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D Abon indicates that the affersata would be ordered by the local chief when the victims reported that cattle had been stolen, or that they had been robbed, or that a relative had been murdered, Aberra, Legal &L Eth., at 239.

uPWwr, 'Traditional Crhn. Pro.,* at 717.

11 Abttta write* that only men were requited to attend the affersata. Aberra, Legal Hist. Eth., at 239. "FSabar, "Traditional Crim. Pro. " at 717.

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22 The Proclamation Is reproduced in Mahtama Sellassrie WokLe Meskcl, Zikrc Negar (1950), at 95 (as

indicated to Fisher, "Traditional Crim. Pro." at 72 0-21).

n The preamble states in pertinent part; "t Wjhereas innocnt people have been said to have done an act by informers who change tbcu names only to harm their enemies, for the future we mate the following law." Affcmia Proclamation, 1933, Preamble (para. 2). w Abon, Legal Hist Eth., at 240.

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following incident, in which the unreliability of the practice was established.

"When the leba shay practice was used to investigate and identify one who had stolen a certain garment from the palace, the chief of the Uba shay, who was not in good terms with some one - a well known personality among the imperial

courtiers — hinted the boy to point to that person as the one who had stolen the garment The boy did *\$ bin tod. This incident mode imperial courtiers to questioo tbe reliability of tbe leba shay particularly vrbm it was later discovered that the garment was stolen by a maid in the palace and found in a market offered far sale." Aberra. Legal Hist Eth., at 239.

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D'Abbadie indicated that it was the accused, but not the accuser, that has the right to choose the judge before whom to appear. Amaud-Michel D'Abbadie, *La Procedure en Éthiopie* (Paris: L. Larose et Force L, 1888) (Nouvelle Revue Historique de Droit Français et étranger. 12^e yr.,) at 462, 463 cited in Fisher, "Traditional Crim. Pro.," at 727, note 90,

** *ftwL*, M 726.

41 P. Merab, *Impressions d'Éthiopie* (Paris, 1929), Vol 3, bL214 (quoted in Fisher, "Traditional Crim. Pro.,"

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41 Aberra, *Legal Hist. Eth.* at 239.

44 KJB. Knutsson, *Authority and Change* (Göteborg: Etno-grafiska Museet, 1967) at 122 (cited in Fisher, "Traditional Crim. Pro.," at 719, note 44).

with Christine Sandford, *Ethiopia Under Haile Selassie* (London: Dent, 1964), at 83 (cited in Fisher, "Traditional Crim. Pro.," at 719, note 44).

^Nebiy Kidanemariam Kifleyohannes, "Issuance of Arrest Warrants in Ethiopian Law" (Addis Ababa University Law School, 1965) (cited in Fisher, "Traditional Crim. Pro.," at 719, note 44).

*PoUera, *L'Abissinie d'aujourd'hui*, at 133.

51 Taslim O. Elias, *The Nature of African Customary Law* (Manchester: Manchester Univ. Press, 1956) (in Fisher, "Traditional Crim. Pro.," at 731).

Walker*. *The Abyssinian at Home*, Hi 179 (cited in Fisher, "Traditional Crim. Pro.," at 734).

° Fisher, "Traditional Crim. Pro.," at 734.

** For the details on the different types of *wagro*, see *ibid.*, at 734-738.

** C- Conti-Rossini. *Principi di diritto costituzionale dell'Eritrea* (Rome: Università di Torino editrice, 1916) (cited in Fisher, "Traditional Crim. Pro.," at 736).

75 Watar, *The Abyssinian at Home*, at 138-139 (cited in Fisher, "Traditional Crim. Pro.," at 732).

TM *Ibid.*, at 740.

In Aberra, *Legal Hist. Eth.*, at 256. However, Fisher notes that a party dissatisfied by a judgment of the district court could petition for the judgment to be reviewed by the provincial court. To ensure that his petition would get attention, the petitioner was obligated to present gifts to the persons deciding the petition, which made appeal difficult for the poor. Fisher, "Traditional Crim. Pro.," at 741.

19 H. Ludolph, *A New History of Ethiopia* (London: Samuel Soith, 1682). at 238 (cited in Fisher, "Traditional Crim. Pro.," at 740).

10 D'Abbadie, "La procedure en Ethiopie," at 467 (cited in Fisher, "Traditional Crim. Pro.," at 740).

" AbctTa, *Legal Hist. Eth.*, at 255-256.

42 Merab, *Impressions de l'Ethiopie*, Vol 3 at 238 (cited in Fisher, "Traditional Crim. Pro.," at 741).

G Ibid; Walker, *The Abyssinians at Home*, at 146-47 (cited in Fisher, "Traditional Crim. Pro.," at 741).

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M A Proclamation to Provide for the Organization Discipline Powers and Duties of the Police Force and for matters incidental thereto, 1 Consolidated Laws of Ethiopia, at 295-99.

99 Administration of Justice Proclamation, *Ibid.*, at 87-90.

" A Proclamation to Provide for the Appointment and Control of Public Prosecutors, *Ibid.*, at 113-14.

To mention a few: Article 43 recognizes the right to due process of law; Article 51 prohibits restriction of Liberty without a court warrant, Article 52 provides for the right of the accused to a speedy trial; Article 54 prohibits a presumption of guilt,

Fisher, "Traditional Crim. Pro.," at 743.

° John H. Beckstrom "Transplantation of Legal Systems: A careful Report on the Reception of Western Laws in Ethiopia," 21 *The American Journal of Comparative Law* (1973), at 559 (hereafter Beckstrom, *Trans. Legal Syst.*).

^ Aberra, *Legal Hist. Eth.*, at 194.

** Stanley Z. Fisher, *Ethiopian Criminal Procedure: A Sourcebook* (Addis Ababa: The Faculty of Law Haile Selassie I University, 1969) at ix (hereafter Fisher, *Eth. Crim. Pro.*). n *Ibid.*, at ix-x.

** *Ibid.* at xi.

91 Aberra, *Legal Hist. Eth.*, at 195. As reported by Singer "a substantial number (7296) of case summaries were prepared by the Ministry of Justice on the order of the Emperor to guide the formation of the new legal system." Singer, "Modernization of Law in Ethiopia: A Study in Process and Personal Values," 11 *Harv. Int'l L J.* 73, at 85 note 44 (1973).

M Fisher, "Traditional Crim. Pro.," at 710.

99 *Ibid.*

** Article 3347 (1) of the 1960 Civil Code provides: “unless otherwise expressly provided, all rules whether written or customary previously in force* concerning matters provided for in this Code shall be replaced by the new Code and are hereby repealed.”

FDRE Constitution) and Article 9(1) of the FDRE Constitution. When: a law contravenes any provision of the FDRE Constitution, it is void by virtue of Article 9(1) of the Constitution,

131 It states: “Federal and State powers are defined by this Constitution. The states shall respect the powers of the Federal Government. The Federal Government likewise shall respect the powers* of the States.” The Constitution of the Federal Democratic Republic of Ethiopia, Proc. No. 1/1995, Fed. Neg. Gaz. References 17 year 1, no.

** The Criminal Code of the Federal Democratic Republic of Ethiopia* Proclamation No. A14/2004, art. 1, para. 1 (hereafter Criminal Code.)

^ Rod., at art. 1, para. 2.

*** On different theories of punishment, see Joshua Dresser, Understanding Criminal Law (3rd ed., Lexis Nexis 2001), at 11-23.

in Joshua Dresser, Understanding Criminal Procedure (3rd ed., Lexis Nexis 2002), at 1 (hereafter Dresser, Understanding Crim. Pro.).

142 As to the several factors that affect the allocation of powers, see *ibid*, at 199-200.

** Atencio, “Rethinking the Functions,” at 200.

*** Such norms include, but are not limited to, the requirement of proof beyond a reasonable doubt, timely disposition, independent adjudication, and assistance of counsel.

in Steven Gert, “Miscarriages of Criminal Justice Reconsidered,” 57 *Thomson Mod. Law Review* 5, at 61 (1993) (hereafter Gert, “Miscarriages of Cr. Just.”) —

** As stated by Squire, “in legal ordering men do not live by results alone.” Summer*, *Improving Legal Process—A Plea for Process Values*, 60 *Cornell L. Rev.* 1, at 51 (1974) (cited in Atencio, “Rethinking the Functions,” at 200). in Amelia, “Rethinking the Functions,” at 200. *ibid*, at 200-201.

Sander and Young. *Crim. Just.* at 22.

ibid.

**• Thomson, Understanding Crim. Pro., at 26-27.

** Padoa-Schioppa, “Limits of Crim. Sanction,” at 160-61 (cited in Sanders and Young* *Crim. Just.*, at 22).

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Packer, of *Crim. Sanction* ", at 154 (cited in Sanders and Young. *Crim. Just.*, at 26).

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D. Smith, "Case Construction and the Goals of Criminal Process," 37 *British Jourm. Crim.* 319, at 335 (1998) (cited in Sanders and Young, *Crim. Just.*, at 26-27).

1K A. Ashworth, *The Criminal Process*, 2"⁵ ©d. (Oxford: Oxford University Press, 1998), (cited in Sanders and Young. *Crim. Just.*, at 26).

References 18

m Packcr, "Limit* of *Crim. Sanction*", at 239 (cited in Sanders and Young. *Crim. Just.*, al 31). m States and Young. *Crim. Just.*, at 32. m I Lew CC 261 (cited in *ibid.*, at 10). m Sanders and Young, *Crim. Just.* 9d 10,

Arenella has criticized propositions as oversimplified and misleading for such a label, in his view,

**iganx3 the moral content and force of substantive guilt and the resulting need for a process that evaluates &e moral quality of the defendant's actions." He expresses his concern as follow. "Most commentators tamcne that the primary goal of any criminal process is to discover the 'truth.' But what 'troth' are we trying 19 discover? To many, the concept of truth-discovery Implies that guilt is an empirical feet ready to be A covered and verified.... Equating the substantive criminal law's concept of guilt with historical Act would be defensible if crimes were defined solely to terms of the defendant's acts. But the criminal law anally refuses to predicate criminal liability on acts alone. .the substantive criminal law's definition of guilt protects individual autonomy and preserves the moral force of the criminal sanction by requiring some showing of the defendant's moral culpability. ...l\$) ubsantivc criminal law requires a moral evaluation of actor' conduct by including; some mental element (e.g., purpose, knowledge, recklessness, or negligence} in its definition of most offences and by its recognition of affirmative defence that either justify die defendant's conduct or excuse it Since substantive guilt includes both facts and value judgments about

the actor's moral culpability, criminal procedure must provide a procedural mechanism that reliably reconstructs historical facts and morally evaluates their significance. The combination of these two procedural functions - reliable historical feet reconstruction and moral evaluation — cannot be equated with 'truth discovery/' Amelia, "Rethinking the Functions," at J97-98.

1,9 FL L. A, Hart, *Punishment and Responsibility* (Oxford; Clarendon Press, 196B) at 22 (cited in Sanders and Young, *Crim. Just.*, at 9),

192 Miscarriages of criminal justice are defined as "occasions upon which the justifications offered for &

finding of guilt or a 'non finding of guilt' are seriously defective." Ibid., at 61.
Foist defines error of justice

m For sources, consequences, and management of due process errors see Forst,
Errors of Justice, at 16-21.

m Ibid. at 4.

m Ibid, at 4,10,

m For Sources, consequences, and managing errors of impunity see ibid., at 22-30.

Ibid., at 23.

References 19

** Ibid., at 4.

w Greer. "Miscarriages of Crim. Just.," at 66.

** iDressler, Understanding Crim. Pro... at 31.

361 Ibid

306 Gftr, "Miscarriages of Crim. Just.," at 74.

iU Ibid., at 165-66.

2,5 Fennel et al., Crim. Just.. Bt 42.

216 Gary Goodpastor, "On the Theory of American Adversary Criminal trial/* 78
J. Crim. L- «4 Criminology 120 (1987) (cited in Dressier, Understanding Crim.
Pro., at 32).

217 Fennel et al., Crim. Just., at 42.

Rckfcd, Comp. Or. Just., at 166.

*** Fennel et al., Crim. Just., at 42.

J. McEwan, "Adversarial and Inquisitorial Proceedings," in R. Bull and D. Carson
(eds.) Handbook of Psychology in legal Contexts (Chichester: Wiley, 1995) (cited
in Sanders and Young, Crim. Just., at 15) thereafter McEwan, "Adversarial and
Inquisitorial Proceedings").

Sanders and Young, Crim. Just., at 14.

Fennel et al., Crim. Just., at 43.

"The problem of abuse in the inquisitorial system, and doubts about the
effectiveness of the judge d'instruction led to their abolition in Germany in 1975.
Corruption amongst investigative judges led to abolition in Italy in 1988." Sanders
and Young, Crim. Just., at 17.

J. McEwan, "Adversarial and Inquisitorial Proceedings," (cited in Sanders and Young, *Crim. Just.*, at 15).

234 Abtftlm S. GoldftteSn, "Reflections on TWo Models: Inquisitorial Themes in American Criminal Procedure, 26 *Stan. L. Rev.* 1017 (cited in Dressier, *Understanding Crim-Pro.*, at 32).

For more oo convergence of tbe two system see: Fennel et *L, *Crim. Justl.* (cited in Keichel, *Comp. Cr.*

Toro Stacy, <Tbe Search fortbc Trntii in Constitutional Criminal Procedure," 91 *Cohan. L. Rev.* 1407

(1991) (cited in Dressier, *Understanding Crim. Pro.*, at 29).

References 20

253 Forst, *Errors of Justice*, at 10.

236 Its Article 33 on presumption of intent provides: "tbe standard of proof required todetermine any question arising as to 'wbctbcr a person has bcncfi&cd from criminal conduct, or the amount to be recovered itoiU be that applicable in civil proceedings."

257 Tts Article +03 on "presumption of intent to obtain advantage or to injure" provides: "unless evidence is produced to tbe contrary, where h is proved that tbe material elemeitf (tbe act) has been committed as defined in a particular Article providing for a crime of corruption perpetrated to obtain or to procure undue advantage or to cause injury, such act (ball be presumed to have been committed with intent to obtain for ocoel for to procure for another an undue advantage or to injure fbe rigfal or interest of a third person.

M Sentonch, *Crim. Proc. Law*, at 89.

See title of Book n» Title U Chapter JT J961 *Crim. Fro. Code*.

"NegaritGaaeta Establishment Proclamation. Proc. No. 1/1942, *Fed. Neg. Gaz.*, ytwr 1, no. 1.

SeaaeoeK *Crim. Pro. Law*, at 89.

The President's Commission on Lew Enforcement and Administration of Jiutice, m Robert E. Meak, <*Mtepriskm of Felony: A Crime Whose Time has Come, Again,* 26 *U. Fla £. Rev.* 199, at 209-210 0975) fereafter Meaie, "Misprision of Felony.")

Criminal Code, Article 1.

As provided under Article 16(1) of the *Cr. Pro. Code*, fee police and the public prosecutor the competent Authorities to report to. If the report concerns a young person, it has to be made to the court *Cr. Pro. Code*, Arts. 172 at 173.

Article 11 (1) of the Code reads: "any person has the right to report any offence, whether or not he was witnessed the commission of the offence, with a view to criminal proceedings being instituted."

Far the definition of fault see Article 2030 of the 1960 Civil Code.

Article 211 of the Criminal Code. Right Of Complaint or Accusation in General

(1) Prosecution with a view to a judgment — is a public proceeding and is instituted by the public prosecutor in all cases where the law does not otherwise expressly provide.

Article 211 of the Criminal Code. Right of Complaint or Accusation in General

in Ibid.. at 1789-1790 (footnotes omitted).

with Darwin O. Sawyer and Ann Maney, "Legal Reform in Child Abuse Reporting," 5 Evaluation Rev. 758,

References 21

777 (1981) (cited in Wenik, "Forcing the Bystander," *1 1799).

Ibid.. at 1800.

299 Ibid., at 1802-03.

in HotkmdV' State, 302 So. 2d 806 (2d D.C.A Fla. 1974) (cited in Kelly, "Misprision of Felony," at 227). in QK'Aryt, "A Failure to Prevent Crime," at 5.

in Marbury v. Brooks, 20 U.S. (7 Wheat.) 556, 575-76 (1805) (cited in Meale, "Misprision of Felony," at 202).

Article 17 of the FDRE Constitution:

2. No person may be subjected to arbitrary arrest, and no person may be detained without a charge or conviction against him.

® Article 3 of the UDHR

Everyone has the right to...liberty...—

Article 9 of the ICCPR

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

Art. 6 of the African Charter on Human and Peoples' Rights ("ACHPR")

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

In quasi-flagrant cases and in cases assimilated with flagrant offences, as defined under Articles 19(2) and 20 of the Code, there are possibilities where the criminal may not be known because in these types of cases there is no

requirement that one be witnessed while committing a crime. What is certain in such cases is the commission of a crime.

323 Of course, even in flagrant cases where there is no doubt that one has committed an offence arrest is not allowed if the offence is minor. Article 50 of the Code allows arrest without a warrant in flagrant cases only where the crime is punishable for not less than three months..

m. Brinegar v. United States, 338 U.S. 160, 176 (1949) cited in Dressler, *Understanding Criminal Procedure*, at

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In cases where one commits a flagrant offence, as defined under Articles 20 and 21 of the Code, there is

References 22

reasonable risk that the wrong person might be arrested. So, the substantive requirement to restrict an individual liberty in the context of flagrant offences is not treated lightly.

In view of the fact that most arrests (both in law and in ratio) are made without a warrant, normally to police determine whether there is a "reasonable belief" or "reasonable suspicion." The issue would come to attention of the court only where an application for a court warrant is made or in cases of arrest without a warrant where, following the arrest, the arrestee is brought before the court in accordance with Article 19(3) of the FDRE Constitution and Article 59 of the Code (if based on "reasonable belief" or "suspicion" is articulated by the arrestee and treated as an issue before the court). The courts have been extremely reluctant to question, on their own initiative, whether the arresting authority acted upon reasonable suspicion.

m. Brinegar v. United States, 338 U.S. at 175-76 (quoted in Dressler, *Understanding Criminal Procedure*, at 142). *See* *Murray v. United Kingdom*, para. 60; *KF v. Germany*, para. 57; *Berkday v. Turkey*, para. 199 (cited in Stefan Trechsel, ed., *Human Rights in Criminal Proceedings* (New York: Oxford University Press, 2005), at 424 (hereafter *Trechsel, Human Rights*).

532 Ibid.

There is still a slight difference in the wording of Article 25 and Article 51(I)(a). Unlike the latter, the former simply requires that the officer "have a reason to believe" instead of requiring him to "reasonably suspect" that a person has committed a crime.

Jil [1986] 1 N1 103 (cited in *ibid.*).

144 *Texas v. Brown*, 460 U.S. 730, 742 (1983) (quoted in Dressler, *Understanding Criminal Procedure*, at 161). 141 Dressler, *Understanding Criminal Procedure*, at 161.

546 Federal Police Commission Administration Council of Ministers Regulation, Reg. No. 86/2003, Art. 40(2), Reg. Ni>. 86. Fed. Neg. Gaz., year 9, do. 39 (hereafter Federal Policc Regulation). w|1991| 2 NTJB 22 (quoted m Barrister, "Reasonable Suspicion," al 66).

341 Ibid.

Dressier, Understanding Crim. Pro., at 143.

371 Alejandro D. Canio and Alejandro M. Cairo. "Argentina," in Bradley, Crim. Pro., ax 9.

Code regulating arrest on warrant, which is 1o he executed only by a police officer. Simeneh, Crim. Pro. Law, at 167. However, Article 56 is found neither Under Soction 2, regulating arrest with warrant, nor under Section 1. dealing with arrest without warrant. It b found tinder Section 5, the caption of which is "General Provisions," which implies the section's relevance to both types of arrest

References 23

*** Lewis v. Chief Constable ofthe South Woles Constabulary [19911 1 All E JL 206, CA* (cited in David J. Feldman, "'England and Wales," in Bradley, Crim. Pro., at 97, note 34).

Article 56(2) of tbe Code states: "where the arrest is made wirh a warrant, tbe policc officer ahajl read out the -warrant to the person to be attested and shall show h to th~ person arrested if he so requests." (emphasis added).

*** Aiticle 56(3) of the Code stales: "He shall then actually touch or confine th* body of the person to be arrested unless there be a submission to his custody by word or action." (emphasis added).

515 Simeneh, Crim. Pro. Law. at 143.

*** According to Article 51(1) (a) of the Cr. Pro. Code, a police officer is allowed to arrest, without warrant, a person suspected of such offence.

** Ibid.

m Griffin, "Appropriateness of Deadly Force/7 at 312).

391 He may be arrested even where the officer does cot want any information from the arrestee. Under the law, a policc officer is allowed to arrest a pcT3cc the officer has a reason to believe has committed a crime. It is not the fact that the suspcci is needed for interrogation that justifies his arrest. Rather, it is the suspicion of hie involvement in the commission of a crimc. Oocc the suspect is arrested, the ofQccr will dccidc what to do next. U lie thinks that he will get relevant information from tbe suspect, he has the discretion to interrogate him. If not, he must have arrested him to ensure his presence during his trial or whenever he is wanted. So, depending on several factors, the officer will dccidc to release the suspect on bond or bring him before r court of law for one of the several possible rulings by the court

m The arrestee's admission that he has committed the crime has other several advantages. He may be relieved of the anxiety he might have as a result of committing the crime and may feel better for confessing. Although the arrest is made where the police, on the basis of information and evidence, have developed a reason to believe that the arrestee has committed a crime, they cannot be certain that they have caught the right person. The confirmation of their suspicion by the arrestee's own admission would relieve them of Uncertainty as to whether the arrestee is the real offender. m Songero, "Miranda is Not Enough," at 2794.

** Harold -r. Berman, Introduction to Soviet Criminal Law and procedure; The RSFSR Codes, trans. Harold

References 24

Draff—Evidence Rules, April 5, 1967 When Confession may tv proved

16, (1). No confession made to a police officer shall be proved as against a person accused of an offence.

. No Confession made by a person while in the custody of the police shall he proved as against such person accused of an offence unless it has been recorded in accordance with the provisions of Article 35 of tbe Criminal Procedure Code.

Art. 97. —Exhibits. All exhibits including depositions and statements under Art. 27 and 30 shall be marked and numbered by the registrar of the court Such exhibits shall be kept by the registrar in a safe place and shall not be withdrawn without an order of tbe court.

Public Prosecutor v. Leyekun Sergualem (Fed. Sup. CL. Cr. App. No. 6359, Miazia 20,1994 E.C.).

425 The accused also has other opportunities to testify in connection with the alleged crimc during the trial stage in accordance xvith Articles 132 and 142 (3) of the Code.

^Jbid.

himself in person or through legal assistance of his own choosing,"

** Ibid., at 201.

"Ibid.

w Liling Yoe, "China," in Bradley, Crim Pro., at 86.

«Ibid.

w Muradu Abdo, 'The Indigeat's Right to Defense Counsel in Ethiopia" in Wondwossen Dcnrissic (ed.), 3 Ethiopian Human Rights Law Series (Addis Ababa: Addis Ababa University, 2010), at 145-146 (fccrcraftv Muradu, "Indigent's Right"),

*** It states: "Everyone has tbe right 10 protection against dud. tnhiwnwne nr Hegwttitng trr*tm«nt:. ."

two bouts of severe whipping and the other two were whipped with a strap until their bare backs were cut to pieces.” Weaver et al., Principles of Crim. at 165.

*71 The prohibition under this provision should be seen in light of its purpose. It should not be construed as allowing persons other than a police officer or a person in authority to threaten...a person being examined by the police. But, where a threat comes from a police officer or a person in authority it may have the effect of making the confession or testimony inadmissible. However, if the threat comes from other persons it may not have impact on the admissibility of the confession or statement without prejudice to the arrested person's right to institute action against these persons.

472 Colorado v. Connelly, 479 U.S. 157, 165-66 (1986) (cited in Dressier*
Understanding Crim. Pro., at 443-44).

References 25

475 Ibid.

474 Ibid.

Colorado v. Connelly, 479 U.S. 157, 165-66 (1986) (cited, in Joshua Dressier,
Understanding Crim. Pro., at 443-444).

W. S. White, “What is an Involuntary Confession Now?”, 150 Rutgers L. Rev.
2001, 2052, (1998) (hereafter White, “What is Involuntary”).

441 Ibid.

*** Ibid.

Of course, there is no doubt that an arrestee who does not have confidence in the criminal justice system may trust that the officer's story is true, although he knows he is innocent. In such cases, the deception might be capable of influencing the innocent person to confess.

**^FCent W. Roach, “Canada,” in Bradley, Crim. Pro., at 70.

Welsh S. White, “False Confessions and the Constitution: Safeguards Against Untrustworthy Confessions,” 32 Harv. C.R.-C. L. Rev. 105 (Winter 1997) (cited in Sengco, “Miranda is Not Enough,” at 2802)

474 Eliahn Hamon and Alex Stein, “Israel ” in Bradley, Crim. Pro. at 234,

W. Ashcraft v. Tennessee, 322 U.S. 143 (1944). 367 U.S. 568 (1961) (cited in White, “What is Involuntary,” at 2012).

Para. 136* section 1,3 German Code of Criminal Procedure (cited in Thomas Weigend, “Germany,” in Bradley, Crim. Pro., at 201).

Demesev Zeryehun and Yakob Haile v. Federal Public Prosecutor (Fed. Sup. Ct. Cr. App. No. 35768), reported in J. Eth L, vol. 22, no.2 (2008), at 20.

491 Berman, Soviet Criminal Law, at 92 (cited in Sangero, "Miranda is Not Enough," at 2794).

m Report of the Commission for Convictions Bated Solely on Confessions andfor Issues Regarding the Grounds for Retrial* (1994) (cited in Sangero, "Miranda is Not Enough," at 2798) (hereafter the Goldberg Commission Export).

**Ibid.

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**Tl»e Goldberg Commission Report (cited in Sangero, "Miranda is Not Enough at 2798-2799).

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^Jbid.

Sangero, "Miranda is Not Enough," al 2820.

Sangero, "Miranda is Not Enough," at 2820.

** Ibid., at 2804.

515 Cr. P. U 4342,43SO/97 Israel v. AlAbid\ Al Abid v. Israel, 51< 1) PJ>. 736,836 (cited m ibid., at 2800).

Ibid,, at 2796,

54-1Miller v. Fenton, 474 U.S. 534.541 (1961) (quoted in Dressier, Understanding Crim. Pro., at 442-443).

** David j, Feldman, "England end Wales," in Bradley, Crim. Pro, at 113. w Cowancntary, at 31-34. m Sangero, "Miranda is Not Enough," at 2808.

361 Cohan de Broger, CNCrim-IV, 26 May 198?, LL, 1987-0-403 (cited in ibid., st 25).

571 Public Prosecutor v. Getachew Biru (P*t. Sup. Ct, Cr. App. No. 50965, Tir 26,1996).

575 Thomas Weigead, "Gennany," in Bradley, Crim. Pro., at 204.

** BOHSt 13, 60 at 61 (1959) (cited in ibid.).

577 Section 76 (2) of the Police and Criminal Evidence Act 1984 (PACE Act).

3C Article 184 of the Argentine Code of Criminal Procedure, in Alejandro D. Carrie and Alejandro M. Garro, "Argentina," in Bradley, Crim. Pro., at 29). m Ibid., mt 29-30.

514 David J. Feldman, "England and Wiles," in BradJey. Crim. Pro., at 113.

545 Tbomus Weigend "Germany,^ in Bradley, Crim. Pro., at 204.

3*3 Its Article 61 states: "all persons and all private domiciles shall be exempt from unlawful searches and seizures."

Its article 43 states: "1) Ethiopians are guaranteed inviolability of the person; 2) Ethiopians are guaranteed inviolability of the home. No one may enter the home of another against his will, except as prescribed by law."

w In many jurisdictions provisions exist which regulate search and seizure without necessarily relating it to the right to privacy. In England, there are laws dealing with search and seizure, but some take the view that English law does not recognize the right to privacy as such. *R. v. Khan (Sultan)* [1997] A.C. 558, H.L. (cited in David J. Feldman,⁴ "England and Wales," in Bradley, *Crim. Pro.*, at 104). Generally, the Argentine courts are said not to have developed "a constitutional jurisprudence aimed at extending the protection expressly granted to private dwellings and private documents to other spaces or communications surrounded by a reasonable expectation of privacy." The constitutional protection against illegal or arbitrary searches has been applied only to searches of homes, personal dwellings, and personal written documents, Alejandro D. Carrio and Alejandro M. Garro, "Argentina," in Bradley, *Crim. Pro.*, at 10, 14. However the Argentine Supreme Court, in *Fiore mi no*, is said to have made "reference in one passage to the connection between the constitutional protection against warrantless searches of private dwellings and the right to privacy." *Fiorentino*, CSXNr 306 Fallos 1752, paragraph 9 (cited in *ibid.* at 14). French law deals only with search of houses: but does not have definition of a search comparable to the laws of the U.S. and Canada. Richard S. Frase, "France," in Bradley, *Crim. Pro.*, at 154. Lack of detailed laws on search and seizure was the ground for the European Court of Human Rights to conclude that "French law did not sufficiently protect the right to privacy recognised under Art.8 of the European Convention." Tomlison, "The Saga of Wiretapping in France: What It Tells Us About the French Criminal Justice System," 73 *La. J.*, Rev. 1091 (1993) (quoted in *ibid.*); in Germany, the exact limits of what constitutes search is not much litigated and there is no law that clearly interrelates search and seizure and the privacy interest Thomas Weigend, "Germany," in Bradley, *Crim. Pro.* at 192-93. Italian law simply deals with the details of search without relating it with privacy, Rachel VanKempen, "Italy," in Bradley, *Crim. Pro.*, at 251-55.

References 27

< iW Kent W. Roach, "Canada," in Bradley, *Crim. Pro.*, at 59. w Eliahu Hamon and Alox Stein, "Israel." in Bradley, *Crim. Pro.*, at 228.

** *Katz v. United States*, 389 U.S. 347,360.361 (1967) (cited in Weaver et al., *Principles ofCrim.*, at 83).

** See *v. City ofSeattle*, 387 U.S. 541 (1967) (cited in Dressier, *Understanding Crim. Pro.*, at 91).

" Richard S. Frase, "France," in Bradley, *Crim. Pro.* at 154.

VanKempen, "Hum. Rights," at J.

Criminal Code, Articles 513, 524, 530, 599 and 652.

VanKempen, "Hum. Rights" at 1-34.

616 For details on van Kempt's finding regarding the second question, see *ibid.*, at 7-12.

** European Court of Human Rights (ECtHR), Judgment of 16 April 2002, *Society Colas Es (v. France)*, Appl. 37971/97, para. 41 (regarding right to privacy in Art. 8 ECHR) (cited in *ibid.* at 3, note 10).

Van Kempen, "Hum. Rights," at 3.

** African Commission on Human and Peoples' Rights ("AfComHPR"), Decision of References 28/1995, *Obi Liberties Organization v. Nigeria*, Comm 101/93 (1995), para. 37 (cited in *ibid.* at 5).

** Van Kempen, "Hum. Rights," at 5. *See ibid.*, at 6.

65 Criminal Code, Article 601(1) (a).

Bunieu v. McDowell, 256 T.J.S. 465 (1921), 55 *Tinner v. Itoihvay Labor Executives' Ate'n*, 489 U.S. 602,

614 (1989) (cited in Dressier, *Understanding Crim. Pro.*, at 83).

87 Commentary, at 58-60.

trid., at Art 18(1) (a).

When it comes to physical examination of the victim, though there is no need to get authorization from the court, the police officer has to secure the consent of the victim himself or his guardian as the case may be, to whatever examinations the offence being inquired into requires. Criminal Procedure Code, Article 34(2),

It is probably the fact that the search envisaged under Article 16 is made of vehicles or pedestrians on their way to another location that makes the search unexpected and thus a "sudden search." Otherwise, searches are normally classified into "with warrant" - where a court gives permission for the search to be conducted, and "without warrant" - where the search is conducted without prior permission from a court. For the person whose privacy is to be restricted, the search can always be a sudden one - something which was not expected, something that comes by surprise - whether it is conducted with or without a warrant. Even where the search is to be conducted with a warrant, an investigating police officer is not supposed to inform the person concerned in advance of the time that his property, home, or body will be searched, so in effect any search is a sudden search. A search under Article 16 of the law is to be made without a warrant from the court.

™ It is interesting to note that under both Articles 14 and 16, the primary purpose of the search is to prevent the commission of a terrorist act. Article 14 deals with interception of different types of communications where a court

warrant is necessary. Article 46 of the Revised Proclamation to Provide for Special Procedure and Rules of Evidence on Anti-Corruption empowers the head of the appropriate executive organ to authorize interception of communications. Article 16 relates to search of property and body, where permission from the Director of the Federal Police or his representative suffices. In both cases, there is no requirement that the materials seized or communications intercepted be reported to the concerned authorities - those which give the permission to search. It is not clear why a court warrant is required in the first case, while the second case requires permission from the Director of the Federal Police.

*** United States v. Gitohi, 601 F. 2d (8th Cir. 1979) cited in John G. McCormick. "Criminal Procedure - Expansion of the Good Faith Exception to the Exclusionary Rule - United States v. Owens, 848 F. 2d 462 (4th Cir. 1983)," 62 Temp. L. Rev. 1351, at 1361-62 (1989) (hereafter McCormick. "Crim. Pro.*). References 29

•** This refers to the covert search warrant envisaged under Article 18(1) of the Anti-Terror Proc. in Woodwossen, "Reflective Analysis," at 69.

** Richard Vogler, "Spain," in *ibid.*, at 379-381.

Dressier, Understanding Crim. Pro., at 261.

104 *Ibid.*, at 261-262.

The Criminal Justice Policy, under its section calls for laws that expressly provide for exclusion of evidence obtained illegally.

m \$ v. Mooloutsu, 1996 (i; SACR 78 (C). The case was decided when the interim Constitution of South Africa, which had no provision for the exclusion of unconstitutionally obtained evidence, was in place. The final Constitution of South Africa has a provision to that effect. P. J. Schwindt and S.E. van der Merwe,

719 Kent W. Roach, "Canada," in Bradley, Crim. Pro., at 65-66.

72> P. J. Schwindt and S.J. van der Merwe, "South Africa," in Bradley, Crim Pro., at 334-335; Rayford, CSJN, 13 May 1985> 30S Fall os 733 (quoted in Alejandro D. Camacho and Alejandro ML Gatu, "Argentina," in Bradley, Crim. Pro., at 20). *in* Commentary, at 31-34,

731 This excerpt deals with two issues: the organ of the government which the constitution empowers to determine the duration of investigation, and the compatibility of Article 20(3) of the Anti-Terrorism Proclamation with Article 19(4) of the FDRF, Constitution in particular, Woodwossen, "Reflective Analysis," at 55-56. Some modifications in footnotes have been made.

MI One may wonder if the public prosecutor may, in such cases, be allowed to order further investigation in accordance with Article 38 of the Cr. Pro. Code. If further investigation is allowed without any time limitation, then the purpose of the law, which is ensuring the speedy completion of investigation, would be defeated.

10 Anti-Terror Proc., Arts. 28(2). 28(3), 29 and 30.

2011) (hereafter Fkiner, Common Law); Trechsel, Human Rights, at 462-63.

Kl Yackje, Habeas Corpus, at 9-15; Brian. R Farrell, "Access to Habeas Corpus: A Human Rights Analysis of U.S. Practices in the War on Terrorism," 20 Transitional Law and Contemporary Problems 3, at 5*6 (2011) available at <http://www.wrl.amgnrmedu/hrhr/cf716/1/farrell.pdf> (accessed September 6, 2011).

** Brian Farrell, "Does the Universal Declaration of Human Rights Implicitly Guarantee a Right to Habeas Corpus?," at 2-3, available at <http://www.wrl.amgnrmedu/hrhr/cf716/1/farrell.pdf> (accessed September 6, 2011).

References 30

743 Trechsel, Human Rights, at 463-464.

776 Article 13(2) of the Constitution states: "the fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights and international instruments adopted by Ethiopia." The right to habeas corpus as provided under Article 19(4) is one of the rights envisaged under this provision of the Constitution.

** Ibid., at 72*.

** Woodwossen, "Right to Bail," at 3-4.

1,4 The Criminal Code of Canada, Section 515(10) (cited in Kent W. Roach, "Canada," in Bradley, Crim. Pro. 71)-

M Ibid., at 37.

117 Ibid

*u Federal Ethics and Anti Corruption Commission v. Assefa Abrha et al. (Fed. Sup. Ct., Cr. F. No. 7366,

Tikant* 26,1994 E.C.).

419 Federal Public Prosecutor v. Engineer Hailu Shaoul, et al. (Fed. H. Ct., Cr. F. No. 43246, Hidar 25,

1993 E.C.).

Woodwossen. "Right to Bail," at 16-23. in Semeneh, Crim. Pro. Law, at 71.

123 This position of the Council is reflected in its recommendation on the constitutionality of such laws to the House of Representatives in response to the petition submitted to it by Tadesse Abayc and others. "Council of Constitutional Inquiry's Opinion on the constitutionality of a law that prohibits bail for those suspected of Corruption Offence" 23 J, Eth. Law, at 146-53 (hereafter "Council's

Opinion"). The English summary of the Opinion is reported at 23 J! Eth. Law., at 154-56.

Commentary, at 34-35.

3. To what does the phrase "the person in respect of whom the offence was committal dyingn under Article 63 of the Cr. Pro. Code refer? According to the interpretation thtf Article 63 of the Code requires fulfillment of two conditions for denial of bail, should bail be denied if the arrestee is suspctcd of any crime that involves human life (such as

127 "Council1 s Opinion."

*** Public Prosecutor v. Engines Hailu Shatnit. et al. (Fed. H. Ct., Cr. F. No. 43246, liidar 25, 1998).

References 31

09 Daniel Bekele et al. v. Public Prosecutor (Fed, Sup. Ct., Cr. F. Mo. 22909, Megabit 3,1998).

1,0 Public rosecut&r v Andarge Yalerw. et al. (Fed. H. Ct., Cr. H. No. 1007/93, Sene 15,1993).

D1 WanchvDsscn, <<RigJot to Bail," at 30-34.

m Taken from ibid., «t 34-35. Minor modifications have been made to footnotes.

05 Pcra. 3142(g) of the Bail Reform Act of 1984 (cited in Lloyd L. Weinreb (ed.), Leading Constitutional Combs on Criminal Justice (New York: Foundation Press, 2001), at 862.

** Section 515(1 OXc) of the Criminal Code of Canada, Kent W. Roach, "Canada," in Bradley, Crim. Pro, at 71, note 82.

Criminal Procedure Law, Section 2(aXU» (cited by Eliahu I larnon and Alex Stein, "Israel," in Bradley, Crim. Pro., at 222).

** Btrfamu Degu etalv. Public Prosecutor (Fed_ Sup. Cl, Cr. App. No. 25845, Tifccmei 3 0, 1999). m Ibid.-, Isayas G/Hiwot etal. v. Public Prosecutor (Fed. Sup. Ct., Cr. App. No. 26012, Tikemet 30.1999); Rod Eyob Tilahun v. Public Prosecutor (Fed. Sup. Ct., Cr. App. No, 27093, Hidar S, 1999).

*** Eyob Tftahtm v. Public Prosecutor (Fed. Sup. Ct., Cr. App. No. 27093. Hidar B, 1999).

949 Federal Public Prosecutor v. Abaynhe Admasu et al. (Fed, H, Ct, Cr. F. No. 4598 Sene 1, 1998 K.C.).

Abaynhe Admasu et al. v. Federal Public Prosecutor (Fed. Sup. Ct, Cr. App. No.26133T Fed. Sup. Ct, Tikemet 10,1999).

*** Melese Bekele v. Public Prosecutor (Fed, Sup. Ct, Cr. App. No. 28370, Tir 18.1999),

453 Abaynhe Admasu et al. v. Federal Public Prosecutor (Fed. Sup. Ct., Cr. App. No. 26133, Tiksmt 10, 1999 E.C.).

** Major Argaw Habtamu et al. v. Federal Public Prosecutor (Fed. Sup. Ct., Cr. App. No. 26578, Tahi 26, 1999 E.C.).

855 Ibid.

Public Prosecutor v. Isayas G/Hnvot (Fed. H. CL, Cr. F. No. 45071, Ginbot 15, 1998 E.C.).

"ibfcl

**18 U.S.C. Sec. 3142(f) (cited in Dressier, Understanding Crim. Pro., at 642). m References 32
Dawit Kassu v. Public Prosecutor (Fed. Sup. Ct., Cr. App. No. 11354, Ginbot 22, 1995 E.C.).

™ WoUla Ahmed Mehamed v. Public Prosecutor (Fed. Sup. Ct., Cr. App. No. 15255, Miazia 15, 1996),

*** Moh&med MucUzr v. Public Prosecutor (Fed Sup. Ct, Cr. App. No, 14646, Megabit 9.1996).

173 Aichumettt Birhanu v. Public Prosecutor (Fed Sop. Ct» Cr. App. No. 2845S, Yekatit 15, 1999),.

Sprack, Practical Approach, at 107-08. n5 Bail Reform Act of 1984 (IS U.S.C. Sec. 314-2 (f)).

** Kent W. Roach. "Canada," in Bradley, OUn Pn>.% at 72.

971 Sprack, Practical Approach, at 104.

1. If the court allows the accused to be released on bail upon depositing a certain amount of money, does Article 75 allow him to appeal the amount of bail? Is it right for the prosecutor to challenge the appeal on the ground that the lower court did not netnsc to

*** Criminal Justice Policy, Section 3.5.

** Such decisions include closure of the police investigation file for reasons of age and diplomatic immunity; refusal of institution of proceedings for reasons related to a period of limitation, pardon c# amnesty; *TifiuaJ of institution of a charge because there is no possibility of finding the suspect and the case ia one that cannot be tried in the absence of the suspect

*** This ground of refusal was repealed by Office of 'Jle Centraj Attorney Proc., Article 24 (2). Tbe Criminal Jrc Policy has restored U.a\$ a possible ground not to institute a criminal proceeding. Criminal Justice '~?t Section 3 12.

Criminal Justice Policy, Section 3.11. para. 2.

** Kirkos Sub City Police Cr. F. No. 37/2001; Federal First Instance Public Prosecutor Criminal File No. 05548/00.

w Alejandro D. Carrio and Alejandro M. Garro, "Argentina." in Bradley, at 37.

*** Thomas Weigend, "Germany," in Bradley, Crim. Pro., at 205.

w Rachel Van Cleave, "Italy" in Bradley, Crim Pro., at 269-270.

**PJ. Schwikkard and S.E. van der Merwe, "South African" in Bradley, Crim. Pro., at 347.

** Sprack, Practical Approach at 73-74,

References 33

**Brtnfgar v. United States, 338 U.S, 160 (1949) (cited in Kami&ar et al. Adv. Crim. Pro., at 47).

State of Washington Criminal Code, Section 9A.44(2)(a) (cited in Peter Krug, "Prosecutorial Discretion and Its Limits," 50 The American Journal of Comparative Law 643, at 651-52, note 55 (2002). (hereafter Krug, 'Pros Discr').

924 Kent W. Roach, "Canada," in Bradley, Crim. Pro., at 72.

925 Article 279 of the Japanese Code of Criminal Procedure of 1922 instructs prosecutors to decide whether or not to prosecute by taking into consideration "the character, age and the environment of the offender, the circumstances of the offence, or the circumstances following the offence." In an amendment made in 1948, Article 248 was added to the Code requiring the prosecutor to consider the "gravity of the offence." Moreover, there is a book of instruction and broad guidelines known as Kensaisu Kōkan (Prosecutor's Manual) that provides a list of factors that prosecutors may consider for their decision on whether to prosecute. All prosecutors study the book at the Legal Training and Research Institute. Moreover, local public prosecutor offices have their own standard policies regarding decision making. Mark D. West, "Prosecution Review Commissions: Japan's Answer to the Problem of Prosecutorial Discretion," 92 Columbia Law Review 684, at 688 (1992) (hereafter West, "Pros. Rev. Comm.,").

Herrmann, "Rule of Comp.," at 471-474. 9) Ibid., at 472.

** Ibid., at 474.

9,1 Kamisar et al., Adv. Crim. Pro., at 851, w Joseph, "Review Ability," at 144.

W1 Attorneys Proc., Ait. 9.

** German Penal Code, para. 346 (cited in Herrmann, "Rule of Comp.," at 476).

** Herrmann, Rule of Comp, at 476. in Ibid. at 477.

Code of Criminal Procedure, paras. 172-75 (cited in Ibid.).

Article 47 provides; "No person other than:

(a) The injured party or his legal representative; or (b) the husband or wife on behalf of the spouse; or

the legal representative of an incapable person; or the attorney of a body corporate; may conduct a private prosecution."

** Cr. Pro. Code. Articles 150-153.

Office of the Central Attorney Proc., Article 24(2X

** 497 F. 2d (576 (P-C. ct. 1974) (cited in Joseph, "Review Ability," at 138).

** 470 U.S. 598 (1985), Weaver et al., Principles of Crim., at 271.

References 34

** Ibid.

967 Joseph, "Review Ability," at 140.

*** United States v. Goodwin, 457 U.S. 368 (1982) (cited in Weaver et al., Principles of Crim., at 273).

hearing to review the strength of the prosecutor's case before trial is not part of Germany's criminal process. The judges of the trial court may simply review the prosecution's case before setting it for trial. This process seems similar to what is known as preparatory hearing under the Anti Corruption Proclamation. Thomas Weigand, "Germany," in Bradley, Crim. Pro., at 206.

^ Eliahu Hamoti and Alex Stein, "Israel," in Bradley, Crim. Pro., at 237; Raehel Van Cleave, "Italy," in ibid., 270; Catherine Newcombe, "Russian Federation," in ibid., at 303. In United States, in Weaver et al., Principles of Crim. at 276.

In P.J. Schwikkard and S.E. van der Merwe, "South Africa," in Bradley, Crim. Pro., at 347.

** The Criminal Justice Policy provides that a preliminary inquiry for any of the offences within the jurisdiction of the High Court, including aggravated homicide and aggravated robbery, is to be made only where the public prosecutor decides so. That is, no permission from a court of law is required to proceed to trial without preliminary inquiry. Criminal Justice Policy, Section 3.18.

*** The Criminal Justice Policy expressly indicates that the production of testimony is the objective of a preliminary inquiry. Criminal Justice Policy, Section 3.1 S.

** Ohio v. Roberts. 448 U.S. 56 (1980) (cited in Weaver et al., Principles of Crim., at 279).

** This proclamation by virtue of Article 58(1), repealed the Anti-Corruption Proclamation, in Eliahu Hamoti and Alex Stein, "Israel," in Bradley, Crim. Pro., at 237.

Classical examples of such federal arrangement are the U.S., Canada, and Australia. Ronald L. Watts, *Comparing Federal Systems*, 2nd ed. (Montreal & Kingston, London: McGill-Queen's University Press, 1999), at 36.

1015 Examples of this type of federal arrangement include Switzerland, Austria and Germany. *Ibid.* For more on this federal arrangement see Peter H. Merfeld "Executive-Legislative Federalism in West Germany," 53 *The American Political Science Review* at 732-741 (1959).

ICC3 The Court has appellate jurisdiction over decisions of the Federal First Instance Court. Federal Courts Proc., Article 13.

By virtue of the Proclamation's Article 38, it came into force on February 15, 1996. References 35

1044 Public Prosecutor V. Assefa Degefa (Fed. Sup. Ct. Cr. App. No. 1102. Hamle 21, 1995 E.C.).

1045 Public Prosecutor v. Birhanu Kassa et al. (Fed. Sup. Ct. Cr. App. No. 15343. Tikemtr 30, 1997 E.C.). Yared TUakun v. Public Prosecutor (Fed. Sup. Ct., Cr. App. No. 27906, Tir 30. 1999 E.C.),

10* Ft* note on collateral estoppel refers principles of crim pro., pp. 309-11

Public Prosecutor v. Getachew Biru (Fed. Sup. Ct., Cr. App. No. 10965, Tir 26, 1996 E.C.).

10* Adamson v. California, 332 U.S. 46 (1947).

1066 Eshetu Ute Dttba v. Public Prosecutor (Fed. Sup. Ct. Cr. App. No. 26631, Tir 2, 1999 E.C.).

Item Art 138. Antecedents of the accused.

(2) The previous convictions of an accused shall not be included in the record of any preliminary inquiry

1972 *Zafnxi v United State**, 535 U.S. 534 (1993) (cited in Weaver et al., *Principles of Crim.*, at 313).

lim Bruton v. United States, 391 U.S. 123 (1968) (cited in Kamisar et al., *Adv. Crim. Pro.* at 1061). There is another alternative for preventing such a confession from influencing the jury to develop a bias against another defendant, *lo Richardson v. Marsh*, the U.S. Supreme Court recognized a redacted confession -with an instruction not prejudicial to the accused; redaction and instruction can prevent the jury from forming a bias. 1974 *Federal Ethics and Anti-Corruption Public Prosecutor v. Misgarux Mitiku and Captain Elias Keiema* (Fed. H. Ct. Cr. F. No. 34354).

1975 *Public Prosecutor v- Tamirat Layne et al.* (Fed, Sup. Ct, Cr. F. No. 1/1959)

, or* Office of the Central Attorney Proc., Art 24 (2).

,C77 lbfcL, at Art. 9(7).

1<P% Attorneys Proc., Ait 12.

1019 Article 16(6) of the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation. Proc. No. 691>2010, Fed. Neg. Gaz., year 17, no. 1.

Criminal Justice Policy, Section 4.5,5- ""itrlId.

J~Ibid

lli0For the details of the errors or omissions that call for amendment, refer to Chapter IS.

References 36

12 Wondwossen. "Reflective Analysis," at 90-91. On his opinion about how the term should be understood under Ethiopian law, see *ibid.* at 91.

1111 This text is taken, with minor modifications, from *ibid.*, at 92-96.

4 *Ibid.*

Unavailability is defined under Federal Rule of Evidence 804 (a) in Robert, "Right to Confrontation," at

.9.

51M The Confrontation clause of the Convention does not prohibit the domestic court from admitting hearsay into evidence where the source of the evidence is unavailable for cross-examination. See *R v. Cole*; *R v. Kett* (2008) 1 Cr. App. 5, CA.

113* Wondwossen* "Reflective Analysis/" at 97-99.

m< *Doorson v. Netherlands* and *Van Mechelen v. Netherlands* (quoted in Trechsel, Human Rights, at 316). *See* Cf., e.g., *Fyfe* (2001), at 15 (cited in Trechsel, Human Rights, at 316).

1135 Trechsel, Human Rights, at 316.

U4J *Van Mechelen v. Netherlands*, para. 59 (cited in Trechsel, Human Rights, at 316).

114* Trechsel does not agree with the court's approach in the second case. Trechsel believes that, though it is helpful for the defence to be able to see the witness because it allows his counsel to point out specific observations to the court, visual contact is not the definitive criterion to apply. In his opinion, it is "finally for the judges to assess the reliability of the testimony. Anyway, the voice itself carries a wealth of information on the speaker's information." See Trechsel, Human Rights at 320.

114? This right is recognized under Article 14(3)(c) of the ICCPR and Article 7(1)(d) of the African Charter on Human and Peoples' Rights.

Article 17(2) of the Re-establishment of Oromia National Regional State Courts Proclamation, Proc. No. 141/2008, A:(egeleta Oromia, year 16, i>6.10.

1157 Muradu* Indigene's Right," at 146, note 19.

2,71 Trechsel, Human Rights, at 119.

Article 14(1) states in pertinent part: "In the determination of any criminal charge against him...everyone shall be entitled to a...hearing by a competent independent and impartial tribunal established by law."

Principles and Guidelines, Section A(4). Trechsel, Human Rights, at 53,

See, e.g., *Incal v. Turkey*, para. 65, *McGormell v. United Kingdom*, para. 48; *Lauko v. Slovakia*, para 63. For more on these factors, see Trechsel, Human Rights, at 54-57.

References 37

,Mf7 Trecfaael, Human Rights, At 61.

"Ibid.

"w Eberhard Schmidt (1967) (cited in *ibid.*).

1 ,w Trechsel, Human Right*, at 61.

Article 14(2) of the ICCPR states: 'Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law'; Article 11(2) of the UDHR provides, "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense"; and Article 7(IXh) of the ACHPR states: "Every individual shall have the right to have his cause heard. This comprises: ...the right to be presumed innocent until proved guilty by a competent court or tribunal."

2<H Sec Chapter Ten.

1210 Argentine Code of Criminal Procedure, Art 456 (cited in Alejandro D. Carrio and Alejandro M. Gano, "Argentina," in Bradley, *Crim. Pro.*, at 47).

21J Italian Code of Penal Procedure, Art. 581 (lc) (cited in Rachel Van Cleave, "Italy," in Bradley, *Crim. Pro.*, at 260-81).

Weaver et al., *Principles of Criminal Procedure* 390-91.

1216 On the other hand, the Argentine Supreme Court held that "to permit the appeal of an acquittal by the prosecution does not violate due process nor constitutes a double jeopardy violation." Gomez, CSIN, 299

Falks 19 (1977) (cited in Alejandro D. Cairio and Alejandro M. Guto, "Argentina." in Bradley, *Crim. Pro.*, at 48).

The Criminal Justice Policy envisages a law that would allow the public prosecutor and a person who it

convicted, upon discovery of new evidence showing the convict's innocence, to request the court that

convicted the person to reconsider its judgment and release the person because he was wrongly convicted.

1237 General Comment No. 32.

12*Ibid.

,2y* Je&D-Loup Charrier, Art 2 Protocol No. 7 N 3 (2002), fe Trechsel, Human Rights* at 370. IUt> Trechsel, Human Rights, al 370.

References 38