

A Note on the State of Judicial Immunity in ANRS: Alarming Instances

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Abstract

An independent judiciary is an essential element of a democratic state. To guarantee this, the legislature and the executive wings of the government should have a minor impact on the judiciary and the judiciary should be equipped with special provisions allowing it to defend itself from political pressure.¹ The concept of judicial immunity, which protects judges and other judicial officials from civil or criminal liability in connection with their official duties, has been recognized as an important tool to assure full-fledged judicial independence. This article aims to examine the state of procedural judicial immunity in the context of Amhara Regional State. In addition to a critical review of applicable legislations and case analysis, the author conducts unstructured interviews with purposively selected judges working in the region. The article concludes that judges in the region lack legal protection to function independently. It, in particular, underlines that fact arbitrary detention of judges by the police has negatively affected judicial independence as well as public confidence in the judiciary. Based on these findings, the article recommends to the concerned organs to assure

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¹ Charles M. Cameron, "Judicial Independence: How Can You Tell It When You See It? And, Who Cares?" in *Judicial Independence at the Crossroads. An Interdisciplinary Approach*, ed. Stephen B. Burbank and Friedman Barry (California: Sage, 2002), 42-55 and Christopher M. Larkins, " Judicial Independence and Democratization: A Theoretical and Conceptual Analysis," *American Journal of Comparative Law*, 1996, vol. 44 no. 4, pp. 605-626.

procedural immunity for judges in the region to ensure the functional independence of the judiciary and the fair administration of justice.

Key Words: Judicial Immunity; Judges; Alarming Instances; Amhara Region; Ethiopia.

1. Introduction

Judicial immunity is a legal principle that protects judges and other judicial officials from civil or criminal liability in connection with their official duties.² This principle is recognized in various legal instruments at the international, regional, and national levels. At the international level, judicial immunity is recognized by the United Nations through the Convention on the Privileges and Immunities of the United Nations, which grants immunity to UN judges and other officials, and the United Nation Basic principles on the independence of the judiciary,³ and the International Bar Associations Minimum Standards of judicial independence.⁴ The International Criminal

² Jeanne F. Pucci, Immunity Doctrines and Employment Decisions of Judges, *Fordham Law Review*, 1987, vol. 55. Pp. 621; see also Randolph Block, *Stump vs Sparkman and the history of judicial immunity*, *duck law journal*, 1980, pp.881. see also Marie Adornetto, Monahan, "The Problem of "The Judge Who Makes the Case His Own": Notions of Judicial Immunity and Judicial Liability in Ancient Rome," *Catholic University Law Review*, 4th ser., 49, No. 2 ,2000, pp. 430. see also D. Thomson, *judicial immunity and the protection of justices*, *modern law review*,1958, vol.21, no.5,pp.517-533.

³ *The Prevention of Crime and the Treatment of Offenders*,1985, reprinted in Marie Adornetto, Monahan, "The Problem of "The Judge Who Makes the Case His Own": Notions of Judicial Immunity and Judicial Liability in Ancient Rome," *Catholic University Law Review*, 4th ser., 49, No. 2 ,2000, pp. 435.

⁴ *The international Bar Associations Minimum Standards of judicial independence*, 1982, Art. 43.

Court also recognizes judicial immunity for its judges and prosecutors.⁵ Under international law, judicial immunity applies to all acts performed by judges in the course of their official duties, including decisions given in court, administrative actions related to the administration of justice, and other functions related to the judicial process. This immunity is not absolute under international law, however, and judges may still be held accountable for acts that are outside the scope of their official duties, such as acts of corruption or other criminal acts.⁶

At the regional level, there are several regional legal instruments that deal with judicial immunity. To this evidence, one can refer to Article 12 of Declaration of Minimal Principles about judiciary and judges' independence in Latin America (Campeche Declaration) which provides procedural immunity to judges as long as they are not caught in flagrant crimes.⁷ It is also interesting to mention Article 14 of Europeans Charter of Judges which guarantees immunities to national judges in a good manner.⁸

At the national level, most countries recognize judicial immunity although its scope and extent vary depending across legal systems.⁹ The general principle is that judges should be able to perform their duties without fear of reprisal or harassment.¹⁰ From the above discussion, one can safely understand that

⁵ Rome statute of international criminal court, 2002, Art. 48.

⁶ Id.

⁷ Declaration of minimal principles about judiciaries and judges independence in Latin America, 2008, Campeche, Article 12.

⁸ European charter on the status of judges, 1998, Art. 14.

⁹ Goda Ambrasaitė, Comparative analysis on the High Councils for Judiciary in the EU member states and judicial immunity, October 2015, pp. 28. See also, Article 86 of The Constitution of Czech Republic, Article 134 of The Constitution of Slovenia, Article 153 of The Constitution of Estonia, Article 122 of the Constitution of Croatia Article 181 of The Constitution of Poland, Article 153 of The Constitution of Estonia.

¹⁰ Id.

judicial immunity has been incorporated into different international, regional and national legal instrument as a means of securing judicial independence as well as public trust and legitimacy in the judiciary.

In Ethiopia, the judiciary has historically been subject to political influences and interferences that in turn undermine judicial independence and impartiality.¹¹ This has further led to a lack of trust in the legal system and has made it difficult for judges to uphold the rule of law and protect human rights. Similarly, in the Amhara national regional state, there have been concerns about the protection of procedural judicial immunity.¹² The judiciary has faced challenges in maintaining its independence and impartiality, and judges have been subject to harassment and intimidation by government officials and the police departments.¹³ In recent years, there have been efforts to strengthen the protection of procedural judicial immunity in Ethiopia at federal level.¹⁴ However, there are still much works to be done to ensure that judges can make decisions free from external influence or reprisal.

The purpose of this article is to examine *the state of procedural judicial immunity in the context of Amhara Regional State*. This article is organized in five sections including this introduction. In the second section, it discusses

¹¹ K I Vibhut, The judicial system of Ethiopia: from empire to military junta to federal democratic republic : A legal perspective, Christ university law journal, 2015, vol.4, no.1 , pp.4 see also Assefa Fisseha, Some Reflections on the Role of the Judiciary in Ethiopia, Ethiopian Bar Review, Vol. 3, No. 2, 2009, pp. 122-123. See also, Tsegaye Regassa, Courts and the Human Rights Norms in Ethiopia (Proceedings of the Symposium on the Role of the Courts in the Enforcement of the Constitution, Civil Service College, 2000, p. 116.

¹² All the interviewee's judges express their concerns about procedural immunity protections and its importance in the region.

¹³ Id.

¹⁴ The Federal judicial administration Proclamation, 2013, *NEGARIT GAZETA*, Proc. No. 1233, 27th year, No. 18, Article 34.

about procedural judicial immunity protection in general and its relation with judicial independence and accountability. The third section reviews relevant legal instruments in Ethiopia and the region. The fourth section continues to see the state of procedural immunity protections in practice. The fifth section suggests some legal and practical safeguards for judiciary that would make the concept of judicial independence practicable in the country and the region.

2. The Concept of Judicial Immunity

2.1. General Remarks

The notion of judicial immunity is part of the wider concept of judicial independence. There are different types of immunities. The most famous division is the one that divides immunities into civil and procedural judicial immunity.¹⁵ The former can also be called civil immunity since it declares total impunity for certain actions as long as they were undertaken in the performance of duties. A person enjoying this privilege shall never be tried or sentenced for such an action even if it constitutes liability. In English literature, this immunity is also called non-liability or non-accountability.¹⁶ On the other hand, procedural immunity, sometimes called inviolability, is seen as an obstacle in the trial. If procedural immunity can be lifted then we call it a relative immunity. In other words it is a hindrance in criminal procedure, which may be removed if a specific authority agrees. That is to say, consent is needed in order to continue with the prosecution of the judge. The other related concept is procedural immunity, which is a legal doctrine that provides protection to government officials who are carrying out their official duties by preventing them from being sued or prosecuted for actions

¹⁵ *Supra* note 8.

¹⁶ *Id.*

related to their official duties.¹⁷ This type of immunity applies to individuals who are involved in the judicial or administrative process, such as judges, prosecutors, and witnesses. The purpose of procedural immunity is to ensure that government officials can carry out their duties without fear of reprisal or retaliation. This protection helps to ensure that the judicial system can function effectively and efficiently, as officials are able to carry out their duties without worrying about the potential legal consequences of their actions. Totally, procedural immunity is an important legal doctrine that helps to ensure that government officials can carry out their duties without fear of legal consequences. However, it is important to balance this protection with the need to hold officials accountable for their actions, particularly when those actions violate the rights of individuals or are outside the scope of their duties. In the same way, this immunity is intended to ensure that judges can perform their functions independently and without fear of being sued for their decisions or actions. However, the justification for procedural immunity for judges cannot be to protect the judge from prosecution, but only from false accusations that intend to exert pressures.

2.2 Judicial immunity, Accountability and Independence

The natures of judicial independence are divided into two conceptions. The first concept of judicial independence is the personal independence of judges, in this concept; it is often analogous to the concept of “authors of their own opinions.”¹⁸ The judiciary has realized its independence if the judges can make decisions without fear of internal (vertical) or external (horizontal)

¹⁷ Id.

¹⁸ Ewis A. Kornhauser, “Is Judicial Independence a Useful Concept?”, in *Judicial Independence at the Crossroads: An Interdisciplinary Approach*, (2002), pp.45 ff. *An Interdisciplinary Approach*, ed. Stephen B. Burbank and Friedman Barry, (California: Sage, 2002), 42-55.

pressure to resolve cases with certain conditions. In other words, personal independence can be achieved when the output of the judicial process can reflect its judicial preferences.¹⁹ The second concept of judicial independence is institutional independence. It appears that judicial independence depends on other branches of power, especially if it is associated with decisions that are routinely ignored or poorly implemented. This concept is often interpreted as collective independence of institutional independence, or referred to maxim what judge's think is what they produce and what they produce controls the outcomes of legal conflicts.²⁰

Accountability is the same as the judicial independence, both of which are important foundations for the rule of law. The word 'accountable' as defined in the Oxford Dictionary means 'responsible for your own decisions or actions and expected to explain to them when you are asked'.²¹ Now coming to judicial accountability, it means the responsibility or answerability of the judiciary as an institution and judges as individuals for their own decisions.²² The judiciary being the justice delivery system of the State is a well empowered organ which performs significant and noble functions. It is, therefore, annexed with some level of accountability. Judicial accountability is, in fact, a corollary of judicial independence.

¹⁹ Id.

²⁰ Charles M. Cameron, "Judicial Independence: How Can You Tell It When You See It? And, Who Cares?" in *Judicial Independence at the Crossroads. An Interdisciplinary Approach*, ed. Stephen B. Burbank and Friedman Barry (California: Sage, 2002), 42-55 and Christopher M. Larkins, "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis," *American Journal of Comparative Law*, 1996, vol. 44 no. 4, pp. 605-626.

²¹ Henry Campbell Black, *Black's Law Dictionary*, 9th ed., West Publishing Co, United States: 2009, pp. 818.

²² Muro Cappellite, *Who Watches the Watchmen? Comparative Study on Judicial Responsibility*, *American Journal of Comparative Law*, Vol.31, p. 2.

When we come to their relation, judicial independence aim to ensure that judicial decision-making is unencumbered by other components of government; neither protects judges from lawsuits stemming from the exercise of such decision-making by the public. For a legal system to flourish, its judiciary must be able to make decisions without the menacing cloud of potential litigation lingering overhead. Fear and intimidation have no more of a place in just judicial decision-making. So, ensuring principled and fearless decision-making forms the basis for judicial immunity. Judicial immunity, specifically procedural judicial immunity, is a doctrine that aims to protect judges from the harassment of personal litigation in respect of their judicial functions, precluding lawsuit or prosecution except under the authorization of appropriate judicial authority.

Although judges are generally not detained or arrested without prior authorization of appropriate judicial authority, the legal systems make judges accountable through other methods. For example, judges remain criminally liable for fraud, conspiracy, or any other crimes, even when they commit those crimes in connection with the judicial office, under an authorization of appropriate judicial authority. In addition to liability for their criminal behavior, society can hold judges accountable for their misconduct through several other methods. These methods include impeachment or removal from office and disciplinary measures imposed by organizations that regulate judicial conduct.

Society, therefore, holds judges accountable to the public in a number of ways. The legal system is designed to correct itself either through a system of appeals or through a few limited circumstances when litigants can hold a judge liable for his or her conduct through criminal prosecution or disciplinary proceedings. These accountability measures ensure that the legal system supports both individual and societal reliance on the judicial process.

Therefore, while the doctrine of judicial immunity greatly protects judges from the harassment of personal litigation in respect of their judicial functions, the practices of judicial accountability help to preserve the integrity and workability of the legal system.

3. Review of Pertinent Ethiopian laws

In Ethiopia, the FDRE constitution asserts judicial independence in more than one provision and in different tones.²³ Judicial independence is the principle that judges or courts shall be free from any external interference or influence when making decisions. It requires that judges be impartial and make decisions based solely on the law and facts presented in each case, without any pressure or influence from other branches of government, political parties, or from any other source.²⁴ Thus, it is a critical aspect of the rule of law and is necessary for ensuring that the justice system remains fair, impartial, and transparent.

Then, depending on these provisions of the constitution, HPR proclaimed detailed law that helps to protect the independence. So the proclamation which establishes the federal judicial administrative Council goes to the detail in elaborating upon what was stated in general terms in the constitution. Basically, this proclamation is destined to regulate matters such as the

²³ Article 78(1) of the FDRE Constitution proclaims that the judiciary established under the Constitution is independent. Article 79(2) asserts that all courts are required to be 'free from any interference or influence of any governmental body, government official or from any other source'. Article 79(3) mandates a judge to exercise his judicial functions in 'full independence' and to be 'directed solely by the law'. With this spirit, Article 79(4) assures a judge of full tenure of service and provides him a constitutional safeguard against arbitrary removal. See also The Constitution of The Federal Democratic Republic of Ethiopia, 1995, Article 78 and 79, *Federal Negarit Gazeta*, Year 1, number 1(here in after called FDRE constitution).

²⁴ TFDRE constitution Article 79(2) (3).

organization of the judicial council, power and duties of council, judicial appointments, training, tenure, termination, judicial immunities, and the likes of these.²⁵ Nevertheless, the discussion in this sub-section will be limited to the immunities and right of judges as the article is not meant to serve as a commentary for the proclamation.

Concerning the judicial immunity of judges, Article 34 sub articles 1 of this proclamation stipulate that as if judges may not take civil liability for action taken in their official capacity. This is basically what we call it judicial civil immunity protection because it clearly guarantees non liability for judgments handed out by judges.²⁶ In addition to this, article 34 sub articles 2 of this proclamation, interestingly mentions no judges to be arrested, detained and prosecuted so far as its immunity is lifted by the judicial council.²⁷ This sub article is articulated so as to recognize procedural judicial immunity since it protects judges from prosecution and arrest until the immunity is lifted. Furthermore, sub article 3 of this article makes judicial independence practicable by giving's of right to promulgate directive on the procedure, which helps to lift immunity, to the Supreme Court. It is genuine and plausible to say that, proclamation no 1233/2021, is quite shine since it guaranty the judiciary both types of judicial immunities. That is civil and procedural judicial immunity.²⁸

²⁵ The Federal judicial administration Proclamation, 2013, *NEGARIT GAZETA*, Proc. No. 1233, 27th year, No. 18.

²⁶ *Id.*, Art. 34.

²⁷ *Id.*

²⁸ *Id.*, Art. 3.

3.1 The State of procedural Judicial Immunity in ANRS constitution

The FDRE Constitution clarifies the structure of the organ of the state as comprising the federal government and state members.²⁹ And also specified that both the federal and states have three wings of government, namely, legislative, executive and judiciary.³⁰ The Constitution further provides the respective powers and functions.³¹ Moreover, the Constitution allows for the state to establish a state administration that best advances self-government and gives the power to design and adopt their own constitutions so as to offers an excellent opportunity for the accommodation of their regional matters.³² When it comes to Amhara National Regional State sub national constitution, the regional Constitution provides both institutional and functional independence of the judiciary.³³ Looking at this while the ANRS constitution seems on the way to qualifying the minimum standards requirements for judicial independence by settings up institutional and functional independence; it is silent and says nothing about procedural judicial immunity, which is the base for practicability of functional independence.

Procedural judicial immunity is an important protection for judges that helps to ensure the fair and impartial administration of justice. By shielding judges from personal liability and other forms of retaliation, this immunity helps to preserve the independence of the judiciary, prevent frivolous lawsuits, and ensure that judges are able to make decisions based solely on the law and the facts of the case. However, the lack of constitutional protection for procedural judicial immunity in the Amhara national regional state is a cause for concern.

²⁹ Id.

³⁰ Id.

³¹ FDRE Constitution, Art 50(2).

³² FDRE Constitution, Art 52; Article 52(1) (a)(b).

³³ ANRS Constitution, Article 66 sub Article (2) (3).

Recently, the Amhara region is known for its political instability³⁴, and the lack of protection for procedural judicial immunity has made it difficult for judges to maintain their independence and uphold the rule of law. In the absence of such protection, judges in the Amhara region are vulnerable to political pressure, harassment, and intimidation.

3.2 The State of Procedural Judicial Immunity in ANRS Courts Establishment Proclamation

The federal constitution has clearly authorized regional states to issue their own constitutions and other laws.³⁵ In the same fashion, according to article 49(3)(1) of the Revised Amhara National Regional State Constitution it is the council of Amhara national region which is given the power to enact laws within the region context.³⁶ Following this, the state council proclaimed laws that established Amhara regional courts. The council amended its regional courts establishment Proclamation No 153/2000, 169/2002, and 223/2008 and came out with recent applicable Proclamation No 281/2015. The main objective of these laws is to ensure in a fundamental way that the courts exercise their judicial functions in an efficient, effective and accessible manner plus to make judicial service based on the principle of rule of law, transparency and accountability.³⁷ However, all these judiciary establishment laws repeatedly ignored the issues of procedural judicial immunity. So that, in the ANRS there is no law which guarantees procedural judicial immunities for the judges. This means that judges are not protected from personal

³⁴ Thompson Makahamadez and Muluken Fikade, popular protest in the Amhara Region and political reform in Ethiopia, 2016-2018, *Journal of Eastern Africa Studies*, 2022, vol.16 No.1, pp. 115-137.

³⁵ FDRE Constitution, Article 50(5)

³⁶ ANRS Constitution, Article 49

³⁷ Amhara National Region State Court Establishment Proclamation, 2015, ZIKRE HIG, Proc. No. 281/2015, 27th year, No. 21, preamble.

consequences for their official actions while performing their duties. The Amhara national Regional state Government needs to address this issue and provide procedural judicial immunity for judges. This will not only ensure the independence and impartiality of the judiciary but also promote public confidence in the judicial system.

4. Practical challenges of procedural judicial immunity: Alarming instances

The absence of procedural judicial immunity for judges in the Amhara national regional state has significant practical impacts for functional judicial independence, especially in a situation where judges are being detained arbitrarily simply for doing their job. The following cases are selected and discussed to identify the state of procedural judicial immunity and its impact in the region.

4.1 Instance One

Judges play a crucial role in the legal system, as they are responsible for interpreting and applying the law to resolve disputes and maintain social order. However, the decisions that judges make may not always be accepted, particularly in cases where one party feels they have been wronged or treated unfairly. In such situations, judges may be at risk of being detained or facing other forms of retaliation for their decisions. To this evidence, now let us see the case that has happened at *Ayna bugna woreda*.

The case was raised by an individual and a criminal investigation police officer. Then the investigating police officers have asked the court to grant them a 14 days remand in order to investigate the case that they suspected an individual of the crime of willful injury. The court that heard the case also ordered that since the police complaint was not enough to allow remand, the suspect would be released from prison when he paid 2000 birr cash for the

preserved bail right. After it was said that he would be released from prison when he posted financial bail, the suspected was fulfilled what ordered by the court and the court issued order to the police to release the suspect and the case was closed. After that, due to the fact that the police did not free the suspect, the relatives of the suspect filed a complaint to the court and the court ordered the police to do it according to the order. Then when the police was not willing to release the suspect as per previously given order the court fined the detective who was holding the investigation file with 1000 Birr for contempt of court due to his refusal to not to set free the suspect. After that, the policeman who was punished for court contempt together with other policemen waited for a judge when she came home from work, then they beat her up in public and took her to jail, saying that they were arresting her because of what she done to the police officer.³⁸

This kind of arbitrary detention of judges for their actions in the courtroom is a serious threat to the rule of law. If judges are subject to arbitrary detention or other forms of harassment by the police because they are perceived to be acting contrary to their interests, this can have a chilling effect on the judiciary. Judges may be reluctant to make decisions that go against the government or the police, even if those decisions are in line with the law, for fear of retaliation. This can lead to a situation where the rule of law is undermined, as judges may not feel free to make decisions based solely on the law and the facts of the case. Instead, they may be influenced by external pressures, which can compromise the integrity of the judicial system. However, judges are tasked with upholding the law and ensuring that justice is served in a fair and impartial manner.

³⁸ Interview with Meseret Andargachew, Judge at *Ayna bugna woreda* in ANRS, on the case happened in her, 12 march, 2023.

When judges are arbitrarily detained for their actions in the courtroom, it sends a message that the rule of law can be disregarded and that those in power can act with impunity. This undermines the rule of law in several ways. First, it undermines the independence of the judiciary. Judges should be free to make decisions based on the law and the facts presented in court, without fear of reprisals or retaliation. When judges are arbitrarily detained, it sends a message that they are not truly independent and that they can be targeted for their decisions. Second, arbitrary detention of judges undermines the public's trust in the judicial system. If judges can be detained for their decisions, it suggests that the system is not fair or impartial and that justice can be undermined by those in power.

4.2 Instance Two

The starting point of the case was the search warrant submitted by the investigating police officer, and after looking at their complaint, the court ordered them to amend, stating that the complaint submitted by the police is too general and should be written again in a specific manner. Later on the same day, when the same detective asked for an additional 14 days remand for the youths who were suspected of being dangerously ill, and then the court warned that suspected bail rights should be protected so far as the police did not do the work they repeatedly scheduled for. Then the policeman who was at the trial said that the court was disrupting our work to the bench judge, and following this statement, he was ordered not to leave the courtroom by the judge, however, he left by neglecting the court's order.

After that, the court decided to sentence the investigating police officer to one month's simple imprisonment for his action of court contempt. The police then appealed against the lower court's decision, but the High Court upheld the lower court's decision. After that, other policemen came to the judge's

office and brought a summons to the judge saying that you are wanted at the police station for investigation. After they brought him a summons, they arrested him and took him to the police station.³⁹

These kinds of arbitrary arrest of a judge by the police for simply doing their job can have serious implications on judicial impartiality. When judges are arrested without cause, it sends a message that their decisions can be influenced by external factors, such as political pressure, police or personal vendettas. This can lead to a culture of fear and intimidation among judges, compromising their ability to make impartial decisions and undermining the fairness of the judicial system. One practical solution to prevent such arbitrary arrests of judges is to provide them with procedural judicial immunity protection. This would ensure that judges are protected from arrest and other forms of retribution for their decisions, and would help to safeguard their independence and impartiality.

4.3. Instance Three

The root cause of the issue was an execution case between the individual and the government. In the case, the individual who is the judgment debtor said that he was willing to release the 2 meters that he had received in the judgment, but the land demolition task force that was executing said that you should release 5 meters and they pushed and demolished 3 meters of the judgment debtor property against what stated in the judgment. Following this, when an individual submitted a petition to the judge holding the record stating that it was done outside of his judgment, the judge ordered the member who is the chairman of the land demolition task force to appear in court and

³⁹ Interview with Adem Mohamed, judge at *Kalu Woreda* in ANRS, about the case happened on him, 30 April 2023.

explain the matter. Subsequently, the district Administrator, who is the chairman of land demolition task force, appeared in court and when asked why he acted outside of the judgment, he showed inappropriate behavior and gave an answer. For this reason, he was punished in a court of contempt and sent to a prison. After that, the members of the district administration cabinet organized a mob, carrying stones and sticks, and the district police chief along with some armed policemen surrounded the court and arrested the judge who gave the order in front of the public and took him out of the courtroom and taken to the police station. After that, when they told to release the judge by presiding judge, they said that he would not be released if the district administrator is not released, then after they released the judge when the district administrator was released by negotiation.⁴⁰

When judges are arbitrarily detained for performing their duties, it can create fear among the judiciary and lead to a threat to judicial independence. Judges can feel pressured to make decisions that please the executive or police instead of making independent and impartial judgments based on the law. In order to ensure practicable judicial independence, it is important that judges are granted procedural judicial immunity. Without this protection, judges may be subject to external pressures and influences, which can compromise their ability to act independently and uphold the rule of law.

4.4 Instance Four

The cause of the case is a newly opened civil dispute, and after the file was opened by the registry office and brought to a judge, the party who filed the case was called and told to deliver the summons to the defendant. Then the lawyer who appeared on behalf of the plaintiff said that the trial was

⁴⁰ Interview with Yohanes Meheretu, judge at Dawent *woreda* in ANRS, about the case happened on him, 25 April, 2023.

problematic because he raised the decision of the trial in another case, but the trial reprimanded him, but the lawyer could not stop insulting the judge. Since the lawyer could not stop, the court sentenced the lawyer to three months of simple imprisonment, saying that he had contempt of court. After that, the lawyer turned to the judge and when he was invited to a fight, the judge decided to add five months to this additional act of court contempt and to sentence him to a total of eight months. Following this, after the judge resumed his normal work, the police came to the court and took him to the prison in handcuffs, saying that he was suspected of abuse of power. Then bringing him to Dessie from Akesta and torturing him for a long time in prison, he was presented with a formal charge of abuse of power, and after a long time of trial, he was sentenced to two years of simple imprisonment by the High Court.

Subsequently, although an appeal was submitted to the Supreme Court, it upheld the decision of the High Court. After that, he appealed to the cassation bench division, claiming that a fundamental error of law had been committed, and the cassation bench acquitted him of the charge, saying that it was an action related to his work and that it was not an abuse of power. Plus, by justifying that the judge sentenced attorney to an additional five months for his additional conduct which is literary additional court contempt, and it is not considered as an overturn of his own decision.⁴¹

These kinds of arbitrary detention of judges can lead to delayed justice. If judges are detained for performing their duties, it can create a backlog of cases since there may not be enough judges to handle the caseload. This can lead to delays in the resolution of cases and a lack of access to justice for the

⁴¹ Interview with Demise Assefa, during that time judge at Akesta *woreda* in ANRS, about the case happened on him, 25 April, 2023.

people. Taking into account the solution there is also a case similar to this, which happened at another *woreda*, which basically shows the magnitude of the problem: now let us see it,

The origin of the case was an execution between two individuals. After execution claim is presented to the court by the judgment creditor the individual who was the judgment debtor was repeatedly served with a summons in the case so as to present to the court, however, the person failed to appear, so the court ordered the district police to arrest and present to the court the execution defendant. After taking the order of the court the police officer was not willing to present the execution defendant to the court, then considering this the court again ordered the police officer who received the order to appear to the court to explain why he did not present the execution defendant, then the police officer appeared to the court to explain orally. Since the police officer did not answer the questions put to him in the trial and also threatened the judge, in addition, he entered the trial armed with a weapon. The judge sentenced the policeman to two months of simple imprisonment for contempt of the court. Following this, the policemen immediately leave the court room. After this, an order was written for the district police office to arrest the policeman and present him in court, but the police institution refused to present the policeman and head of the police office was ordered again to appear and explain the reason why they did not present the policeman in court. Following this order the head of the police institution gave an order that the judge should be arrested and the police were able to arrest the judge from 3 o'clock to 7 o'clock taking him from workplace publicly.⁴²

To sum up, there is the lawlessness of the police officers and the institution, this all in effect shows the failure of the justice system as a whole. And these

⁴² Interview with Abeselom Tebeje, Judge at Armachiho *Woreda* in ANRS, about the case that happened to him, 18 March, 2023.

has practically created a situation where judges are being arbitrarily detained simply for performing their duties, which in effect has significant impacts on the independence, impartiality, efficiency, competence, and public confidence in the judiciary. Therefore, it is important to ensure that judges are protected from retaliation for performing their duties to uphold the rule of law and ensure a just society. So, it requires giving judges procedural judicial immunity protection. In addition to this, it demands taking fundamental measure of the government to reform the police institutions in building professional ethics of the police.

5. Concluding Remark

Judicial independence is the doctrine founded on the premise that decisions of the judiciary should be impartial and not subject to influence from the other branches of government or private or political interests.⁴³ The recognition of full-fledge judicial independence is assessed on the basis of formal compliance with certain minimum standards among which judicial immunity can be mentioned as the vital one. The concept of judicial immunity is an important part of international law that reflects the need to protect judicial independence and ensure that the judicial process is free from external pressures that may interfere with the administration of justice. In Ethiopia at federal level, the concept of procedural judicial immunity is recognized under the federal judicial administration proclamation. Whereas at sub national level, In ANRS, judges within the region have no such protection. Its absence has practically created a situation where judges are being arbitrarily detained simply for performing their duties and this has significant impacts on the independence, impartiality, efficiency, competence, and public confidence in the judiciary. With regard to this, one of the primary impacts of arbitrary

⁴³ *Supra* note, 6.

arrests on judges is the potential for fear and intimidation. When judges are aware that they may be subject to detention or other forms of punishment by the executive branch, they may be reluctant to make decisions that could be perceived as critical of the government or its policies. This can lead to self-censorship and reluctance to take bold or controversial actions, even when they are necessary to uphold the rule of law. Another impact of arbitrary arrests on judges is the potential for reputational damage. When judges are detained or subject to other forms of retaliation by the executive branch, this can create the impression that they are not independent or impartial actors. This can damage public trust in the judiciary and erode the legitimacy of the legal system as a whole. Additionally, arbitrary arrests can have a chilling effect on the willingness of judges to take on high-profile or politically sensitive cases. When judges know that they may be subject to retaliation or punishment for their decisions, they may be more likely to avoid cases that could put them in conflict with the government or other powerful actors. This can undermine the ability of the judiciary to act as a check on executive power and ensure that justice is served fairly and impartially. Therefore, it is possible to say that, the absence of procedural judicial immunity protection in the ANRS can make judges who work in the region vulnerable to the impacts of arbitrary arrests by the executive or police.

To address the legal and practical challenges in the ANRS and the resulting impacts on judges, several measures should have to be taken. Among that,

- First, the regional government should establish and codify procedural judicial immunity protection through legislation. This could include providing clear guidelines for when immunity applies, when it is lifted, by whom it can be lifted and establishing a process for investigating and addressing any alleged misconduct by judges.

- Secondly, it demands serious commitments from the regional government to take fundamental measures or reform the police institutions to build discipline and professional ethics of the police.
- Third, efforts should be made to provide training and support for the police and executives there in all levels to ensure they are aware of separation of power and its importance in clear sense.
- Fourth, legal mechanisms should be put in place to monitor and prevent arbitrary arrests of judges by the police or other executives. This could include, within the law, establishing legal provision that provides criminal liability of individuals who fails to respect procedural immunity protection.