

RWANDA / JUDGMENT

UBUSHINJACYAHA v NKUNDABOSE

RPA/GEN 00002/2021/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v NKUNDABOSE

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Text

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UBUSHINJACYAHA v NKUNDABOSE [Rwanda URUKIKO RW'UBUJURIRE - RPA/GEN 00002/2021/CA (Gakwaya, P.J.) 16 Mutarama 2026] Amategeko agenga imanza nshinjabyaha – Gukora icyaha ku gahato – Ku birebana no gukora icyaha ku gahato, ubiburanisha nk'impamvu ikuraho uburyozwacyaha, afite ishingano yo kugaragaza mu buryo bufatika ibikorwa bishimangira ako gahato aburanisha, kandi bigaragaza ko atashoboraga kubyigobotora. Incamake y'ikibazo: Muri uru rubanza, haregwa uwitwa Nkundabose wari warahungiyeye mu Gihugu cya Tanzaniya nyuma ya jenocide yakorewe Abatutsi, mu mwaka wa 1997 aza gutahuka hamwe n'abandi banyarwanda muri gahunda yo gucyura impuzi ariko aho kujya aho yakoreye icyaha yagiye kwihisha aho avuka mu Karere ka Burera. Mu mwaka wa 1998, ubwo habaga ibitero by'abacengezi byagabwaga mu Rwanda n'Abanyarwanda bari barahungiyeye muri Repubulika iharanira Demokarasi ya Congo, yifatanyije nabo, bajyana mu mashyamba ya Congo bashinga umutwe wa FDLR. Ubushinjacyaha bwakurikiranye uwitwa Nkundabose ku byaha binyuranye birimo icyaha cya jenocide, icyaha cyo kuba mu mutwe w'iterabwoba, gukora no kugira uruhare mu bikorwa by'iterabwoba, icyo gutanga amabwiriza mu gikorwa cy'iterabwoba n'icyo kurema umutwe w'ingabo zitemewe. Nyuma Ubushinjacyaha bwaje kumenya ko yahamijwe icyaha cya jenocide n'Inkiko Gacaca,

ahanishwa igifungo cy'imyaka mirongo itatu (30) bituma bureka kukimukurikiranaho, bwaje kandi no kureka kumukurikirana ku cyaha cyo kurema umutwe w'ingabo zitemewe busaba ko akomeza kuburanishwa ku bindi byaha byari bisigaye. Ku rwego rwa mbere, Urukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibe rwemeje ko ahamwa n'icyaha cyo kuba mu mutwe w'iterabwoba, ariko ko adahamwa n'icyaha cyo gukora no kugira uruhare mu bikorwa by'iterabwoba n'icyo gutanga amabwiriza mu gikorwa cy'iterabwoba, maze rumuhanisha igifungo cy'imyaka cumi n'itanu (15). Nkundabose yajuririye Urukiko rw'Ubujurire, avuga ko anenga Urukiko rwabanje kuba rwaramuhamije icyaha cyo kuba mu mutwe w'iterabwoba rwirengagije ko atigeze awujyamo ku bushake bwe, ko yatwawe bunyago ashimuswe bityo ko ataryozwa ibyo yakoze igihe cyose yamaze mu maboko y'abamunyaze, akaba asaba uru Rukiko kongera gusuzumana ubushishozi icyaha yahamijwe maze akakigirwaho umwere, kandi ko hari abandi bawubanyemo batigeze bakurikiranwa kuri iki cyaha. Mu kuburana kwe, anavuga ko uru Rukiko rubibonye ukundi rwamugabanyiriza igihano yahawe. Ubushinjacyaha bwo buburana buvuga ko ubujurire bwa Nkundabose bushingiye ku gushaka kugaragaza ko yajyanywe bunyango mu mutwe wa FDLR nta bushake abigizemo, nta shingiro bukwiye guhabwa kuko uretse no kuba nta kimenyetso agaragaza cy'ibyo avuga, bwo bwagaragarariye Urukiko mu rubanza ajuririra ko yagiye muri uwo mutwe abishaka, ndetse ko Urukiko rwasobanuye ko harebwe igihe kigera ku myaka 20 yawumazemo kandi yarashoboraga kwitandukanya nawo agataha nk'uko n'abandi babikoraga, bigaragaza ko nta bushake yari afite bwo kwitandukanya nawo kugeza ubwo afashwe n'ingabo za Congo akoherezwa mu Rwanda. Urukiko rwasuzumye ibujyanye no kumenya niba Urukiko Rukuru rwarirengagije ibisobanuro uregwa yarugaragarariye bijyanye no kuba yaragiye mu mutwe w'iterabwoba wa FDLR ku gahato,

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bikaba byaratumye ahamwa n'icyaha yakoze nta bushake afite bwo kugikora. Rwanasuzumye kandi n'igihano yakatiwe niba gikwiranye n'ibikorwa bigize icyaha yahamijwe. Incamake y'icyemezo: 1. Ku birebana no gukora icyaha ku gahato, ububuranisha nk'impamvu ikuraho uburyozwacyaha, afite ishingano yo kugaragaza mu buryo bufatika ibikorwa bishimangira ako gahato aburanisha, kandi bigaragaza ko atashoboraga kubyigobotora.

Ubujurire nta shingiro bufite. Amategako yashingiweho: Ingingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rishya rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange. Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 86. Imanza zifashishijwe: Ubushinjacyaha vs Ryabonyende Cyriaque, RPAA 00386/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 3/7/2024 Ubushinjacyaha vs Nsanzuwera, RPAA 00616/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 30/11/2022

Inyandiko z'abahanga: Bull. Crim. n° 360; D. 1950. 419; JCP 1950. II. 5614; Gaz. Pal. 1950. 1. 295. 19 déc. 1956: Bull. Crim. n° 856, in code pénal annoté, 114e édition, Dalloz, 2016, P. 213. Bernard Bouloc, Droit pénal général, 26e édition, Dalloz, Paris, 2019, P. 379, N° 460. Urubanza I. IMITERERE Y'URUBANZA [1] Nyuma ya jenocide yakorewe Abatutsi mu 1994, Nkundabose Sébastien wahoze ari umwarimu mu ishuri ribanza rya Nkondo, akaba yaranayigizemo uruhare,

yahungiyeye mu Gihugu cya Tanzaniya, mu mwaka wa 1997 aza gutahuka hamwe n'abandi banyarwanda muri gahunda yo gucyura impuzi zabaga muri icyo gihugu. Nkundabose Sébastien aho kujya aho yakoreye icyaha yagiye kwihisha aho avuka mu Karere ka Burera mu Intara y'Amajyaruguru. Mu mwaka wa 1998, ubwo habaga ibitero by'abacengezi byagabwaga mu Rwanda n'Abanyarwanda bari barahungiyeye muri Repubulika iharanira Demokarasi ya Congo, yifatanyije nabo, bajyana mu mashyamba ya Congo bashinga umutwe wa FDLR (Force Démocratique pour la Libération du Rwanda), ahabwa amahugurwa mu ishuli rikuru rya gisirikare ry'uwo mutwe, arirangije ahabwa ipeti rya Majoro, anayobora batayo ishinze kurinda abayobozi ba FDLR bagabaga ibitero mu Rwanda kugeza aho

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afatiwe n'ingabo za Congo (FARDC) zikamwohereza mu Rwanda mu mwaka wa 2016. Ku itariki 26/4/2019, Ubushinjacyaha bwandikiye Umunyamabanga Mukuru w'Urwego rw'Ubugenazacyaha busaba ko Nkundabose Sébastien yakorwaho iperereza ku byaha yacyekwagaho cya jenocide yakoreye i Rwinkwavu n'ibindi byaha bifitanye isano n'icyo kuba mu mutwe w'iterabwoba wa FDLR, maze afatwa ku wa 7/5/2019. [2] Iperereza rirangiye, Ubushinjacyaha bwamureze mu Rukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi, icyaha cya jenocide, icyaha cyo kuba mu mutwe w'iterabwoba, gukora no kugira uruhare mu bikorwa by'iterabwoba, icyo gutanga amabwiriza mu gikorwa cy'iterabwoba n'icyo kurema umutwe w'ingabo zitemewe. Nyuma Ubushinjacyaha bwaje kumenya ko Nkundabose Sébastien yahamijwe icyaha cya jenocide n'Inkiko Gacaca, ahanishwa igifungo cy'imyaka mirongo itatu (30) bumenyeshya Urukiko Rukuru ko butakikimukuriranyeho, busaba ko akomeza kuburanishwa ku bindi byaha byari bisigaye. Igihe cy'iburanisha ry'urubanza, Ubushinjacyaha bwongeyeho ko butakimukurikiranyeho icyaha cyo kurema umutwe w'ingabo zitemewe. Ku bindi byaha, bumusabira guhanishwa igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) kubera ko yabikoze mu buryo bigize impurirane mbonezamugambi. [3] Nkundabose Sébastien yaburanye ahakana ibyaha aregwa, avuga ko nta bikorwa by'iterabwoba yigeze ajyamo, bityo ko ataregwa ibyo byaha kuko ntabwo yakozwe, ndetse ko yagiye muri FDLR afashwe bunyago n'igitero cyabaye ahitwa mu Gitanga muri Nyamugali, yemera kuwujyamo arengera ubuzima bwe kubera ko hari abandi bishwe barimo n'abarimu. [4] Mu rubanza n° RP/GEN 00001/2019/HC/HCCIC rwaciwe n'Urukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi ku wa 5/1/2021, rushingiye ku mvugo za Nkundabose Sébastien mu nzego z'iperereza no mu Rukiko, ku mvugo z'abatangabuhamya Turatsinze Protais, Musanabaganwa Vénantie na Nshimiyimana Saleh mu iperereza, rwemeje ko Nkundabose Sébastien ahamwe n'icyaha cyo kuba mu mutwe w'iterabwoba, ariko ko adahamwe n'icyaha cyo gukora no kugira uruhare mu bikorwa by'iterabwoba n'icyo gutanga amabwiriza mu gikorwa cy'iterabwoba, maze rumuhanisha igifungo cy'imyaka cumi n'itanu (15). [5] Nkundabose Sébastien ntiyishimiye urwo rubanza, ajuririra Urukiko rw'Ubujurire, avuga ko anenga Urukiko rwabanje kuba rwaramuhamije icyaha cyo kuba mu mutwe w'iterabwoba rwirengagije ko atigeze awujyamo ku bushake bwe, ko yatwawe bunyago ashimuswe, kandi ko hari abandi bawubanyemo batigeze bakurikiranwa kuri iki cyaha. Avuga kandi ko uru Rukiko rubibonye ukundi rwamugabanyiriza

igihano yahawe n'Urukiko rwabanje kuko kiremereye, harebwe igihano abayobozi be bahawe mu rubanza n° RP 00017/2020/HC/HCCIC rwaciwe ku wa 20/4/2023. [6] Ubushinjacyaha buvuga ko ubujurire bwa Nkundabose Sébastien nta shingiro bufite kuko uretse kugaruka ku miburanire ye ku rwego rwa mbere, nta kintu anenga urubanza rujuririrwa, ndetse akaba atagaragaza ibimenyetso bishimangira ibisobanuro atanga. [7] Urubanza rwahawe n° RPA/GEN 00002/2021/CA, ruburanisha ku wa 22/12/2025, Nkundabose Sébastien yunganiwe na Me Munini Patrick, Ubushinjacyaha buhagarariwe na Dr. Bideri Diogène, Umushinjacyaha ku rwego rw'Igihugu.

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[8] Hashingiwe ku miburanire y'ababuranyi, mu rubanza harasuzumwa ibibazo bikurikira:

- a) Kumenya niba Urukiko Rukuru rwarakoze ikosa ryo guhamya Nkundabose Sébastien icyaha cyo kuba mu mutwe w'iterabwoba rwirengagiza impamvu yarugaragarije imukuraho uburyozwacyaha.
- b) Kumenya niba igihano Nkundabose Sébastien yakatiwe gikwiranye n'ibikorwa bigize icyaha yahamijwe.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA i) Kumenya niba Urukiko Rukuru rwarakoze ikosa ryo guhamya Nkundabose Sébastien icyaha cyo kuba mu mutwe w'iterabwoba rwirengagiza impamvu yarugaragarije imukuraho uburyozwacyaha [9] Nkundabose Sébastien na Me Munini Patrick umwunganira bavuga ko banenga Urukiko Rukuru, Urugereko rwiheriye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi kuba rwaramuhamije icyaha cyo kuba mu mutwe w'iterabwoba wa FDLR rwirengagije ko atawugiyemo ku bushake bwe. Basobanura ko yemera ko yabaye muri uwo mutwe wabanje kwitwa PARIL- ALIR (Armée de Libération du Rwanda) kuva mu mwaka wa 1998 kugeza mu mwaka wa 2018, ariko ko yawugiyemo atwawe bunyago kuko iyo atagenda yari kwicwa nk'uko byagendekeye abandi benshi; ko kandi nyuma y'ibiganiri bitandukanye byakanguriraga abantu babaga muri uwo mutwe gutaha ku bushake, we n'abagenzi be bemeye gushyira intwari hasi, bishyikiriza ingabo z'Umuryango w'Abibumbye, ariko mu gihe bari bategereje ko habaho ibiganiri by'amahoro, bitegura gutaha ku bushake bwabo, bahise bazanwa mu Rwanda, ahageze atangira gukurikiranwa kuri iki cyaha, nyamara abo batahanye mu buryo bumwe, mu gihe kimwe bakiriwe hamwe mu ngando i Mutobo, ndetse bamaze igihe kinini kurenza icyo we yamaze muri uwo mutwe, bamwe muri bo bari n'abayobozi be bamurusha ipeti ntibakurikiranwa, kandi abantu bese bakwiye gufatwa kimwe imbere y'amategeko, ko rero nta bikorwa by'umwihariko yakozwe kubarenza urwo Rukiko rwagaragaje ku buryo ariwe gusa wari ukwiye kubikurikiranwaho no kubihanirwa. [10] Nkundabose Sébastien na Me Munini Patrick bakomeza bavuga ko bashingiye ku ngingo ya 83, igika cya kabiri n'ya 862 z'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganyaga ibyaha n'ibihano muri rusange, bidahagije kuba ibikorwa uregwa akurikiranyweho biba biteganywa n'amategeko, ahubwo ko n'uwabikoze agomba kuba yari afite ubushake bwo kubikora, ko kuba yarafashwe agatwarwa ku ngufu, ataryozwa ibyo yakozwe igihe cyose yamaze mu maboko y'abamunyaze, bityo ko basaba uru Rukiko kongera gusuzumana ubushishozi icyaha yahamijwe maze akakigirwaho umwere kuko n'abandi benshi babanye muri uwo mutwe nk'uko yakomeje kubigaragaza batigeze

bakurikiranwa kubera impamvu nyinshi z'amateka y'Igihugu.

1 Iyo ngingo iteganya ko " Umuntu ukora icyaha abishaka ni we uhanwa". 2 Impamvu zikuraho uburyozwacyaha: "1o umuntu yakoreshejwe icyaha ku ngufu cyangwa ku gahato atashoboraga kwigobotora; (...)"

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[11] Ubushinjacyaha buvuga ko ubujurire bwa Nkundabose Sébastien bushingiye ku gushaka kugaragaza ko yajyanywe bunyango mu mutwe wa FDLR nta bushake abigizemo, nta shingiro bukwiye guhabwa kuko uretse no kuba nta kimenyetso agaragaza cy'ibyo avuga, bwo bwagaragarije Urukiko mu rubanza ajuririra ko yagiye muri uwo mutwe abishaka, ndetse mu gika cy'urubanza cya makumyabiri (20) rubyemeza rusobanura ko harebwe icyo gihe kigera ku myaka 20 yawumazemo kandi yarashoboraga kwitandukanya nawo agataha nk'uko n'abandi babikoraga, bigaragaza ko nta bushake yari afite bwo kwitandukanya nawo kugeza ubwo afashwe n'ingabo za Congo akoherezwa mu Rwanda, ko ibyo yaburanishaga by'uko yawujyanywemo ku ngufu atinya ko yakwicwa nta shingiro bifite, ko uretse n'ibyo igihe yageraga muri Congo muri uwo mutwe yemeye gukurikira amasomo ya gisirikare wamuhaye, ayarangije yemera guhabwa ishingano zo gutoranya abarinda abayobozi, ibyo byose bikaba bigaragaza ko yarimo abishaka kuko yanagize uruhare mu bikorwa byawo. [12] Ubushinjacyaha busobanura ko nk'uko Urukiko rwabanje rwabibonye, kuva mu mwaka wa 1998 kugeza mu mwaka wa 2019 Nkundabose Sébastien afatwa, atabuze uko yitandukanya na FDLR ngo atahe nk'uko abandi bose bagiye batahuka, kuko ubwe avuga ko yafashwe n'ingabo za FARDC muri operation yo kubashakisha aho bari bihishe mu mashyamba ya Congo, zimushyikiriza ingabo z'u Rwanda, ko rero icyo gihe cyose yamaze mu bacengezi no muri FDLR kigaragaza ko atajyanywe ku ngufu nk'uko abivugaga. UKO URUKIKO RUBIBONA [13] Impaka kuri iyi ngingo y'ubujurire bwa Nkundabose Sébastien zishingiye ku kumenya niba Urukiko Rukuru rwariyengagije ibisobanuro yarugaragarije bijyanye no kuba yagiye mu mutwe w'iterabwoba wa FDLR ku gahato, ibi bikaba byaratumye ahamwa n'icyaha yakoze nta bushake afite bwo kugikora. [14] Ingingo ya 86, igika cya mbere, agace ka mbere (1°), y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange ivuga ko : " Impamvu zikuraho uburyozwacyaha zishingiye ku wakoze icyaha zibaho iyo umuntu yakoreshejwe icyaha ku ngufu cyangwa ku gahato atashoboraga kwigobotora". [15] Ingingo ya 86, igika cya mbere, agace ka mbere (1°) yavuzwe haruguru yumvikanisha ko umuntu wese wakoze icyaha aregwa ku mpamvu itamuturutseho kubera ko yagikoze ku ngufu (contrainte physique) cyangwa ku gahato (contrainte morale), ni ukuvuga nta bushake bwo kugikora kuko yatunguwe (imprévisibilité), kandi akaba atarashoboraga kuyirwanya (irrésistibilité), atakiryoza. [16] Nk'uko byemejwe mu rubanza n° RPAA 00616/2021/CA rwaciwe ku wa 30/11/2022, uwajuriye agomba kugaragaza amakosa Urukiko rwabanje rwaba rwarakoze, agasobanura impamvu ari amakosa, agatanga n'uburyo agomba gukosorwa, bivuze ko uwajuriye afite ishingano yo kugaragaza ukwibeshya kwakozwe n'Urukiko rubanza gushingiye ku mategeko cyangwa ku byabaye kwatumye urubanza rujuririrwa rucibwa nabi cyangwa kwatuma ruta agaciro. Kutagaragaza inenge z'urubanza cyangwa amakosa yakozwe

mu rubanza n'uburyo agomba gukosorwa, bituma ubujurire butakirwa³.

3 Reba igika cya 23 cy'urwo rubanza, hagati y'Ubushinjacyaha na Nsanzuwera Aphrodis.

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[17] Nk'uko byemejwe mu rubanza n° RPA 00001/2022/ CA rwaciwe ku wa 14/2/2025, uwajuriye ntashobora kugaruka (gusubira) gusa ku ngingo ze yaburanishije ku rwego rwa mbere, kandi zitarahawe ishingiro, atagaragaza amakosa Urukiko rwabanje rwaba rwarakoze ruzitesha agaciro n'uko ayo makosa agomba gukosorwa⁴. [18] Nk'uko byemejwe mu rubanza n° RPAA 00386/2021/CA rwaciwe ku wa 3/7/2024, umuburanyi wese agomba gutanga ibimenyetso bigaragaza ukuri kw'ibyo aregera kandi asaba Urukiko, bitaba ibyo imiburanire ye ntihabwe agaciro⁵. [19] Ku birebana no gukora icyaha ku gahato, umurongo watanze n'Urukiko rusesa imanza rw'u Bufaransa, wemeje ko uregwa uburanisha agahato nk'impamvu ikuraho uburyozwacyaha, afite ishingano yo kugaragaza mu buryo bufatika ibikorwa bishimangira ako gahato aburanisha, kandi bigaragaza ko atashoboraga kubyigobotora⁶. [20] Nk'uko bigaragara mu gace ka makumyabiri (20) k'urubanza rujuririrwa, Urukiko rwabanje rwasobanuye ko harebwe igihe kigera ku myaka makumyabiri (20) Nkundabose Sébastien yamaze muri uwo mutwe (FDLR) n'uko nta bushake bwo kwitandukanya nawo yagize kugeza ubwo afashwe n'ingabo za Congo (FARDC) zimwohereza mu Rwanda, ibyo avuga ko atagiye muri FDLR ku bushake ahubwo yashyizwemo ku ngufu n'uko impamvu atagarutse ari uko yatinyaga kwicwa, nta shingiro bifite. Rwasobanuye kandi ko bitahabwa agaciro kuko ageze muri Congo yemeye gukurikira amasomo ya gisirikare atangwa n'uwo mutwe, yayarangiza akanemera guhabwa ishingano zo gutoranya abarinda abayobozi, nabyo bigaragaza ko yabaye mu mutwe w'iterabwoba wa FDLR, anagira uruhare mu bikorwa byawo ku bushake bwe. [21] Urukiko rw'Ubujurire rurasanga ibivugwa na Nkundabose Sébastien ko Urukiko rwabanje rwirengagije imiburanire ye irebana no kuba yaragiye mu mutwe w'iterabwoba wa FDLR ku gahato, bitahabwa agaciro kuko nk'uko byagaragajwe ku gace kabanziriza aka, rwasobanuye impamvu iyo miburanire ye nta gaciro yahabwa, rwanzura ko yagiyemo ku bushake bwe. [22] Urukiko rw'Ubujurire rurasanga ku bw'ibyo, uretse kugaruka ku miburanire ye ku rwego rwa mbere, ntacyo anenga ibisobanuro byatanze n'Urukiko rwabanje ruyitesha agaciro, ngo agaragaze amakosa yakozwe n'uko agomba gukosorwa, ibi bikaba bitemewe mu bujurire ku uburyo iyi ngingo ye y'ubujurire idakwiye kwakirwa, hashingiwe ku murongo wagaragajwe haruguru. [23] Urukiko rw'Ubujurire rurasanga kandi n'ubwo agaruka ku miburanire ye ku rwego rwa mbere yo kuvuga gusa ko yafashwe akajyanwa bunyago mu mutwe wa FDLR, atagaragaza

4 Une partie ne saurait se contenter de répéter en appel des arguments qui ont échoué en première instance, à moins de démontrer que leur rejet constituait une erreur de nature à justifier l'intervention de la Chambre d'appel", Affaire n° ICTR-01-73-A, Procureur contre Zigiranyirazo Protais, Para. 12. Dans ce sens, voir également l'Affaire n° ICTR- 01-74-A Procureur contre François Karera, Para. 11. 5 Reba igika cya 27 cy'urwo rubanza, hagati y'Ubushinjacyaha

na Ryabonyende Cyriaque. 6 Si la contrainte morale peut, comme la contrainte physique, exonérer l'auteur d'un crime ou d'un délit de toute responsabilité pénale, cette exception, laissée à la charge de l'inculpé, ne peut être utiliment invoquée qu'autant qu'elle se fonde sur des faits et circonstances parfaitement établis, desquels il résulte qu'il était dans l'impossible d'échapper au péril imminent né de ces faits et circonstances, sans commettre d'infraction", Crim. 29 déc. 1949: Bull. Crim. n° 360; D. 1950. 419; JCP 1950. II. 5614; Gaz. Pal. 1950. 1. 295. 19 déc. 1956: Bull. Crim. n° 856, in code pénal annoté, 114e édition, Dalloz, 2016, P. 213.

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ikimenyetso gifatika kandi gihamya igitutu n'ibikangisho bitigobotorwa⁷ yaba yarashyizweho kugira ngo akurikire abacengezi avuga ko bamujyanye atabishaka bakamugeza muri Congo mu mutwe w'iterabwoba wa FDLR, bityo ibyo avuga bikaba bitagomba guhabwa agaciro. [24] Urukiko rw'Ubujurire rurasanga uretse n'ibyo, ibisobanuro byatanze n'Urukiko rwabanje nk'uko byasubiwemo mu gace ka makumyabiri (20) k'uru rubanza byatumye rutesha agaciro imiburanire ye, nabyo bishimangira ko yagiye ndetse aguma mu mutwe w'iterabwoba wa FDLR ku bushake bwe. [25] Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga iyi ngingo y'ubujurire bwa Nkundabose Sébastien nta shingiro ifite. 2. Kumenya niba igihano Nkundabose Sébastien yakatiwe gikwiranye n'ibikorwa bigize icyaha yahamijwe [26] Nkundabose Sébastien n'umwunganizi we bavuga ko mbere na mbere atari ari akwiye guhamwa n'icyaha cyo kuba mu mutwe w'iterabwoba kubera impamvu basobanuye ko ariko uru Rukiko rubonye ko akwiye gukomeza guhamwa n'icyo cyaha rwamugabanyiriza igihano yahawe kuko ari kirekire kidakwiranye n'ibikorwa yakoze, agahanishwa igihano cy'igifungo cy'imyaka itanu (5) nk'icyo abari abayobozi bakuru ba FDLR bahanishijwe mu rubanza barezwemo no RP 00017/2020/HC/HCCIC8 kuko ari nabo bamuhaga amabwiriza mu kazi no mu nshingano yari afite, rukanashyirira ku ngingo ya 499 y'Itegeko y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganyaye ibyaha n'ibihano muri rusange, ndetse akaba yanahabwa igihano gito kucyo abo bayobozi be bahanishijwe. [27] Ubushinjacyaha buvuga ko ibyo Nkundabose Sébastien asaba uru Rukiko byo kugabanyirizwa igihano, nta shingiro byahabwa kuko yakigabanyirijwe bihagije agahanishwa igihano gito gitenganywa n'Itegeko cy'igifungo cy'imyaka cumi n'itanu (15), ko rero busaba ko hakwemezwa ko nta gihindutse ku mikirize y'urubanza ajuririra. UKO URUKIKO RUBIBONA [28] Impaka kuri iki kibazo zishingiye ku kumenya niba igihano Nkundabose Sébastien yakatiwe kidakwiranye n'ikorwa ry'icyaha yahamijwe.

7 "La contrainte morale n'est considérée comme une cause de non-imputabilité que si elle a été irrésistible, c'est-à-dire, a exercé sur la volonté de l'agent une pression telle qu'elle a annihilé sa liberté" Bernard Bouloc, Droit pénal général, 26e édition, Dalloz, Paris, 2019, P. 379, n° 460. 8 Urubanza no RP 00017/2020/HC/HCCIC rwaburanishijwemo abayobozi bakuru ba FDLR aribo : Habyarimana Joseph Alias Mucebo Sofoni [Gen. Major FOCA], Habimana Marc Ndinzimihigo alias Tumayini Faraja [Gen. de Brigade FOCA], Mujiyambere Léopold, Alias Musenyeri Achille [Gen. de Brigade FOCA], Ruzindana Félicien alias Mushagarusa [Col. FOCA], Habimana Emmanuel alias Asifiwe Manudi alias, Habarurema Emmanuel [Lt. Col FOCA], Mpakaniye Emilien alias Cheguevara Jacob [Lt. Col. FOCA], bese baregwa icyaha cy'irema ry'umutwe

w'ingabo bitemewe, icyaha cy'ubugambanyi, n' icyaha cyo kuba mu mutwe w'iterabwoba, maze Urukiko nyuma yo kumva ubushinjacyaha, ndetse n'imyiregurire y'abaregwa rukemeza ko abaregwa bose bahamwa n'icyaha cyo kuba mu mutwe w'iterabwoba. Ruhanisha buri wese igihano cy'igifungo cy'imyaka itanu (5). 9 Umucamanza atanga igihano akurikije uburemere bw'icyaha, ingaruka icyaha cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo.

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[29] Ingingo ya 60, agace ka (b) y'Itegeko y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganyaye ibyaha n'ibihano muri rusange, nk'uko ryahinduwe kugeza ubu10, iteganyaye ko " Iyo Umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano, igifungo kimara igihe kizwi kiva ku mezi 6 kuzamura gishobora kugabanywa, ariko ntikijye muni ya kimwe cya kabiri cy'igihano gito giteganyirijwe icyaha cyakozwe". [30] Nk'uko byemejwe mu rubanza no RPAA 01059/2024/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 26/2/2025, mu rubanza n° RPAA 00729/2024/CA rwaciwe ku wa 28/3/2025 no mu rubanza n° RPAA 00628/2024/CA rwaciwe ku wa 30/12/2025, harebwe ibiteganywa n'ingingo ya 60, agace ka (a), y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganyaye ibyaha n'ibihano muri rusange, nk'uko ryahinduwe kugeza ubu, ku bushake bw'Umushingamategeko byateganyijwe ko uwakoze icyaha gihanishwa igihano cy'igifungo cya burundu, igihe hemejwe impamvu nyoroshyacyaha, adashobora kugabanyirizwa igihano cy'igifungo kiri muni y'imyaka cumi itanu (15), kuko aricyo gihano gito giteganywa n'Itegeko. Uwo murungo ariwo ugomba gukurikizwa mu myumvire y'ibiteganywa mu gace ka b) k'ingingo ya 60, bivuze ko uwakoze icyaha gihanishwa igihano cy'igifungo cy'igihe kizwi, igihe hemejwe impamvu nyoroshyacyaha, adashobora kugabanyirizwa igihano cy'igifungo kiri muni ya kimwe cya kabiri cy'igihano gito giteganyirijwe icyo cyaha. [31] Nk'uko byemejwe mu rubanza n° RPA 00060/2021/CA rwaciwe ku wa 4/4/2022, Umucamanza, mu gutanga igihano, areba imibereho y'uwo uwakoze icyaha mbere yo kugikora, igihe yagikoraga na nyuma yo kugikora, akazihuza n'uko icyaha cyakozwe, uburemere bwacyo n'ingaruka cyateye muri sosiyete, ndetse afite uburenganzira bwo kugenera ukurikiranywe, impamvu nyoroshyacyaha n'ubwo icyaha aregwa cyaba ari icyaha cy'ubugome (crime) cyangwa icyaha gikomeye (délit), kuko nta mwihariko Itegeko ryashyize ku cyaha runaka11. [32] Mu gace ka 24 na 25 tw'urubanza rujuririrwa, Urukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi, rushingiye ku ngingo ya 1812 y'Itegeko no 46/2018 ryo ku wa 13/8/2018 ryerekeye kurwanya iterabwoba, rwemeje ko harebwe imikorere y'icyaha gihama Nkundabose Sébastien, agomba guhanishwa igifungo cy'imyaka cumi n'itanu (15). [33] Mu rubanza n° 00017/2020/HC/HCCIC rwaciwe ku wa 20/4/2023, uregwa agaragaza nk'umurungo ugomba gukurikizwa ku birebana n'igihano akwiye guhabwa kuko ibikorwa aregwa bisa neza n'ibyaburanishijwe muri urwo rubanza, hagaragamo ko Urukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi, rushingiye ku kuba abaregwa batigeze bahakana ko bari muri FDLR-FOCA, bakaba barasobanuye ku buryo burambuye inzego z'imirimo yihariye buri wese yari ashinzwe no kuba baritwaye neza kuva

urubanza rutangiye kugeza iburanisha ripfundikiwe, kuba nta bitero bagaragayemo mu Rwanda,

10 Reba ingingo ya 2 y'Itegeko n° 059/2023 ryo ku wa 4/12/2023 rihindura Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange. 11 Urukiko rw'Ubujurire rwatanze uwo murongo rusobanura ibingomba kumvikana mu bivugwa mu ngingo ya 49 n'ya 58 z'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange. 12 ingingo ya 18 y'Itegeko no 46/2018 ryo ku wa 13/8/2018 ryerekeye kurwanya iterabwoba iteganya ko "uwakoze icyaha cyo kuba mu mutwe w'iterabwoba cyangwa ugira uruhare mu bikorwa by'umutwe w'iterabwoba cyangwa ukora ikintu cyose cyongerera ubushobozi undi mutwe w'iterabwoba ahanishwa igifungo kitari muni y'inyaka cumi n'itanu (15) ariko kitarenze imyaka makumyabiri (20)".

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ndetse ari ubwa mbere bakurikiranywe, rwasobanuye ko mu bushishozi bwawo bakwiye kugabanyirizwa igihano, buri wese agahanishwa igifungo cy'inyaka itanu (5), aho kuba igifungo kiri hagati ya cumi n'itanu (15) na makumyabiri (20) giteganyirijwe n'Itegeko 13. [34] Mu kugabanyiriza abaregwa muri urwo rubanza igihano, Urukiko Rukuru rwashingiye ku murongo watanze n'Urukiko rw'Ikirenga wemeje ko igihe hari impamvu zituma igihano giteganywa n'Itegeko kigabanywa, Umucamanza abikora ashingiye ku mwihariko wa buri rubanza agamije gutanga igihano gikwiranye n'ubutabera 14 no ku murongo watanze n'Urukiko rw'Ubujurire wemeje ko Umucamanza atanga igihano kigabanyije kugera muni y'igihano gito giteganywa n'Itegeko iyo intera iri hagati y'igihano gito n'ikiri hejuru ari ndende cyangwa hitawe ku buremere bw'icyaha n'ingaruka cyateje, mu gihe iyo ntera ari nto 15. [35] Urukiko rw'Ubujurire rurasanga mu guha Nkundabose Sébastien igihano cy'igifungo cy'inyaka cumi n'itanu (15), nta bisobanuro byatanze n'Urukiko rwabanje, uretse kuvuga ko rushingiye ku biteganywa n'Itegeko, rukanareba imikorere y'icyaha kimuhama, ko akwiye guhanishwa icyo gihano. [36] Urukiko rw'Ubujurire rurasanga ibisabwa na Nkundabose Sébastien ko yahabwa igihano cy'igifungo cy'inyaka itanu (5) nk'uko Urukiko Rukuru rwagihaye abaregwa muri urwo rubanza rusa n'urwe, bitahabwa agaciro kuko harebwe ibiteganywa n'ingingo ya 60, agace ka b) nk'uko yahinduwe n'Itegeko n° 059/2023 ryo ku wa 4/12/2023 ryatangajwe mu Igazeti ya Leta ku wa 5/12/2023 n'umurongo wagaragajwe haruguru, ukurikizwa ubu usobanura ibyumvikana muri iyo ngingo, ku birebana n'icyaha yahamijwe, Urukiko ntirushobora guha uregwa igihano cy'igifungo kiri muni y'inyaka irindwi n'igice ($7\frac{1}{2}$). [37] Urukiko rw'Ubujurire rurasanga n'ubwo Urukiko Rukuru rwasobanuye impamvu rwahaye Nkundabose Sébastien igihano cy'igifungo cy'inyaka cumi n'itanu (15), nta mpamvu iyo ariyo yose yatuma icyo gihano gihinduka. [38] Hashingiye ku byagaragajwe haruguru byose, Urukiko rw'Ubujurire rurasanga ubujurire bwa Nkundabose Sébastien nta shingiro bufite. III. ICYEMEZO CY'URUKIKO [39] Rwemeje ko ubujurire bwatanze na NKUNDABOSE Sébastien nta shingiro bufite; [40] Rwemeje ko nta gihindutse ku rubanza no RP/GEN 00001/2019/HC/HCCIC rwaciye n'Urukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi ku wa 5/2/2021;

13 Reba igika cya 74 k'urwo rubanza. 14 Reba agace ka 41 k'urubanza n° RS/REV/Injust/ Pen 0001/17/CS rwaciwe ku wa 13/4/2017, hagati ya Bahirwe Geoffrey na Mukagatoya Marie. 15 Reba agace ka 18 k'urubanza n° RPAA 00032/2019/CA rwaciwe ku wa 28/2/2020, hagati y'Ubushinjacyaha na Nzafashwanimana Jean de Dieu.

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[41] Rwemeje ko igihano cy'igifungo cy'imyaka cumi n'itanu (15) yakatiwe n'Urukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi, kigumyeho; [42] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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