

RWANDA / JUDGMENT

Re MUTSINDASHYAKA

RS/ INCONST/PEN 0001/10/CS

COURT

Supreme Court

DECIDED

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Re MUTSINDASHYAKA

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Text

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Re MUTSINDASHYAKA [Rwanda URUKIKO RW'IKIRENGA – RS/ INCONST/PEN 0001/10/CS (Mugenzi, P.J., Mutashya, Mukanyundo, Hatangimbabazi, Kanyange, Mukamulisa, Mukandamage, Munyangeri na Rugabirwa, J.) 26 Werurwe 2010] Itegeko Nshinga – Amategeko anyuranyije n'Itegeko Nshinga – Ikirego kigamije gukuraho ingingo – Mu gihe mu ngingo zibanziriza iya 176, Umushingamategeko yateganyijemo ibikorwa byinshi bibujijwe, noneho ibihano byabyo akabishyira mu ngingo ya 176 ntaho biba binyuranyije n'ingingo ya 18 n'ya 20 z'Itegeko Nshinga – Si ngombwa ko igikorwa kibujijwe, n'igihano kigiteganyirizwa, bihurizwa mu ngingo imwe. – [Subject line] – [Subject line]. Itegeko Nshinga – Inshingano y'umucamanza y'ukusobanura itegeko – Umucamanza afite inshingano yugusobanura itegeko cyangwa ingingo z'itegeko ziteye urujijo (confusion ku buryo agaragaza icyo rishaka cyangwa icyo zishaka kuvuga. Incamake y'ikibazo: Rukiko rw'Ibanze rwa Kacyiru rwa hamije Mutsindashyaka icyaha cyo kunyuranya n'amategeko agenga imitangire y'amasoko ya Leta, rumuhanisha igifungo cy'amezi 12 n'ihazabu ya 500.000Frw. Nyuma yaho Mutsindashyaka yaregeye Urukiko rw'Ikirenga asaba kuvanaho ingingo ya 176 y'Itegeko N°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta kuko ibangamiye ibiteganywa n'ingingo ya 18 n'ya 20

z'Itegeko Nshinga uko ryavuguruwe kugeza ubu avuga ko ingingo ya 176 ibangamiye ihame ry'uko icyaha cyose kigomba kuba giteganyijwe n'itegeko (principe de la légalité des infractions) riteganywa n'ingingo za 18 na 20 z'Itegeko Nshinga uko ryavuguruwe kugeza ubu kuko ntigaragaza igikorwa nyirizina kibujijwe, ntisobanura igihe igikorwa cyo gutanga isoko gitangirira n'igihe kirangirira, ngo inasobanure ibikorwa byihariye birebana n'itangwa ry'isoko rya Leta, ku buryo yasobanura ibikorwa bibujijwe n'ibihano bihanishwa, ngo kandi ko iyo ngingo iteganya ibihano ariko ntigaragaze ibikorwa bibujijwe bizahanishwa ibyo bihano, ku buryo irekera inkiko ububasha bwo kugena ibikorwa bizafatwa nk'icyaha mu itanga ry'amasoko ibyo bigatuma umucamanza cyangwa umugenzacyaha agomba kugenekereza ashakisha muri iryo tegeko ibikorwa byakwitwaga icyaha; akaba yahimba ikintu icyo aricyo cyose akakita icyaha; akaba ari yo mpamvu asanga ibyaha bidasobanutse. Kubirebana n'igihano cyose kuba giteganywa n'Itegeko (légalité de la peine) Leta y'u Rwanda ivuga ko, mu Itegeko rigenga amasoko ya Leta, igihano kigaragara bihagije mu ngingo ya 176, naho ku bijyanye n'uko icyaha cyose giteganywa n'Itegeko (légalité de l'infraction), ikavuga ko icyaha ari ukurenga ku biteganyijwe n'Itegeko rigenga amasoko, hakwicwaga ingingo imwe cyangwa nyinshi, kandi ko atari ngombwa ko icyaha gikorwa ku gikorwa kimwe ukwacyo (individualisé) ahubwo icy'ingenzi ari uko icyaha kiba giteganyijwe, ku birebana n'uko Itegeko ritumvikana cyangwa ritasobanutse (clarté et précision) ivuga ko ingingo ya 176 ihana uwakoze igikorwa kinyuranyije n'Itegeko n'amabwiriza by'itangwa ry'amasoko ya Leta, kuva isoko ritangajwe kugeza rirangijwe (exécution), kandi n'umucamanza akaba yemerewe gusuzuma niba ukoze igikorwa iki n'iki aba akoze icyaha Kubirebana n'inyungu Mutsindashyaka afite mu kuvanaho iyi ngingo yavuze ko kuba yarahanuwe ibyaha bidateganyijwe n'Itegeko, ibyo bimuhira inyungu yo gusaba kuvanaho ingingo ya 176 y'Itegeko N°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta, kuko ibangamiye uburenganzira bw'ibanze buteganywa n'ingingo ya 18 n'ya 20 z'Itegeko Nshinga uko ryavuguruwe kugeza ubu kandi niyo yabaye nyirabayazana y'ikurikiranwa kwe. Urukiko rw'ikirenga rwasanze imihango y'ugutaanga bene ibi birego kuko yagitanze ku giti cye kandi akaba afite inyungu mu rubanza akurikiranyweho icyaha gishingiye kuri iyo ngingo, ikirego cye kikaba kiriho itariki, umukono we, kikanerekana ikiregerwa n'impamvu zishingirwaho, ndetse akaba yatanze ku mugereka w'inyandiko y'ikirego, Itegeko ririmo ingingo asabira kuvaho akaba yatanze ikirego cye mu Rukiko rw'ikirenga rubifitiye ububasha.

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Incamake y'icyemezo: 1. Kuba bikorwa bibujijwe mw'itegeko ari byinshi atari byo bituma iryo tegeko rinyuranywa n'Itegeko Nshinga, mu gihe Umushingamategeko we yasanze agomba kubihana, kuko yasangaga ari ibyaha kandi nta n'ubwo kandi ari ngombwa ko igikorwa kibujijwe, n'igihano kigiteganyirizwa, bihurizwa mu ngingo imwe. 2. Mu gihe mu ngingo zibanziriza iya 176 y'Itegeko N°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta, Umushingamategeko yateganyijemo ibikorwa byinshi bibujijwe, noneho ibihano byabyo akabishyira mu ngingo ya 176 ntaho biba binyuranyije n'ingingo ya 18 n'ya 20 z'Itegeko Nshinga.

3. Kuba itegeko cyangwa ingingo z'itegeko ziteye urujijo (confusion), bigatuma umucamanza ashobora kuzisobanura uko ashatse si cyo cyatuma zitwa ko zinyuraniye n'Itegeko Nshinga ahubwo n'inshingano y'umucamanza y'ukuzisobanura (interpréter) ku buryo agaragaza icyo rishaka cyangwa icyo zishaka kuvuga.
4. Iyo umucamaza mu manza z'inshinjabyaha asobanuye itegeko agenekereje si byafatwa nkaho habayeho kunyuranya n'Itegeko Nshinga ahubwo icyo kibazo kiba impamvu y'ubujurire kugirango harebwe niba koko uwo mucamanza hari aho yagenekereje maze abikosore. Urukiko rwemeye kwakira ikirego kuko cyatanze mu buryo n'inzira bikurikije amategeko; Ariko rusanze nta shingiro gifite. Ingingo ya 176 y'Itegeko N°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta ntaho inyuraniye n'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/6/2003 nk'uko ryahinduwe kandi rujijwe kugeza ubu; Mutsindashyaka atsinze. Amagarama y'urubanza aherereye k'Urega. . Amategeko yashingiweho: Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavugururwe kugera ubu, ingingo za 18 na 20. Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 rigenga imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 89. Itegeko n°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta, ingingo ya 176. Nta manza zifashishijwe. Ibitecyerezo by'abahanga: Frédéric Desportes, Francis Le Guehec, Droit Péal Général, 14ème édition, Economica, 2007, p.9-10 G. Stefani, G. Levasseur na B. Bouloc, Droit Pénal general, 12ème édition, Paris,1984, p.179, N°148

Judgment.

Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rukomoka ku kirego Ubushinjacyaha bwatanze mu Rukiko rw'Ibanze rwa Kacyiru burega Mutsindashyaka Théoneste na bagenzi be, ibyaha binyuranye, Mutsindashyaka ku giti cye akaregwa icyaha gikurikira : kunyuranya n'amategeko agenga imitangire y'amasoko ya Leta, icyaha giteganywa kandi kigahanishwa ingingo za 84 (isubirwamo ry'ibiciro) na 176 z'Itegeko n° 12/2007 ryo kuwa 27/03/2007 ryerekeye amasoko ya Leta (1); ingingo ya 31 y'Iteka rya Minisitiri N°001/08/10/Min ryo kuwa 15/01/2008 rishyiraho amabwiriza agenga amasoko ya Leta n'ibitabo ngenderwaho by'amabwiriza agenga ipiganwa;

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ingingo za 2 na 4 z'iteka rya Minisitiri N°002/08/10/Min ryo kuwa 09/05/2008 rigenga ububasha bw'ikigo cy'igihugu gishinzwe amasoko ya Leta n'imibare y'amafaranga yerekana aho ububasha bw'inzego zitanga amasoko ya Leta bugarukira. [2] Urubanza rw'Urukiko rw'Ibanze rwaciye kuwa 20/11/2009, Urukiko rwemeza ko Mutsindashyaka Théoneste ahamwa n'icyaha cyo kunyuranya n'amategeko agenga imitangire y'amasoko ya Leta, rumuhanisha igifungo cy'amezi 12 n'ihazabu ya 500.000Frw. Urukiko rwategetse kandi ko afatanywa n'abandi bavuzwe mu rubanza guha Leta 320.000.000 Frw y'indishyi hamwe na 4% y'umusogongero wa Leta ungana na 12.800.000 Frw, bakanaha Leta izindi ndishyi zingana na 2.000.000 Frw. Rwanategetse ko ahita afatwa agafungwa urubanza rukimara gusomwa kabone n'iyi yajurira [3] Nyuma y'urwo rubanza,

kuwa 02/02/2010, Urukiko rw'Ikirenga rwakiriye mu bwanditsi bwarwo ibaruwa ya Me Umubyeyi Béatrice, itanga ikirego cya Mutsindashyaka, gisaba kvanaho ingingo ya 176 y'Itegeko N°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta ngo kuko ibangamiye ibiteganywa n'ingingo ya 18 n'ya 20 z'Itegeko Nshinga uko ryavuguruwe kugeza ubu. [4] Perezida w'Urukiko rw'Ikirenga yashyizeho Itegeko n°0021/2010 ryo kuwa 09/02/2010 rishyira iburanisha ry'uru rubanza kuwa 22/02/2010. [5] Uwo muni ugeze, hitabye Mutsindashyaka Théoneste yunganiwe na Me Umubyeyi Béatrice. Hitabye kandi n'Intumwa ya Leta Yungirije, Me Mbonera Théophile. II. IMIBURANISHIRIZE Y'URUBANZA A. Ingingo ikirego cya Mutsindashyaka gishingiyeho Ku bijyanye n'inyungu yo kvanaho ingingo ya 176 y'Itegeko n°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya leta [6] Me UMUBYEYI Béatrice yavuze ko MUTSINDASHYAKA yahaniwe ibyaha bidateganywa n'amategako, nyamara ngo ingingo ya 20 y'Itegeko Nshinga ivuga ko « ntawushobora guhanirwa ibyo yakoze cyangwa ibyo atakoze iyo amategako y'igihugu cyangwa mpuzamahanga atabifataga nk'icyaha igihe byakorwaga ». [7] Yakomeje avuga ko kuba MUTSINDASHYAKA yarahaniwe ibyaha bidateganiye n'Itegeko, ibyo bimuha inyungu yo gusaba kvanaho ingingo ya 176 y'Itegeko n°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta, ngo kuko ibangamiye uburenganzira bw'ibanze buteganywa n'ingingo ya 18 n'ya 20 z'Itegeko Nshinga uko ryavuguruwe kugeza ubu, bitewe n'uko iyo ngingo ya 176 idasobanura imiterere (description) y'ibyaha iteganyiriza ibihano, kandi ari yo yabaye nyirabayazana y'ikurikiranwa rya MUTSINDASHYAKA). Ku bijyanye n'impamvu zigaragaza uburyo ingingo ya 176 ibangamiye kandi inyuraniye n'ibiteganywa n'ingingo ya 18 n'ya 20 z'Itegeko Nshinga [8] Me UMUBYEYI yavuze ko iyo ngingo ya 176 ibangamiye ihame ry'uko icyaha cyose kigomba kuba giteganiye n'itegeko (principe de la légalité des infractions) kubera impamvu zikurikira :

1. ntigaragaza igikorwa nyirizina kibujijwe, kandi gihanwa n'Itegeko, mu gihe ingingo ya 20 y'Itegeko Nshinga ivuga ko icyaha gishingira ku gikorwa runaka cyangwa ku kitakozwe runaka (actions ou omissions)
2. ntisobanura igihe igikorwa cyo gutanga isoko gitangirira n'igihe kirangirira, ngo inasobanure ibikorwa byihariye birebana n'itangwa ry'isoko rya Leta, ku buryo yasobanura ibikorwa bibujijwe n'ibihano bihanishwa ;
3. iyo ngingo iteganya ibihano, nyamara ntigaragaze ibikorwa bibujijwe bizahanishwa ibyo bihano, ku buryo irekera inkiko ububasha bwo kugena ibikorwa bizafatwa nk'icyaha mu

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itanga ry'amasoko. [9] Me UMUBYEYI yakomeje ibisobanuro bye avuga ko Itegeko rigenga amasoko rifite ingingo 181, n'amabwiriza akaba afite ingingo zingana gutyo, akibaza niba izo ngingo zose, ari ibyaha 181; akaba asanga kuba Itegeko riteye kuriya, bituma umucamanza cyangwa umugenzacyaha agomba kugenekereza ashakisha muri iryo tegeko ibikorwa byakwitwa icyaha; akaba yahimba ikintu icyo aricyo cyose akakita icyaha; akaba ari yo mpamvu asanga ibyaha bidasobanutse, bityo bikaba binyuraniye n'ingingo ya 20 y'Itegeko Nshinga iteganya ko buri cyaha kigomba guteganywa n'Itegeko; bikongera kunyuranya n'ubwisanzure buteganywa n'ingingo ya 18 y'Itegeko Nshinga, bitewe n'uko umuntu wese urebwa n'amasoko ya Leta

ashobora gukurikiranwa agahanirwa ibyaha bidateganijwe n'amategeko ahana. [10] Me UMUBYEYI yarangije asaba Urukiko ko, ubwo iryo tegeko ritumvikana, iyo ngingo ya 176 yavaho kuko ibangamiye uburanganzira bw'ibanze bwa muntu buteganywa n'ingingoza 18 na 20 z'Itegeko Nshinga, cyane cyane ko hari n'andi mategeko akena ibyaha bishobora gukorwa mu itangwa ry'amasoko, atanga urugero kuri "conflit de lois , trafic d'influence, corruption" n'ibindi, avuga ko iyi ngingo aho gutanga umuti itera ikibazo. Yongeyeho ko iyi ngingo ya 176 ivuyeho, nta cyuho (vide juridique) byatera mu mategeko, kubera ko ibyaha bivugwa mu Itegeko ry'amasoko biteganywa n'andi mategeko. [11] Ku kibazo cyo kumenya niba iteganywa ry'ibyaha (incrimination) n'igena ry'ibihano by'ibyo byaha (pénalité) bigomba kuba mu ngingo imwe, byaba bitabaye gutyo, bikaba ari byo bibyara ukunyuranya n'Itegeko Nshinga (inconstitutionnalité), Me UMUBYEYI yasubije ko atari ko abibona, ko ahubwo ukunyuranya n'Itegeko Nshinga (unconstitutionnalité) bigaragara iyo hateganywa ibihano, nyamara nta bikorwa bihari. Yongeyeho ko kuba hari ingingo iteganywa ibikorwa, indi igateganywa ibihano, asanga nta kibazo gihari, kuri we igikuru kikaba ari uko ibikorwa bibanza bigateganywa. [12] Yabajijwe niba mu Itegeko rigenga amasoko, hari ibikorwa bibujijwe yabonyemo, asubiza ko birimo, biteganyirizwa n'ibihano bitari iby'inshinjacyaha (pénal), atanga ingero zikurikira : Igongana ry'inyungu (conflit d'intérêt) iteganyijwe mu ngingo ya 16, aho umuntu utanze isoko abifitemo inyungu, igihano (sanction) ari ugusesa amasezerano aba yasinywe ; ndetse n'abakozi ba Leta bagaragaye muri iryo tangwa ry'isoko bagahabwa ibihano byo mu rwego rw'akazi (disciplinaire).

icyaha cyo gukoresha igitinyiro mu isoko rya Leta (trafic d'influence) kivugwa mu ngingo ya 178 kikaba gifite n'igihano cyacyo, ku buryo iyo ngingo yo yumvikana kuko iteganywa igikorwa, igateganywa n'igihano cy'icyo gikorwa.

Ingamba zo gukumira ruswa (mesures anti-corruption) ziteganyijwe mu ngingo ya 15 B. Icyo Leta itekereza ku ngingo zatanze na Mutsindashyaka [13] Me MBONERA Théophile uhagarariye Leta yahawe ijamba, kugirango avuge icyo Leta itekereza ku ivanwaho ry'ingingo ya 176 risabwa na Mutsindashyaka n'umwunganira, avuga ko atemeranya na busa n'icyo bavugaga, bitewe n'uko asanga ingingo ya 176 y'Itegeko ry'amasoko yarububahirije ahubwo ibivugwa mu ngingo ya 18 by'uko gihano cyose giteganywa n'Itegeko (légalité de la peine) kimwe n'ibivugwa n'ingingo ya 20 by'uko icyaha cyose giteganywa n'Itegeko (légalité de l'incrimination). [14] Ku bijyanye n'uko igihano cyose giteganywa n'Itegeko (légalité de la peine), yavuze ko mu Itegeko rigenga amasoko, igihano kigaragara bihagije mu ngingo ya 176, ku buryo asanga kuvuga ko ingingo ya 18 itubahirijwe nta shingiro bifite; naho ku bijyanye n'uko icyaha cyose giteganywa n'Itegeko (légalité de l'infraction), yabanje gusobanura ko icyaha ari ukurenga ku biteganyijwe n'Itegeko rigenga amasoko, hakwicwa ingingo imwe cyangwa nyinshi. Ko rero kuvuga ko iryo tegeko rifite ingingo 181, cyangwa kuba ingingo ya 176 iteganywa ibihano n'ibyaha biteganywa n'andi mategeko nka "trafic d'influence", asanga ntaho bibangamiye Itegeko Nshinga kuko, hashobora gukoreshwa uburyo bw'impurirane rw'ibyaha (concours d'infraction),

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- [15] Me MBONERA Théophile yakomeje avuga ko atari ngombwa ko icyaha gikorwa ku gikorwa kimwe ukwacyo (individualisé), ko ahubwo icy’ingenzi ari uko icyaha kiba giteganyijwe, noneho hakarebwa niba ibikorwa byinjira mu ngingo iteganya icyo cyaha; [16] Ku birebana n’uko Itegeko rigomba kuba ryumvikana kandi risobanutse (clarté et précision), Me MBONERA Théophile yavuze ko kuri we asanga ingingo ya 176 ihana uwakoze igikorwa kinyuranyije n’Itegeko n’amabwiriza by’itangwa ry’amasoko ya Leta, kuva isoko ritangajwe kugeza rirangijwe (exécution), akaba asanga nta kitumvikana iyo umuntu asomye iryo tegeko, umucamanza akaba yemerewe gusuzuma niba ukoze igikorwa iki n’iki aba akoze icyaha. [17] Yakomeje avuga ko rero n’iyo haba hari aho Itegeko ridasobanura ku buryo buri wese ahita yumva icyo rivuze (clarté et précision), Urukiko rugahura n’impaka ku myumvire, asanga umurimo wo kubisesengura (interprétation) ari uw’umucamanza, kuko yahawe ububasha bwo kugaragaza niba igikorwa runaka ari icyaha, nk’uko bisobanurwa n’abahanga mu mategeko barimo Jean Pradel na Herald Renout1. [18] Yarangije avuga ko ingingo y’Itegeko idashobora rero gukurwaho n’uko gusa hari umuntu utayumva, cyangwa hari abatayumva kimwe, bitewe n’uko buri muntu wese adashobora gusoma ingingo y’Itegeko ngo ayumve nk’uko mugenzi we ayumva, ko ahubwo buri muntu ayumva ajyana mu nyungu ze, akaba ari yo mpamvu ijamba rya nyuma rifatwa n’umucamanza, ugomba kuyisobanura (interprétation).
- [19] Kuri iki kibazo cy’isesengura ry’itegeko, Me UMUBYEYI yavuze ko ibyo kuvuga ko ijamba rya nyuma ari iry’ umucamanza, bigomba kujyanirwa hamwe n’ibivugwa mu ngingo ya 3 y’igitabo cy’amategeko ahana y’uko amategeko ahana agomba gufatwa uko ateye; inkiko zikaba nta bubasha zifite bwo guca imanza ku buryo bugenekereje, bityo rero akaba asanga nta “interpretation” yemewe mu manza z’inshinjabyaha, mu gihe ikidateganyijwe mu Itegeko kidashobora kwitwa icyaha, umucamanza akaba atemerewe kwita ibyaha ibintu Umushingamategeko atigeze yita ibyaha, akaba asanga n’ubwo bubasha bwa “interprétation” ari ubw’Umushingamategeko.
- [20] Nyuma y’ibisobanuro byatanze n’impande zari muri uru rubanza, iburanisha ryarashojwe, Urukiko rutangaza ko urubanza ruzasomwa kuwa 26/03/2010, nyuma ruriherera ruruca mu buryo bukurikira: III. ISESENGURA RY’URUBANZA N’UKO URUKIKO RUBIBONA Iyakirwa ry’ikirego [21] Ingingo ya 89 y’Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n’ububasha by’Urukiko rw’Ikirenga nkuko ryahinduwe kandi ryujijwe kugeza ubu, iteganya ko Urukiko rw’Ikirenga arirwo ruburanisha ibirego byerekeranye no gusaba gukuraho Itegeko-ngenga, Itegeko, Itegeko- teka, cyangwa Itegeko ryemerera kwemeza amasezerano mpuzamahanga, haba kubikuraho byose cyangwa se zimwe mu ngingo zabyo zinyuranyije n’Itegeko Nshinga. Ruregerwa n’umuntu wese cyangwa ikigo n’amashyirahamwe bifite ubuzima gatozi iyo babifitemo inyungu.

1Pradel: “une infraction doit être clairement définie par la loi, cette condition se trouvant remplie lorsque le justiciable peut savoir à partir du libellé de la disposition pertinente, et au besoin de son interprétation par les tribunaux, quels actes et omissions engagent sa responsabilité”;

Herald Renout:” Il résulte du principe de la légalité des délits et des peines qu’une infraction doit être clairement définie par la loi, condition qui se trouve remplie lorsque l’individu peut savoir à partir du libellé de la clause pertinente, et au besoin à l’aide de son interprétation par les tribunaux, quels actes et omissions engagent sa responsabilité pénale”.

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[22] Urukiko rw’Ikirenga rwashyikirijwe ikirego kigamije gusaba gukuraho ingingo y’Itegeko kuko inyuranyije n’Itegeko Nshinga, ingingo ya 89 imaze kuvugwa ikaba yarubahirijwe, bityo ikirego cyatanzwe kikaba kiri mu bubasha bw’Urukiko rw’Ikirenga. [23] Mutsindashyaka yubahirije kandi iyo ingingo ya 89 kuko ikirego yagitanze ku giti cye kandi afite inyungu mu rubanza akurikiranyweho icyaha gishingiye ku ngingo ya 176 y’Itegeko N°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta. Yubahirije ndetse n’ibiteganywa n’ingingo ya 90 y’Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 rigenga imitunganyirize, imikorere n’ububasha by’Urukiko rw’Ikirenga nkuko ryahinduwe kandi ryujijwe kugeza ubu, kuko ikirego cye kiriho itariki, akaba yaragishyizeho umukono we, kikaba kinerekana ikiregerwa n’impamvu zishingirwaho, ndetse akaba yatanze ku mugereka w’inyandiko y’ikirego, Itegeko ririmo ingingo asabira kuvaho, bityo ikirego kikaba kigomba kwakirwa kigasuzumwa

Urubanza mu mizi [24] Ikibazo kigomba gusuzumwa muri uru rubanza ni ukumenya niba igihano giteganywa mu ngingo ya 176 y’Itegeko n°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta nta gikorwa (fait incriminé) cyagiteganyirijwe, ku buryo byaba binyuranye n’ibiteganywa mu ngingo ya 18 n’iya 20 z’Itegeko Nshinga. [25] Ingingo ya 18 y’Itegeko Nshinga iteganya ko “ubwisanzure bwa muntu bwubahirizwa na Leta; ko ntawushobora gukurikiranwa, gufatwa, gufungwa, cyangwa guhanirwa icyaha keretse mu gihe biteganywa n’amategeko akurikizwa mu gihe icyaha akurikiranyweho....”, naho iya 20 igateganya ko “ntawushobora guhanirwa ibyo yakoze cyangwa atakoze, iyo amategeko y’igihugu cyangwa amategeko mpuzamahanga atabifataga nk’icyaha igihe byakorwaga....”. [26] Mu gusobanura ikibazo cye, MUTSINDASHYAKA avuga ko yahawe ibihano biteganywa n’ingingo ya 176 y’Itegeko n°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta, nyamara ngo iryo tegeko rivuga ibintu byinshi mu ngingo 181, ngo rikaba ritagaragaza ibikorwa bibujijwe bihanishwa ibihano biteganyijwe n’iyo ngingo ya 176, ko ahubwo ubwo bwinshi butuma haba urujijo (confusion) mu Itegeko, kandi Itegeko rihana rigomba kumvikana (claire et précise); ibyo bikaba ngo bibangamiye uburenganzira buteganywa n’Itegeko Nshinga ry’uko nta muntu ugomba guhanirwa ibikorwa bitigeze byitwa ibyaha nk’uko bivugwa mu ngingo ya 18 na 20 z’Itegeko Nshinga zirebwe hamwe. [27] Ingingo ya 176 y’Itegeko n°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta, iteganya ibikorwa: bitabangamiye ibiteganywa n’igitabo cy’amategeko ahana, abayobozi cyangwa abakozi, mu gihe bari mu gikorwa cyo gutanga amasoko, barenze kuri iri tegeko n’amabwiriza agena ishyirwa mu bikorwa byaryo,

bahanishwa igifungo cyo kuva ku mezi atandatu (6) kugeza kuri cumi n'abiri (12) n'ihazabu itarenze ibihumbi magana atanu (500.000) by'amafaranga y'u Rwanda cyangwa kimwe muri ibyo bihano. [28] Ingingo ya 1 y'igitabo cy'amategeko ahana ibyaha mu Rwanda isobanura icyaha icyo ari cyo, igira iti: icyaha ni ugukora ikibujijwe cyangwa kwanga gukora igitegetswe ku buryo buhungabanya umutekano mu bantu kandi hari Itegeko ribiteganyiriza ibihano. [29] Iyo hasuzumwe ibikubiye mu Itegeko N°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta, kuva ku ngingo ya mbere yaryo kugeza ku ya nyuma, bigaragara ko harimo ibintu byinshi bibujijwe, ndetse mu iburanisha ry'uru rubanza, Mutsindashyaka hamwe n'umwunganira bakaba bemera ko ibyo bintu bibujijwe birimo koko. [30] Ikigaragara kandi muri iryo tegeko, ni uko Umushingamategeko yifuje ko ibyo bintu bibujijwe bihanwa, akabiteganyiriza ibihano, by'umwihariko ibihano bikubiye mu ngingo ya 176 y'iryo tegeko. Kuba rero Umushingamategeko yarabiteganyirije ibihano, amaze kubona ko bibujijwe, bihura n'ibivugwa mu

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ngingo ya 1 y'igitabo cy'amategeko ahana by'uko icyaha ari ugukora ikibujijwe.....kandi hari Itegeko rigiteganyiriza ibihano. [31] Kuba ibyo bikorwa bibujijwe ari byinshi mu Itegeko N°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta, Urukiko rurasanga atari byo bituma iryo tegeko rinyuranya n'Itegeko Nshinga, mu gihe Umushingamategeko we yasanze agomba kubihana, kuko yasangaga ari ibyaha [32] Nta n'ubwo kandi ari ngombwa ko igikorwa kibujijwe, n'igihano kigiteganyirizwa, bihurizwa mu ngingo imwe, ibyo bikaba bihuza n'ibyo abahanga mu mategeko nka Frédéric Desportes na Francis Le Gunehec bavuga, y'uko igenwa ry'icyaha n'igenwa ry'igihano cyacyo atari ngombwa kuba bibangikanye mu ngingo imwe y'Itegeko (...il n'est pas nécessaire qu'incrimination et sanction pénale soient formellement réunies dans un même texte.....Il se peut même que le texte d'incrimination et le texte de pénalité ne soient pas au même niveau dans la hiérarchie des normes).2 [33] Mu gihe rero, mu ngingo zibanziriza iya 176 y'Itegeko N°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta, Umushingamategeko yateganyijemo ibikorwa byinshi bibujijwe, noneho ibihano byabyo akabishyira muri iyo ngingo ya 176, Urukiko rurasanga ntaho binyuranye n'ibivugwa mu ngingo ya 18 n'ya 20 z'Itegeko Nshinga. [34] Ku bijyanye n'ingingo y'uko iryo tegeko rigenga amasoko ya Leta rishobora kuba riteye urujijo (confusion) ngo kubera ko riteganyira ibintu byinshi mu ngingo zigera kuri 181, ngobigatuma umucamanza ashobora kurisobanura uko ashatse, Urukiko rurasanga, nk'uko abahanga mu mategeko babisobanura³, iyo habaye urujijo rutuma itegeko ritumvikana, inshingano y'umucamanza ari ukurisobanura (interpréter) ku buryo agaragaza icyo rishaka kuvuga, kuko atabura guca urubanza ngo ni uko itegeko ritumvikana. Kuba rero haba ingingo z'itegeko zakenera gusobanurwa, si cyo cyatuma zitwa ko zinyuranije n'Itegeko Nshinga. [35] Mu manza z'inshinjabyaha, iyo bibaye ngomwa gusobanura itegeko, umucamanza abikora ku buryo butagenekereje (interprétation restrictive). N'iyi kandi yaramuka asesenguye itegeko agenekereje, Urukiko rurasanga ibyo bitatuma habaho kunyuranya n'Itegeko Nshinga, ahubwo icyo kibazo gishobora kuba impamvu y'ubujurire, kigashyikirizwa umucamanza usuzuma urubanza mu rwego rw'ubujurire kugirango arebe niba koko uwo mucamanza hari aho yagenekereje maze abikosore. [36] Hashingiwe rero ku bimaze gusobanurwa byose haruguru,

Urukiko rurasanga ingingo ya 176 y'Itegeko N°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta ntaho inyuranya n'ibiteganywa mu ngingo ya 18 n'ya 20 z'Itegeko Nshinga, mu gihe iryo tegeko ryafashe nk'icyaha ibikorwa bibujijwe (actions et omissions) binyuranye birivugwamo, bityo ikirego cyatanzwe na Mutsindashyaka Théoneste gisaba kurivanaho kikaba nta shingiro gifite.

IV. ICYEMEZO CY'URUKIKO RW'IKIRENGA [37] Rwemeje kwakira ikirego rwashyikirijwe na Mutsindashyaka Théoneste kuko cyatanzwe mu buryo n'inzira bikurikije amategeko. [38] Rwemeje ariko ko nta shingiro gifite. [39] Ruvuze ko ingingo ya 176 y'Itegeko N°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta ntaho inyuranije n'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/6/2003 nk'uko ryahinduwe kandi rujijwe kugeza ubu.

2 Frédéric Desportes, Francis Le Gunehec, « Droit Péal Général, 14ème édition, Economica, 2007, p.9-10 3 Reba G.Stefani, G.Levasseur na B.Bouloc mu gitabo cyabo "Droit Pénal général", 12ème édition, Paris,1984, p.179, n°148

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[40] Rukijije ko Mutsindashyaka Théoneste atsinzwe. [41] Rutegetse Mutsindashyaka Théoneste gutanga amagarama y'urubanza angana na 8.900Frw, atayatanga mu minsi mirongo itatu, ayo mafaranga agakurwa mu bye ku ngufu za Leta.

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