

Constitutional Protection of Privacy during Search and Seizure Under the Ethiopian Criminal Procedure Laws

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Abstract

The right to privacy is fundamental right, essential autonomy and the protection of human dignity serving as the foundation up on which many other human rights are built. Different international and national law protects privacy through legislation. The birth of FDRE constitution is viewed as the most important events for the establishment of democracy. The right to privacy and other similar fundamental human rights are granted by this constitution. Any law, customary practice or decision of an organ of state which contravenes this constitution shall be of no effect. Criminal code of Ethiopia, anti-terrorism proclamation and anti-corruption proclamation are laws which have a mandate of search and seizure through restricting privacy. These laws stipulate the condition of search and seizure which are inconsistency with the constitution and over restrict privacy. Our laws on search and seizure are legally in line with international trends. the law related to search and seizure is complex but not impossible to understand. The concerned organ to search and seizure should be need training and knowing the law to respect individual protection of privacy during search and seizure.

Back Ground of the Study

The right to Privacy is a fundamental right, essential to autonomy and the protection of human dignity; serving as the foundation upon which many other human rights are built. The right of privacy is a human right and an element of various legal traditions which may restrain both government and private party action that threatens to privacy of individual. Privacy is the condition or state of being free from public attention to intrude in ones act or decision. Different international and national laws protect privacy through legislation. United Nation declaration of human right (UDHR) 1948 Art 12, states that “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attack upon his honor and reputation. Everyone has the right to protect of privacy by law against such interference or attack.” Also the right of privacy is recognized as one of the fundamental right under the international covenant on civil and political

rights here in after (ICCPR). It states as follows, “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, and home or correspondence....., everyone has the right to the protection of privacy by law against such interference.

Ethiopia has recognized the right to privacy throughout its brief constitutional history, albeit to a different degree. The first written constitution of 1931 explicitly recognizes the right of Ethiopian subjects not to be subjected to domiciliary searches and the right to confidentiality of correspondence except when provided by law. These rights were also incorporated with a more amplified tone in the revised constitution of 1955. The 1987 constitution of the Derge also guarantee Ethiopians the right to have inviolability of their persons and home along with secrecy of correspondence. More comprehensively, privacy protection is safe guarded by 1995 constitution which protects privacy of persons, their homes and correspondences’. The right of privacy is not however absolute in the constitution. The 1995 constitution under article 26 (3) provides a limitation clause to the right to privacy for the purpose of other competing and compelling interest.

Search and seizure are among the activities that an investigating police officer might engage in during an investigation in order to collect evidence for trial. These types of evidence are obtained through restriction of privacy; a search of a suspect’s person or his premises, or interception of verbal or written communications.” Seizure” refers to an actual possession of a thing obtained through search to be used as evidence. Search is an examination of person’s body, property or other area that the person reasonably expects to be considered as private by law enforcement officer for the purpose of finding evidence.

Search in accordance with Ethiopian criminal procedure law can be conducted with court warrant and without court warrant. However, the FDRE constitution is silent as to whether the search must be conducted with court warrant or without court warrant. No premises may be searched unless the police officer or member of the police is in possession of a search warrant in the form prescribed in the third schedule to this code except where: (a) an offender is followed in hot pursuit and enters premises, (b) information is given to an investigating police officer or member of the

police that there is reasonable cause for suspecting that article which may be material as evidence in respect of which an accusation or complaint has been made under Art 14 of this code and the offence is punishable with more than three years imprisonment, are concealed or lodged in any place and he has good ground for believing that by reason of the delay in obtaining a search warrant such articles are likely to be removed. From this article it's possible to understand search can be conducted with warrant in accordance with article 32(2) (a), (b) of the criminal procedure code.

In addition to criminal procedure code of Ethiopia, privacy is restricted by anti-terrorism proclamation No.652/2009. Art 17 of anti-terrorism proclamation requires the police officer to request a covert search from the court when he has reasonable ground to believe that two conditions exist. The first condition relating to the officers suspicion that a crime has been or is likely to be committed. This condition is satisfied where he has reasonable ground to believe that a terrorist act has been or likely to be committed.

Anti-terrorist proclamation like criminal procedure code of Ethiopia permits (stipulated) how search must be conducted with court warrant and without court warrant "Art 16 of the law (anti-terrorism proclamation) provides that a search of a person or property with a court warrant, may be made with a view to prevent the commission of a terrorist act, which is known as sudden search. Two precondition need to exist to conduct the search under this provision. First, the concerned police officer need to have " a reasonable suspicion" about the possibility of a terrorist act to be committed. Second, the officer should believe that it is "necessary" to make the search in order to prevent the act. Upon ascertaining the fulfillment of existence of these two conditions, the police officer is supposed to get permission for the director general of federal police or his representative to carry out the search."

In general privacy is protected under the current constitution of Ethiopia. This right shall include the right not to be subject to searches of his home, person or property or the seizure of any property under his personal possession". On the other hand, this right is restricted on exceptional cases. Public officials shall respect and protect this right. No restrictions may be placed on the enjoyment of such right except in compelling circumstances and in accordance with specific laws whose purpose shall be the safeguarding of national security or public peace, the prevention of crimes or

protection of health and the right and freedom of others.” The criminal procedure code and anti-terrorism proclamation NO652/2009 also restrictes privacy through search one’s home, person property correspondence, communication etc.

1.1. Statement of Problem

Since privacy is one of the fundamental rights of human right and the FDRE constitution recognized privacy as “everyone has the right to privacy” save the restriction stipulated in the constitution of FDRE and “constitution is the supreme law of the land any law customary practice or a decision of organ of state or public official which contravenes this constitution shall be of no effect.” Although the constitution guarantees the right of privacy, search and seizure which affect and limit the right of privacy, are among the activities that an investigating police officer might engage in during an investigation. Besides, the criminal procedure code, anti-terrorist proclamation, anti-corruption proclamation stipulates the condition of search and seizure which are inconsistence with the constitution and over restriction of privacy.

1.2. Objective of the Study

1.2.1. General Objective of the Study

The general objective of this research was to investigate constitutional protection to the right of privacy and the applicability of the law.

1.2.2. Specific Objective

- ✓ To examine constitutional protection of privacy and the scope of the right to privacy
- ✓ To investigate search and seizure on the view of criminal procedure laws and its consistency (criminal procedure law, anti-terrorism proclamation, anti-corruption proclamation)
- ✓ To show the violation of the right to privacy during search and seizure in practice
- ✓ To identify possible remedies

1.3. Research Questions

1. What is the scope of the right to privacy in the FDRE constitution and other international laws?
2. What are the gaps in laws related to protection and restriction of right to privacy?

3. How to minimize arbitrary interference of the right to privacy under Ethiopian criminal procedure laws?
4. What are the remedies for unlawful searches?
5. What is the acceptability of status of articles seized on the base of a defective warrant?

1.4. Significance of the Research

This study has various supportive values for the law maker on the issue of privacy. For the law maker, it shows the gap between the constitution and criminal procedure law while search is conducted. For other researchers, the study may serve as an input on this area. For the society and the readers at large, the study will create awareness on the gap between privacy in the constitution and in the criminal procedure laws and make active community on his right of privacy that guaranteed by the constitution.

Besides the study has the following detail significance protect unconstitutional search and seizure.

- Narrow the gap between constitutional protection of privacy nexus unlawful search and seizure
- Inspire the judge and police officer to respect constitutional right of privacy while search and seizure.

1.5. Scope of the Research

This research mainly concerned on constitutional privacy protection particularly during search and seizure under Ethiopian criminal procedure law. Beside, this research assessed anti-corruption proclamation and anti-terrorism proclamation of Ethiopia during search and seizure.

1.6. Limitation of the Study

- a. The unavailability of internet access
- b. Time was the other problem since the research need critical view

1.7. Research Methodology

The methodology adopted to do this research is doctrinal legal research.

1.7.1.Types and Source of Data

Both primary and secondary sources of data were used to do this study. Books, journals, articles and different written materials on the issue of the study were utilized.

2.Privacy, Search and Seizure under the Legal Framework

2.1. Introduction

Traditionally “privacy” means freedom from official intrusion. It is a concept relating to solidarity, secrecy and autonomy. Right to privacy is a right to be let alone. It is the right of a person to be free from unwarranted publicity. Its foundation is the concept of inviolable personality and personal immunity. It is considered as a naturally absolute or pure right springing from the instinct of nature. So right to privacy is nothing more than a right to live in particular way one chooses for himself to enjoy his life, his family life, honor and reputation. A person should not be disturbed while meditating, sleeping, studying or enjoying sex. Privacy in modern time is understood as a fundamental right, essential to autonomy and the protection of human dignity; serving as the foundation upon which many other human rights are built. The right to privacy is a human right and an element of various legal traditions, which may restrain both government and private party action that threaten the privacy of individuals.

2.2. Legal Protection of Privacy

Privacy is a fundamental human right; essential to autonomy and the protection of human dignity serving as the foundation upon which many other human rights are built. Therefore, both international and national human right instrument incorporates the right to privacy.

2.2.1. International Legal Framework

Different international laws protect privacy through their legislation. United Nation Declaration of Human Right (UDHR) 1948 Article12, states that “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attack upon his honor and reputation. Everyone has the right to protection of privacy by law against such interference or attack”. Also the right of privacy is recognized as one of the fundamental right under the international covenant on civil and political rights here in after ICCPR. It, under article 17, states as follows “no one shall be subject to arbitrary or unlawful interference with his privacy, family, and home or correspondence....., everyone has the right to the protection of law against such interference.

2.2.2. National Legal Framework

Ethiopia has recognized the right to privacy throughout its brief constitutional history, albeit to a different degree. The first written constitution of 1931 explicitly recognized “the right to Ethiopia subjects not to be subjected to domiciliary searches and the right to confidentiality of correspondence except provided by law. This right is also incorporated with a more amplified in the revised constitution of 1955. 1987 of the constitution also guaranteed Ethiopians to right to have inviolability of their persons and home along which secrecy of correspondence. A More comprehensive privacy safe guard is however observed in the 1955 constitution which protects privacy of person, their home and correspondence. Notable about this constitutional privacy provision is that it is framed illustratively so that any forms of intrusion into private spheres are prohibited. The constitution requires not only to refrain interferes with individual privacy but also to prevent private persons or entitles that would impair the right. The right to privacy is not however absolute. The constitution under Article 26 (3) puts a limitation clause to the right to privacy for other competing interests.

Article 26 FDRE Constiution /The right to privacy

- (1) Everyone has the right to privacy. This right shall include the right not to be subjected to searches of his home, person, or property, or the seizure of any property under his personal possession.
- (2) Everyone has the right to the inviolability of his notes and correspondence including postal letters, and communications made by means of telephone, telecommunications and electronic devices.
- (3) Public officials shall respect and protect these rights. No restrictions may be placed on the enjoyment of such rights except in compelling circumstance and in accordance with specific laws whose purpose shall be the safe guarding of national security or public peace, the prevention of crimes or the protection of health, public morality or the rights and freedom of others.

2.3. The Scope of Privacy

Article 12 of the UDHR family home or correspondence and honor and reputation are protected interest. There is no indication whether it includes communication or note. However, as we infer from the Article honors, reputation may went to include communication and others. Article 17 of the ICCPR also can be interpreted like UDHR no one shall be subject to

arbitrary interference with his privacy, family, home or correspondence or to unlawful attack up on his honor and reputation. In regarding whose interest is protected the ICCPR approach can be inferred from the preamble, which asserts that these human rights derived from the inherent dignity of human person. In Ethiopia the right to privacy is stipulated under Article 26 of the FDRE constitution.

According to Article, 26 of the FDRE constitution search of home, person or property are protected interests and seizure of any property under his personal possession notice and correspondence including postal letters, and communication made by means of telephones telecommunication and electronic device are protected interest. Regarding the question of whose right is protected, according to Article 26 of FDRE constitution only human person rather judicial person, because the term “everyone from article 26 (1), (2) cannot indicate juridical person. It is unsound to use the term “everyone” for juridical person. The obligation to prevent interference of privacy is on the government. Article 26 (3) of the constitution stipulate as public officials shall respect and protect these rights.

2.4. Restriction of Privacy

There is no absolute right freely disposed for human beings. Since human beings are selfish design, there is a possibility of abusing this right for self-interest. By abusing these right, human beings affect the right of others and injure others to obtain unlawful (unjustifiable) advantages. To ascertain the right of people to live in freedom, peace and security for public at large the law restrictes rights to dispose freely. The UDHR under Article 12 and the ICCPR under Article 13 avoid arbitrary interference with his privacy. From this Article we can understood that there is lawfull interference of privacy specified by laws. In Ethiopia, Article 26 (3) of the FDRE constitution provides three conditions that must be fulfilled for the restriction of privacy not to be arbitrary or unlawful. The first condition is the existence of specific law that authorizes the restriction. The second condition is purpose of specific law that authorizes the restriction of privacy: the law should serve one or more of the three purpose, the safe guarding of national security or the rights and freedom of others, the prevention of crimes, or the protection of health, public morality and the right and freedom of others. The third

requirement is the existence of compelling circumstance that calls for the restriction of privacy.

2.5. Search and Seizure

Other types of evidence in addition to statements or confession of the accused and oral testimony of third parties may be used as evidence in criminal trial. Such evidence, includes, but is not limited to, tools which were used to commit a crime and the fruits of the crime. These types of evidence are to be obtained through restriction of privacy by a search of a suspected person or his premise, or interception of verbal or written communications.

“Seizure” refers to the actual possession of a things obtained through search to be used as evidence. Search and seizure are among the activities that an investigating police officer might engage in during an investigation in order to collect evidence for trial.

Search and seizure is a procedure used in many civil law and common law legal system by which police or other authorities and their agents, who suspect that a crime has been committed, do a search of persons, their property and confiscate any relevant evidence to the crime. Search in accordance with Ethiopian criminal procedure law can be conducted with court warrant and without court warrant. However, FDRE constitution is silent as to whether the search must be conducted with court warrant and without court warrant.

But, the following argument can be upheld. If restriction is allowed on the basis of specific law in compelling circumstances for the purposes mentioned in art 26 (3) of the constitution, it means the law may demand search and seizure with court warrant or allow simply without warrant. After all, all organs of the government have the duty to respect it including the judiciary. So it seems that the constitution left details of how the right can be restricted to subsequent laws to be enacted by legislative body. A restriction without court warrant is thus an extended limitation that may be allowed by specific law.

2.5.1. Search with Court Warrant in Criminal Procedure Code Search of Premise:

In light of Article 26 (3) of the FDRE constitution which requires inter alia, that restriction of privacy be made in compliance with specific provision of

the law, the court has a paramount responsibility to confine the issue of search warrant to strict requirement of the law. It is clear from Article 33 (1) the criminal procedure code that warrants are not to be issued up on mere demand, or even lightly. A court will issue search warrant if it is satisfied that doing so will serve the interests of justice that is, where the court is convinced that 1.likelihood of the items to be found in the premise to be searched 2. Relevance of the item to be seized 3. Compelling circumstance.

1.Likelihood of the items to be found in the premise to be searched found in the premise searched Article 26 of the FDRE constitution and Article 33 (1) criminal procedure code taken together, seems to suggest the mere suspension of the police officer that the item to be seized will be found on certain premise is not adequate to obtain a search warrant. Rather the law seems to require a certain degree of probability that the items the police are seeking will be found on the premise. After all searches is not trial and error exercise.

2. **Relevance of the item to be seized:** when all application for research is made, the court is required to verify whether the items to be seized are relevant. The phrase “and it has been made to appear to me that the production of the Article....is essential to the inquire” in the context of from prescribed in the third schedule of the code suggests that the judge, before issuing the warrant should be convinced of the relevance of the item to be seized.

3. **Compelling circumstance:** Article 26 (3) of the FDRE constitution required that compelling circumstance be present for the application of the specific laws. Compelling circumstance exist justifying a search if the search serves the purpose of justice or inquiry under the criminal procedure code and the purpose cannot serve otherwise than through the search.

2.5.2. Search without Court Warrant in Criminal Procedure Code

a. Search of Premise:

Article 32 (2) of criminal procedure code: no premise may be searched unless the police officer or member of the police is in possession of a search warrant in the form prescribed in the third schedule except where:

a. An offender is followed in hot pursuit and enters premise or disposes of Articles the subject matter of an offence in premise;

b. Information is given to an investigating police officer or member of the police that there is reasonable cause for suspecting that Articles which may be material as evidence in respect of an offence in respect of which an accusation or complaint has been made under Article 14 of this code and the offence is punishable with more than three years' imprisonments, are concealed or lodged in any place and he has good grounds for believing that by reason of the delay in obtaining a search warrant such articles are likely to be removed.

As stated in Article 32 criminal procedure code search of premise without a court warrant unlike search of persons is an exception to the rule that a warrant is required to authorize a search. Police officer may carry out a search of premise without prior court authorization from a court of law in only two circumstances.

1st. Case of Hot Pursuit:

If a person who commits a flagrant offence, defined under Article 19 and 20 of criminal procedure code is not caught but is being followed in "Hot Pursuit" the premise into which he enters or where he dispose of a fruits or instrumentalists of the offence may be searched without warrant. Two conditions must be met or the search to be lawful first the hot pursuit with a view to arrest him. Article 50 of the criminal procedure code provides that arrest without warrant in case of flagrant offence is allowed where the offence is punishable with simple imprisonments for not less than three months. Moreover, the crime committed should not be one that is punishable only upon complaint. That is, where police officer may not arrest the offender without getting authorization from the victim of the offence. Second, the purpose of the search is very specific if the person enters into a certain premise then the premise may be searched only to the extent necessary to make his arrest. Hence, whether the suspect is not likely to be found should not be searched. If the person being followed in hot pursuit, instead of entering the premise, simply throws materials that may be used in evidence into the premise, the search is to be made only to seize these materials. Search part of the premise where the materials are not likely to be found would be illegal. Because Article 50 of criminal procedure code allows ordinary persons to arrest one who has committed a flagrant offence, a possibility exists that person who committed a flagrant offence will be found

in hot pursuit by ordinary persons. If the suspect disposes of Articles that are the subject matter of an offence on giving premise, the person, the person following the offender in hot pursuit may not enter the premise, to conduct a search doing so, unlike effective arrest, is exclusively reserved for the police officer.

2nd Existence of Exigency

If there is a need to act quickly, the police officer may conduct search of premise without a warrant. According to Article 32 (2) (b) of criminal procedure code, the search without warrant must be justified by the existence of the a pressing emergency and the need to take from prompt action first the commission of the offence must have been reported by accusation or compliant to police officer in accordance with Article 14 criminal procedure code. Second, the offence must be punishable with more than three years impressments. The reported offence must be so grave that there is a possibility for the accused, if convicted, to be punishing with more than three years impressments. Third, an investigating police officer must have received information from informants that articles which may be used in evidence are likely to be found in a certain place. The officer may not really be on his own personal knowledge to conduct the search without a warrant even where other conditions are fulfilled. Fourth the information should be circumstantial evidence and from a credible source of that there is reasonable causes of suspecting that article which may be used as evidence are found in a certain place. The fifth requirement requires good reason to believe that Article which are reported to be found in the premise to be searched would be removed if attempts were made to obtain a search warrant.

A. Search of a person

Article 32 (1) criminal procedure code states as “No arrested person shall be searched except where it is reasonably suggested that he has about his person any article which may be material as evidence in respect of the offence which he is arrested or suspected to have committed. A search will be made by a person of the same sex as the arrested person. The police officer can conduct search without court warrant when first the person must be arrested, second reasonably suspected in relation to the crime he committed. And must be search with the same sex.

Article 32 physical examination

(1) Notwithstanding, the provision of Article 20 civil code where an investigating police officer considers it necessary, having regard to the offence with which accused is charged, that a physical examination of the accused should be made. He may require a registered medical practitioner to make such examination. Examination under this Article shall include the tacking of a blood test.

(2) The investigating police officer may, with the agreement of victim of an offence or, where incapable with the consent of the parent or guardian, requires registered medical practitioner to make such physical examination, as the offence being inquired into would appear to require. He shall require the registered medical practitioner to record in writing the result of such examination. Search under this provision is appropriate in the context of certain types of offence. If, for stance an individual, is suspected of consuming an illegal drug, a medical examination can determine whether he has consumed the drug. Similarly if a person is suspected of spreading disease such as HIV the appropriate medical examination can ascertain whether he carries the diseases.

2.6. Search with Court Warrant in Anti-Terrorism Proclamation 652/2009
Anti-terrorism proclamations like criminal code of Ethiopia permits how search is conducted by two ways, with court warrant and without court warrant.

b. Search of premise; covert search article 17 of anti-terrorism proclamation police may request the court in writing or, in urgent cases by telephone for covert warrant where he has reasonable grounds to believe that;

(1) A terrorist act has been/ is likely to be committed, or

(2) A resident or possessor of a house to be searched has made preparation or plans to commit a terrorist act; and

(3) Covert search is essential to prevent or to take action against a terrorist act.

2.7. Search without Court Warrant in Anti-Terrorism Proclamation

A. Sudden Search

Article 16 states that where a police officer has reasonable suspicion that a terrorist act may commit and deems it necessary to make a sudden search in order to prevent the act, which the permission of the director general of the federal police or a person delegated by him, may stop vehicle and pedestrian and conduct sudden search at any time and seize relevant evidences. Article 16 provides case where a search of person or property without a court warrant may be made with a view to prevents the commission of a terrorist act, which is known as sudden search. Two preconditions need to exist to conduct the search under this provision. First, the concerned police officer should believe that it is necessary to make the search to prevent the act.

B. Search of Person

Article 21 due to give sample

The police may order a person suspected of act of terrorism to give sample of his hand writing, hair, voice, finger print, photo graph, blood, saliva and other body fluids for investigation. Moreover, he may order the suspect to undergo medical test. If the suspect is not willing for the test, the police may use necessary and reasonable force to take sample.

Article 21 of anti-terrorism proclamation empowers the police to order the person suspected of acts of anti-terrorism to undergo a medical test, and to provide, among the things sample of his blood, saliva, and other body fluids to analyze.

2.8. Search without Court Warrant: In Revised Anti-Corruption Especial Procedure and Rule of Evidence Proclamation:

Search of Communication

Art 46 Interception of Correspondence and Letter

(1) Where is it necessary for the investigation of corruption office, head of the appropriate organ may order the interception of correspondence by telephone, telecommunications and electronic devices as well as mail by postal letters.

(2) Where it is necessary, evidence gathered through video, camera, sound recorder, and similar electronic device may be produced as evidence

(3) In order to give in accordance with sub Article, one of the Article shall indicate the offence which gives rise to interception, and the duration of interception and, if it is a telephone or telecommunication, the link to be intercepted. Unless head of the appropriate organ decides otherwise, the duration of the interception may not exceed four month.

Article 46 (1) should not be understood as restricting privacy interests. For all matters listed under 26 (2) of FDRE constitution, it allows only interception of communication, whether verbal or oral, between two or more person. It does not allow seizer of notice.

Article 46 (1) is authorization to intercept “live” communications. If a communication has already been made and recorded or a letter already reached its destination, is to let for interception. In such case, the record or the letter can only seized in a search of premise made pursuant to a court to order in accordance with Article 32 and 33 of the criminal procedure code. The agency head is empowered only to order the seizure of previously recorded communication. That is, “interception” extends to current communication or letters only, while cassettes or letters that have reached their distinction would be subject only to be sized.

The phrase “where it is necessary for the investigation of corruption offence under Article 46 sub one indicators the compelling circumstance” requirement of the constitution. The concerned person may order interception under Article 26 only when there is no other effective and adequate way of collecting evidence. It is only then that the interception becomes “necessary”. In other words, the concerned person considers other way of conducting a successful investigation before rushing into giving permission for interception of correspondence and letters. If a successful investigation can be conducted without it interception should not be allowed, for in search case it is unnecessary. Unlike searches under Article 31 (1) of the criminal procedure code which may be justified for the purpose other than serving investigation, interception can only be justified if needed for investigation.

When interception is ordered and made, the evidence obtained through this means need not be evidence during trial. As provided under Article 46 (2) , it is only “where necessary” that the evidence gathered through interception using a video camera, sound recorder, or similar electronic device may be

produced as evidence. That is if the prosecutor is convinced that he has other evidence to prove this case he cannot use the evidence collected through interception.

2.9 Possible Remedies

In extra contractual liability rule any damage should be compensated. Search and seizure are offence as stipulated under Article 2035 of civil code. As a result, the following are the remedies guaranteed in the civil code. Article 2028 of the civil code provides that whose ever causes damage on another by offence shall make good.

Article 2035 the civil code infringement of the law

A person commits an offence where he infringes any specific and explicit provision of a law, decree or administrating regulation. Article 2035 trespass a person commits an offence where without due legal authority, he force his way, on the land for into the house of the others against the clearly expressed will of the law full honor or possessor of the property. This infringement of law not only extends to the civil liability but also puts to the wrong doer a criminal liability. As per article 422/1 and 2 of the criminal law a person who acts above his legal authority in execution of his authority during search and seizure he will punishable rigorous imprisonment with 7 years.

During Search and Seizure under Ethiopia Criminal Procedure Laws

3.1. Constitutionality of Search and Seizure under Criminal Procedure Code of Ethiopia

3.1.1. Introduction

The criminal procedure code long provided the legal basis for obtaining warrants to search and seizure or to perform such actions with a certain circumstance. The criminal procedure code embodied to guarantees police officer with regards to searching. Any investigating police officer or member of police may make searches or seizure in accordance with the provisions. The cumulative reading of article 50 and 32 (2) of criminal procedure code also give a power to search for any private person in addition to the police.

On the other hand, the birth of the FDRE constitution viewed as the most important event for the establishment of democracy. The right to privacy, freedom to thought and other similar fundamental human rights are guaranteed by this constitution. Any law, customary practice or a decision of

an organ of state a public official which contravenes this constitution shall be no effect in all matters and the fundamental rights and freedoms shall be interpreted in the manner conforming to the principle of universal declaration of human rights, international convention on human right and international instruments adopted by Ethiopia. Therefore, the criminal procedure code of Ethiopia shall be within the manner conforming to international human right standard and the FDRE constitution.

3.1.2. Search with Court Warrant in Criminal Procedure Code and Its Constitutionality

The FDRE constitution simply requires that the right to privacy may be restricted. It is silent whether the search must be conducted with the prior authorization or search without a court warrant. Article 17 of the ICCPR and Article 12 of the UDHR are also silent regarding to the manner how search is to be conducted rather left this matter for the law making body. However the FDRE constitution lists out the criteria to be fulfilling during search and seizure which restrict the right. First existence of compelling circumstances and second specific laws, whose purpose shall be the safety guarding of national security or public peace, the/prevention of crime or the protection of health, public morality and the rights and freedom of others.

3.1.2.1. Search of Premise

Article 32 (2) of the criminal code

No premise may be searched unless the police officer or member of the police is in possession of a search warrant in the form prescribed in third schedule of this code except where;

- (a) An offender is followed in hot pursuit and enters premise or dispose of articles the subject matter of an offence in premises
- (b) Information is given to the investigating police officer or member of the police there is reasonable cause for suspecting that articles which may be material as evidence in respect of an offence which an accusation or compliant has been made under Article 14 of this code and the offence is punishable with more than three years imprisonment, are concealed or lodged in any place and he has good grounds for believing that by reason of delay in obtaining a search warrant such articles are likely to be removed.

Article 32 (2) can be construed in two ways. First upon the application of the police officer the court can make a search warrant based on the form

prescribed in third schedule to the code. Secondly, in exceptional case stipulated under article 32 (2) a), b) the police officer can make a search without warrant.

Article 33 of the Criminal Procedure Code; Issue of Search Warrant

(1) No search warrant shall be issued unless the court is satisfied that the purpose of justice or of any inquiry, trial or other proceedings under this code will be served by issue of search warrant.

To avoid unreasonable and arbitrary searches the court power is not nominal. The court should grant the warrant when it is satisfied that the purpose of justice or any inquiry, trial or other proceedings under this code will be served by the issue of search warrant. However, the problem is when did we say the purpose of justice can be achieved and the court is satisfied?

Wondwosen Demise, Ethiopian criminal procedure code puts three prerequisite for the court to issue a search warrant. Firstly, on the base of the information that the official has received or his personal knowledge there is a reasonable possibility that the item sought to be seized will found on the premise to be searched. Secondly, the items to be found and seized will be used in evidence meeting the relevance test. Lastly, the item to be seized are so important that the prosecution's case would fail if they are not seized (the compelling circumstance requirement). The criminal procedure code tries to balance with constitution in regarding to the restriction of privacy as an exceptional case.

3.1.3. Search without Court Warrant in Criminal Procedure Code

3.1.3.1. Search of Premise

Search without prior court authorization conducted in criminal procedure code in two scenarios. First, in case of hot pursuit and when there are urgent circumstances. Firstly, if a person commits a flagrant offence, as defined under article 19 and 20 and is not caught but is being followed in "hot pursuit" the premise which he enters or where he dispose of the fruits of instruments may be searched without warrant. And if there is a need to search quickly, the police may conduct a search of premise without warrant for the existence of pressing emergency and the need for prompt action as can be inferred from article 32 (2) of criminal procedure code. The offence must be punishable with more than three years imprisonment is one prerequisite. The issue in this case is the law assumes that the police officers

and private person know punishment prescribed for each offence? In case of hot pursuit, most of the time criminals are followed by ordinary private person rather than police officer and in this junction does private person respect the constitutionality of privacy?

Article 26 of the constitution requires the police official to protect and respect the right to privacy. However, it is impossible to imagine the Ethiopian ordinary private citizen even the police know punishment prescribed for each offence. As a result, we can conclude that the criminal procedure code Art.32 (2) (a) and (b) is inconsistency with the constitution by giving a power to search for ordinary person and disqualified organ to know the law.

3.1.3.2. Search of Persons

Everyone has the right to respect for his human dignity, reputation and honor. Everyone has the right to privacy. This right includes the right against search of home, person..... By stipulating this article the FDRE constitution gives worth and value for human body.

3.1.4. Search without Court Warrant in Anti-Terrorism Proclamation

3.1.4.1. Sudden Search

Where a police officer has reasonable suspicion that a terrorist act may be committed and deems it necessary to make a sudden search in order to prevent the act, with the permission of the director general or the federal police or a person delegated by him, may stop vehicle and pedestrian in an area amid conduct sudden search at any time and seize relevant evidences.

These types of search may be made with a view to prevent a commission of a terrorist act, which is known as sudden search and two preconditions need to exist to conduct a search under this provision. First, the concerned police officer needs to have a reasonable suspicion about the possibility of commission of a terrorist act. Second the officer should believe that it is necessary to make a search in order to prevent the act. Upon ascertaining the fulfillment existence of the two conditions, the police officer is supposed to get permission from the director general, the federal police or his representation to carry out the search.

Though not explicitly mentioned in the law, the director or his representative before getting the permission, support to verify the fulfillment of the two

conditions whether or not the sudden search is necessary to prevent the commission of the suspected terrorist act.

If this interpretation is correct and if it is provided by law the concerned police officer can get permission to get the director of the federal police or his representative, there may be still a delay to get the permission during which time the act may be committed or evidence destroyed or removed. It is not difficult to think of instance where getting a warrant from the nearest court would be faster than getting the permission from the director or his agent. If it is sense of urgency that motivated the law maker to include the concept of sudden search it might be more appropriate to give the discretion to the concerned police officer to make the decision as does the criminal procedure code.

3.1.4.2. Search of Person

Article 21 due to give sample, the police may give order a person suspected of acts of terrorism to give samples of his hand writing hair, voice, finger print, photograph, blood, saliva and other body fluids for investigation. Moreover, he may order the suspect to undergo medical test. If the suspect is not willing for the test, the police may use necessary and reasonable test for the taking of sample. The proclamation gives the power to the police without warrant order suspect in their cast day to provide sample of blood and other body fluids, hand writing, hair, finger prints and undergo medical tests and states that suspect is not willing to the test the police may use force. The proclamation sets new evidentially standard for the terrorism case under the legislation that are far more permissible than the rule covering ordinary case. Under the new rules hearsay or indirect evidence or indirect evidence can be admitted. Even if the report does not disclose the source of the method it gathered. This is completely inconsistency with the constitution that guaranteed everyone has the right respect, human dignity reputation and honors. And also affect privacy guaranteed by the constitution as everyone has the right to not subject to his person except provided by the constitution.

3.1.5. Search without Court Warrant in Revised Anti- Corruption Special Procedure and Rule of Evidence Proclamation No.434/2005

3.1.5.1. Search of Communication

Article 46 interception of correspondence and letters

(1) Where it is necessary for the investigation of corruption offence, lead of the appropriate organ may order the intersection of correspondence by telephone, telecommunication and electronic devices, and postal letters,

(2) Where it is necessary, evidence gathered through video cameras sound records, and similar electronic devices may be produced as evidence.

(3) An organ order to in accordance with Sub- Article, one of these articles shall indicate the offence which give rise to the interception and the duration of the interception and if it is a telecommunication the link to be intercepted. Unless head of the appropriate organ decides otherwise the duration of the interception may not exceed four months.

Article 46 (1) should not be understood as restricting privacy interests on a matters listed under Article 26 (2) of the FDRE constitution. It allows only interception of communications whether verbal or oral between or more persons. It does not allow seizure of private notes. 70 Article 46(1) authorizations to intercept “live” communication of the communication has already been made and recorded or letter has searched its destination, it is late for interception.

The phrase “where it is necessary for investigation of corruption officer under Article 46(1) is consistence with the compelling circumstance requirement of the constitution. The concerned person may order interception under Article 26 only where there is no one effective and adequate ways of collecting evidence. It is only then the interception is lead to be “necessary”

3.1.6.Possible Remedies and Status of Article Seized on the Basis of Defective Warrant

Exclusion of the Article for evidence which is found by illegal search is one of the remedies for the victim of illegal search. Even if Ethiopia does not have a codified evidence law, the court should reject evidence seized in violation of the privacy provision of the constitution stipulated in Article 9(1) and Article 13 (1) of the constitution. Evidence discovered as a result of an illegal search may also be in admissible unless it in viably would be

discovered by legal means. In addition to exclusion of the article, the victim of illegal search can be compensated a damage arising from the illegal act.

2052 of the civil code of Ethiopia stipulate as --- a person commits an offence where, without due legal authority, he forces his way on the land or into the house of the other against the clearly expressed law of full owner and possessor of the property. 2052 of the Civil code Ethiopia infringement of the law states as, person commites an offence where he infringes any specific and explicate provision of law, decree or administrative regulation. 2028 of the Civil code of Ethiopia also who so ever case damage on anther by an offence shall make good.

Conclusion and Recommendation

The study has shown, the right to privacy is a fundamental right essential to autonomy and on which the protection of human right are built. Different international law protects privacy through legislation, UDHR and ICCPR are among international human right documents that Ethiopia ratified and stipulated the right to privacy. Ethiopia recognized the right to privacy thought out its brief constitutional history, albeit to different degree. A more comprehensive privacy protection is safeguard by the 1955 constitution. The FDRE constitution is regarded as the product of straggle for a democratic society in Ethiopia. Due to that the constitution of the FDRE is the supreme law of the land and any other law and customary practice inconsistence with it is void. Art 26 of the FDRE constitution granites for every one the right to privacy and the public officials shall respect and protect this right with some exception. Compelling circumstance and in accordance with specific laws whose purpose shall be the safeguarding of national security or public peace, the prevention of crimes or the protection of health, public morality and the right and freedom of other are those exceptions of privacy.

Search and seizer are a procedures under many civil law and common law legal system by which police or other authorities an there agents who suspect that a crime is committed, do a search of a personal property and confiscate any relevant evidence to the crime.

The criminal procedure code of Ethiopia long provides the legal basis for obtaining warranties to search and seizer or to perform such action without a certain circumstance. The code allowed for the police to conduct search with

court warrant and without court warrant for the case of hot pursuit and exigent circumstance. Even, an ordinary private person in case of hot pursuit to do so when they being followed the criminal. In criminal procedure code search with warrant is a principle and search without warrant is an exception. Anti-terrorism proclamation, the other law that constrains the right to privacy this proclamation became independently law to restrict privacy is because of terrorism is danger to peace and development of the country and a serious threaten to the peace and security of the world at large. And the law presents in force in the country are not sufficient to prevent and control terrorism. The proclamation of anti-terrorism authorized to conduct a search both with warrant and without warrant. The aim of anti-terrorism proclamation is to prevent and to control terrorist act. Include all types of search; of premise, search of person search of communication.

The revised anti-corruption special procedure and rules of evidence proclamation is other proclamation that restricts the right to privacy .Art 46(1) should not be understand as restricting privacy interest on all mater listed under Art 26(2) of the FDRE constitution, it allow only interception of communication, whether verbal or oral between two or more persons, it does not allow seizure of private notes.

To sum up the criminal procedure code of Ethiopia antiterrorism proclamation no 652/2009 and revised anti-corruption special procedure and rule of evidence proclamation no 434/2005are laws that restrictthe right to privacy, since Art 26(3) of the FDRE constitution authorized to restrict privacy as specific law .However the authorized shall not exceed from the purpose of safeguard of national security or public peace, the prevention of crimes or protection of health, public morality or the rights and freedoms of others.

Finally, the exclusion of the articles from evidence which found by illegalsearch, and compensating to victim by extra contractual liability are the possible remedies.

4.1. Recommendations

4.1.1. Knowing the Law

Our law on search and seizer is legality in line with international trend and it is complex but not impossible to understand. Probable more evidence is

inadmissible in criminal case because failure to police officer to follow a legal provision relating to search and seizure than for any other reason. The police officers are responsible for upholding and enforcement of law according policing power and duty are prescribed by law. All Ethiopian police officer must know, understand and to be apply in the law in order to perform the law diligently, effectively and lawfully.

Indeed the police face dilemma when confronted with serious form of crime on one the hand, on the other hand, they must respect constitutional right of an individuals. When the level of crime is perceived to threaten the safety of the society the police often feel pressurized to take repressive measure at the expense of human right. Therefore the police officer should be trained to strike a balance the compiling demand imposing up on the legal system and became objective, diligent law enforcement.

4.1.2. The Criminal Procedure Code

Art 34 physical examination

The police officer may order a competent medical person to make the examination without court authorization. On the other hand, everyone has the right to respect dignity reputation and honor. As we know the court has better knowledge in law than police. Therefore, giving this type of task to the police without court warrant is harms the constitutionality of the right to dignity and disrespect human body. To makes a balance the court shall involve on the decision of physical examination if the court is available easily.

Article 32(1) (a) (b)

In case of hot pursuit and exigent circumstance the police officer even private person is authorized to search without warrant if the offence is punishable with more than 3 year imprisonment in this case how the police officer knows the court decision because the actual punishment to be served by offender will only know after a court decision. Therefore, the term punishment with three years' imprisonment shall be erasing.

Article 21 of Anti-Terrorism Proclamation

A proclamation gives the police, the power without warrant to order a suspect in their custody to provide a sample of blood, hand writing, hearing..... And undergo medical test. And states that,, if the suspect is not willing for the test the police may use force. This act of police is against the

constitution since everyone has the right to respect his human dignity, reputation and honor. It's better to presume as if the accused has the diseases rather than examining him forcefully. In this case the court should participate and create awareness to the offender to submit his sample of blood, hand writing ... voluntarily if the court is available easily

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