

RWANDA / JUDGMENT

Re EXCEL SECURITY RWANDA LTD

RLR V.2-2025

COURT

Supreme Court

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RS/INCONST/SPEC 00003/2022/SC

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Text

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Re EXCEL SECURITY RWANDA LTD [Rwanda SUPREME COURT – RS/INCONST/SPEC 00003/2022/SC– (Ntezilyayo, P. J., Cyanzayire, Mukamulisa, Hitiyaremye and Kazungu, J.) December 22, 2023]

Constitution – The principle of equality before the law and of non-discrimination – The fact that the requirements for private security service providers differ from those for other types of businesses, based on the nature of each business, cannot be considered discrimination against them on ground that businesses that do not belong to the same category cannot be treated alike, especially when they are governed by different laws.

Constitution – The Right to due process of law – The requirement that an appeal against the revocation of a private security service license must first be submitted to the Minister before taking the matter to court cannot be considered as a denial of the right to due process of law. Instead, it serves as a mechanism to rectify a decision made at the initial level in case it was unlawfully issued. However, this does not prevent the aggrieved party from seeking judicial recourse.

Constitution – National security and public safety – Private security service businesses cannot be treated in the same way as other types of businesses, given that their unique nature, their operation and regulation must be a

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specific framework and be overseen by a competent authority with the necessary expertise and mandate. Constitution – Security organs – Rwanda National Police – Responsibilities of Rwanda National Police – Private security companies responsible for ensuring the safety and security of persons and property are required to submit operational reports to Rwanda National Police on the security situation which aligns with the Police's mandate, as it holds the primary responsibility for ensuring the security of people and property countrywide. Facts: Excel Security Rwanda Ltd, as a private security service company, filed a petition before the Supreme Court, seeking to declare some articles of the law governing private security services unconstitutional. Specifically, the Company argues that article 5, article 6 subparagraphs 6°, 7°, 8°, and 9°, articles 13, 19, 30, 31, and 37 of Law n° 16bis/2020 of 07/09/2020 governing private security services, contradict with the principles enshrined in articles 15, 16, 23, 29, 37, and 159 of the Constitution, as their nature constitute serious discrimination, while others demonstrate the violation of the rights and freedoms of private security service providers in general and of it in particular. The Petitioner claims that article five (5) of the aforementioned Law is inconsistent with the provisions of article 159 of the Constitution, which entitles to the Police the powers and responsibilities of a regulatory body that are different from the responsibilities assigned to it by the Constitution. Article 6, subparagraphs 6°, 7°, 8° and 9° of the aforementioned Law sets out the requirements that a

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private company intending to provide security services must meet, including a document indicating its assets with a value determined by a Ministerial Order, while other commercial entities are not subject to this requirement; this clearly constitutes discrimination and oppression against private companies that provide security services. The Petitioner further states that article 13 also implies discrimination against private security service providers because they are required to have basic equipments (cameras, detectors, scanners) specified in the contract between the service provider and the client or the owner of the building, while cleaning service providers are not required to provide basic cleaning equipments. The Petitioner concludes by submitting that article 37 of the aforementioned Law also appears discriminatory, whereby a private security service provider is subject to an administrative fine if s/he provides security service without the approval of the Police, which is inconsistent with article 15 of the Constitution. The Government of Rwanda was summoned in this instant case and stated that the impugned articles do not constitute any discrimination, because the fact that there was a difference in requirements based on the provide services cannot be considered as discrimination, nor does it violate the principle of equal treatment before the law. The Government of Rwanda explains that articles 159 and 161 of the Constitution indicate that Rwanda National Police already has regulatory powers because it is responsible for ensuring the safety and security of persons and property in general throughout the country as

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provided for in the Law determining the governing principles, powers, responsibilities, organisation and functioning of Rwanda National Police. This means that Rwanda National Police has the powers and responsibilities to act as a regulatory body for private sectors ensuring the safety and security of persons and property and to advise them on how to discharge their responsibilities. Private companies wishing to provide such a service are granted special authorisation by Rwanda National Police, which also has the power to revoke it at any time if they fail to comply with the required standards. The Government concludes by submitting that not entitling such powers to Rwanda National Police would be, rather, unconstitutional. Held: 1. The fact that the requirements for private security service providers differ from those for other businesses based on the nature of each type of business cannot be considered discrimination, as businesses in different categories cannot be treated alike, especially when the laws governing them are also different.

2. The fact that the appeal to the revocation of a private security service license must first be submitted to the Minister before taking the matter to court cannot be considered as a denial of the right to due process of law, rather, it serves as a mechanism to rectify any decision made at the first level in case it was unlawfully taken; however, this does not prevent the aggrieved party from seeking judicial recourse.
3. Private security service businesses cannot be treated in the same way as other types of businesses, given that their

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unique nature, their operation and regulation must be a specific framework and be overseen by a competent authority with the necessary expertise and mandate.

4. Private security companies responsible for ensuring the safety and security of persons and property are required to submit operational reports to Rwanda National Police on the security situation which aligns with the Police's mandate, as it holds the primary responsibility for ensuring the security of people and property countrywide. Petition seeking to declare that the provisions of law are inconsistent with the Constitution of the Republic of Rwanda lacks merit.

Statutory and statutes referred to: Constitution of the Republic of Rwanda of 04/08/2023, article 29, 159 and 161; Constitution of the Republic of Rwanda of 2003 revised in 2015, in its articles 15, 16, 23, 37, 159; International Covenant on Civil and Political Rights, article 14, 17 and 18; European Convention on Human rights as amended by Protocol no 11 and 14, article 8; Law n° 026/2023 of 17/05/2023 governing Rwanda National Police, article 9, 10 and 34; Law n° 016 bis/2020 of 07/09/2020 governing private security services, article 5, 6, 13, 19, 30, 31, and 37;

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Law no 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, article 75 and 177; Law no 48/2017 of 23/09/2017 governing the National Bank of Rwanda, article 6; Law n° 09/2017 of 20/03/2017 modifying and complementing Law n° 46/2010 of 14/12/2010 determining the powers, responsibilities, organization and functioning of Rwanda National Police, article 8; Law n°46/2010 of 14/12/2010 determining the powers, responsibilities, organization and functioning of Rwanda National Police, article 41. Case laws referred to: RS/INCONST/SPEC 00004/2021/SC, Ngendahayo Kabuye v. Government of Rwanda rendered by the Supreme Court on 10/02/2023; RS/INCONST/SPEC 00004/2019/SC, Counsel Nzafashwanayo Dieudonné v. Government of Rwanda rendered on 24/07/2020.

Judgment**I. BACKGROUND OF THE CASE**

EXCEL SECURITY Rwanda Ltd filed a claim before the Supreme Court, requesting it to declare that article 5, article 6 subparagraphs 6°, 7°, 8°, 9°, and 10°, article 13, article 19, article 30, article 31 paragraph 2, and article 37 of Law n° 016 bis/2020 of 07/09/2020

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governing private security services, are inconsistent with the Constitution of the Republic of Rwanda (hereinafter referred to as "the Constitution"), specifically its articles 15, 16, 23, 37, and 159. The case was registered under RS/INCONST/SPEC 00003/2022/SC.

EXCEL SECURITY Rwanda Ltd states that, after the publication of Law n° 016 bis/2020 of 07/09/2020 above mentioned, it found that some of its articles are inconsistent with the Constitution because their nature reflects significant discrimination, while others imply the violation of the rights and freedoms of private security service providers in general, and of EXCEL SECURITY Rwanda Ltd in particular.

Counsel Cyubahiro Fiat, representing the Government of Rwanda, states that the provisions of law challenged by EXCEL SECURITY Rwanda Ltd do not constitute any form of discrimination because the fact that there has been distinction of the requirements based on the type of services provided by people, this cannot be considered discrimination nor does it violate the principle of equality before the law.

The hearing was conducted on 24/07/2023, and the Court notified the parties that the judgment will be pronounced on 29/09/2023. On 14/08/2023, Nshuti Rugerinyange, the Managing Director of EXCEL SECURITY Rwanda Ltd, submitted an additional defense submission to the Court through IECMS, requesting it to be received and examined because he was unable to attend the hearing as he had traveled to the United States for medical treatment of backache. He further stated that, as

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an expert in this profession, he had essential clarifications regarding the responses provided by the Company's representative to the questions posed by the Court during the hearing. The Court found that this submission could not be considered as it was made in violation of article 75 of Law no 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure.¹

While the case RS/INCONST/SPEC 00003/2023/SC was still pending for pronouncement, on 04/08/2023, a revised Constitution was enacted, amending the 2003 Constitution revised in 2015. The claimant had based the claim on the previous Constitution, arguing that certain legal provisions were inconsistent with it. The Court found it necessary to reopen the hearing to allow EXCEL SECURITY Rwanda Ltd to align its claim with the provisions of the new

¹ Article 75 of Law no 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, provides that in general, no documents, submission, brief or pleading notes may be deposited with the court after the pretrial conference. However, any time before the hearing, if there is a new and relevant document or fact which can help to demonstrate the truth that is discovered by one of the parties, the concerned party may present it to the court for it to decide on its admission. If the hearing is closed, the party applies for the re-opening thereof. The court determines at its sole discretion whether it is necessary to re-open the hearing when it finds that it will rely on the new fact to decide the case. Before taking the decision and upon its own motion, the court may re-open the hearing if it finds that it needs further clarifications on some facts which remained unclarified in the hearing for the establishment of the truth. If the reopening of the hearing is ordered, the court determines the date, place and time of appearance of parties for the hearing.

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Constitution. The hearing was rescheduled for 28/11/2023.

On that day, all parties appeared before the Court, with Counsel Mfashingabo Aimable representing EXCEL SECURITY Rwanda Ltd and the Government of Rwanda was represented by Counsel Kabibi Spéciose.

In the additional submissions made regarding the alignment of the provisions of the 2015 revised Constitution of the Republic of Rwanda, on which the claimant had based the claim, with the Constitution of the Republic of Rwanda promulgated on 04/08/2023, Counsel Mfashingabo Aimable and Counsel Kabibi Spéciose agreed that articles 15, 16, 23, 29, 37, and 48 of the 2015 revised Constitution remained unchanged in the 2023 Constitution. However, article 158 became article 159, and article 160 became article 161.

Legal issues to be analysed in this instant case: a. Whether article 5, article 6, subparagraphs 6°, 7°, 8°, and 9°, article 13, and article 37 of Law n° 016 bis/2020 of 07/09/2020 governing private security services are inconsistent with articles 15, 16, and 159 of the Constitution; b. Whether article 19 of Law n° 016 bis/2020 of 07/09/2020 governing private security services is inconsistent with article 29 (3°) of the Constitution; c. Whether article 6, subparagraph 10° of Law n° 016 bis/2020 of 07/09/2020 governing private

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security services violates the principle of freedom of opinion as provided for in article 37 of the Constitution; d. Whether articles 30 and 31 of Law n° 016 bis/2020 of 07/09/2020 governing private security services violate the principle of respect for privacy of a person and of family as provided for in article 23 of the Constitution. I. ANALYSIS OF LEGAL ISSUES A. Whether article 5, article 6, subparagraphs 6°, 7°, 8°, and 9°, article 13, and article 37 of Law n° 016 bis/2020 of 07/09/2020 governing private security services are inconsistent with articles 15, 16, and 159 of the Constitution

Counsel Mfashingabo Aimable, representing EXCEL SECURITY Rwanda Ltd, states that article 5 of Law n° 016 bis/2020 of 07/09/2020, above mentioned, is inconsistent with the provisions of article 159 of the Constitution² because it entitles to the Police powers and responsibilities of a regulatory body, which differ from the mandate assigned to it by the Constitution.

² The State has the following defence and security organs: 1° Rwanda Defence Force; 2° Rwanda National Police; 3° National Intelligence and Security Service. A law may determine other security organs. National defence and security organs collaborate and coordinate their activities in fulfilment of their respective responsibilities. A presidential order determines the manner in which these organs collaborate and coordinate their activities.

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Counsel Mfashingabo Aimable further submits that the article 6, subparagraph 6°, 7°, 8°, and 9° as well as articles 13 and 37 of Law n° 016 bis/2020 of 07/09/2020 above mentioned, are inconsistent with articles 15 and 16 of the Constitution³, based on the following reasons: a. Article 6, subparagraph 6 of Law n° 016 bis/2020 of 07/09/2020, above mentioned, requires to an applicant seeking a license to provide private security services to first present a document indicating the assets of the licence applicant whose value is determined by an Order of the Minister. He considers this to be discriminatory and restrictive towards private security service providers, as other businesses providing different services are not required to present ownership of assets other than the capital before commencing operations. b. Article 6, subparagraph 7° of the mentioned Law provides that that anyone seeking to provide private security services must present a document indicating that the building

3 Article 15 of the Constitution provides that all human beings are equal before the law. They enjoy equal protection of the law.” while article 16 of the Constitution provides: (1) All Rwandans are born and remain equal in rights and freedoms. (2) Any form of or propaganda for discrimination, including on the basis of ethnicity, family or descent, clan, skin, colour, sex, region, social status, religion or belief, opinion, wealth, cultural differences, language, economic status, physical or mental disability or any other form of discrimination are prohibited and punishable by law.

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housing the head office of the applicant for a licence to provide private security services meets the requirements of the building code. This requirement contradicts with article 15 of the Constitution because such security services are provided in various locations, including clients’ homes and buildings where security guards are needed, similar to how cleaning services are offered in homes, government offices and private companies, restaurants and hospitals while providers of such cleaning services are not required to present a document proving that their headquarters comply with construction code. Therefore, this requirement constitutes discrimination against private security service providers. c. The fact that article 6, subparagraphs 8° and 9° require to applicants seeking to provide private security services to present a document proving that they have a training centre that fulfils requirements determined by Rwanda National Police or an agreement the applicant has with a training centre recognised by Rwanda National Police, as well as a training syllabus and trainers’ curriculum vitae satisfying standards determined by Rwanda National Police, also violates the principle provided for in articles 15 and 16 of the Constitution on grounds that providers of other services like banking, insurance, or cleaning are not subject to

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similar requirements, which is a restrictive measure for private security service providers. d. Article 13 of Law n° 016 bis/2020 of 07/09/2020 above mentioned, requires to applicants seeking to provide private security services to present basic security equipment, which also constitutes discrimination and imposes restrictions on private security service companies, despite the fact that these services are provided in various locations, including clients’ homes and buildings where security guards are needed. Requiring them to first present basic equipment such as cameras, detectors, and scanners are usually determined through agreements between the service provider and the client or the owner of the building seeking for security service while cleaning service providers are not required to present basic cleaning equipment, this also constitutes a restrictive measure for such services. e. Article 37 of Law No 016 bis/2020 of 07/09/2020, above referred to, discriminates against private security service providers and is contrary to Article 15 of the Constitution, in that it provides that any private security service provider who has not been authorised by the Rwandan National Police shall be liable to an administrative fine of not less than two million Rwandan francs (Frw 2,000,000)

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and not more than three million Rwandan francs (Frw 3,000,000).

Counsel Cyubahiro Fiat, representing the Government of Rwanda, states that the claims made by the petitioner are unfounded based on the following

reasons:

- a. Articles 159 and 161 of the Constitution stipulate that Rwanda National Police has the regulatory power alleged by EXCEL SECURITY Rwanda Ltd, and this power does not stem from the legal provisions challenged in this instant case, as it is generally responsible for ensuring the security of people and property nationwide. Furthermore, the law establishes the guiding principles, powers, responsibilities, organization, and functioning of Rwanda National Police. Therefore, the powers of the Rwanda National Police should be assessed within this law. b. Article 41 of Law N°46/2010 of 14/12/2010 determining the powers, responsibilities, organization and functioning of Rwanda National Police relating to collaboration between Rwanda National Police with private security companies provides that the Rwanda National Police oversees the daily performance of private security companies and provide them with advice on the improvement of their performance. Rwanda

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National Police has the powers and responsibilities to act as a regulatory body for private security services providers ensuring the security of people and property, including offering them advice on how to enhance the fulfillment of their duties. c. Article 5 of Law N° 016 bis/2020 of 07/09/2020 above mentioned, is not inconsistent with article 159 of the Constitution. Instead, it aligns with the provisions of article 8 of Law N° 09/2017 of 20/03/2017 which amends and supplements Law N°46/2010 of 14/12/2010 determining the powers, responsibilities, organization and functioning of the Rwanda National Police. This law stipulates that in the accomplishment of its mission, Rwanda National Police prioritizes the following activities: ... (12) to issue operating licences to any person who intends to register a private security company. d. The powers of the Rwanda National Police to oversee the daily performance of private security companies and provide them with advice on the improvement of their performance is derived from article 41 of Law N°46/2010 of 14/12/2010 as above mentioned, instead of being from article 5 of Law n° 016 bis/2020 of 07/09/2020 also above mentioned. Others can only perform such service if granted specific licence by

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the Rwanda National Police. Therefore, those to whom the Rwanda National Police has granted this power remain subject to its supervision and may have it revoked at any time if they fail to properly exercise it. Not entitling such power to the Rwanda National Police would constitute a

violation of the Constitution. e. The fact that the Police oversees private security service companies is not unique to Rwanda because it is also applied in other countries. For example, in Uganda, UPS (Uganda Police Service)⁴, in Tanzania, TPF (Tanzania Police Force)⁵, and in Ethiopia, FPC (Federal Police Commission)⁶, Police oversee private security service providers, it annually grants to them the licenses, it oversees, inspects the weapons used, and their arsenal.

By providing detailed explanations to this present case, the representative of the Government of Rwanda relied on the interpretations given by legal experts regarding the principles set forth in articles 15 and 16 of the Constitution, namely equality before the law, equal

4 See Statutory Instrument No.11 of 2013, online at <https://www.upf.go.ug/police-tightens-control-private-security-companies>. 5 Online at <https://observatoire-securite-privee.org/en/content/tanzania>. 6 Online at <https://newbusinessethiopia.com/crime/ethiopia-bans-14-private-security-agencies>.

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protection before the law, and protection from discrimination, and he explains those principles as follows : a. “Equal treatment in equal circumstances” is a principle which means that people should be treated alike when they are in the same circumstances, which means that in case they are in different circumstances, they should not be treated alike. Regarding security service providers and other service providers such as cleaning as mentioned by the petitioner, they are not in the same circumstances, nor do they perform the same duties; therefore, they should not be treated alike. This is also based on the fact that, in matters concerning security, there are many tasks performed by security service providers that can have an impact on people's lives, the reason why they are also governed by different laws. b. “Differentiation of treatment” means that equality before the law does not necessarily imply that all individuals must be treated alike in every aspect, but instead, people are treated differently based on the category to which they belong. Security service providers are different from other service providers, such as cleaning service providers whom the petitioner claimed ; therefore, they must be differently treated. He adds that what matters is that those within the same category (those

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providing the same or similar services, such as security services) are equally treated and in the same way, while those who do not belong to the same category, do not necessarily have to be equally treated. c. Such differentiation based on categorisation aimed at positive purpose and provided for by law, does not constitute discrimination or inequality before the law, as it has been upheld by the United Nations Human Rights Committee⁷ and upheld by the Supreme Court in judgment RS/SPEC/0001/16/CS where this Court declared that... the equality before the law and non-discrimination do not imply that differentiation between individuals itself is discriminatory in all circumstances. Differentiating individuals or categories of people may be necessary depending on the purpose, provided that there are reasonable justifications based on a legitimate or rational purpose. d. “Specificity and special rule” is a principle meaning that the fact that

equality before the law or equal protection before the law does not imply that all laws must be general or totally identic. Instead, in case there are different categories of people, it is clear that

7 “...Finally, the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”

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there should be laws that specifically address the nature and circumstances of each category of people, and these laws must have justified reasons for their enactment.

The representative of the Government of Rwanda further states that the fact that the applicant for a registration certificate to provide private security services, requires specific documents which are not the case for others engaged in various types of businesses, should not be considered discrimination because each type of business requires its own specific documents; for example, the requirements for those wishing to provide medical services and those working in this field are not the same as those for hotel service providers; the requirements for those wishing to join the military are different from those seeking admission to university; and the documents required for financial institutions (banks and insurance companies) are not the same as that for businesses involved in agricultural products. Therefore, according to him, the allegations made by EXCEL SECURITY Rwanda Ltd that article 6, subparagraphs 6°, 7°, 8°, 9° and article 13 of Law n° 016 bis/2020 of 07/09/2020 as above mentioned, are inconsistent with articles 15 and 16 of the Constitution, are unfounded. DETERMINATION OF THE COURT

In analysing this point, the Court finds that, since EXCEL SECURITY Rwanda Ltd has combined the litigation issues in its submissions and during the hearing

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of the case, it is necessary first to divide this point into two separate issues, as follows : A.1. Whether article 5 of Law n° 016 bis/2020 of 07/09/2020 governing private security services is inconsistent with article 159 of the Constitution ; A.2. Whether article 6, subparagraph 6°, 7°, 8°, and 9°, article 13, and article 37 of Law n° 016 bis/2020 of 07/09/2020 governing private security services is inconsistent with articles 15 and 16 of the Constitution. A.1. Whether article 5 of Law n° 016 bis/2020 of 07/09/2020 governing private security services is inconsistent with article 159 of the Constitution

Article 159 of the Constitution provides that : 1. The State has the following defence and security organs: (a) Rwanda Defence Force;

(b) Rwanda National Police; (c) National Intelligence and Security Service. 2. A law may determine other security organs. 3. National defence and security organs collaborate and coordinate their activities in fulfilment of their respective responsibilities.

Article 9 of Law n° 026/2023 of 17/05/2023 governing Rwanda National Police states that the responsibilities of Rwanda National Police include monitoring compliance with laws; to maintain public order inside the country; to ensure the safety and security

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of persons and property; to play a role in training operations inside the country in matters pertaining to the maintenance of security of persons and property; to update Rwandan residents on the security of persons and property. Article 10, subparagraph (f) of the same law states that Rwanda National Police works closely with private security service providers. Additionally, article 34, subparagraph (b) of that law states that Rwanda National Police issues licenses for private security services providers.

Article 5 of Law n° 016 bis/2020 of 07/09/2020 above mentioned, states that Rwanda National Police is the sole organ with the authority to issue a licence to provide private security services.

The aforementioned provisions, when considered together, indicate that Rwanda National Police has a constitutional mandate as a primary responsibility for ensuring the security of people and property throughout the country, and the procedure for the implementation of this mandate is determined by law. In this regard, the provisions of Law n° 016 bis/2020 of 07/09/2020 and Law n° 026/2023 of 17/05/2023 as above mentioned, demonstrate that Rwanda National Police is also responsible for training individuals in security matters, to update Rwandan residents on the security of persons and property, and authorizing private entities to participate in the provision of security services. To fulfill these responsibilities, it is necessary for Rwanda National Police to have knowledge of the structure, objectives, identifications, and operations of other security-related

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entities, including private security service providers operating in the country, as well as to receive reports on their activities.

This is also the case in other countries; for example, in Uganda,⁸ the National Police oversees private security companies in the following aspects: recruitment and management of the staff, management and purchase of weapons, and the quality of their operations. Those companies provide the Police with their employees' identifications together with their fingerprints, bank accounts and their salaries. Managers of those companies cannot travel abroad without obtaining permission from the Inspector General of Police, while other regular employees, when granted permission to travel abroad, their supervisor must inform the Police administration. These companies must report every activity they have undertaken every three months and are

⁸ “The Police on its part is expected to monitor and maintain the standards of training and recruitment procedures that the PSOs are required to adhere to. *PSOs must pay the wages and allowances to their employees promptly. To this end, they must file their monthly salary accounts with the police to ensure they are complying with this requirement. *No director of a PSO can

travel out of country without permission of IGP *Any staff of a PSO traveling outside the country must be authorised by their Managing Director, who in turn must report to IGP staff who have traveled out of the country. *PSO are required to file all particulars of their staff including fingerprints within two weeks of employment to IGP. * PSOs have to ensure that the training their personnel undergo is only conducted by in a certified institution by certified instructors. *Every PSOs must make a report to IGP of its operations every 3 months. Available at <https://www.upf.go.ug/police-tightens-control-private-security-companies/>

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required to train their employees in accredited institutions that have been granted authorization.

In Kenya,⁹ the National Police responsible for regulating the operations of private security service providers oversees the employees, the training they have received, their conduct, whether they were trained in an accredited institution, their previous working background, their fingerprints, the technology systems they use, and other equipment, including the supervision of the individuals these companies are protecting.

In its pleadings, EXCEL SECURITY Rwanda Ltd argues that article 5 of Law N° 016 bis/2020 of 07/09/2020

9 “The Private Security Regulation Act, No. 13 of 2016 from Kenya, states that: Article 23: (1) An individual private security services provider shall make an application for registration to the Authority in such form and manner as may be prescribed and the application shall be accompanied by the prescribed application fee. (2) An individual shall be eligible for registration as an individual private security provider if that person— (a) is a citizen of Kenya or a person who is ordinarily resident in Kenya; (b) is over eighteen years of age;

(c) holds at least a primary school certificate; (d) has attended training in security matters in an institution accredited by the Authority; (e) submits a certificate of good conduct issued by the Directorate of Criminal Investigation; (f) where he or she previously served in any of the disciplined services, produces a certificate of discharge and a certificate of clearance from such service; (g) has no criminal record; [...], Article 37: An application under this Act shall be accompanied by— (a) a clear and complete set of fingerprints taken in the prescribed manner [...], Article 59 [...] (c) use any computer system or equipment on the premises which is or appears to be utilised for the control or administration of the rendering of a private security service, or require reasonable assistance from any person on the premises to use that computer system; [...]

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above mentioned violates the provisions of article 159 of the Constitution because it grants to the Police the powers and responsibilities of the regulatory body.

The Court finds that article 5 of Law n° 016 bis/2020 of 07/09/2020 governing private security services, is not inconsistent with the provisions of article 159, because, as above explained, its provisions actually enforce the provisions stipulated in the Constitution, especially in article 161.10 A.2. Whether article 6, subparagraphs 6°, 7°, 8°, and 9°, article 13, and article 37 of Law N° 016 bis/2020 of 07/09/2020 governing private security services is inconsistent with articles 15 and 16 of the Constitution

Article 15 of the Constitution provides that all human beings are equal before the law and they enjoy equal protection of the law. Article 16 states that: (1) All Rwandans are born and remain equal in rights and freedoms. Any form of or propaganda for discrimination, including on the basis of ethnicity, family or descent, clan, skin colour, sex, region, social status, religion or belief, opinion, wealth, cultural differences, language, economic status, physical or mental disability or any other form of discrimination are prohibited and punishable by law.

10 Article 161 of the Constitution states: (1) Rwanda National Police is generally responsible for ensuring security of persons and property throughout the country. (2) A law determines the governing principles, powers, responsibilities, organisation and functioning of the Rwanda National Police.

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Article 6, subparagraphs 6°, 7°, 8°, and 9° of Law N° 016 bis/2020 of 07/09/2020 above mentioned states that an applicant for a certificate to provide private security services submits an application to the Inspector General of Rwanda National Police that is accompanied by the following: 6° a document indicating the assets of the licence applicant whose value is determined by an Order of the Minister; 7° a document indicating that the building housing the head office of the applicant for a licence to provide private security services meets the requirements of the building code; 8° a document indicating a training centre of the applicant for a licence to provide private security services that fulfils requirements determined by Rwanda National Police or an agreement the applicant has with a training centre recognised by Rwanda National Police; 9° a training syllabus and trainers' curriculum vitae satisfying standards determined by Rwanda National Police.

Article 13 of Law N° 016 bis/2020 of 07/09/2020 governing private security services above mentioned states that the holder of a licence to provide private security services presents basic security equipment prior to starting providing private security services. An Order of the Minister referred to in paragraph 2 of article 3 of this Law also determines the basic security equipment.

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Article 37 of Law N° 016 bis/2020 of 07/09/2020 states that a private security provider who employs a security guard that is not vetted by Rwanda National Police commits a fault. It is liable to an administrative fine of not less than two million Rwandan francs (Frw 2,000,000) but not more than three million Rwandan francs (Frw 3,000,000). A non-vetted security officer is suspended with immediate effect.

Various cases decided by this instant Court set position on the principle of equality before the law and of non-discrimination, the most recent being the Case RS/INCONST/SPEC 00004/2021/SC, decided by the Supreme Court on 10/02/2023, Ngendahayo Kabuye v. Government of Rwanda. In this case, the Court stated that the principle of equality before the law is closely linked to the principle of non-discrimination and that the two principles must be considered together, since they share the fundamental objective of preventing unlawful or prohibited irrational inequalities between persons which, for no justifiable reason, seek to deprive certain persons of the rights conferred on them by law. The Court further clarifies in this case that equality before the law and non-discrimination do not imply that differentiation between individuals itself is discriminatory in all circumstances. Differentiating individuals or categories of people may be necessary depending on the purpose, provided that there are reasonable justifications based on a legitimate or rational purpose.¹¹

¹¹ Judgment RS/INCONST/SPEC 00004/2021/SC, decided by the Supreme Court on 10/02/2023, involving Ngendahayo Kabuye v. Government of Rwanda, Paragraph 36 and 39.

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In that case, the Court emphasized that individuals in similar situations or categories must be equally treated and that failing to do so without a rational and legitimate purpose constitutes discrimination. The Court also upheld that the government may differentiate individuals or categories of people without violating the principle of equality before the law or of non-discrimination. However, for such distinctions to be possible, the government must have a reasonable, rational and legitimate reason, and which is aimed at serving the public interest.¹²

Paragraph 31 of the

judgment

RS/INCONST/SPEC 00004/2019/SC, rendered on 24/07/2020, Counsel Nzafashwanayo Dieudonné v. the Government of Rwanda, explains that the principle of equality before the law means that the law equally treats those who are in the same category and is similarly enforced. In other words, similar situations must be treated alike. This means that there should be no discrimination against individuals who are in similar circumstances and conditions. It is clear that individuals who are not in the same category cannot be treated alike.

In its submission, EXCEL SECURITY Rwanda Ltd states that article 6, subparagraphs 6°, 7°, 8°, and 9° of Law n° 016 bis/2020 of 07/09/2020 above mentioned contradicts with the provisions of the aforementioned principles because private security service providers are required to present a document indicating the assets of the licence applicant whose value is determined by an Order

12 Idem, paragraph 57.

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of the Minister, demonstrate that the headquarters meet the required standards, provide a document indicating a training centre of the applicant for a licence to provide private security services that fulfils requirements determined by Rwanda National Police, and to request the applicant to present basic security equipment prior to start providing private security service provided in agreements between him/her and his/her client. Additionally, security service provider is fined in case s/he employs a security guard who has not been vetted by Rwanda National Police while, such requirements do not apply to other businesses, such as cleaning service providers, banks, insurance companies among others.

The Court finds that, based on the positions set in various aforementioned judgments, the statements of EXCEL SECURITY Rwanda Ltd that security service providers are subjected to discrimination because they are required to meet certain requirements that do not apply to other businesses, are unfounded since security service providers do not belong to the same category as those engaged in other types of businesses. The Court notes that, as long as the requirements differ based on the nature of each business, there can be no claim of discrimination, since the businesses that are not in the same category cannot be treated alike, especially when the laws governing them are different.

Based on the foregoing elucidations, the Court finds that article 6, subparagraphs 6°, 7°, 8°, and 9°, article 13, and article 37 of the aforementioned Law n° 016

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bis/2020 of 07/09/2020 are not inconsistent with articles 15 and 16 of the Constitution. B. Whether article 19 of Law N° 016 bis/2020 of 07/09/2020 governing private security services is inconsistent with article 29, paragraph 1 (3°) of the Constitution

The representative of EXCEL SECURITY Rwanda Ltd submits that the provisions of article 19 of Law N° 016 bis/2020 of 07/09/2020 above mentioned are inconsistent with the article 29, paragraph 1(c) of the Constitution on ground that the appeal against the revocation of the license to provide private security services is submitted to the Minister, arguing that this amounts to the violation of the right to due process of law.

The representative of the Government of Rwanda argues that the petitioner's allegations are unfounded because the fact that the revocation of a license to provide private security services can be appealed to the Minister, does not constitute a violation of the right enshrined in the

article 29, paragraph 1(c) of the Constitution; instead, it is an administrative appeal intended to allow a superior authority to review the validity of the decision made by a lower authority and, if deemed necessary, to overturn it. However, this does not preclude the appellant from taking the matter to a competent court if he/she is not satisfied with the Minister's response.

DETERMINATION OF THE COURT

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Article 19 of Law n° 016 Bis/2020 of 07/09/2020 governing private security services provides that when the holder of a licence to provide private security services is not satisfied with the decision by Rwanda National Police to revoke his or her licence to provide private security services, he or she may appeal to the Minister within seven (7) working days from the date of his or her being notified thereof in writing. The Minister responds in writing to the person so appealing within fifteen (15) working days from the date of receipt of the appeal.

Paragraph 1 (c) of article 29 of the Constitution provides that everyone has the right to due process of law, which includes the right to appear before a competent Court.

The right to due process of law is also provided for in International Covenant on Civil and Political Rights, where it states that "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."¹³

Regarding EXCEL SECURITY Rwanda Ltd's allegation that the fact that the appeal for the revocation of a private security service license is appealed to the Minister constitutes a denial of the right to due process of

13 Article 14, para 1, of International Covenant on Civil and Political Rights

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law, the Court finds that there is a misinterpretation of the distinction between an administrative appeal (seeking for a review to a superior administrative authority) and filing a case before a court, because appealing to the Minister provided for in article 19 of Law n° 016 Bis/2020 of 07/09/2020, is intended to rectify a decision made at the first level in case it was unlawfully taken. However, this does not prevent the aggrieved party from seeking redress in court as provided in article 177 of Law n° 22/2018 of 29/04/2018 above mentioned; therefore, such cannot be considered a denial of the right to due process of law as provided for in the Constitution.

Based on the foregoing elucidations, the Court finds that article 19 of Law n° 016 Bis/2020 of 07/09/2020 governing private security services is not inconsistent with article 29, paragraph 1(3°) of the Constitution. C. Whether article 6, subparagraph 10° of the Law n° 016 bis/2020 of 07/09/2020 governing private security services is inconsistent with article 37 of the Constitution

The representative of EXCEL SECURITY Rwanda Ltd states that the article 6, subparagraph 10 of Law n° 016 bis/2020 of 07/09/2020 above mentioned, is inconsistent with article 37 of the Constitution on ground that it grants to Rwanda National Police the power to establish internal regulations for private security service providers, and therefore, this constitutes a violation of freedom of expression.

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The representative of the Government of Rwanda states that the allegations made by the representative of EXCEL SECURITY Rwanda Ltd are unfounded because matters concerning private security service providers are specific, given that security impacts on people's life in general and on national security in particular. DETERMINATION OF THE COURT

Article 37, paragraph 1 of the Constitution reads that: Freedom of thought, conscience, religion, worship and public manifestation thereof is guaranteed by the State in accordance with the law.

Article 6, subparagraph 10 ° of Law n° 016 Bis/2020 of 07/09/2020 governing private security services stipulates that an applicant for a certificate to provide private security services submits an application to the Inspector General of Rwanda National Police that is accompanied by the following: (...) 10° internal rules and regulations meeting standards determined by Rwanda National Police.

The aforementioned provisions of the Constitution regarding freedom of conscience and religion align with the provisions of article 18, paragraph 1 of the International Covenant on Civil and Political Rights¹⁴.

¹⁴ Article 18, 1, of International Covenant on Civil and Political Rights, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political->

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This Covenant, like other treaties containing this provision¹⁵, also outline the rights contained therein, while identifying the following rights: the right to have or choose a religion or belief of one's choice, as well as the freedom, either individually or in community with others, in public or in private, to manifest one's religion or belief through worship, observance, practice, and teachings.

In the case *Lautsi and Others v. Italy*, decided by the European Court of Human Rights, it was explained that freedom of religion and freedom of not having religion include the right to manifest any religion of one's choice, the right and freedom to change religion, the right of not accept any religion, and the right to express one's religion through belief, worship, teaching, and observance of its rituals.¹⁶

rights, states that “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” 15 Article 9 of European Convention on Human Rights, available at https://www.echr.coe.int/documents/d/echr/convention_ENG. 16 See Judgment *Lautsi and Others v. Italy*, 2011, paragraph 2.6, page

40. It is stated that “Freedom of religion, and freedom from religion, in substance, consist in the rights to profess freely any religion of the individual's choice, the right to freely change one's religion, the right not to embrace any religion at all, and the right to manifest one's religion by means of belief, worship, teaching and observance. Here the Convention catalogue grinds to a halt, well short of the promotion of any State secularism.” Available at https://adfinternational.org/wp-content/uploads/2021/09/Lautsi-and-Others-v.-Italy_Lautsi-Decision.pdf

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Based on the foregoing, it is in the finding of the Court that the statement of EXCEL SECURITY Rwanda Ltd, that article 6, subparagraph 10° of Law n° 016 Bis/2020 of 07/09/2020 above mentioned, is inconsistent with article 37 of the Constitution, is unfounded because this article relates to freedom of thought and religious belief, which is not related to the fact that Rwanda National Police is granted the power to establish internal rules for private security service providers or to any alleged violation of freedom of thought. D. Whether articles 30 and 31 of Law n° 016 bis/2020 of 07/09/2020 governing private security services violate the principle of respect for privacy of a person and of family as provided for in article 23 of the Constitution

The representative of EXCEL SECURITY Rwanda Ltd asserts that those provisions violate the principle of respect for privacy of a person and of family for the following reasons: a. Article 30 of Law n° 016 bis/2020 of 07/09/2020 above mentioned requires private security service providers to have a software program monitored by Rwanda National Police, which helps manage their employees, and he therefore finds this provision to be inconsistent with article 23 of the Constitution, in its last paragraph, stipulating that the confidentiality of correspondence and communications cannot be infringed upon except in circumstances and procedures

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provided by law. He considers that granting to the Police the power to interfere in the private affairs of these companies violates their independence in performance. b. Article 31, paragraph 1 of Law n° 016 bis/2020 of 07/09/2020 above mentioned provides that a private security service provider submits in writing to Rwanda National Police its weekly and monthly activity report, and also informs Rwanda National Police of the daily security situation in its area of operation. He finds this provision to be in violation of the freedom of business, arguing that a businessperson should be working independently and freely without being required to submit daily, weekly, and monthly reports to the Police.

The Government representative argues that EXCEL SECURITY Rwanda Ltd's assertion that article 30 of Law n° 016 Bis/2020 of 07/09/2020 above mentioned is inconsistent with article 23 of the Constitution is unfounded for the following reasons: a. The petitioner deliberately alters the provisions of this article of the Constitution with regard to the confidentiality of correspondence and communication mentioned in that provision, by comparing it to a software program that helps it to manage its human resource. b. Furthermore, since Rwanda National Police is the institution responsible for ensuring the security of persons and property nationwide,

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the law grants to this organ the powers to oversee the daily operations of private security service providers and also provide them advice on how to improve their operations. Additionally, the Police is granted the right and powers to monitor a software program that helps manage human resources of private security service providers as one of the aspects that require monitoring. A software program that helps the company to manage its human resources should not be compared to letter correspondence. Therefore, EXCEL SECURITY Ltd's allegation that article 30 of Law n° 016 Bis/2020 of 07/09/2020 governing private security services, is inconsistent with article 23 of the Constitution is unfounded. c. The requirement for private security companies to provide to Rwanda National Police with activity reports detailing the security situation falls within the Police's mandate, as it is the primary institution responsible for ensuring the security of persons and property across the country, as stated in article 161 of the Constitution. EXCEL SECURITY Rwanda Ltd should clearly understand that national security is the cornerstone of all aspects of the country's well-being, as mentioned in the preamble of the Constitution. d. EXCEL SECURITY Rwanda Ltd appears to compare itself to other business companies, yet each type of business has its own specific

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nature, their requirements and has the regulatory body responsible for ensuring compliance. He mentions the example of the National Bank of Rwanda whereby, based on article 6 bis of Law n° 48/2017 of 23/09/2017 governing the National Bank of Rwanda, it approves individuals appointed to leadership positions in banks operating in Rwanda as well as those engaged in the insurance sector. DETERMINATION OF THE COURT

Article 23, paragraph 3 of the Constitution provides that confidentiality of correspondence and communication shall not be breached except in circumstances and in accordance with procedures determined by the law.

Article 30 of Law n° 016 Bis/2020 of 07/09/2020 mentioned above provides that a private security service provider acquires a software program that helps to manage its human resources. Rwanda National Police reserves the right to monitor such a software program.

The provisions of article 23 of the aforementioned Constitution is also provided in article 17 of the International Covenant on Civil and Political Rights¹⁷, which states that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or

17 Article 17 of International Covenant on Civil and Political Rights.

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correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”.

This is also provided for in the European Convention on Human Rights, as amended by Protocols n0 11 and 14, in its article 8, which stipulates that everyone has the right to respect for their private and family life, their home, and their correspondence. It further states that no public authority may interfere with the exercise of this right except as provided by law and necessary in a democratic society for the interests of national security, public safety, the development of the country, the prevention of disorder or crime, or the protection of the rights and freedoms of others. This is upheld by the case *Klass and Others v. Germany*, decided by the European Court of Human Rights, which ruled that interference with an individual's rights and privacy may be carried out based on the exception outlined in article 8 of the aforementioned Convention.¹⁸

While analyzing the provisions of the aforementioned articles in relation to the submissions of EXCEL SECURITY Rwanda Ltd which argues that the Police have been granted power to interfere with the private operations of private security service providers, thereby restricting their freedom and liberty in their operation since a businessperson should operate in freedom and liberty without being required to submit daily reports, it appears that the actions of Rwanda

18 See Judgment *Klass and Others v. Germany*, 1978, paragraph 60, page 23. Available at: <https://www.legal-tools.org/doc/f46bdd/pdf/>

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National Police fall within their constitutional mandate and are also provided for in various international human rights treaties, as they all recognize that national security, public order, and the rights of others justify certain limitations on individual or group's rights. Additionally, Rwanda National Police has a duty to update Rwandan residents on the security of persons and property. It is therefore clear that in case the Police is not provided with reports or prevented from overseeing these private security companies, it could hinder their ability to fulfill their constitutional mandate of ensuring public safety.

The Court also finds that the specific nature of national security and public safety, as repeatedly emphasized in laws and international conventions, should not be ignored, in order for the private security service providers to be considered as other businesses given its specific nature and the way it operates or monitored, which requires to be a specialized mechanism and be conducted by an authority with the necessary expertise and competence derived from the Constitution and other laws, as explained in the previous paragraphs.

Based on the explanations provided above, the Court finds that the provisions of article 30 and article 31, paragraph one of Law n° 016 Bis/2020 of 07/09/2020 governing private security services are not inconsistent with the provisions of article 23, paragraph 3 of the Constitution. III.

DECISION OF THE COURT

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Holds that the petition lodged by EXCEL SECURITY Rwanda Ltd seeking to declare that articles 5, article 6, subparagraphs 6°, 7°, 8°, 9°, and 10°, articles 13, 19, 30, 31, paragraph 2, and 37 of Law n° 016 bis/2020 of 07/09/2020 governing private security services are unconstitutional in relation to articles 15, 16, 23, 37, and 159 of the Constitution of the Republic of Rwanda, is unfounded.

Holds that article 5 of Law n° 016 bis/2020 of 07/09/2020 governing private security services is not inconsistent with article 159 of the Constitution of the Republic of Rwanda.

Holds that article 6, subparagraphs 6°, 7°, 8°, and 9°, article 13, and article 37 of Law n° 016 bis/2020 of 07/09/2020 governing private security services are not inconsistent with articles 15 and 16 of the Constitution of the Republic of Rwanda.

Holds that article 6, subparagraph 10° of Law n° 016Bis/2020 of 07/09/2020 governing private security services is not inconsistent with article 37 of the Constitution of the Republic of Rwanda.

Holds that article 19 of Law n° 016 bis/2020 of 07/09/2020 governing private security services is not inconsistent with article 29, paragraph 1(c) of the Constitution of the Republic of Rwanda.

Holds that article 30 and article 31, paragraph one of Law n° 016 bis/2020 of 07/09/2020 governing private security services are not inconsistent with article 23,

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paragraph 3 of the Constitution of the Republic of Rwanda.

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