

Aan de minister voor Immigratie, Integratie en Asiel
Ministerie van Binnenlandse Zaken en Koninkrijksrelaties
Dienst Terugkeer en Vertrek
Postbus 20301
2500 EH DEN HAAG

**Directie Consulaire Zaken en
Migratiebeleid**

Afdeling Migratie en Asiel

Postbus 20061
2500 EB Den Haag
Nederland
www.minbuza.nl

Contactpersoon
DCM/MA

T 070-3485643
F 070-3485046
dcm-ma@minbuza.nl

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Betreft "Ne bis in idem"-beginsel en erkenning buitenlandse vonnissen in Ethiopië

Onze referentie
DCM/MA-027/2012

Kopie aan
IND/D-SDIS (BLT)

Hierbij ontvangt u de door u gevraagde informatie met betrekking tot de toepassing van het "ne bis in idem"-beginsel en de erkenning van buitenlandse vonnissen in Ethiopië.

Onderstaande informatie is afkomstig uit openbare en vertrouwelijke bronnen.

1.1 "Ne bis in idem": de wet- en regelgeving

Het "ne bis in idem" beginsel is opgenomen in artikel 2.5 van de *Criminal Code of Ethiopia (Proclamation No. 414/2004)*:

Article 2. Principle of Legality

(5) Nobody shall be tried or punished again for the same crime for which he has been already convicted, punished or subjected to other measures or acquitted by a final decision in accordance with the law.

Het "ne bis in idem" beginsel is niet alleen verankerd in de *Criminal Code* maar wordt ook nader uitgewerkt in de *Code of Criminal Procedure*. In deze *Code of Criminal Procedure* is geregeld dat indien een verdachte terechtstaat de rechter de verdachte dient te vragen of hij bezwaar wil maken tegen de voorgelezen tenlastelegging. De verdachte heeft dan de mogelijkheid om te verklaren dat hij al eerder voor eenzelfde aanklacht is veroordeeld danwel is vrijgesproken, of dat het misdrijf is verjaard danwel onderdeel is van een pardon- of amnestieregeling. De rechtbank beslist vervolgens of het bezwaar al dan niet gehonoreerd wordt.

Het is niet bekend hoe de "ne bis in idem" wet- en regelgeving in de praktijk door de Ethiopische rechterlijke macht wordt toegepast.

In het geval van een buitenlands vonnis gelden bijzondere bepalingen en is de situatie een andere:

Article 16 (Criminal Code). Effect of Foreign Sentences

(1) Where a criminal who is subject to Ethiopia's principal jurisdiction (Arts. 11, 13, 14 (1) and 15 (2) has been sentenced in a foreign country, he may be tried

and sentenced again on the same charge in Ethiopia, if he is found in Ethiopia or extradited to it.

(2) His discharge or acquittal in a foreign country shall be no bar to a fresh trial or sentence being passed in Ethiopia in accordance with this Code.

(3) Where by reason of the crime committed, the criminal has already been convicted in a foreign country and has undergone the whole or part of the punishment, the Court shall deduct the punishment already undergone from the new sentence to be passed.

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Article 20 (Criminal Code). Effect of Foreign Sentences

(1) In all cases where Ethiopian courts have subsidiary jurisdiction only (Arts. 15 (1), 17 and 18), the criminal cannot be tried and sentenced in Ethiopia if he was regularly acquitted or discharged for the same act in a foreign country.

(2) If the criminal was tried and sentenced in a foreign country but did not undergo his punishment, or served only part of it in the said country, the punishment, or the remaining part thereof may be enforced according to the forms prescribed by this code, if it is not barred by limitation under this Code or the law of the country of commission. The provisions of Article 12 (3) shall apply mutatis mutandis to this Article.

1.2 Erkenning van buitenlandse vonnissen: de wet- en regelgeving

De erkenning van buitenlandse vonnissen is opgenomen in artikel 22 van de *Criminal Code of Ethiopia (Proclamation No. 414/2004)*:

Article 22 (Criminal Code). Recognition of Foreign Sentences

(1) Foreign criminal sentences may be taken into account as regards antecedents and aggravating circumstances, the granting or revocation of an order for conditional release, recidivism and its punishment, the enforcement of safety measures, incapacities and forfeitures, conditions as to reinstatement, as well as compensation, restoration of property and other civil effects and all other legal consequences provided by this Code.

(2) The foreign sentence shall not be recognized unless passed by an ordinary Court and not by a special tribunal for a crime punishable under this Code and its validity has been recognized by the appropriate Ethiopian authority. Such recognition may be made on the basis of a certified extract from the judgment register of the criminal or of the judgment pronounced or by means of an official attestation delivered by the judicial or executive foreign authority, or in any other reliable manner.

Het is niet bekend hoe de wet- en regelgeving inzake de erkenning van buitenlandse vonnissen in de praktijk door de Ethiopische rechterlijke macht wordt toegepast.

De minister van Buitenlandse Zaken
namens deze,
de directeur Consulaire Zaken en Migratiebeleid

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Bijlage 1. Artikelen 11 t/m 22 van de Criminal Code of Ethiopia

Article 11. Crimes Committed on Ethiopian Territory: Normal Case.

(1) This Code shall apply to any person whether a national or a foreigner who has committed one of the crimes specified in this Code on the territory of Ethiopia.

The national territory comprises the land, air and bodies of water, the extent of which is determined by the Constitution.

(2) Nothing in the provision of sub-article (1) of this Article shall affect immunities of persons enjoying an official status as sanctioned by public international law.

(3) If the criminal has taken refuge in a foreign country, his extradition shall be requested so that he may be tried under Ethiopian Law.

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Article 12. Special Case: Delegation.

(1) Where a foreigner who has committed a crime in Ethiopia cannot be tried or punished, because he has taken refuge in a foreign country and his extradition cannot be obtained, the Ethiopian authorities may request that he be tried in the country of refuge.

(2) The accused foreigner cannot be retried in Ethiopia for the same crime if he has been tried and acquitted in the foreign country by a judgment which has become final or if he has been granted pardon or amnesty or if the prosecution or sentence has been barred by limitation.

(3) Where the criminal has not undergone his punishment or only undergone part of it in the foreign country, the whole or the unexpired part thereof shall be enforced in Ethiopia, if he is apprehended and the enforcement of the penalty is not barred by limitation under the provisions of this Code.

Should the punishments differ as to their nature or form, such punishment as is the closest to that imposed in the foreign country shall be enforced.

Article 13. Crimes Committed against Ethiopia Outside Its Territory.

This Code shall apply to any person who outside Ethiopia has committed one of the crimes against the State of Ethiopia, its safety or integrity, its institutions, essential interests or currency as defined in Book III, Title I, Chapter I, and under Title V of this Book (Art. 238 -260 and Art. 355-374).

Article 14. Crimes Committed In a Foreign Country by an Ethiopian Enjoying Immunity.

(1) Subject to the provision of Article 13, this Code shall apply to a member of the Ethiopian diplomatic or consular service, an Ethiopian official or agent who cannot be prosecuted at the place of commission of the crime by virtue of international principles of immunity, where he committed in a foreign country a crime punishable both under the Ethiopian Code and under the law of the country where it was committed.

(2) Where, according to either the foreign law or this Code, the crime is punishable upon a formal complaint no proceedings may be instituted where such complaint has not been lodged.

Article 15. Crimes Committed in a Foreign Country by a

Member of the Defence Forces.

(1) Where a member of the Ethiopian Defence Forces in such capacity commits a crime against the ordinary law in a foreign country he shall be subject to the ordinary law and territorial jurisdiction if he is arrested and tried in the country where the crime was committed.

If he has taken refuge in Ethiopia, he shall be tried in accordance with the provision of Article 21 (2) of this Code.

(2) In cases of crimes against international law and specifically military crimes as defined in Article 269-322, the member of the Defence Forces shall remain subject to national law, and be tried under the provisions of this Code by Ethiopian military courts.

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Article 16. Effect of Foreign Sentences.

(1) Where a criminal who is subject to Ethiopia's principal jurisdiction (Arts. 11,13,14 (1) and 15 (2)) has been sentenced in a foreign country, he may be tried and sentenced again on the same charge in Ethiopia, if he is found in Ethiopia or was extradited to it.

(2) His discharge or acquittal in a foreign country shall be no bar to a fresh trial or sentence being passed in Ethiopia in accordance with this Code.

(3) Where by reason of the crime committed, the criminal has already been convicted in a foreign country and has undergone the whole or part of the punishment, the Court shall deduct the punishment already undergone from the new sentence to be passed.

Article 17. Crimes Committed Outside Ethiopia Against International Law or Universal Order.

(1) Any person who has committed outside Ethiopia:

(a) a crime against international law or an international crime specified in Ethiopian legislation, or an international treaty or a convention to which Ethiopia has adhered; or

(b) a crime against public health or, morals specified in Articles 525, 599, 635, 636, 640 or 641 of this Code;

shall be liable to trial, in Ethiopia in accordance with the provisions of this Code and subject to the general conditions mentioned hereinafter (Arts. 19 and 20(2)) unless a final judgment has been given after being prosecuted in the foreign country.

(2) Nothing in this Article shall affect the provisions of Articles 14 and 15(2).

Article 18. Other Crimes Committed Outside Ethiopia .

(1) This Code shall also apply to any person who has committed a crime outside Ethiopia against an Ethiopian national or to any Ethiopian national who has committed outside Ethiopia a crime of another kind than those specified in the foregoing Articles, if the criminal was not tried in the foreign country for the crime, provided that:

(a) the act to be tried is prohibited by the law of the State where it was committed and by Ethiopian law; and

(b) it is of sufficient gravity under the latter law to justify extradition.

(2) In the case of all other crimes committed outside Ethiopia by a foreign national, the criminal shall, save as otherwise expressly provided, failing extradition, be prosecuted and tried only if the crime is punishable under Ethiopian law with death or with

rigorous imprisonment for not less than ten years.

Article 19. Conditions for Subsidiary Application.

(1) This Code shall apply where:

- (a) the complaint by the victim or his dependants was lodged when it is a condition for prosecution under the law of the place of commission of the crime or under Ethiopian law,
- (b) the criminal is within the territory of Ethiopia and has not been extradited, or extradition to Ethiopia was obtained by reason of the crime committed; and
- (c) the crime was not legally pardoned in the country of commission and that prosecution is not barred either under the law of the country

where the crime was committed or under Ethiopian law.

(2) The condition specified under sub-article 1 (a) and (c) of this Article need not necessarily be satisfied as regards the kinds of crimes provided for under Article 17 and 18(2) of this code.

(3) The prosecution shall consult with the Minister of Justice before instituting proceedings.

(4) In case of disparity between the punishments prescribed under this Code and the law of the country of commission, the punishment to be imposed shall be the one, which is more favourable to the accused.

Article 20. Effect of Foreign Sentences.

(1) In all cases where Ethiopian courts have a subsidiary jurisdiction only (Arts.15(1), 17 and 18), the criminal cannot be tried and sentenced in Ethiopia if he was regularly acquitted or discharged for the same act in a foreign country.

(2) If the criminal was tried and sentenced in a foreign country but did not undergo his punishment, or served only part of it in the said country, the punishment, or the remaining part thereof, may be enforced according to the forms prescribed by this Code, if it is not barred by limitation under this Code or the law of the country of commission. The provisions of Article 12 (3) shall apply *mutatis mutandis* to this Article.

Article 21. Extradition.

(1) Any foreigner who commits an ordinary crime outside the territory of Ethiopia and who takes refuge in Ethiopia may be extradited in accordance with the provisions of the law, treaties or international custom; extradition shall be granted on the application made in proper form by the State where the crime was committed for the purpose of trial under the territorial law when the crime does not directly and principally concern the Ethiopian State (Art. 13).

(2) No Ethiopian national having that status at the time of the commission of the crime or at the time of the request for his extradition may be handed over to a foreign country. However, he shall be tried by Ethiopian courts under Ethiopian law.

(3) In all cases where a crime raises a question of extradition the request shall be dealt with in accordance with Ethiopian Law and existing treaties.

Article 22. Recognition of Foreign Sentences.

(1) Foreign criminal sentences may be taken into account as regards antecedents and aggravating circumstances, the granting or revocation of an order for conditional release, recidivism and its punishment, the enforcement of safety

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measures, incapacities and forfeitures, conditions as to reinstatement, as well as compensation, restoration of property and other civil effects and all other legal consequences provided by this Code.

(2) The foreign sentence shall not be recognized unless passed by an ordinary Court and not by a special tribunal for a crime punishable under this Code and its validity has been recognized by the appropriate Ethiopian authority.

Such recognition may be made on the basis of a certified extract from the judgment register of the criminal or of the judgment pronounced or by means of an official attestation delivered by the judicial or executive foreign authority, or in any other reliable manner.

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