NISR v NIYIGABA

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RAD 00001/2022/SC – (Nyirinkwaya, P.J., Hitiyaremye na Karimunda, J.) 27 Mutarama 2023]

Amategeko agenga umurimo – Amasezerano y'umurimo – Uburyozwe bw'icyaha – Ibyemezo byafashwe mu rubanza rw'inshinjabyaha si itegeko kubikurikiza mu gihe hafatwa ibyemezo byo mu rwego rw'ubutegetsi – Iyo ibikorwa byashingiweho mu gufata ibyo byemezo bigize icyaha, muri icyo gihe, ibyemezo byo mu rwego rw'ubutegetsi bigomba kubahiriza ibyemejwe n'umucamanza w'inshinjacyaha.

Amategeko agenga imanza z'umurimo – Amasezerano y'umurimo – Ibihano mu rwego rw'akazi – Mu gihe umukozi yakurikiranwe n'inkiko ku bikorwa bigize icyaha yakekwagaho nyuma akabigirwaho umwere mu rubanza rwabaye itegeko, umukoresha we ntashobora guhindukira ngo amufatire ibihano byo mu rwego rw'ubutegetsi kuri bya bikorwa yagizweho umwere.

Incamake y'ikibazo: Niyigaba yareze Ikigo cy'Igihugu gishinzwe ibarurishamibare mu Rwanda (NISR) kuba cyaramwirukanye mu buryo bunyuranyije n'amategeko kivuga ko yagiye mu butumwa bw'akazi ubwo yari yitabiriye amahugurwa ntawe umwoherejeyo akoresheje urupapuro rw'inzira (*ordre de mission*) rw'uruhimbano. Icyo cyaha yagikurikiranweho afunze aza kurekurwa by'agateganyo, maze yandikira ubuyobozi bwa NISR asaba gusubira ku kazi, burabyanga buvuga ko ataragirwa umwere ahubwo bumwandikira ibaruwa imwirukana burundu ku kazi.

Urukiko rwaciye urwo rubanza nshinjabyaha rumugira umwere bituma asaba NISR kumusubiza ku kazi no kumuha imishahara ye bamubikiye igihe yari afunzwe ntiyabyemererwa, atakambira icyemezo cy'umuyobozi kimwirukana ku kazi, binaniranye aregera Urukiko Rwisumbuye rwa Nyarugenge asaba kuvanirwaho icyemezo kimwirukana ku kazi no guhabwa iyo mishahara yose atahembwe, indishyi z'akababaro n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

NISR yatenze inzitizi isaba kutakira ikirego cya Niyigaba ivuga ko yatakambye mu buryo butemewe n'amategeko ariko Urukiko rwemeza ko iyo nzitizi nta shingiro ifite ndetse rwemeza ko ikirego cye gifite ishingiro kuri bimwe, rwemeza kandi ko icyemezo cyimwirukana ku kazi kivanyweho agasubizwa mu kazi, ndetse agahabwa n'imishahara ye yose yavukijwe.

NISR yajuririye Urukiko Rukuru ivuga ko ikirego cya Niyigaba kitagombaga kwakirwa ngo gisuzumwe kubera ko atubahirije imihango iteganywa n'Itegeko mbere yo kugitanga, ko kandi kuba yaragizwe umwere n'Urukiko bitakuragaho ko ahanirwa ikosa yakoze mu rwego rw'akazi, bityo ko n'ibyo yagenewe n'Urukiko Rwisumbuye atabihabwa. Uyu Niyigaba yatanze ubujurire bwuririye ku bundi asaba Urukiko guhabwa amafaranga y'ikurikiranarubanza kuko ayo yahawe mu rubanza rwajuririrwaga ari make, ndetse anasaba ay'igihembo cya Avoka n'andi y'ikurikiranarubanza mu rwego rw'ubujurire.

Urukiko Rukuru rwemeje ko ubujurire bwa NISR nta shingiro bufite ariko ko ubujurire bwuririye ku bundi bwa Niyigaba bufite ishingiro kuri bimwe, ko imikirize y'urubanza rwajuririwe idahindutse uretse ku byerekeye amafaranga y'igihembo cya Avoka n'ayatanzweho ingwate y'igarama.

Ibi byatumye NISR isaba ko urwo rubanza rwaciwe n'Urukiko Rukuru rusubirishwamo ku mpamu z'akarengane, irabyemererwa hasuzumwa ikibazo kijyanye no kumenya niba Niyigaba atarirukanwe mu buryo bukurikije amategeko ariko ibibazo byatanzwe n'Uregwa bitagomba gusuzumwa kuko atemerewe kuririra ku busabe bw'uwo baburana kugira ngo agire icyo anenga urubanza rusubirwamo ku mpamvu z'akarengane.

Kuri icyo kibazo cya suzumwe, NISR ivuga ko akarengane kari mu rubanza basabye ko rwasubirwamo ari uko Urukiko Rukuru rwemeje ko Niyigaba yirukanywe mu buryo bunyuranyije n'amategeko, kubera ko amakosa yirukaniwe ari nayo yagizweho umwere mu rubanza rw'inshinjabyaha kandi ataribyo, nyamara yarirukaniwe ukwiha ubutumwa akabujyamo ubuyobozi butabizi, ibyo akaba yarabisabiwe n'ibisobanuro bikamunanira kubitanga kuko atigeze agaragaza uwamwohereje mu mahugurwa i Musanze.

Ikomeza isobanura ko Uregwa atirukanywe mu buryo bunyuranyije n'amategeko kuko ikosa ryatumye yirukanwa yarikoze, kandi imihango yose ikurikizwa mu gutanga ibihano ikaba yarubahirijwe mbere yo

kumuhana. Isoza isaba ko, mu gihe Urukiko rwasanga Niyigaba yarirukanywe mu buryo bukurikije amategeko, rwakuraho icyemezo cyafashwe n'Urukiko Rukuru kandi akishyura NISR indishyi.

Niyigaba asobanura ko nta karengane kari muri urwo rubanza kubera ko ibyaha yari akurikiranyweho mu rubanza rw'inshinjabyaha bikaburirwa ibimenyetso, ari nayo makosa yirukaniwe. Avuga ko Ubushinjacyaha butabashije kugaragaza ibimenyetso bihagije byemeza ko yakoze icyaha cyo kujya mu butumwa bw'akazi ntawe umwoherejeyo akoresheje urupapuro rw'inzira rw'uruhimbano. Ikindi ni uko NISR yakagombye kuba igaragaza ibimenyetso bindi byemeza ko koko yakoze amakosa yamwirukaniye, kuko we agaragaza ibimenyetso byerekana ko ayo makosa ntayo yakoze.

Niyagaba akomeza avuga ko nta na hamwe mu mategeko yaba akoreshwa mu Rwanda cyangwa akoreshwa ku rwego mpuzamahanga biteganyijwe ko umukozi ugikurikiranywe n'inkiko, mu rwego rw'akazi ashobora guhanirwa ibyo agikurikiranyweho, ko nta n'aho amategeko ateganya ko uwagizwe umwere n'urukiko, mu rwego rw'akazi ashobora guhanirwa ibyo yagizweho umwere nk'uko NISR yabikoze.

Asoza asaba Urukiko ko, mu gihe rwasanga yarirukanwe mu buryo bunyuranyije n'amategeko, rwategeka ko urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane rwagumaho kandi ntagire indishyi acibwa.

Incamake y'icyemezo: 1. Ibyemezo byafashwe mu rubanza rw'inshinjabyaha si itegeko kubikurikiza mu gihe hafatwa ibyemezo byo mu rwego rw'ubutegetsi. Iyo ibikorwa byashingiweho mu gufata ibyo byemezo bigize icyaha, muri icyo gihe, ibyemezo byo mu rwego rw'ubutegetsi bigomba kubahiriza ibyemejwe n'umucamanza w'inshinjacyaha.

2. Mu gihe umukozi yakurikiranwe n'inkiko ku bikorwa bigize icyaha yakekwagaho nyuma akabigirwaho umwere mu rubanza rwabaye itegeko, umukoresha we ntashobora guhindukira ngo amufatire ibihano byo mu rwego rw'ubutegetsi kuri bya bikorwa yagizweho umwere. Bityo, Ikigo cy'Igihugu gishinzwe ibarurishamibare mu Rwanda (NISR) nticyari kwirukanira Niyigaba Jean ibikorwa bigize icyaha yaje kugirwaho umwere mu rubanza rw'inshinjabyaha itabanje gutegereza umwanzuro w'Urukiko.Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane, nta shingiro gifite.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe muri 2015, ingingo ya 29.

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111.

Itegeko Nº 86/2013 ryo ku wa 11/09/2013 rishyiraho sitati rusange igenga abakozi ba Leta, ingingo ya 41 n'iya 78.

Iteka rya Perezida Nº 65/01 ryo ku wa 04/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, ingingo ya 4.

Imanza zifashishijwe:

Niwemugeni Jeannette na KCB Bank Ltd, RS/INJUST/RSOC 00001/2019/SC6 rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 31/01/2020.

Umujyi wa Kigali na Ndakengerwa Gasana Aimable, RS/REV/INJUST/RAD 00005/2018/SC, rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 15/03/2019.

EWSA na Ndayobotse Amon, RADA 0037/10/CS rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 31/07/2012.

Electrogaz na Niwenshuti Nzaramba Valens, RADA 0038/09/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 25/03/2011.

Leta y'u Rwanda (Rwanda Civil Aviation) na Nkongori John, RADA 0012/07/CS rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 27/03/2009.

Inyandiko z'abahanga zifashishijwe:

Conseil d'Etat, Assemblée, du 8 janvier 1971, 77800, publié au rueil Lebon.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Niyigaba Jean wari umukozi wa NISR, ku itariki ya 11/04/2017 yarafashwe arafungwa akurikiranyweho kurigisa umutungo wa Leta, guhimba no gukoresha inyandiko mpimbano bikozwe n'umukozi wa Leta, ibyo bikorwa bikaba byarabaye kuva ku itariki ya 11 kugeza ku ya 16/12/2016, aho yari yitabiriye amahugurwa yabereye mu Karere ka Musanze yari yateguwe n'Ikigo cy'Igihugu cyo kubungabunga ibidukikije, REMA mu magambo ahinnye y'icyongereza. Yaregwaga kujya muri ayo mahugurwa ntawe uyamwoherejemo nyuma yo guhimba urupapuro rw'inzira rumwohereza mu butumwa bw'akazi (*ordre de mission*), ibyo bikaba byaratumye ku itariki ya 13/04/2017, NISR imuhagarika ku kazi by'agateganyo.

[2] Niyigaba Jean yaje kurekurwa by'agateganyo, maze ku itariki ya 11/05/2017, yandikira ubuyobozi bwa NISR asaba gusubira ku kazi, ubwo buyobozi bubyanga buvuga ko ataragirwa umwere, ahubwo ku itariki ya 30/08/2017, bumwandikira ibaruwa imwirukana burundu ku kazi.

[3] Ku itariki ya 13/04/2018, Urukiko Rwisumbuye rwa Nyarugenge rwaje guca urubanza n° RP 00597/2017/TGI/NYGE, rwemeza ko Niyigaba Jean ari umwere ku cyaha cyo kwandika cyangwa gukoresha inyandiko yahinduwe cyangwa irimo ibinyoma yari akurikiranyweho, urwo rubanza ruhinduka itegeko.

[4] Niyigaba Jean yasabye NISR kumusubiza ku kazi no kumuha imishahara ye bamubikiye igihe yari afunzwe ntiyabyemererwa, atakambira icyemezo cy'umuyobozi kimwirukana ku kazi, binaniranye aregera Urukiko Rwisumbuye rwa Nyarugenge asaba kuvanirwaho icyemezo kimwirukana ku kazi no guhabwa imishahara yose atahembwe igihe yari afunzwe, indishyi z'akababaro n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

[5] NISR yatanze inzitizi isaba kutakira ikirego cya Niyigaba Jean ivuga ko yatakambye mu buryo butemewe n'amategeko, ko kandi kuba yaragizwe umwere n'Urukiko bitabuzaga ko ahanirwa ikosa yakoze ryo mu rwego rw'akazi.

[6] Ku itariki ya 23/12/2019, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza RAD 00191/2019/TGI/NYGE rwemeza ko inzitizi yatanzwe na NISR nta shingiro ifite, rwemeza ko ikirego cya Niyigaba Jean gifite ishingiro kuri bimwe, rwemeza kandi ko icyemezo cyo ku itariki ya 30/08/2017 cya NISR cyimwirukana ku kazi kivanyweho agasubizwa mu kazi, ndetse agahabwa n'imishahara ye yose yavukijwe kuva ku itariki ya 13/04/2017 kugeza asubiye ku kazi, rutegeka NISR kumwishyura igihembo cya Avoka kingana na 500.000 Frw, hamwe n'andi 500.000 Frw y'ikurikiranarubanza no kumusubiza 20.000 Frw y'igarama yatanze arega.

[7] NISR yajuririye Urukiko Rukuru mu rubanza RADA 00008/2020/HC/KIG, ivuga ko ikirego cya Niyigaba Jean kitagombaga kwakirwa ngo gisuzumwe kubera ko atubahirije imihango iteganywa n'Itegeko mbere yo kugitanga, ko kandi kuba yaragizwe umwere n'Urukiko bitakuragaho ko ahanirwa ikosa yakoze mu rwego rw'akazi, bityo ko n'ibyo yagenewe n'Urukiko Rwisumbuye atabihabwa.

[8] Niyigaba Jean yatanze ubujurire bwuririye ku bundi asaba Urukiko guhabwa amafaranga y'ikurikiranarubanza kuko ayo yahawe mu rubanza rwajuririrwaga ari make, ndetse anasaba ay'igihembo cya Avoka n'andi y'ikurikiranarubanza mu rwego rw'ubujurire.

[9] Ku itariki ya 22/10/2021, Urukiko Rukuru rwaciye urubanza rwemeza kandi rutegeka ko:

- ubujurire bwa NISR nta shingiro bufite,
- ubujurire bwuririye ku bundi bwa Niyigaba Jean bufite ishingiro kuri bimwe,
- imikirize y'urubanza rwajuririwe idahindutse, uretse ku byerekeye amafaranga y'igihembo cya Avoka n'ayatanzweho ingwate y'igarama,

- icyemezo cyo ku itariki ya 30/08/2017 cya NISR cyirukana Niyigaba Jean ku kazi kivanyweho,
- Niyigaba Jean agomba gusubizwa mu kazi nk'uko byari byemejwe mu rubanza rwajuririwe,
- NISR iha Niyigaba Jean imishahara ye yose yavukijweho uburenganzira kuva ku itariki ya 13/04/2017 kugeza asubiye ku kazi nk'uko byemejwe mu rubanza rwajuririwe,
- NISR imuha 500.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza nk'uko yemejwe mu rubanza rwajuririwe, ikanamuha na 250.000 Frw y'igihembo cya Avoka kuri urwo rwego.

[10] Mu gufata icyo cyemezo, Urukiko Rukuru rwashingiye ku mpamvu y'uko kuba Niyigaba Jean yaragizwe umwere ku cyaha cy'inyandiko mpimbano, bigaragaza ko uruhushya yari yitwaje atari uruhimbano, kandi ko nta kigaragaza ko yataye akazi kuko umukoresha we atamwandikiye amubaza impamvu atabonetse ku kazi iminsi igera kuri itandatu yose, ko rero yirukanywe mu buryo bunyuranyije n'amategeko.

[11] Ku itariki ya 20/11/2021, NISR yandikiye Perezida w'Urukiko rw'Ubujurire isaba ko urubanza RADA 00008/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 22/10/2021 rwasubirwamo ku mpamvu z'akarengane. Amaze gusuzuma ubwo busabe, Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rusubirwamo. Amaze kubona raporo yakozwe kuri urwo rubanza, Perezida w'Urukiko rw'Ikirenga yafashe icyemezo ko rwongera kuburanishwa, ruhabwa RS/INJUST/RAD 00001/2022/SC.

[12] Urubanza rwaburanishirijwe mu ruhame ku itariki ya 13/12/2022, NISR ihagarariwe na Me Cyubahiro Fiat, Niyigaba Jean yunganiwe na Me Dusenge Vestine. Urukiko rwamenyesheje ababuranyi ko hakurikijwe imyanzuro iri muri dosiye, rwasanze ikibazo (*issue*) rwagejejweho na NISR ari ikijyanye no kumenya niba Niyigaba Jean atarirukanwe mu buryo bukurikije amategeko. Rwasanze ibindi bibazo ari ibyazanywe na Niyigaba Jean uregwa mu karengane, rwemeza ko byo bitagomba gusuzumwa hashingiwe ku murongo watanzwe n'uru Rukiko ko uwarezwe mu karengane atemerewe kuririra ku busabe bw'uwo baburana kugira ngo agire icyo anenga urubanza rusubirwamo ku mpamvu z'akarengane.

[13] Nyuma y'uwo mwanzuro rero, ibibazo byasuzumwe muri uru rubanza akaba ari ikijyanye kumenya niba Niyigaba Jean atarirukanywe mu buryo bukurikije amategeko n'ikijyanye n'indishyi zasabwe kuri uru rwego.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba Niyigaba Jean atarirukanwe mu buryo bukurikije amategeko

[14] Me Cyubahiro Fiat uhagarariye NISR, avuga ko akarengane kari mu rubanza basabye ko rwasubirwamo ari uko Urukiko Rukuru rwemeje ko Niyigaba Jean yirukanywe mu buryo bunyuranyije n'amategeko, kubera ko amakosa yirukaniwe ari nayo yagizweho umwere mu rubanza rw'inshinjabyaha kandi ataribyo. Asobanura ko mu rubanza rw'inshinjabyaha Niyigaba Jean yari akurikiranyweho guhimba no gukoresha inyandiko yahinduwe, mu gihe amakosa yirukaniwe mu kazi ari ukwiha ubutumwa akabujyamo ubuyobozi butabizi, ibyo akaba yarabisabiwe n'ibisobanuro bikamunanira kubitanga kuko atigeze agaragaza uwamwohereje mu mahugurwa i Musanze. Avuga ko ayo ariyo makosa yatumye Niyigaba Jean yirukanwa, kandi ayo makosa akaba atandukanye n'ibyo yagizweho umwere mu rubanza rw'inshinjabyaha. Avuga ko kugeza n'ubu urwandiko rw'inzira rwamujyanye mu butumwa batazi uwarukoze, ko ikizwi ari uko ataruhawe n'ubuyobozi.

[15] Me Cyubahiro Fiat akomeza asobanura ko hari igihe ibikorwa umukozi akurikiranyweho biba bitagize icyaha ariko bigize ikosa ryo mu rwego rw'akazi, iryo kosa umukozi akaba yarihanirwa hashingiwe ku ngingo ya 78 ya sitati rusange igenga abakozi ba Leta yakurikizwaga Niyigaba Jean yirukanwa. Avuga ko kuba Niyigaba Jean yaragiye mu mahugurwa afite urupapuro rw'inzira

rumwohereza mu butumwa bw'akazi rudasinyweho n'umuyobozi uzwi, akaba nta raporo y'ubwo butumwa yari yagiyemo yigeze atanga, bigaragaza ko urwo rupapuro rw'inzira rwari uruhimbano.

[16] Me Cyubahiro Fiat ashimangira ko Niyigaba Jean atirukanywe mu buryo bunyuranyije n'amategeko kuko ikosa ryatumye yirukanwa yarikoze, kandi imihango (*procédure*) yose ikurikizwa mu gutanga ibihano ikaba yarubahirijwe mbere yo kumuhana, iyo mihango ikaba ari iyi ikurikira:

- ku itariki ya 13/04/2017, Niyigaba Jean yahagaritswe ku kazi ku mpamvu z'iperereza;
- ku itariki ya 15/05/2017, Niyigaba Jean yandikiwe ibaruwa asabwa ibisobanuro ku makosa yakoze yo kujya mu butumwa bw'akazi ntawe ubumwoherejemo akoresheje urupapuro rw'inzira rwemejwe n'abantu batashoboye kumenyekana;
- ku itariki ya 19/05/2017, Niyigaba Jean yasubije ibaruwa yo ku itariki ya 15/05/2017;
- ku itariki ya 26/05/2017, Niyigaba Jean yakiriye ibaruwa y'Umuyobozi Mukuru wa NISR imumenyesha ko ibisobanuro yatanze ku itariki ya 19/05/2017 bitumvikana;
- ku itariki ya 15/06/2017, Akanama gashinzwe imyitwarire muri NISR katanze raporo y'isesengura ndetse n'ikurikirana ry'ikosa rya Niyigaba Jean ryo kuba yaragiye mu butumwa bw'akazi ntawe umwoherejeyo akoresheje urupapuro rw'inzira rwasinyweho n'abantu batamenyekanye runaterwaho kashe y'Ikigo mu buryo butazwi, iyo raporo ikaba ariyo yashingiweho yirukanwa.

[17] Avuga ko ku itariki ya 22/06/2017, Umuyobozi Mukuru wa NISR yandikiye Minisitiri w'Abakozi ba Leta n'Umurimo agisha inama ku gihano cyahabwa Niyigaba Jean, ku itariki ya 11/08/2017, Minisitiri w'Abakozi ba Leta n'Umurimo amusubiza amugira inama yo kumuha igihano cyo kwirukanwa burundu kubera amakosa yakoze, maze ku itariki ya 30/08/2017, Umuyobozi Mukuru wa NISR amwandikira ibaruwa imwirukana burundu ku kazi.

[18] Me Cyubahiro Fiat kandi akomeza avuga ko ku itariki ya 25/09/2017, Niyigaba Jean yandikiye Umunyamabanga Nshingwabikorwa wa Komisiyo ishinzwe Abakozi ba Leta ajuririra icyemezo cyo kwirukanwa ku kazi, ku itariki ya 19/10/2017, Komisiyo imusubiza ko igihano yahawe gikwiye hashingiwe ku makosa yakoze.

[19] Avuga ko ku itariki ya 03/07/2018, Niyigaba Jean yandikiye Umuyobozi Mukuru wa NISR asaba gusubizwa mu kazi nyuma y'icyemezo cy'Urukiko kimugira umwere ku cyaha yari akurikiranyweho, ku itariki ya 20/07/2018, Umuyobozi Mukuru amusubiza ko ubusabe bwe nta shingiro bufite kuko amakosa yakoze mu kazi akurikiranwa ukwayo bitabangamiye cyangwa ngo bibangamirwe no gukurikiranwa mu rwego rw'Ubushinjacyaha.

[20] Akomeza avuga ko ku itariki ya 03/07/2018, Niyigaba Jean yandikiye kandi na Minisitiri w'Abakozi ba Leta n'Umurimo asaba gusubizwa mu kazi nyuma y'icyemezo cy'Urukiko, maze ku itariki ya 26/07/2018, amusubiza ko ubusabe bwe nta shingiro bufite ashingiye ku Iteka rya Perezida N° 65/01 ryo ku wa 04/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi.

[21] Asobanura ko nyuma yo kutanyurwa n'ibisubizo yagiye ahabwa, Niyigaba Jean yahisemo kwitabaza inzira y'inkiko, aribwo ku itariki ya 04/09/2018, yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge asaba gutesha agaciro (kuvanaho) icyemezo cyo ku itariki ya 30/08/2017 cya NISR kimwirukana mu kazi ngo kuko ibyo yirukaniwe yabigizweho umwere mu rubanza rw'inshinjabyaha.

[22] Me Cyubahiro Fiat akomeza asobanura ko, n'ubwo Niyigaba Jean yagizwe umwere mu rubanza rw'inshinjabyaha, ariko yakoze ikosa ryo mu rwego rw'akazi yagombaga gukurikiranwaho hashingiwe ku biteganywa n'ingingo ya 78 y'Itegeko Nº 86/2013 ryo ku wa 11/09/2013 rishyiraho sitati rusange igenga abakozi ba Leta ryakurikizwaga icyo gihe[1], bityo ko bakurikije iryo Tegeko, amakosa y'akazi

[1] Igihano cy'umukozi wa Leta mu rwego rw'akazi ntikibangamira uburyozwe bw'icyaha n'igihano giteganywa n'amategeko ahana, ku buryo ikosa ry'umukozi wa Leta rishobora gukurikiranwa mu kazi no mu nkiko.

n'uburemere bwayo yagombaga gusuzumwa ukwayo mu buryo bwimbitse, ari nayo mpamvu asanga Niyigaba Jean atarirukaniwe icyaha yagizweho umwere mu rubanza rw'inshinjabyaha, ko ahubwo yirukaniwe ikosa ryo mu rwego rw'akazi. Avuga ko ibyakozwe binubahirije ingingo ya 4, igika cya 5, y'Iteka rya Perezida N° 65/01 ryo ku wa 04/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi[2].

[23] Avuga kandi ko ibikubiye mu ngingo z'amategeko zimaze kuvugwa ari nako Urukiko rw'Ikirenga rwabyemeje mu rubanza RS/INJUST/RAD 00005/2018/SC rwaciwe ku itariki ya 15/03/2019, haburana Umujyi wa Kigali na Ndakengerwa Gasana Aimable mu gika cyarwo cya 28, aho rwavuze ko kuba umuntu adakurikiranywe mu rwego rw'inshinjabyaha, bidakuraho kuba yakurikiranwa mu rwego rw'akazi.

[24] Me Cyubahiro Fiat asoza asaba ko, mu gihe Urukiko rwasanga Niyigaba Jean yarirukanywe mu buryo bukurikije amategeko, rwakuraho icyemezo cyafashwe n'Urukiko Rukuru kandi akishyura NISR indishyi.

[25] Niyigaba Jean na Me Dusenge Vestine umwunganira bavuga ko nta karengane kari mu rubanza NISR isaba ko rwasubirwamo kubera ko ibyaha yari akurikiranyweho mu rubanza rw'inshinjabyaha bikaburirwa ibimenyetso, ari nayo makosa yirukaniwe nk'uko bigaragara mu ibaruwa bamwandikiye ku itariki ya 13/04/2017 n'iyo ku ya 15/05/2017, aho bamubwiraga ko bagiye kumubikira umushahara mu gihe batarabona icyemezo cy'urukiko kimugira umwere ku byo yari akurikiranyweho. Bakomeza bavuga ko kuba ku itariki ya 30/08/2017 yarandikiwe ibaruwa imwirukana mu kazi hashingiwe ku ibaruwa bari baramwandikiye ku itariki ya 15/05/2017, nabyo bigaragaza ko amakosa yirukaniwe ari nayo yari akurikiranyweho mu nkiko, kandi ko ayo makosa yayagizweho umwere.

[26] Bavuga ko Ubushinjacyaha butabashije kugaragaza ibimenyetso bihagije byemeza ko yakoze icyaha cyo kujya mu butumwa bw'akazi ntawe umwoherejeyo akoresheje urupapuro rw'inzira rw'uruhimbano, kandi ko na NISR nta bimenyetso igaragaza bitandukanye n'ibyo Ubushinjacyaha bwashingiyeho bumurega bugatsindwa. Bavuga ko NISR yakagombye kuba igaragaza ibimenyetso bindi byemeza ko koko yakoze amakosa yamwirukaniye, kuko we agaragaza ibimenyetso byerekana ko ayo makosa ntayo yakoze.

[27] Ku bivugwa n'uhagarariye NISR ko ingingo ya 78 ya Sitati rusange igenga abakozi ba Leta ivuga ko igihano cy'umukozi wa Leta mu rwego rw'akazi kitabangamira uburyozwe bw'icyaha n'igihano giteganywa n'amategeko ahana, ku buryo ikosa ry'umukozi wa Leta rishobora gukurikiranwa icyarimwe mu kazi no mu nkiko, Niyigaba Jean na Me Dusenge Vestine umwunganira, bavuga ko icyo iyo ngingo isobanura ari uko uwahamwe n'icyaha ashobora no gukurikiranwa mu rwego rw'akazi. Bakavuga ko iyo Niyigaba Jean aza guhamwa n'icyaha, NISR nayo yashoboraga kumukurikirana ikanamuhana mu rwego rw'akazi, ko ariko itashoboraga kumuhana atarahamwa n'icyaha yari agikurikiranyweho mu nkiko. Bavuga ko kuba ibyo byarabaye binyuranyije n'ingingo ya 80[3] ya Sitati rusange igenga abakozi ba Leta NISR ishingiraho, bigashimangirwa n'ingingo ya 29, agace ka 2 n'aka 5, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe muri 2015 ivuga ko buri muntu wese afite uburenganzira ku butabera buboneye, burimo uburenganzira bwo gufatwa nk'umwere kugeza igihe urukiko rubifitiye ububasha rumuhamirije icyaha, no kutaryozwa icyaha atakoze kuko uburyozwacyaha ari gatozi ku wagikoze.

[28] Bavuga kandi ko nta na hamwe mu mategeko yaba akoreshwa mu Rwanda cyangwa akoreshwa ku rwego mpuzamahanga biteganyijwe ko umukozi ugikurikiranywe n'inkiko, mu rwego rw'akazi ashobora guhanirwa ibyo agikurikiranyweho, ko nta n'aho amategeko ateganya ko uwagizwe umwere n'urukiko, mu rwego rw'akazi ashobora guhanirwa ibyo yagizweho umwere nk'uko NISR yabikoze yirukana Niyigaba Jean.

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[2] 5° ikosa cyangwa igihano byo mu kazi ntibibangamira cyangwa ngo bibangamirwe n'uburyozwe n'uburyo bwo gukurikirana icyaha cyangwa ikosa biteganywa n'amategeko ahana cyangwa agenga uburyozwe bw'indishyi.
[3] Iyo ngingo iteganya ko nta gihano na kimwe gishobora gushyirwa mu bikorwa ikosa ritarahama nyir'ubwite.

[29] Bakomeza bavuga ko, kuba nta makosa yo mu rwego rw'akazi yigeze ahama Niyigaba Jean kubera ko nta bimenyetso NISR yerekana byashingiweho yirukanwa kuko ikosa (icyaha) yakabaye yarakurikiranweho mu rwego rw'akazi ryari ritaramenyekana bitewe ni uko n'iperereza ryari ryaratangijwe n'inzego z'ubutabera ryari rigikorwa, bisobanuye ko yirukanwe mu buryo bunyuranyije n'amategeko. Bavuga ko ibyo n'uru Rukiko rwabitanzeho umurongo mu rubanza RADA 0025/13/CS rumeze kimwe n'uru rwaciwe ku itariki ya 18/09/2015 hagati ya NAEB na Nyirahabimana Athanasie, mu gika cya 18, aho rwavuze ko icyo urukiko rwaciye urubanza rwajuririwe rwemeje ari uko nta bimenyetso NAEB yerekanye byashingiweho Nyirahabimana Athanasie yirukanwa, kuko amakosa yakabaye yarakurikiranyweho yari ataramenyekana bitewe ni uko iperereza ryari rigikorwa, nta n'urubanza yaciriwe rwamuhamije icyaha…, ko ibyo ari nako byagenze kuri Niyigaba Jean kuko nta rukiko rwigeze rumuhamya icyaha (ikosa) yirukaniwe.

[30] Bavuga ko ibyo nanone bigaragara mu murongo wari waratanzwe mu rubanza RADA 0037/10/CS rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 31/07/2012, EWSA yaburanagamo na Ndayobotse Amon, no mu rubanza RADA 0038/09/CS rwaciwe ku ya 25/03/2011 Electrogaz iburana n'uwitwa Niwenshuti Nzaramba Valens. Bavuga ko muri izo manza zombi, Urukiko rw'Ikirenga rwemeje ko iyo umukoresha yirukanye umukozi kubera impamvu runaka, nyuma akagirwa umwere n'umucamanza mu rubanza rw'inshinjabyaha kuri ibyo byaha yari akurikiranyweho, icyo gihe umukoresha ategetswe kubahiriza icyemezo cy'uwo mucamanza.

[31] Niyigaba Jean na Me Dusenge Vestine umwunganira basoza basaba Urukiko ko, mu gihe rwasanga yarirukanwe mu buryo bunyuranyije n'amategeko, rwategeka ko urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane rwagumaho kandi Niyigaba Jean ntagire indishyi acibwa.

UKO URUKIKO RUBIBONA

[32] Impande zombi muri uru rubanza zemeranya ko Niyigaba Jean yakurikiranwe mu rubanza rw'inshinjabyaha akaza kugirwa umwere ku byaha yari akurikiranyweho. Icyo batemeranywaho ni ingaruka z'iryo kurikiranwa mu rwego rw'akazi. Uruhande rwa NISR bavuga ko ibyaha Niyigaba Jean yagizweho umwere atari byo yirukaniwe, ko uretse n'ibyo, kuba umuntu yagirwa umwere mu rubanza rw'inshinjabyaha bidakuraho ko yakurikiranwa mu rwego rw'akazi. Mu gihe ku ruhande rwa Niyigaba Jean bo bavuga ko icyaha yagizweho umwere ari ryo kosa yirukaniwe mu rwego rw'akazi, kandi ko ibyo binyuranyije n'amategeko.

Kumenya niba ibikorwa Niyigaba Jean yirukaniwe aribyo yakurikiranyweho mu rubanza rw'inshinjabyaha akabigirwaho umwere

[33] Dosiye y'urubanza igaragaza ko Niyigaba Jean yarezwe icyaha cyo kwandika cyangwa gukoresha inyandiko yahinduwe cyangwa irimo ibinyoma. Mu gusobanura icyo cyaha, Ubushinjacyaha bwavugaga ko ku itariki ya 11/12/2016, Niyigaba Jean yitabiriye amahugurwa yateguwe na REMA atoherejwe n'Ubuyobozi bwe, ko urupapuro rw'inzira (*ordre de mission*) yakoresheje ari uruhimbano kuko ataruhawe n'Ubuyobozi.

[34] Urukiko rurasanga ku itariki ya 13/04/2018, Urukiko Rwisumbuye rwa Nyarugenge rwaraciye urubanza RP 00597/2017/TGI/NYGE rukemeza ko Niyigaba Jean adahamwa n'icyaha cyo kwandika cyangwa gukoresha inyandiko yahinduwe cyangwa irimo ibinyoma. Muri urwo rubanza, urukiko rwasanze ibimenyetso byatanzwe n'Ubushinjacyaha bitemeza mu buryo budashidikanywaho ko Niyigaba Jean yakoze icyaha cyo kwandika cyangwa gukoresha inyandiko yahinduwe cyangwa irimo ibinyoma, bityo rumugira umwere.

[35] Dosiye igaragaza kandi ibi bikurikira:

- Ku itariki ya 13/04/2017, NISR yandikiye Niyigaba Jean ibaruwa imuhagarika by'agateganyo kubera ko yafashwe agafungwa aregwa kuba yaragiye mu butumwa bw'akazi atoherejwemo n'Ikigo akoresheje urupapuro rw'inzira rwemejwe n'abantu batabashije kumenyekana.

- Ku itariki ya 11/05/2017, Niyigaba Jean yandikiye NISR ibaruwa ayimenyesha ko yafugunguwe ku itariki ya 10/05/2017, bityo ko asaba kugaruka ku kazi no guhabwa umushahara yabikiwe.
- Ku itariki ya 15/05/2017, NISR yandikiye Niyigaba Jean imumenyesha ko imishahara ye izakomeza kubikwa mu gihe hari hagitegerejwe umwanzuro wa nyuma w'urukiko rumugira umwere kuko yari agikurikiranwa n'ubwo yari yarafunguwe by'agateganyo. Baboneyeho no kumumenyesha ko, harebwe ikibazo aregwa kigomba gukurikiranwa n'ubuyobozi, ahagaritswe by'agateganyo mu gihe bari bagisuzumana ubushishozi ikosa ryamugaragayeho.
- Kuri iyo tariki ya 15/05/2017 kandi, NISR yandikiye Niyigaba Jean ibaruwa imusaba ibisobanuro. Muri iyo baruwa, bamubwiraga ko kuba yarafunzwe azira kujya mu butumwa bw'akazi kandi Ikigo kitaramwohereje ndetse n'urupapuro rw'inzira yakoresheje rukaba rwaremejwe n'abantu batashoboye kumenyekana, basanga ari ikosa rikomeye agomba gutangira ibisobanuro.
- Raporo y'isesengura ndetse n'ikurikirana ry'ikosa rya Niyigaba Jean yakozwe n'akanama gashinzwe imyitwarire muri NISR yakozwe ku itariki ya 15/06/2017. Muri iyo raporo, ako kanama kemeje ko Niyigaba Jean yakoze amakosa abiri ariyo kwiyohereza mu butumwa bw'akazi nta muyobozi n'umwe w'Ikigo akorera wamwohereje, no kuba yarakoresheje ordre de mission itemejwe n'abayobozi babifitiye ububasha ndetse iriho kashe ya NISR. Iyo raporo kandi iri mu byashingiweho mu kwirukana Niyigaba Jean.
- Ku itariki ya 30/08/2017, NISR yandikiye Niyigaba Jean ibaruwa imwirukana burundu ku kazi. Muri iyo baruwa bagarutse ku yo bamwandikiye ku itariki ya 15/05/2017 ifite nimero 0288[4]. Nk'uko byibukijwe haruguru, muri iyo baruwa bamubwiraga ko badashobora kumugarura ku kazi batarabona umwanzuro wa nyuma w'urukiko rumugira umwere.

[36] Hashingiwe ku nyandiko zigize dosiye zagaragajwe haruguru, Urukiko rurasanga icyaha Niyigaba Jean yakurikiranyweho mu Rukiko ari ugukoresha urupapuro rw'inzira (*ordre de mission*) rw'uruhimbano, iryo akaba ari naryo kosa yirukaniwe kuko Ubuyobozi bwavugaga ko yiyohereje mu butumwa nta muyobozi n'umwe w'Ikigo wamwohereje akoresheje urupapuro rw'inzira rw'uruhimbano.

[37] Urukiko rurasanga kandi, harebwe inyandiko zavuzwe haruguru, n'ubuyobozi bwa NISR bwaremeraga ko ikosa Niyigaba Jean yahaniwe ari naryo yari akurikiranyweho mu Rukiko, cyane cyane aho mu ibaruwa yo ku itariki ya 13/04/2017 yavuzwe haruguru, ubwo buyobozi bwamubwiye ko ahagaritswe ku kazi hashingiwe ku kuba yarafashwe na Polisi agashyikirizwa Ubushinjacyaha ku birego bijyanye no kuba yaragiye mu butumwa bw'akazi kandi Ikigo kitamwohereje ndetse n'urupapuro rw'inzira yakoresheje rwaremejwe n'abantu batamenyekanye. Ibi byanagarutsweho muri raporo yakozwe n'akanama gashinzwe imyitwarire muri NISR, kandi nk'uko byibukijwe haruguru, iyo raporo iri mu byashingiweho Niyigaba Jean yirukanwa.

[38] Ikindi cyerekana ko icyo NISR yirukaniye Niyigaba Jean ari nacyo yari akurikiranyweho mu rukiko, ni ibaruwa nimero 0288/2017/10/NISR yo ku itariki ya 15/05/2017, aho yamwangiraga kugaruka ku kazi imumenyesha ko izakomeza kumubikira umushahara mu gihe bagitegereje umwanzuro wa nyuma umugira umwere. Ibyo babishingiye ku ngingo ya 41, igika cya 2[5], y'Itegeko Nº 86/2013 ryo ku wa 11/09/2013 rishyiraho sitati rusange igenga abakozi ba Leta yakurikizwaga icyo gihe, iteganya ko iyo umukozi afunguwe ari umwere cyangwa iyo nta kosa ryamuhamye, ahabwa imishahara ye yose uko yayibikiwe. Kandi nk'uko byibukijwe haruguru, mu kumwirukana iyo baruwa yagarutsweho.

[39] Ku bivugwa n'uhagarariye NISR ko ikosa ryatumye Niyigaba Jean yirukanwa ari ukwiha ubutumwa akubujyamo ubuyobozi butabizi, mu gihe mu rubanza rw'inshinjabyaha yari akurikiranyweho guhimba no gukoresha inyandiko yahinduwe, Urukiko rurasanga, uretse amagambo akoreshwa gusa, byombi bisobanuye kimwe. NISR yamwirukanye ivuga ko yiyohereje mu butumwa akoresheje

[4] Habayeho kwibeshya bandika ko ari iyo ku itariki ya 15/05/2014.
[5] Muri iyo baruwa baribeshye bavuga ko ari igika giheruka.

urupapuro rw'inzira rw'uruhimbano, Urukiko rwemeza ko atari we wiyohereje muri ubwo butumwa kubera ko Ubushinjacyaha butashoboye kurugaragariza ko urupapuro rw'inzira yakoresheje rwahimbwe.

[40] Hashingiwe ku bisobanuro byose bimaze gutangwa, Urukiko rurasanga ibikorwa bigize ikosa Niyigaba Jean yahaniwe ari nabyo byari bigize icyaha yagizweho umwere n'Urukiko.

Ku birebana no kumenya niba mu rwego rw'akazi umuntu yahanirwa ibikorwa yakurikiranyweho mu rubanza rw'inshinjabyaha akabigirwaho umwere

[41] Ingingo ya 78 y'Itegeko N° 86/2013 ryo ku wa 11/09/2013 rishyiraho sitati rusange igenga abakozi ba Leta ryakurikizwaga igihe Niyigaba Jean yirukanwaga, iteganya ko igihano cy'umukozi wa Leta mu rwego rw'akazi kitabangamira uburyozwe bw'icyaha n'igihano giteganywa n'amategeko ahana, ku buryo ikosa ry'umukozi wa Leta rishobora gukurikiranwa mu kazi no mu nkiko.

[42] Mu rubanza RS/INJUST/RSOC 00001/2019/SC[6] rwaciwe n'uru Rukiko ku itariki ya 31/01/2020, haburana Niwemugeni Jeannette na KCB Bank Ltd, Urukiko rwasobanuye ko ingingo imaze kuvugwa igomba kumvikana mu buryo bukurikira:

- Kuba umukozi yaragizwe umwere cyangwa atarakurikiranywe mu rwego rw'inshinjabyaha, ntibibuza ko afatirwa ibihano mu rwego rw'akazi hashingiwe ku mpamvu z'uko ikirego cy'inshinjabyaha mu nkiko ntaho gihuriye n'ibihano byo mu rwego rw'akazi bikomoka ku ikosa. Ibi ni nako byemejwe mu rubanza RS/REV/INJUST/RAD 00005/2018/SC Umujyi wa Kigali waburanagamo na Ndakengerwa Gasana Aimable[7].
- Habaho irengayobora igihe umucamanza wo mu rwego rw'imanza z'inshinjabyaha yafashe icyemezo gihamya ko ibikorwa bikurikiranywe ku mukozi byabayeho cyangwa bitabayeho nta gushidikanya. Bisobanuye ko icyo gihe, urwego rw'ubutegetsi ruba rugomba kubahiriza ibyategetswe mu rubanza rw'inshinjabyaha.

[43] Ikibazo kirebana no kumenya niba mu rwego rw'akazi umuntu yahanirwa ibikorwa yagizweho umwere n'urukiko mu rubanza rw'inshinjabyaha, uru Rukiko rwabisuzumye no mu zindi manza:

- Mu rubanza Leta y'u Rwanda (*Rwanda Civil Aviation*) yaburanagamo na Nkongori John[8], hashingiwe ku kuba urubanza RPA 0079/05/HC/KIG rwaragaragaje ko icyaha Nkongori John n'abo bari kumwe kitabahama, uru Rukiko rwemeje ko ntaho rwahera ruvuga ko habayeho ikosa ryo mu rwego rw'akazi ku ruhande rwa Nkongori John ryerekeye imicungire mibi y'ibya Leta ryari ryarabaye intandaro yo kumuhagarika mu kazi, rwemeza ko yirukanwe mu buryo bunyuranyije n'amategeko.
- Mu rubanza Niwenshuti Nzaramba Valens yaburanagamo n'icyahoze ari Electrogaz[9], Urukiko rwavuze ko ntaho rwaherarwemeza ko yirukaniwe impamvu zumvikana, kubera ko rwasanze ibyo Electrogaz yavugaga ko hari ibyaha yashinjwena Manyurane Albert n'abandi baturage nta shingiro bifite kuko ibyo byasuzumwe n'umucamanza waciye urubanza rw'inshinjabyaha agasanga ibyo bamushinja bidafite gihamya, kandi Electrogaz ikaba nta yandi makosa yerekanaga Niwenshuti Nzaramba Valens yakoze uretse ayo nyine umucamanza yaburiye gihamya.
- Mu rubanza EWSA yaburanagamo na Ndayobotse Amon[10], mu gusubiza imvugo y'uwaburaniraga Leta ko kuba umwere mu rubanza rw'inshinjabyaha bidakuraho amakosa umukozi yahanirwa mu rwego rw'akazi, Urukiko rwavuze ko kuba ibikorwa EWSA yashingiyeho yirukana Ndayobotse Amon ari nabyo yarezwe mu rukiko mpanabyaha nyuma rukemeza ko bitamuhama, kandi hakaba nta yandi makosa EWSA yagaragaje yashingiyeho

[6] Urubanza RS/INJUST/RSOC 00001/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 31/01/2020, igikacya 46.
[7] Urubanza RS/REV/INJUST/RAD 00005/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 15/03/2019,igika cya 28.
[8] Urubanza RADA 0012/07/CS rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 27/03/2009, igika cya 55 n'icya56.
[9] Urubanza RADA 0021/09/CS rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 25/03/2011, igika cya 9, icya 10n'icya 12.
[10] Urubanza RADA 0037/10/CS rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 31/07/2011, igika cya 14.

imwirukana uretse ayo urukiko rwaburiye ibimenyetso, byafatwa ko Ndayobotse Amon yirukanwe hatagaragajwe impamvu yumvikana.

[44] Umurongo watanzwe n'Urukiko rw'Ikirenga uhura kandi n'ugaragara mu rubanza rwaciwe n'Urukiko rw'imanza z'ubutegetsi (*Conseil d'Etat*) rwo mu Bufaransa, aho rwemeje ko muri rusange ibyemezo byafashwe mu rubanza rw'inshinjabyaha atari itegeko kubikurikiza mu gihe hafatwa ibyemezo byo mu rwego rw'ubutegetsi, uretse ku birebana n'ibyabaye byemejwe mu rubanza rw'inshinjabyaha biri ngombwa kubishingiraho mu gufata ibyo byemezo. Urwo Rukiko rwavuze ko ariko ibyo bitandutakanye no mu gihe ibyemezo byo mu rwego rw'ubutegetsi byashingiye ku bikorwa bigize icyaha, ko muri icyo gihe, ibyo byemezo biba bigomba kubahiriza ibyemejwe n'umucamanza w'inshinjabyaha. (*…que si, en principe, l'autorité de la chose jugée au pénal ne s'impose aux autorités et juridictions administratives qu'en ce qui concerne les constations de fait que les juges repressifs ont retenues et qui sont le support nécessaire de leurs décisions, il en est autrement lorsque la légalité d'une décision administrative est subordonnée à la condition que les faits qui servent de fondement à cette décision constituent une infraction pénale ; que, dans cette dernière hypothèse, l'autorité de la chose jugée s'étend exceptionnellement à la qualification juridique donnée aux faits par le juge pénal*)[11].

[45] Urukiko rurasanga icyumvikana mu manza zagaragajwe haruguru, ari uko mu gihe umukozi yakurikiranwe n'inkiko ku bikorwa bigize icyaha yakekwagaho nyuma akabigirwaho umwere mu rubanza rwabaye itegeko, umukoresha we ntashobora guhindukira ngo amufatire ibihano byo mu rwego rw'ubutegetsi kuri bya bikorwa yagizweho umwere.

[46] Mu rubanza Umujyi wa Kigali waburanagamo na Ndakengerwa Aimable, uhagarariye NISR aburanisha, Urukiko rwasanze kuba dosiye yarashyinguwe n'Ubushinjacyaha ntacyo byamumarira (Ndakengerwa Aimable), kuko kuba umuntu adakurikiranywe mu rwego rw'inshinjabyaha bidakuraho kuba yakurikiranwa mu rwego rw'akazi. Ibi binajyanye n'ihame ubushinjacyaha bugenderaho ryo gukurikirana cyangwa kudakurikirana uwo bukekaho icyaha (*le principe de l'opportunité de poursuite*). Nk'uko byibukijwe haruguru kandi mu gika cya 42, uwo murongo uru Rukiko rwongeye kuwushimangira no mu rubanza rwa Niwemugeni Jeannette na KCB Bank Ltd. Urukiko rurasanga ariko uwo murongo udahura n'uru rubanza kubera ko Niyigaba Jean we yarakurikiranywe agezwa imbere y'urukiko.

[47] Kuba rero Niyigaba Jean yarirukaniwe kujya mu butumwa bw'akazi ntawe ubumwoherejemo, NISR ikavuga ko yakoresheje urupapuro rw'inzira rw'uruhimbano kugira ngo ashobore kujya muri ubwo butumwa, nyuma yo kubona ko mu rubanza rw'inshinjabyaha yari yarakurikiranwe ku cyaha cyo guhimba inyandiko gishingiye kuri urwo rupapuro akaza kukigirwaho umwere kubera ko Ubushinjacyaha butashoboye kugaragaza ibimenyetso ko urwo rupapuro rwahimbwe koko, Urukiko rurasanga ibyo byerekana ko Niyigaba Jean atiyohereje mu butumwa bw'akazi.

[48] Kuba nanone NISR yarihutiye kumwirukana idategereje icyemezo cy'urukiko, nyuma akaza kugirwa umwere ku bikorwa bigize ikosa yirukaniwe, nk'uko n'Urukiko Rukuru rwabibonye, n'uru Rukiko rurasanga NISR yaramwirukanye mu buryo bunyuranyije n'amategeko, kuko ibikorwa bigize ikosa yamwirukaniye Urukiko rwasanze ntabyabayeho.

[49] Hashingiwe ku bisobanuro byose byatanzwe haruguru, Urukiko rurasanga nta karengane kagaragara mu rubanza RADA 00008/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 22/10/2021, bityo ikirego cyatanzwe na NISR isaba kurusubirishamo kikaba nta shingiro gifite.

2. Ku bijyanye n'indishyi zisabwa muri uru rubanza

[50] Me Cyubahiro Fiat uburanira NISR, avuga ko Ikigo ahagarariye gisaba igihembo cya Avoka kingana na 1.000.000 Frw kuri uru rwego.

[11] Conseil d'Etat, Assemblée, du 8 janvier 1971, 77800, publié au rueil Lebon.

[51] Niyigaba Jean na Me Dusenge Vestine umwunganira bavuga ko nta kosa yakoreye NISR kuko ibyo yari akurikiranyweho yabigizweho umwere n'Urukiko. Bavuga ko ahubwo NISR ari yo yamurenganyije igatuma ajya mu manza kuko yamwirukaniye ikosa ryari rigisuzumwa mu rwego rw'ubutabera, ndetse akaba yaraje no kurigirwaho umwere. Bavuga ko kuba NISR itagaragaza irindi kosa yaba yarakoze ngo abe ariryo yirukaniwe ibyo isaba nta gaciro byahabwa, bityo Niyigaba Jean akaba atagomba kubazwa igihembo cya Avoka waburaniye NISR.

[52] Bavuga ko bashingiye ku ngingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, basaba Urukiko rw'Ikirenga gutegeka NISR gusubiza Niyigaba Jean amafaranga yakoresheje mu gukurikirana urubanza yamushoyemo nyuma y'akarengane yamukoreye imwirukana mu buryo bunyuranyije n'amategeko. Amafaranga asaba gusubizwa akaba ari 3.000.000 Frw y'igihembo cya Avoka wamuburaniye mu manza zose yamushoyemo.

[53] Me Cyubahiro Fiat avuga ko indishyi zisabwa na Niyigaba Jean ntazo akwiye guhabwa kuko ikosa yahaniwe yarikoze kandi ryamuhamye mu rwego rw'akazi.

UKO URUKIKO RUBIBONA

[54] Urukiko rurasanga amafaranga y'igihembo cya Avoka asabwa na NISR muri uru rubanza ntayo igomba guhabwa kuko ntacyo itsindiye.

[55] Urukiko rurasanga amafaranga y'igihembo cya Avoka Niyigaba Jean asaba ayakwiriye kuko ariwe utsinze urubanza, ariko agahabwa ayo kuri uru rwego gusa kuko ayo ku zindi nzego yarangije kuyagenerwa mu manza zabanje. Akaba agomba guhabwa 500.000 Frw agenwe mu bushishozi bw'urukiko.

III. ICYEMEZO CY'URUKIKO

[56] Rwemeje ko ikirego cyatanzwe n'Ikigo cy'Igihugu gishinzwe ibarurishamibare mu Rwanda (NISR) gisaba gusubirishamo ku mpamvu z'akarengane RADA 00008/2020/HC/KIG, rwaciwe n'Urukiko Rukuru ku itariki ya 22/10/2021, nta shingiro gifite.

[57] Rwemeje ko nta karengane kabaye muri urwo rubanza.

[58] Rutegetse Ikigo cy'Igihugu gishinzwe ibarurishamibare mu Rwanda (NISR) guha Niyigaba Jean 500.000 Frw y'igihembo cya Avoka kuri uru rwego.