ALL ABOUT WORDS ON THE PROCEDURE OF CONSTITUTIONAL INTERPRETATION IN ETHIOPIA: A COMMENT ON MELAKU FANTA CASE

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1. INTRODUCTION

The procedure of constitutional interpretation governs as to how and where constitutional complainants are presented, determined, and finally enforced by the concerned official. In a nutshell, one may comfortably conclude that procedural rules, in essence, give effect ("life") to the ends sought to be achieved by the Constitution.

However, the relevance of the constitutional complaint procedure is not yet familiar practice in Ethiopia. Nor is the distinction between objective and subjective purposes of the constitutional complaint well understood. This has been reflected when the House of Federation (herein after HoF) declared unconstitutionality of laws in *Melaku Fenta v. Federal Ethics and Anti- Corruption Commission Prosecutor Team* [1] (herein after Melaku case). The Federal Democratic Republic of Ethiopia (herein after FDRE) Constitution, particularly under Article 84 (2) has been less clear on the procedure to be employed in the process of adjudicating constitutional issues. It has created confusion particularly regarding the initiation of constitutional complaint.

If one considers the plain meaning of the provision, a law must be contested for its unconstitutionality. And constitutional interpretation could be undertaken if there is contestation of unconstitutionality of law, which bears a plaintiff versus defendant court drama. Then the contest or dispute over the unconstitutionality of legislations enacted by House of

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[1] The Former Director General of the Ethiopian Revenues and Customs Authority, Melaku Fenta V. Anti Corruption Prosecutor Team (Decision of HoF on Thursday, January 2, 2014 unpublished).

Peoples Representative (hereinafter HoPR) must be submitted to the Council of Constitutional Inquiry (here in after CCI).

On the other hand, Article 84(2) of the FDRE Constitution by itself provides 'any court or any affected party has the right to challenge the unconstitutionality of laws (federal or state)'. In clear statement, any court or interested party has the right to submit the issue of unconstitutionality to the CCI. Accordingly, if any court or any affected party has the right to challenge the unconstitutionality of laws (federal or state), constitutional interpretation could be undertaken without the need for a dispute or contest, which bear a plaintiff versus defendant court drama. We should therefore ask what the meaning of Article 84 (2) is with the issues relating to initiation of constitutional interpretation.

In addition, for most, if not for all, in the past 23 years, declaration of unconstitutionality of laws enacted by HoPR is a new phenomenon in Ethiopia. Recently, the HoF has passed decision that declares laws enacted by HoPR did contradict with the FDRE Constitution for the first time in Melaku's case.The reasoning of the HoF is that adjudication of cases by the Federal Supreme Court on the basis of its first instance jurisdiction violates individual's constitutional appeal right. The decision on Melaku's case is strange and has attracted the attention of many people. It is strange because, there is 'prevalent' perception that such kind of decision is not attemptable by the HoF. The scholarly comments thus necessary on decision rendered by the HoF and the argument that claim 'unconstitutional declaration of unconstitutionality' of laws in Melaku's case. And it is also necessary to comment on the error of the latter that argued the unconstitutionality of decision of the HoF on the ground that content of the argument did not succeed in attracting enough criticism.

This case comment is written not in attempt to discuss constitutional interpretation and which organ is empowered to adjudicate constitutional complaint. Rather, it has purpose of analyzing laws that create confusion pertaining to the procedure of constitutional interpretation, particularly its initiation. Besides, it attempts to portray the chronology of events accompanying the first ever form of declaration of unconstitutionality of

laws enacted by HoPR as unconstitutional by the HoF. It also discusses the former perception and practice on the right to appeal in a case when the Federal Supreme Court has exclusive first instance jurisdiction. It argues the decision of the HoF in Melaku's case is used as a landmark decision of constitutional interpretation and shows the breakdown of the perceptions that the HoF is not independent, impartial to declare unconstitutionality of laws enacted by HoPR. The comment begins with summary of the Melaku's Case and emphasis on rulings of the Federal High court and the HoF. The next part provides discussion on procedure of constitutional interpretation, particularly its initiation in Ethiopia. The rest part gives analysis on the decision.

2. SUMMARY OF THE CASE

In Melaku's case, the Federal High Court referred the case to the CCI/HoF seeking for constitutional interpretation on the issue of jurisdiction. In this case, the Federal High Court's jurisdiction to try Melaku was challenged on the ground that the defendant, Melaku is a government official with a ministerial portfolio as well as member of the Council of Ministers and shall be tried by the Federal Supreme Court by citing Art.8 (1) of the Federal Courts Establishment Proclamation No 25/1996 and Art.7 (1) of the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No 434/2005[2].

The court, presided by three judges, in its unanimous ruling, questioned the constitutionality of these articles considering that the defendant will be deprived of his constitutional right to appeal guaranteed under Article 20(6) if his case is to be tried by the Federal Supreme Court. Therefore, the court ruled that the issue as to which court should have jurisdiction to preside over the case needs constitutional interpretation and referred the

[2] Article 8(1) of the Federal Courts Establishment Proclamation No 25/1996 provides that the Federal Supreme Court will have first instance jurisdiction on offences for which officials of the Federal Government are held liable in connection with their official responsibility. Similarly, Article 7(1) of the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005.provides that the Federal High Court will have first instance jurisdiction other than those cases for which the Federal Supreme Court has first instance jurisdiction.

case to CCI/HoF based on its own initiation. Finally, the HoF declared the unconstitutionality of Article 8(1) of the Federal Courts Establishment Proclamation; and Article 7(1) of the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation on the ground that if his case is to be tried by the Federal Supreme Court, the defendant would be deprived of his constitutional right to appeal.

3. PROCEDURE OF CONSTITUTIONAL INTERPRETATION IN ETHIOPIA

Although the Constitution has been less clear on the procedures to be employed in the process of adjudicating constitutional issues, the ' law to re-enact for the strengthening and specifying the power of Constitutional Inquiry of the FDRE, proclamation No. 798/2013 has attempted to clarify some of the ambiguities.[3] An area of procedure of constitutional interpretation in Ethiopia includes the concrete review (in court proceeding**)** and individual complaints (out of court proceeding). Let's briefly look both concepts.

3.1. IN COURT PROCEEDING

When the issue of constitutional interpretation arises in the court proceeding, the interested party cannot directly lodge his complaint before the CCI/HoF. S/he should rather present his request or complaint before court handling the case before submitting it to the CCI.[4] In such instances, once complaint is posed before the court, it cannot immediately declare a decision on the case. Rather it has two options: either to reject the complaint on the ground that it is not a legal issue to call for constitutional interpretation or to submit that complaint to CCI if the court is convinced that the complaint really demands interpretation in deciding the case.[5] In this regard, the proclamation seems to obligate the courts to refer all complaints of constitutional issues if it calls for

[3] Proclamation to Re-enact for the Strengthening and Specifying the Power of Constitutional Inquiry of the Federal Democratic Republic of Ethiopia, Proclamation No. 798/2013 (hereinafter Procl. No 798/2013). Except for the general clauses that empower the HoF to 'interpret the constitution and to decide constitutional disputes' the FDRE Constitution is silent on the exact contours of the vague clauses.

[4] Ibid.

[5] Id., Proclamation No. 798/2013, Article 4(3)

constitutional interpretation. Also this fact obligates us to assert that depending on the circumstances of a case, the court has absolute discretion either to submit a case to the CCI if it believes that the complaint calls for constitutional interpretation or to reject the complaints if the court believes that the complaint does not need interpretation.

Whenever the court announces its rejection of the complaint and at the same time if the suspect is aggrieved by such rejection, the aggrieved can submit his grievance by way of appeal to the CCI within three months from receipt of the decision of the court.[6] In such a case, CCI may order the court to suspend until it decides on inquiry for constitutional interpretation of a case.[7]

3.2. OUT OF COURT PROCEEDING

Constitutional complaint is said to be ensued out of court proceeding when fundamental rights and freedoms of any person is adversely affected or violated by the decision of any government organ or any public officials.[8] In such scenario, an individual is expected to first exhaust all available remedy from government institution having the power with due hierarchy to consider it.[9] On other hand, constitution firmly demands protection of those fundamental rights and freedoms as they are regarded as basic rights. That is to mean since these rights are considered as roots on which other rights base their existence, any violation of such rights and liberties will be shocking and seem to contradict with constitution.

Thus, in view of this fact interested party has a right to raise any form of constitutional complaint whenever s/he deems it calls for interpretation and then to question validity, legitimacy of the decision of public officials by posing it before CCI. But, as it has been clearly forwarded before what makes complaint too difficult is interested party cannot

[6] Id.,Procl. N. 798/2013, Article 4(5)
[7] Id.,Procl. N. 798/2013, Article 6
[8] Id., Procl. N. 798/2013, Article 5 (1)
[9] Id., Procl. N. 798/2013, Article 5(2)

directly lodge it to the CCI before exhausting other procedural remedies be it judicial or administrative.

4. THE PROCEDURE AT INITIATION OF CONSTITUTIONAL COMPLAINT

Constitutional interpretation in Ethiopia involves some sort of inherent procedure. It begins from the very initiation of constitutional complaints by the courts or by any interested party up to final decision is rendered by the HoF. One among the various prescription of the Constitution is to rightly pin point those persons (either physical or legal) who would be entitled to initiate constitutional complaints. The FDRE Constitution has tried to expressly provide those persons who would initiate constitutional complaints as '*any court or any interested party*'.[10] From this, one can infer that initiation of constitutional interpretation by court is possible since the constitution by itself provides that as court could channel constitutional complain to the interpreter of the constitution. Generally, in Ethiopia whenever constitutional interpretation on issues before courts of law arises, courts of any level refer the case to CCI.[11] But, the courts do such task if they are convinced that law is repugnant to the constitutional right of the concerned party.

However, there may be a problem to ensure the right of accessibility to the interpreter organ in a case when 'any courts' refer all constitutional matters to the CCI/HoF. Look, how many courts are in the country. For instance, all First Instance Courts of the nine regional states, High Courts of the nine regional states, Supreme Court of the nine regional states; and all First, High and Supreme Courts of the federal and Dire Dawa city administration. From this fact, it is inevitable that huge number of constitutional cases could be referred to HoF via CCI which results a great load to this organ. Therefore, how could CCI which is the part timer organ effectively accommodate constitutional issues which need day to day activity that will be referred from all level of courts of the corner of

[10] The Constitution of Federal Democratic Republic of Ethiopia (Proclamation number, 1/1995, Art. 84(2) (hereinafter FDRE constitution).
[11] Procl. No. 798/2013, Supra note 3, Article 4(1).

country on the matter of constitutional issues? From this angle, it is very difficult to think of having the proper protection of the fundamental rights and freedoms guaranteed under the constitution. Furthermore, as could be inferred from minute of constitutional assembly, the drafter of the constitution did not intend as courts refer all cases which entail constitutional issues to the HoF.[12] So that, it is not necessary for courts to refer all cases which entail constitutional issues rather as per Article 84 (2) of the constitution they should refer cases entailing only un/constitutionality of legislative acts to the HoF.

The other point is the FDRE Constitution fails to define the term 'interested party' and it becomes a matter of controversy to understand its meaning constitutionally. Some scholar states that 'where an issue of constitutional interpretation or disputes arises in the course of litigation in a court, an interested party may mean a plaintiff or a defendant.'[13] Because, it is a plaintiff or a defendant whose interest is inevitably affected by the outcome of a case.

In spite of the controversy among the scholars, the term "interested party" is used to denote those whose interest is at stake directly or in directly as a result of the operation of the law or the legislation enacted either by the federal or state legislature. Because, constitutionally, the term "interested party" could mean the defendant or the plaintiff or any party or any organ or any individual whose constitutional rights is affected by the operation of the law, by the decision of public officials as well as by any other customary practices. If the term interested party is understood and interpreted just like this, through what procedures could these parties initiate constitutional complaint? Initially, the interested party may apply to the court if the issue is ensued in court proceeding or

[12] Minute of the Constitutional Assembly of the Transitional Government of Ethiopia, V.5, December 01-04, 1994. Discussion of the Assembly on Article 83, one member forwarded to the assembly his fear that "if courts are excluded from interpreting the constitution, it is difficult to say that there are courts in Ethiopia" and the response given from the house was that courts are not totally excluded from their traditional interpretation power.

[13] Ibrahim Indris, Constitutional Adjudication under the 1994 FDRE Constitution in *Ethiopian Law Review(2002)*, Vol. 1, No.1, p. 82.

directly to the CCI as the application of a certain provision of the constitution requires interpretation. In doing so s/he should show the transgression or the violation of his constitutionally guaranteed right by the operation of certain federal or state legislation or by the decision of any organ of the government.

In short, the initiation of constitutional interpretation in Ethiopia operates within the above framework.

5. ANALYSIS ON THE INITIATION OF ONSTITUTIONAL COMPLAINT IN MELAKU'S CASE

5.1. WHO COULD INITIATE CONSTITUTIONAL COMPLAINT?

The procedure of initiation of constitutional complaint seems less familiar practice in Ethiopia. This is also observed in Melaku's case. Let me begin with the argument of a group of people who argued that 'unconstitutional declaration of unconstitutionality of laws in Melaku's case. According to supporter of this argument, for instance, article headlined, 'Unconstitutional Declaration of Unconstitutionality'[14] Mulugeta Argawi argued that "*declaring unconstitutionality of laws in Melaku's case is unconstitutional, in and of itself" on the ground that HoF/CCI checked un/constitutionality of legislative laws without real controversy or dispute between the real parties to a case.*

The above argument rests basically on Article 84 (2) of the constitution. I think it is important to counter this line of argument by focusing on the laws themselves. The criticism of this line of argument rotates around purely legalistic thinking that a court of law cannot initiate or raise any constitutional matter until such a time that either of the parties raise the issue, which should, in turn, be disputed and contested by the other.

But, is this true in constitutional interpretation like that of civil suit? Who could initiate constitutional complaint under the FDRE Constitution? Of

[14] Mulugeta Argawi, Unconstitutional Declaration of Unconstitutionality, *Addis Fortune (Feb.9,2014),* Vol. 14, No.719, Addis Ababa).

course, there are varying mechanisms of initiation of constitutional interpretation, but even then, courts do not follow civil procedures like that of civil suit. Constitutional interpretation is all about maintaining constitutionalism. Many cases have been raised as issues of constitutional rights (and hence constitutional interpretations) which were not exactly cases of one party against the other and there should not necessarily be two litigants fighting for a case. The only precondition for constitutional interpretation is people. There ought to be a section of the population adversely affected by the unconstitutionality of a law.

FDRE Constitution seems partially adopted concentrated system of constitutional interpretation particularly regarding the initiation of constitutional complaint since it has tried to provide those persons who would initiate constitutional complaints as 'any court or any interested party'.[15] Here, it is obvious that if there is an issue of constitutional interpretation in court of law, the court can by its own initiation channel the case to the HoF. In Ethiopia, whenever constitutional interpretation on issues before courts of law arises, courts of any level can refer the matter to CCI.[16] But, the courts do such task if they are convinced that law is repugnant to the constitutional right of the concerned party.

If we take Germany's constitutional court experience, which is more similar to our system, the un/constitutionality of legislative act is not checked by regular courts like that of the US. There is no need to have litigants and disputes for the German Constitutional Court to decide on the unconstitutionality of a law or practice[17]. It has unique powers of making any legislation ineffective which it believes to be unconstitutional. It has even been criticized for playing politics due to its incessant interventions in the country's legislative system.[18] These examples show that there is no experience in other federal constitutional systems that can prove the idea that constitutional interpretation is in the

[15] FDRE Constitution, Supra note 10, Article 84(2)
[16] Procl. No. 798/2013, Supra note 3, Article 4 (1).
[17] Martin Borowski, The Beginnings of Germany's Federal Constitutional Court, *Ratio Juris (2003)*,Vol.16,No.2, p. 156.
[18] Ibid

way civil matters are adjudicated. Those who argued that the constitutions should be interpreted in the way civil matters are adjudicated and the courts should only refer constitutional issues when they ascertain the existence of disputes, contests, litigants and specific causes of action, failed to provide readers with a balanced view since their argument is not fair, critical and logical when we see from the legal and theoretical aspects of constitutional interpretation.

I believe that it is not normal for a lawyer to dwell on such big constitutional issues by picking up only two keywords, namely "dispute" and "contest", from just one constitutional provision and jump into unwarranted conclusions. It is not questionable that the defendant (Melaku) did not initiate the case. Nor did the prosecutors apply to the court for review of either Article 8 (1) of Proclamation No. 25/1996 or Article 7 (1) of Proclamation No. 434/2005. It was the High Court itself that invoked the question of (un) constitutionality of the pieces of legislation and forwarded it to the CCI. For instance, those who thinks in such a way that the court is prohibited from doing so under Article 84 (2) of the constitution; and their selection of the sub-article as the sole relevant provision for their argument and their failure to consider the problem through a comprehensive understanding of all relevant provisions in the constitution made them to rush to reach a devastating conclusion.

It is essential to read Article 84 (2) of the constitution more critically and show whether or not it was unconstitutional for the Federal High Court to have initiated a problem of unconstitutionality in Melaku's case. It is more helpful to read all the relevant constitutional provisions, the whole chapter of the constitution as it is and even the intent of the Constitutional Conference, which ratified the document, instead of cynically selecting one sub-article and then, out of it, just one or two points.

Article 84 (2) of the Constitution reads, "Where any Federal or State law is contested as being unconstitutional and such a dispute is submitted to it

by any court or interested party, the Council shall consider the matter and submit it to the HoF for a final decision". Let us now breakdown article 84 (2) and find out the true concept of "key" words - 'contest' and 'dispute' in relation to initiation of constitutional complaint.

If one is to go by the provision, a law must be contested for its unconstitutionality in court proceeding. The contest or dispute over the unconstitutionality of legislations enacted by HoPR must be submitted to the CCI. And any court or interested party has the right to submit the issue of unconstitutionality to the CCI.

Based on the above premises, if any court or any affected party has the right to challenge the unconstitutionality of a law, constitutional interpretation could be undertaken without the need for a dispute or contest, which bear a plaintiff versus defendant court drama. Thus, the words and spirit of the provision seem to clear and cannot lead anyone with an open mind to believe that it is only when there are contending parties in a courtroom that the issues of constitutionality of a law can exist. Laws, as we all know, are administered in the courtroom as well as in other government structures. Hence, the unconstitutionality of a law can come to the surface not only in the courtrooms, but also within the bureaucracy and even on the high street.[19]

Any court, or interested party, can directly apply to the CCI and challenge the constitutional nature of legislation. Analogy of the process of constitutional interpretation to a civil case court dispute is total fabrication. I think the issue seems to be put clearly. And the Constitution is not as such ambiguous in showing that the issue of unconstitutionality

[19] The former president, Dr Negasso Gidada v Speaker of the HoF and Speaker of House of Peoples' Representatives of Federal Democratic Republic of Ethiopia (Decision of CCI of 25 February 2005, Unreported). In this case, question of unconstitutionality of the law was raised and brought before the CCI/HoF outside the courtroom without any contestation or dispute. This case was brought before CCI by single person. Therefore, to deal with the un/constitutionality of law, the existence of real dispute like in civil case between two parties is not mandatory.

can be raised both by the Court as well as by the contending parties, within or outside of the courtroom.

In Melaku case,Mulugeta wonders as to how the High Court submitted the question of constitutionality of the proclamations in a situation where neither the accused nor the prosecutor disputed and invoked it. He advises the court that 'it should have declined jurisdiction because those provision of laws clearly deny it jurisdiction to hear the case.'[20]

Yet, this kind of position is subject to criticism. The reason is that court can submit constitutional issue to the CCI on its own initiation while adjudicating the criminal case of the accused. More importantly, article 84 (2) of the FDRE Constitution has empowered the Court to invoke issues of constitutionality whenever the need arises. This is a right track that was reflected in the document of the constitution itself and from the purpose of maintaining constitutionalism by all means. The constitutional mechanism of safeguarding constitutionalism is incontestable.

5.2. THE RIGHT TO APPEAL VERSUS FIRST INSTANCE JURISDICTION OF FEDERAL SUPREME COURT IN MELAKU'S CASE

Article 8 of the Federal Courts Establishment Proclamation No. 25/1996 and Article 7(1) of the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005 empower the Federal Supreme Court to assume first instance jurisdiction in criminal cases in which officials of the federal government are charged in connection with their official responsibility. Both provisions grant the Federal Supreme Court, the country's highest and final judicial organ, first instance jurisdiction over criminal suits involving government officials.

In such case, there are different views regarding the right to appeal when Federal Supreme Court entertain cases on the basis of its first instance jurisdiction. The first line of argument is that as far as Federal Supreme Court has supreme power and no higher forum available than it,

[20] Mulugeta Argawi, Supra note 14

rendering decision on the basis of its first instance jurisdiction means the losing party automatically loses the right to appeal against the decision. As the supporter of this argument correctly argued, it is clear that there is no chance of appeal.[21] Because the losing party has been deprived of his constitutional right to appeal if his case has once been tried and decided by the Supreme Court. This is clearly the denial of the right granted under Article 20 (6) of the Constitution which declares the parties' right to appeal. And the right to appeal against a final decision guaranteed under the constitution is no longer available to the parties involved in the case.

The second argument which also indicates the earlier position of Federal Supreme Court is that the right to appeal is not violated when the Supreme Court handle and decide the case basing on its first instance jurisdiction.[22] Because, the main purpose of appeal is to attain the highest quality of justice rendered in the courtroom. According to supporters of this argument, 'though this practice seem to narrow the right to appeal, the disposition of the case by the competent judges puts persons tried by the highest court in advantageous position.'[23] As far as the judges that preside over the case are senior and more competent than judges in other low level of courts, there is no any doubt on the justice that would be rendered and it does not amount to violation of appeal right.[24] CCI also had similar position with the right to appeal in connection to the issue. In short, in the past there was a perception and practice that the laws grant the Supreme Court exclusive first instance jurisdiction did not amount to violating the appeal right of individuals.[25]

[21] Wondwossen Demissie, Ethiopian criminal procedure, (American Bar Association, Addis Ababa University, 2012), P, 374

[22] Public Prosecutor v. Tamirat Layne, *et al*.,(Federal Supreme Court file No.1/1989. In this case, the Federal Supreme Court has the position that while establishing appeal systems adequate attention should be given to efficient and quality justice. So, first instance jurisdiction of Supreme Court does not amount to violating the right to appeal so long as highest quality of decision in the country is rendered by Supreme Court of the country.

[23] Wondwossen Demissie, Supra note 21, p. 375.

[24]Ibid.

[25] Ibid

However, when we see the position of the HoF in Melaku's case, in an overwhelming majority, it rendered Article 8 (1) of Proclamation No. 25/1996 and a similar provision, Article 7 (1) of Proclamation No. 434/2005, is 'null and void'. The provisions grant the Federal Supreme Court, the country's highest and final judicial organ, first instance jurisdiction over criminal suits involving government officials. This decision shows that HoF has changed the previous position and practice by arguing that when a case has been handled and decided by Supreme Court on the bases of its first instance jurisdiction; it violates the right to appeal of individuals. From this the decision in Melaku's case is the first ever breaking point of former position and practice of Federal Supreme Court and CCI on appeal right of individual. And this decision also portrays the chronology of events accompanying the first ever form of declaration of laws enacted by the HoPR as unconstitutional.

6. CONCLUSION

In Melaku's case, there is a view which claims that Article 84(2) of the FDRE Constitution should be interpreted as 'a law must be contested for its unconstitutionality. And Constitutional interpretation could be undertaken if there is contestation of unconstitutionality of law which bears a plaintiff versus defendant court drama[26]. Accordingly, declaring unconstitutionality of laws in Melaku's case is unconstitutional on the ground that HoF/CCI checked un/constitutionality of legislative laws without real controversy or dispute between the real parties to a case.

On the other hand, the author argues that the provision should be understood in such a way that any court or any affected party has the right to challenge the unconstitutionality of laws. In clear statement, any court or interested party has the right to submit the question of unconstitutionality of laws to the HoF via CCI. Accordingly, as it was properly done by the Federal High Court in Malaku's case, the court has the right to challenge the unconstitutionality of laws. Constitutional interpretation could be undertaken without the need for a dispute or contest which abide a plaintiff versus defendant. It is obvious that as it

[26] Mulugeta Argawi, Supra note 14

was correctly done in Melaku's case if there is an issue of constitutional interpretation in court of law, the court can by its own initiation channel the case to HoF via CCI. Therefore, whenever constitutional interpretation on issues before courts of law arises, courts of any level can refer the case to CCI.[27] I think that is why the Federal High Court correctly followed this line of argument in the Malaku's case which is the best and considered as a landmark case in Ethiopia.

Lastly, in the history of the FDRE, declaring laws enacted by legislature as it contradicts with the Constitution is a new phenomenon in Ethiopia. In Melaku's case, the HoF declared laws that empowered the Federal Supreme Court to preside over a case on the basis of its first instance jurisdiction, violate the right to appeal. This decision is the first ever breaking point of the former position and practice of Ethiopian courts and CCI[28] on the right to appeal. It also attests the confidence of the HoF while it engages in constitutional interpretation. Because, the decision of the HoF breakdown the perceptions that the HoF is not independent, impartial to declare the unconstitutionality of laws enacted by the HoPR. This kind of practice should be appreciated and has great values in the protection of the rights provided under the constitution. Therefore, for its continuity, promoting such kind of practice and building the capacity of the HoF that could increase its confidence is very essential.

[27] Procl. No. 798/2013, Supra note 3, Article 4(1).

[28] Right to appeal is not violated even if Supreme Court handle the case based on its first instance jurisdiction since the main purpose of the appeal is attaining the highest quality of the decision rendered in the courtroom. As far as the judges that preside on the case in Supreme Court has higher quality than judges in other low level of court, there is no any suspicion on the decision be rendered by the Supreme Court and it didn't amount to violation of appeal right.