo aza kuba akomeye ku gaciro ke yari kwirinda imyitwarire n’imvugo zicirirtse yakoresheje yandikira Umwanditsi w’Urukiko, bityo kuvuga ko iki cyemezo aricyo cyamutesheje agaciro bikaba nta shingiro bifite, nta n’indishyi bigomba gutangirwa cyane ko atigeze anazigaragariza ibimenyetso.

[57] Bavuga kandi ko Komisiyo ishinzwe imyitwarire ikora mu nyungu z’umwuga ufitiye abantu bose akamaro no kuwuhesha icyubahiro hirindwa ko abawukora batandukira bitwara nabi, kuba Me Mhayimana Isaïe yarananiwe kubahiriza inshingano yo kwifata, kwigengesera no kwitwararika bikamuviramo gukurikiranwa, atabiheraho ngo abisabire indishyi.

[58] Bongeraho ko Me Mhayimana Isaïe yakomeje gushora Urugaga mu manza z’amaherere, bityo bakaba basanga urega yategekwa kwishyura amafaranga y’ikurikiranarubanza n’igihembo cy’Avoka angana na 5.000.000.

[59] Me Mhayimana Isaïe n’abamwunganira bavuga ko izo ndishyi nta shingiro zifite kuko yareze agamije kurenganurwa, zikaba kandi nta kimenyetso cyangwa igisobanuro zishingiyeho.

UKO URUKIKO RUBIBONA

[60] Urukiko rurasanga amafaranga 1.000.000 y’ikurikiranarubanza n’igihembo cy’Avoka yategetswe n’Urukiko Rukuru, Me Mhayimana Isaïe asaba ko avanwaho, yabyemererwa kuko atsinze urubanza.

[61] Ku bijyanye n'indishyi z'igihombo zingana na 40.000.000 Frw Me Mhayimana Isaïe avuga ko yabaze mu buryo bugenekereje, Urukiko rurasanga zitatangwa kuko igihombo kitabarwa mu buryo bugenekereje, ahubwo kiba kigomba gutangirwa ibimenyetso, bikaba ntabyatanzwe.

[62] Ku bijyanye n'indishyi z'akababaro Me Mhayimana Isaïe asaba, Urukiko ruributsa ko bitabaye ngombwa kwinjira mu mizi ngo hasuzumwe niba icyemezo yafatiwe nta mpamvu cyari gishingiyeho, rukaba rwagarukiye gusa ku kuba cyarafashwe mu buryo budakurikije amategeko. Uburyo indishyi z'akababaro zitangwa mu gihe icyemezo cyavanyweho kubera kuba cyarafashwe mu buryo budakurikije amategeko, byasobanuwe mu manza zinyuranye zaciwe n'Urukiko rw'Umurimo rw'Umuryango w'Ubumwe bw'Ibihugu by'Uburayi; ibyo bisobanuro bikaba byakwifashishwa muri uru rubanza.

[63] Mu rubanza uwiswe DD yaburanaga na *Agence des droits fondamentaux de l'Union européenne* (FRA), Urukiko rwasobanuye ko kuvanaho icyemezo cyafashwe mu buryo budakurikije amategeko ubwabyo ari indishyi ikwiye ku kababaro icyo cyemezo cyaba cyarateye, keretse igihe urega ashoboye kugaragaza akababaro gashobora gutandukanywa n'amakosa yatumye icyemezo kivanwaho, kadasubizwa no kuba kivuyeho (*l'annulation d'un acte entaché d'illégalité constitue en elle-même la réparation adéquate et, en principe, suffisante de tout préjudice moral que cet acte peut avoir causé. Tel n'est toutefois pas le cas lorsque le requérant démontre avoir subi un préjudice moral qui, sans être détachable de l'acte lui-même, est détachable de l'illégalité fondant l'annulation et insusceptible d'être intégralement réparé par cette annulation…. Toutefois, le requérant se contente d'indiquer que la décision de résiliation lui a causé un traumatisme psychologique et a porté atteinte à sa réputation et à sa dignité, sans pour autant démontrer qu'un tel préjudice ne pourrait pas être intégralement réparé par le présent arrêt d'annulation de cette décision. Ainsi, les conclusions indemnitaires relatives au dommage moral causé par la décision de résiliation doivent être rejetées comme non fondées*)[13].

[64] Ibyo nibyo bigaragara no mu rubanza *Ingfried Hochbaum and Edward Rawes vs Commission of the European Communities*[14], mu rubanza *Simona Murariu vs Autorité européenne des assurances et des pensions professionnelles (AEAPP)*[15], ndetse n'izindi. Zimwe muri izo manza zongeraho ko kuba umuntu atekereza ko yarenganye, n'imihangayiko ituruka ku kuba agomba gutanga ikirego kugirango aharanire uburenganzira bwe, bishobora gufatwa nk'akababaro katurutse ku makosa yakozwe n'urwego rw'ubuyobozi (*en particulier, le sentiment d'injustice et les tourments qu'occasionne le fait, pour une personne, de devoir mener une procédure précontentieuse, puis contentieuse, afin de voir ses droits reconnus peut, dans certaines circonstances, constituer un préjudice pouvant découler du seul fait que l'administration a commis une illégalité*).[16]

[65] Ku bijyanye n'uru rubanza, mu bisobanuro Me Mhayimana Isaïe atanga, harimo kuba yaritabye Komisiyo ishinzwe imyitwarire inshuro nyinshi bagatuma afata ku gihe yari gukoramo imirimo yindi imubeshejeho, ibyo bikaba bijyanye n'indishyi z'igihombo cyangwa mbonezamusaruro zagize icyo zivugwaho mu gika cya 62. Ibindi bisobanuro atanga ni ukuba yarafatiwe icyemezo cyo guhagarikwa gukora hashingiwe ku makosa atakoze, bikamutesha agaciro imbere y'abakiriya asanganywe ndetse n'abateganya kumugana. Nk'uko byasobanuwe haruguru ariko (mu gika cya 63), ibirebana no kuba

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[13] Arrêt du Tribunal de la Fonction Publique de l'Union Européenne (deuxième chambre), 8 octobre 2015, para 105 & 107-108.

[14] *As regards the claim for damages in case 44/85, the cancellations in themselves adequately compensate for any non-material damage which mr hochbaum may have suffered in the circumstances. the claim for damages is therefore devoid of purpose and no decision need be given on it;* Judgment of the court (second chamber) of 9 july 1987. - Ingfried Hochbaum and Edward Rawes v Commission of the European Communities, Official - annulment of appointment, Joined cases 44/85, 77/85, 294/85 and 295/85, para 22.

[15] *Quant au préjudice moral allégué, il y a lieu de rappeler que, selon une jurisprudence constante, l'annulation d'un acte entaché d'illégalité, tel que la décision attaquée, constitue en elle-même la réparation adéquate et, en principe, suffisante de tout préjudice moral que cet acte peut avoir causé, sauf lorsque le requérant démontre avoir subi un préjudice moral détachable de l'illégalité fondant l'annulation et n'étant pas susceptible d'être intégralement réparé par cette annulation ;* Arrêt du Tribunal de la Fonction Publique de l'Union Européenne (Première Chambre), 16 juillet 2015, para 150.

[16] Arrêt du Tribunal de la Fonction Publique de l'Union Européenne (troisième chambre), FS vs Comité économique et social européen (CESE), 12 mai 2016, para 59.

Arrêt du Tribunal de la Fonction Publique de l'Union Européenne (Première Chambre), Simona Murariu vs Autorité européenne des assurances et des pensions professionnelles (AEAPP), 16 juillet 2015, para 152.

amakosa yahaniwe yarayakoze cyangwa atarayakoze ntibyasuzumwe, kuko Urukiko rwagarukiye ku kuba hari ibiteganywa n'amategeko bitubahirijwe mu kumufatira icyemezo, bikaba rero bitanashingirwaho mu kugena indishyi z'akababaro.

[66] Nk'uko byagiye bisobanurwa mu byemezo by'inkiko byagaragajwe hejuru, akababaro gashingiye ku kuba icyemezo cyarafashwe mu buryo bunyuranyije n'amategeko karasubizwa no kuba icyemezo cyafashwe kivanyweho, kandi nta bisobanuro Me Mhayimana Isaïe yatanze ku kababaro kaba gashingiye ku bindi bitari ibyo, nk'imihangayiko yaba yaratewe no gukurikirana uburenganzira bwe cyangwa ibindi.

[67] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga indishyi z'akababaro Me Mhayimana Isaïe asaba nta shingiro zifite.

[68] Ku bijyanye n'indishyi zingana na 1.580.000 Frw harimo gusubizwa ingwate y'igarama yatanze arega (40.000 Frw), ibihembo by'abahesha b'inkiko bamenyesheje Urugaga ikirego n'amahamagara (40.000 Frw), indishyi z'ikurikiranarubanza n'igihembo cy'Avoka, Urukiko rurasanga Me Mhayimana Isaïe akwiye gusubizwa 40.000 Frw y'ingwate y'amagarama yatanze arega mu Rukiko Rukuru, agahabwa 500.000 Frw y'igihembo cy'Avoka na 300.000 Frw y'ikurikiranarubanza agenwe mu bushishozi bw'Urukiko kuko byabaye ngombwa gushaka umwunganira no gukurikirana urubanza. Ku bijyanye na 40.000 y'ibihembo by'abahesha b'inkiko, Urukiko rurasanga agomba kubarirwa muri 300.000 Frw y'ikurikiranarubanza.

III. ICYEMEZO CY'URUKIKO

[69] Rwemeje ko ikirego cyatanzwe na Me Mhayimana Isaïe, gisaba gusubirishamo ku mpamvu z'akarengane urubanza RAD 00017/2021/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 28/10/2021, gifite ishingiro.

[70] Rwemeje ko icyemezo nimero 008/CD/2021 cya Komisiyo ishinzwe imyitwarire y'Abavoka mu Rwanda cyo ku wa 20/05/2021 gihanisha Me Mhayimana Isaïe guhagarikwa amezi 3, gikuweho.

[71] Rwemeje ko amafaranga 1.000.000 y'ikurikiranarubanza n'igihembo cy'Avoka Me Mhayimana Isaïe yategetswe n'Urukiko Rukuru, avuyeho.

[72] Rutegetse Urugaga rw'Abavoka mu Rwanda gusubiza Me Mhayimana Isaïe 40.000 Frw y'ingwate y'amagarama yatanze arega mu Rukiko Rukuru, no kumuha 500.000 Frw y'igihembo cy'Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 840.000 Frw.