



ST.MARY UNIVESITY COLLEGE
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THESIS
“THE EFFECT OF THE
CRIMINAL PROCEDUTE CODE
ARTICLE 59 ON SPEEDY TRIAL “
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**THE EFFECT OF THE CRIMINAL
PROCEDURE CODE ARTICLE 59 ON SPEEDY TRIAL**

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Chapter One

Introduction

Background of the study

When a person is arrested by the police it is doubtful that how and when the arrested person appears before the court? The answer is by speedy trial. But the speedy trial is affected by the criminal procedure code article 59 by the grant of remand in custody.

I have practiced works on this civil and military service such as

1. As police investigating officer
2. As prosecutor
3. As judge in the court and I have searched in many law literature, but still know and couldn't get in any written code which solves this problem.

That is why I started to research and write about this problem.

All persons have an alienable right to petition the court to order their physical release where the arresting police officer or the law enforces fails to bring before a court with in the prescribed time and to provide reasons for their arrest. Where the interest of justice order the arrested person to remain in custody or when requested remand him for a time strictly required to carry out the necessary investigation in determining the additional time necessary for investigations. But this will affects the rights of persons arrested to speedy trial. The court shall insure that the responsible law enforcement authorities carry out the investigations respecting the arrested person's right to speedy trial.

See the F.D.R.E. constitution art: 19-4 in this article the constitution rule is very clear on right of persons arrested.

1. Persons have an alienable right to petition the court to order his physical release.
2. The court has power to remand the arrested persons in custody or to release him on bail.
3. Or when required to order to remain in custody to carry out the necessary investigation. But on the last statement of this article is mentioned in determining the additional time necessary for the investigation that the court shall insure that the responsible law enforcement authorities carry out the investigation respecting the arrested person's right to a speedy trial.

In this article of the constitution to order an arrested persons remain in custody is not for further long time. It is only for a period of time or as much as possible for a short time. But still the time is not limited according to this law. The time can be expanded or narrowed by the court and it is in the hands of the court to limit the time not limited by the law. It must not give for long period of time. It must be limited for how many times the carders remain in custody is granted. The time must be limited by law rather than giving infinitive power to the court. If we refer Ethiopian criminal procedure and search on other materials legal literatures we may not get answer for the questions. This is the main issue of the article that created problem on arrested person's right.

Ordering remand in custody may helps to dig out the committed and hidden crime by investigation process but if it is not limited

it has side effect on arrested person's constitutional right article 19-6 of the FDRE constitution. This article rules that the arrested person have the right to be released on bail. If the investigations could not succeed within a limited period of time the arrested person shall be released on bail.

Statement of the problem

According to criminal procedure art 29 and 58 when we see the criminal procedure article 29 we can get the procedure after arrest as follows.

1. “ when the accused has been arrested by the police or private person handed over the police, the police shall bring him before the nearest court with in 48 hours of his arrest, so soon there after as the local circumstance and communication permits.
2. the court before which the accused is brought may make any other it thinks fit in accordance with the article 59 the court which the arrested person brought before shall decide weather such person shall be kept in custody or released on bail, but in this article sub article 2 it permits that where the police investigation is not completed, the investigating police officer may apply for sufficient time to enable the investigation to be completed, so that the court can give order that the arrested person shall remand in custody for not more than 14 days. In some courts such order may be given infinitively for many times again and again simply when ever the police officer request. But it is wrong to remand the arrested person in

Custody. In this ways and it is unreasonable. Art 59:2 of the criminal procedure code provides where the police investigation is not completed the investigating police officer may apply for remand to get a sufficient time to enable him to be completed. Here it is clear that the remand is to facilitate the investigation and trial of an offence but something is lost here and forgotten. What is that? The police investigating officer must show his progress of investigation at least for one or more steps forward on his investigation. But we see the police simply requesting the remand and may the court permits for many times. This is the main problem that is created, where the police simply request for the remand, the court shall not make order of remand in custody. It must be reasonable and the occasion must be limited by the law.

Research Question

After this research is conducted it is expected to answer the following major questions. To make the purpose of the research more clear the research question are made very specific and concrete. The questions are the following.

1. What is the effect of the criminal procedure code art 59 on speedy trial?
2. What solutions can be found to solve the problem of the side effect of the mentioned code on arrested person's right?
3. Why the occasion granted is not limited by law rather than giving infinitive power to the court?

To answer the 1st question, we must have to refer the laws such as the Ethiopian constitution, criminal procedure codes, criminal code, Ethiopian law journals, and other concerning literatures.

According to criminal procedure art 59 the law has aims why an arrested person is ordered or granted to remain in custody. That is to enable the police investigation officer to get sufficient time to complete the investigation. So that a person who committed a crime shall not escape from being guilty and punishment. So further investigation may result strong effect on guilty persons to be punished. But it has side effect also where the investigation fails the arrested person remains in custody for a long period of time without coming to court trial for justice and may sent out from the police station without any compensation for his moral damage.

So from whom shall this person claim compensation for his moral damage?

This person has been kept in custody for a long period of time by the order of court remand and has faced material and moral damage. How these moral and material damages can be retreated or compensated.

There is nothing said in law for such damage. This is another failerity of the criminal procedure code article 59.

An arrested person must brought to speedy trial as soon as possible or according to the law within 48 hours unless other wise if he is kept in custody for further investigation or to complete the investigation for a long period of time and the investigation failed

he must get compensation for his moral and material damage because his property may be destroyed and his income may be stopped and his family may face problem during his remain in custody. Some times such people may kill themselves when they see their property destroyed and their family on danger.

So the law must take care on remand in custody which is simply permitted just following the criminal procedure article 59 so this article must be examined and the solution must be found out.

To find out the solution we shall research around judiciary and law enforcement institutions, law concerned institutions, lawyers, and individuals and collect data's by making interviews around these and reviewing over documentary sources at these institutions such as court files etc.

Our research also must look around related codes and other law literatures, journals, Negarit gazeta, and law magazines etc. after that we may find the result on our research and get solution for the problem.

Objectives of the study

The research has the following objectives.

1. Finding out the effect and the side effect of the procedure code art 59 on speedy trial.
2. Finding possible solution to solve the problem of the side effect of the article on the right of arrested people.

Hypothesis

As this research is directly conducted on a specific article I expect that the effect of the criminal procedure code article 59 on speedy trial and its various consequences on arrested persons will be more clear for judges, police officers, inspection, departments, public prosecutors, legislatives and all law enforcement bodies will be forced to cross check the article. In detailed laws the law is the ruler of all including the legislative the executive and the judiciary bodies of the government. So that the courts and other justification bodies must be ruled by the law. This law must limit the power of the court on remand in custody to keep the constitutional right of the arrested person to speedy trial as much as possible and to release him free with out any moral damage. The remand in custody for the limitation under article 59 is that the remand is granted for not more than fourteen days in each occasion. But the occasions are not limited in this article. In general the study is hoped to influence difference organs of justice to check the article and make amendments on the article.

Significance of the study

This study is supposed to give information for the court to give concern for arrested person; any organization concerned with human rights will clarify the effect of the code on arrested person and try to fight for human right and the supremacy of the constitutional law.

The study may also give information for the legislative body and will be initiated to make amendment on the specific article with in the code by considering how arrested person in police stations are suffering from delay in trial, by the remand in custody on the base of criminal procedure article 59.

The police criminal investigating officer will also be motivated to complete the investigating and bring the arrested person before the court of time.

It will also help the arrested persons to get release fastly from the custody. It also helps the society to be confidential on the law rather than the law enforcement bodies.

Scope of the study

The study will encompass majority on the Arada sub city first instance court and police stations found in the sub city such as the criminal investigations office of the federal police in Addis Ababa the study well be also emphasize on the protection of human right of arrested persons. The study will mention the ways to protect the human right of arrested peoples by amending the Art. 59 the criminal procedure in the code.

Chapter two

Data collection and interpretation

I have collected data's made and my research a round Ethiopian federal courts, federal police, forensic criminal investigation office and federal public prosecutors department as mentioned above in chapter one how the arrested person is kept in custody or released on bail. Where the commit ion of crime is not witnessed until the necessary investigation is completed. So what is the court authorities also practiced on this?

To find out the fact I started my research 1st at the federal first in stance court at Arada district court on criminal files at first trial of the appearance of the arrested person according to the criminal procedure code article 59 what the police criminal investigation officer applies to keep the arrested person in custody and what reason he puts for that and what the court orders in this way I studied on 15 files taking as data that has been of function for the last 10 years on 15 selected files in each from 1991-2000 Ethiopian, colander.

As the law and regulation orders especially in the criminal procedure article 36 the police criminal investigation officer must follow up the dairy of investigation procedure.

This article can be observed as follows.

Art 36.1 every police officer making a police investigation under this chapter shall day by day enter this proceeding in the investigation in a dairy setting forth.

- A) The day on which he started and closed his investigation.
 - B) All the steps taken the course of the investigation.
 - C) The circumstances which the investigation disclosed.
 - D) All the means of evidences which may have been collected.
2. He shall enter in the dairy any order which he may have received from court the public prosecutor in the course of the investigation.

At my first observation to examine weather the investigation police officers are following this procedure and the court also seriously giving order to the police officer to do his duty following the procedure.

When I started my observation on the file No 4573. I found that there is simply a request letter from the police office office to the court to give order to keep the arrested person in custody again for another 14 days to complet the investigation and the court simply ordered the remand again and again for many occasions with out investigation. The police officer what he has found on his investigation, what steps he has developed the investigation to order the remand or release the person on bail.

After some occasions the arrested person is not appeared to the court and the court simply closed the file no repost no information what is happened to the accused person.

According to criminal procedure code article 37 it is prescribed that there must be report after investigation: the article is absolved as follows.

Article 37 report of police investigation

1. Every police investigation under this chapter shall be completed with out unnecessary delay.
2. As soon as the investigation is completed the investigation plocce officer shall for warred to the public prosecutor a report setting forth.
 - a. The name of the parties.
 - b. The nature of the information and the names of all person who appear to be acquainted with circumstance of the case and
 - c. All the means of evidence which have been collected.
3. The report shall specify all the steps which may have been taken with view preservation or other wise in this article sub article 1 it is ordered (Prescribed) that the investigation shall be completed with out, unnecessary delay but it is not fulfilled as I absolved in all files I searched on.

The investigation is delayed for a long period of time in most files minimum for 90 days. Or 3 months. The investigation report may he forwarded to the public prosecutors after a period of time. But no action is taken by the public prosecutors office why the investigation is delayed for such wrong period of time. The court did not get such report even so. That is also the basic problem up on the right of persons arrested for not appear to speedy trial to get justice.

In another file no 4573/91 I found that the investigation is delayed for a minimum of 210 days. that means among this files I found some cases that the court has order the police the releases the accused person on bail. But because of the police did not. Released the arrested person, and there is application by the person to the court in which the court has ordered the police investigating officer to release the person for many times. But the police obey some times and do not obey some times. From this circumstance we understand that some law enforcement authorities do not obey the laws, regulations and they do not keep the orders of procedures of laws.

Another method was interviewing the judges of this court to share their experience on the implementation of the criminal procedure code article 59 what effect the article of the code has on speedy trial.

Observation that I tried to get some facts by interviewing the judges is not succeeded. Because the judges were very busy and have no time to make their statement. In my research I collected 15. Files from the 1990th year's means from 1990 up to 2000 from 1 up to 3 files in each year as data obseved on each file and recorded in the following schedules. At arada first Instance court .

Data collection and sample surveying at federal first instance court

No	Year the file on due	File No	Occasions	Total days	Purpose of Remand.
1.	1990	4573/90	9	14×9 , 126	Because of the police request
2.	1991	4573/91	15	14 × 15 ,210	“
3.	1992	2406/92	8	14 × 8 ,112	“
4.	1993	4928/93	10	14× 10 ,140	“
5.	1994	3094/94	12	14 × 12 ,168	“
6.	1995	5688/95	8	14 × 8 , 112	“
7.	1992	3539/92	7	14 × 7 , 98	“
8.	1996	2123/96	13	14 × 13 ,182	“
9.	1997	15299	12	14 × 12 ,168	“
10.	1997	22725	7	14 × 7 , 98	“
11.	1998	36073	7	14 × 7 , 98	“

12.	1998	34746	9	14 × 9 ,126	“
13.	1998	31060	11	14 × 11,154	“
14.	1999	27732	6	14 × 6 , 86	“
15.	2000	59425	12	14 × 12 ,168	“

My next research place was at the federal police forensic criminal investigation office. On this research I planed to study by observing some police investigation files & police officer interviews how they investigate the criminal offence after the offender is arrested and remand is granted to be kept in custody, for how many occasions that he may request the remand and what is the effect and side effect of remand to the arrested person. Then I started my observation on some samples of criminal investigation files numbered 1, 172/99 2. 7824/99 3. 228/2000 4. 175/99 5. 349/97 6. 342/97 7. 348/98 8. 346/97 9. 3668/99 10. 1036/98 11. 349/98 12. 1034/98 13. 1032/98 14. 1024/99 and 15. 169/99 15 files are from the samples of 1997-2000 E.C. on this observation I found that the investigation is started after many days of the accused arrest and the police took the arrested person before the court after many days of the arrest. In some cases after a weak and in another cases after 5 days.

The remand is graded on files nominated and selected for study as data, the study on this files nominated for data was recorded as follows.

Data collection at federal police forensic & criminal investigation office

No	Years files on due	File no	Occasion	Total date	Reasons for detention
1.	1997	349/97	6 14 × 6	84	Investigation
2.	1997	342/97	6 14 × 6	84	“
3.	1997	348/97	5 14 × 5	70	“
4.	1997	346/97	7 14 × 6	84	“
5.	1998	11668/99	7 14 × 6	84	“
6.	1998	1036/98	4	56	“

			14 × 4		
7.	1998	349/97	6 14 × 76	84	“
8.	1998	1034/98	5 14 × 5	70	“
9.	1998	1032/98	11 11 × 14	154	“
10.	1999	124/99	9 14 × 4	126	“
11.	1999	169/99	4 14 × 4	56	“
12.	1999	170/99	7 14 × 7	98	“
13.	1999	7824/99	7 14 × 7	98	“
14.	1999	175/99	4 14 × 4	56	“
15.	2000	228/2000	4 14 × 4	56	“

Some investigation file as sent to the public prosecutor with the official report some files are closed by the police and the accused is released. Because there is no evidence collected in case of it and it is not witnessed after many months detention.

Some files are refused by the public prosecutor because of the lack of sufficient evidence. According to the criminal procedure code article 42-1-A & some of it is closed according to criminal procedure code article 39.

The accused or the arrested person as released after all of this problems are processed.

When the accused is released after many months detention. Who shall pay his compensation for his property and moral damage? After sample surveying on the files I interviewed some police criminal investigation officers as follows.

Interview on police officers

At first I made interviews wise sergeant major mulugeta temsgen .

Question

Through the experience you have seen what is the effect and the side effect of criminal procedure code article 59 on speedy trial.

Sergeant major mulugeta.

If a crime committed it is our duty to fine out the offender, after the suspected as arrested we shall do investigation on this suspected person. You know that the police shall bring the arrested person before the court within 48 hours. otherwise we shall sent him free if he sent free of on bail he may escape or he may likely to interfere with witnesses or tamper with the evidence so the criminal procedure code article 59 is important her to remand the arrested person until the investigation is completed . According to my understanding there is no side effect.

Question

How do you start investigation after the offender is arrested?

MAJOR MULUGETA

We start investigation by collecting the appropriate evidences & the arrested person may make his statement and must be taken to the court with in 48 hours. Where the investigation is not completed, we may apply for remand for a sufficient time to the court to enable the investigation to be completed. As I mentioned on the

above statement the remand as requested to gather sufficient evidence and to secure the evidence from tamper.

Question .

What is the duty of the police criminal investigation officer after the remand is granted by the court?

Major Mulugeta .

After remand is granted the police criminal investigation must collect the concrete evidences and exhibits necessary for the case.

Every police criminal investigation officer must follow up day by day enter his proceedings in the investigation in a diary setting forth.

Question.

Why do you request remand again and again?

Major mulugeta.

After investigation is made the police criminal investigation officer may find that the evidence gathered is not enough to make the suspected to be guilty & may need more evidence. So to hold this evidence the police request more remand again.

Question

As a result of detaining the arrested persons in custody do you think that there is no injury to the detained person?

Major mulugeta

Even if there is injury to the detained person, if the crime is hard, such as crime against our economy, crime against the defence institution, and crime against the government we will request remand and continue the investigation.

Question .

Where the remand is granted again and again do you think that it can not affect the right of persons arrested that prescribed on the F.D.R.E. constitution?

Major Mulugeta

This do not affect the right of persons arrested that prescribed on the constitution article 19, since the remand as prescribed in special law. Because the remand is granted by the court & it as not limited for how many occasion the remand shall be granted, since the court have authority to grant the remand the police officer can request the remand again and again and continue the investigation.

Question .

Where the case is on remand in custody and the police criminal investigation file is sent to public prosecutors office & until the case is deseeded by public prosecutor, how and where the arrested persons shall be kept?

Major Mulugeta

As soon as the criminal investigation is completed the investigation file is sent to the public prosecutors office. & until it gets some decision the arrested person shall be sent to the prison on warrant by the court.

Question .

Where the public prosecutor decides the case and the investigation file is closed or the prosecution is refused according to article 42, the arrested person must be sent free according to my opinion. What do you think about this?

Major mulugeta.

If the prosecution is refused or the file is closed the arrested person shall be sent free. But where the public prosecutor orders further investigation the police criminal investigation officer must apply to the court that the arrested person shall be sent to the prison.

Question

Where the arrested person is died in the police custody who and how is his barrel procedure is made?

Major mulugeta

If the dead have no family his barrel procedure is made by the government or municipality.

Question

For How many occasions that the remand is granted (14 days each) is it limited by the law?

Major mulugeta.

It is not limited it can granted until the investigation is completed again and again. Since it is not limited by the law. For that the suspected person or the offender can escape from conviction.

Interpretation

After my research is completed in the federal police forensic criminal investigation department I understood the deference b/n the legal work and the cultural (practical) work, after my data collection on the criminal investigation files, and interviewing the police criminal investigation officers.

From this under standing I found that the police think that requesting for remand as an alienable right to the police but it is fault. The police think that when ever requested the remand must be granted. This thinking is habitually adapted in all law enforcement bodies such as police, public prosecutors office, and courts, because the laws do not limit for how many occasions the remand as granted.

My next research was at public prosecutors office, there I colleted dates on the public prosecutor files and data collection at the federal public prosecutor files.

Data collection at the federal public prosecutor office

On the files studied in the federal public prosecutor office is recorded in the following schedules

No	Years the files on due	Public prosecutors file no	Police file no	Time taken before charge	Reason for detention
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1.	1997	02263/97	307/97	2 months	Un known
2.	1997	03653/97	624/97	4 months	“
3.	1996	00147/96	4387/95	4 years	“
4.	1996	322/97	596/96	2 years	“
5.	1999	01384/99	1915	6 months	“
6.	2000	03252/2000	1381	3 months	“
7.	2000	00027/2000	930/99	3 months	“
8.	1996	7710/95	551/91	5 years	refusal
9.	1996	42/96	3653/95	4 months	Un known
10.	2000	03678/99	2938/99	6 years	With drawl of charge
11.	2000	00159/2000	3992/99	5 months	Un known
12.	2000	00103/99	851/99	1 years	“
13.	2000	01086/2000	397/2000	7 months	“
14.	2000	01547/2000	138/2000	8 months	“
15.	2000	01840/2000	094/99	1 years	“

Interview at public prosecutors office

At the federal public prosecutors office Ato Temesgen H/Mariam answers the interview as follows.

Question

Any remand in custody is granted according to criminal procedure code article 59 who request the remand, why it is requested,

The prosecutor

The police criminal investigation officer requests remand where the investigation as not completed for a sufficient time to enable him to complete the investigation.

Question

When ever the police requests the remand is granted for 14 days in each occasion, for how mane occasions shall the remand is granted? Is it limited by the law?

The prosecutor.

It is not limited for how mane occasions should the remand is granted it must be decided by the court same times the court orders it for a long period of time and some times for short time.

Question .

After the remand is granted, some times the police criminal investigation officer simply requests the remand. Is it legal to grant remand when ever the police officer requests remand? Or should the progress of the investigation is seen?

The prosecutor .

No it is not legal to grant remand simply when ever the police requests. The progress of the investigation must be examined, some times the court does that but even so it is wrong.

Question .

Do you think that it is not illegal pressure on the arrested person to keep him in the police custody for a long period of time has effect to make statement of confession to the crime which he as not committed.

The prosecutor

To keep the suspected person in custody may not make pressure up on him to make his statement of confession but as soon as possible the investigation must be completed and forwarded to the public prosecutor.

Question.

If the police criminal investigation officer fails to complete his investigation as soon as possible, what action shall the public prosecutor takes?

The prosecutor

If the police criminal investigation officer fails to complete the investigation the public prosecutor shall take action against the police officer.

On detention the interview I made with Ato simachew shano the public prosecutor on criminal court trial is made as follows.

Question

What is the point that the court should examine before granting remand

The prosecutor

It is clear that the remand as requested where the criminal investigation as not completed and to grant the remained as to get sufficient time to the police to enable him to complete his investigation & it is requested by the police himself. To grant the remand again the progress of the last primitive investigation must be on cite and if it is estimated that the next steep will be better resulted if the remand is granted.

Question

Fore how many days that the remand is granted in each occasion? For how many occasions shall the remand is granted.

The prosecutor

It is only for fourteen days in one occasion but for how many occasion that the remand must be granted it is not prescribed by the law. It is unknown as I think it is simply left to the court. The court has power to expanded or narrows it.

Question

Since the public prosecutor is a public advocator in general to advocate the right of the people where there is remand again and again for a long period of time what action it takes to stop such remand to keep the right of persons arrested? Is it not necessary also?

Prosecutor

It is the right and important but it is not cultural zed still. Because the injured and the public prosecutor stands on one side and the accused on the other side claim each other always.

Question

After the remand is granted and the police officer is not completed the investigation is it right to grant remand again & again.

Prosecutor

It is not right to grant remand because of simply the request is raised. The progress of the primitive investigation must be examined and seen if it is satisfactory and if it is estimated that the next step will catch up good result.

Question

As I believe keeping the arrested person in custody will have result to make his statement of confession that the crime which he is not committed what is your opinion on this?

Prosecutor

Yes! It may be done as I have seen through my experience. But when ever the arrested person is in police custody the police criminal investigation officer shall not offer, or use, or make or cause, to be offered, made, or use any inducement or threat,

promise, or any other improper method to any person examined to the police if such condition as happened the public prosecutor takes any necessary action fit to it .

Question

After the police is completed his investigation did not bring the arrested person to the court trial as soon as possible is it not affecting the right of the arrested person?

The prosecutor

Where the police criminal investigation is completed & the police did not bring him to the court there may has defects. If the investigation file is sent to the public prosecutor & charge is made or the file is closed he may not be affected if it is closed he will be free. Because of the constitution prescribes that the arrested person shall taken to the court, to fulfill the order as mach as possible.

Question

Where the investigation is completed and the file is sent to the prosecutor until the charge as prepared how the arrested person shall be kept or sent to the prison if the investigation is completed the arrested person shall be sent free or taken to the prison by the court order.

The prosecutor

If the investigation is completed arrested person shall be sent free or taken to the prison by the court order.

The arrested person must be sent free where the police criminal investigation file is closed or refused to prepare accusation.

The arrested person must be released where the bail bond is not denied.

Interview to lawyers or attorneys

On questions made on the criminal procedure code article 59 Ato workagenehu gebre Attorney at any court answers as follows.

Question

Do you think that it is right to keep an arrested person in police custody for a long period of time?

The Lawyer workagenehu

As I think it is not right to keep an arrested person for a long period of time in police custody if the person is suspected that he is committed a crime, the police criminal investigation officer must complete his investigation as soon as passable and forward the investigation file to the public prosecutor . The public prosecutor, receiving the police report must decide one following the criminal procedure article 38 A-D with in a short period of time.

Question

For how many occasions shall the remand is granted as it prescribed by the law ?

Lawyer workagengehu

It is nothing prescribed by the law for how many occasions shall the remand is granted. Her law has some defect, or vague. It must be prescribed by the law and there must be limitation to apply remand and there must be limitation of time to bring the arrested person before the court after arrest.

Question

What do you mean by limitation of time after arrest?

Lawyer warkagengehu

Some times the police criminal investigation officer simply keeps an arrested person with out the order of the court delaying for many days after arrest. Since it is prescribed by the constitution to bring the arrested person before the court within 48 hours. So unless the arrested person brought to the court with in the prescribed time the court shall not accept the request of the police to grant the remand to control the necessary delay.

Question

Do you suggest that there must be rule on that also?

Lawyer workagengehu

Yes! There must be a rule which prohibit an necessary delay to bring any arrested person before the court special laws or on the criminal procedure code.

Question

The Ethiopian criminal procedure code is not amended since its proclamation of 1961. What is your opinion about that?

Lawyer workagengehu

It must be amended, since it has many defects or vagues.
On such questions another lawyer Ato tesmma bekele attorney at first instance court answers as follows.

Question

Some times police keeps arrested persons in custody for a long period of with no reason to do so. What is your opinion on this?

The police criminal investigation officers keeps arrested persons with no reasons for a long period of time with out any research of investigation which I have seen what happened on my customers requesting remand again and again. After a long period of time, my customers sent free. Because there is no evidence on the accused and no crime committed this happens so for many times. So the court grants the remand by following up the result of the criminal investigation day by day.

The police criminal investigation officer must complete his investigation and shows the result to get remand other wise the court should not grant the remand and the arrested person must he released.

The police should not keep person in custody unless the court orders remand.

With out the order of the court the police can not keep the arrested person. If he did so that the police criminal investigation officer must be liable for illegal aspects of a crime he has committed.

A Law concerned person Ato tessema zerffa makes his opinion as follows.

Question.

Do you have experience in law enforcement authorities if any? What is your opinion on remand in custody?

Ato Tessema,

Yes! I have been a prosecutor as well as a judge on the court for many years. There are many problems b/n the court and the police. Where the court so trying to keep the Laws and orders the police do not keep orders.

When the court orders to release an arrested person on bail, the police do not obey to the order and keep the arrested person in custody.

Some times the court receives applications of habeas corpses & when the court orders the police to bring the arrested person before the court and why the person is arrested but the police do not reply and do not bring the person also. When a serious action is taken up on the case the police simply release the person.

Question

What do think about the effectors the criminal procedure code on speedy trial?

Ato Tesema

It prescribes about detention of the grant remand an arrested person in custody. It was good to investigate and find out the crime committed but it has side effect to bring the arrested person before the court by seedy trial.

Where the police requests for remand in custody and the court grants the remand the police simply forgets his duty and requests the remand again and again.

With out limitation. At this situation the speedy trial is affected.

Interview with law students

On the interview with the law students student Desta Abdissa answers as follows.

Question

What is your suggestion on keeping an arrested person in custody .

Student dasta

It is not right to keep an arrested person in custody without enough reason because our constitution article 19-2- prescribes that a person arrested must be brought before the court with in 48 hours.

Question

You mean that requesting the arrested person for remand in the custody must be prohibited?

Student dasta

Yes! 48 hours is enough to complete the investigation other wise the remand must be not more than one occasion.

Around the criminal procedure code article. 59 student amsalu makes his opinion statement as follows.

Question

Through your study on law have you seen that what defecate the criminal procedure law has?

Student Amsalu

Yes, there is defect on the article 59 that where the criminal investigation is not complete the police criminal investigation officer may apply for remand to deep the arrested person in custody for 14 days in each occasion. But this occasion has no limitation that for how many occasions the remand is granted here is a big defect that makes an arrested person to be kept in the custody with out decision.

Question

What do you suggest about this article?

Student hamsalu

I suggest this article must be amended.

Question

Have you seen in any code or regulations or any law literature's which suggests solution to this article

Student Hamsalu

Yes! For example Fishers stanely .z Ethiopian criminal procedure a source book

Nigatu testaye hand book for teaching C.P.C.

Literature review

Through my study I made review of literatures are found the criminal code, criminal procedure code, the F.D.R.E. constitution Fishers Z involuntary confessions article 55 of the criminal procedure code J. ETH. L.V.C.No a fishers stanely Z Eth.criminal prosier code a sours book sedlers R.A. criminal Jurisdiction in Ethiopia J.Eth. L.V.2.No 2

St marry university college criminal procedure code module and etc.

In criminal code we fined that any person shall not be punished until his commotion is approved by the court in the criminal code article 59 it is prescribed that suspected person can be kept in custody until the investigation is completed. But the remand is not limited for how many occasions shall the remand is granted that means if he is kept in custody for a long period time, he is already punished. It is meaning less even if he is not guilty and released free from the custody.

Under F.D.R.E. constitution art 19-6 it is prescribed that the person arrested have the right to be released on bail.

Fisher, argue that the criminal procedure code allows that an accused person to be in detention for un known period of time.

The st marry university college module book of criminal procedure code also suggests that the criminal procedure code article 59 shall be amended.

Chapter three

Finding the research study and analyzing the facts and the result of the study

After these researches and studies on files of the court & ceremonial investigation files, interviews with law enforcement authority officers, lawyers and other law intellectuals, we can understand that, whenever the police criminal investigation offices requests to complete his investigation, the court grants a remand but the grant shall be not granted for more than 14 days on each occasion because it is prescribed by the law.

Even it can not be granted not for more than 14 days in each occasion, it is not preserved by the low for how many occasion that the remand shall be granted and because of this the courts always grants remand for many occasions again and again. This may create problems and has side effect on the right of persons arrested to appear to the court by speedy trial to get justice.

The request of the police criminal investigation officer that brings unnecessary report for incompleteness of his investigation shall not be accepted by the court as satisfactory reason the police criminal investigation officer must follow up the following proceedings according to criminal procedure code article 36, and 37 to show his progress for his investigation of his requesting the court to grant remand in custody.

1. where he started the investigation of a crime committed what information of a crime committed what informant on he has received and what evidence he has gathered, and what he want to fined out in more additionally.
2. When ever the court accepted his request and granted the remand he shall complete his investigation within the prescribed time.
3. If the police investigation officer could not complete the investigation with the preserved time at the 1st occasion and requesting for more additional remand to be granted, he must apply his progress at one step for ward in his report.

4. If so he had that and fulfilled the above criteria the court may grant the remand if he failed to do so the court shall release the arrested person on bail.
5. If the police officer reports his progress one step forwarded in his investigation and the additional remand as granted, the arrested person must be forwarded to the prison where he can get food and other important situation is facilitated otherwise the grant of remand in police station has side effect, because the arrested person may make statement of confession of a crime which he has not committed as a result of torture and lack of food in police custody.

The request of remand in custody shall be applied by the police officer the to defend the offender that committed a crime from scalping, and to collect evidences. But it is not fair any suspected person to keep in custody simply without any evidence because of the suspect ion only. So it is omitting the law and international covenants ratified in our constitution and other lowers regulations, proclamations etc.

Another side effect of keeping the arrested person in police custody is that his health may be on danger because of food deficiency and there is no food supply system is form in the police custody like that of the prison.

Some peoples do not have families relatives and friends that can prepare and supply them food in police custody even some people do not have relatives of friends if they die in the custody who can receive the dead body to bury.

As it is explained by the police criminal investigation officer on his interview, if the detained person is died in the police custody and have no any family or relatives and friends his burial procedure is done by the government or the municipality of the city or town. Even if he faced food deficiency and his health falls on danger, and dies as a result of that nobody is responsible for his injury.

By food deficiency, there must be responsibilities to the police criminal in visitation officer or up to the government, and there must be compensation to be paid to his family, and there must be law also to decide the compensation.

There is nothing prescribed in the law so there must be a law if the detained and person is died in the police custody how and why this person is died.

Some dies as a result of hard torture and some of them as a result of food deficiency and some by illness, so it must be investigated if some body is died in the police custody. How this person is died:-

1. By hard torture?
2. By food deficiency?
3. Or by illness?

If the investigation reports that this person is died by torture or by lack of food there must be compensation to be paid for his families and there must be law also to decide the compensation.

After the data collection is completed around the police office I visited office of the public prosecutor to get some information and develop my knowledge and to see the citation of the criminal procedure code after research and studding around the law enforcement bodies.

In the public prosecutor offices I found some police criminal investigation reports and police criminal investigation files annexed, and the public prosecutor files, there I searched and studied on both in a public prosecutors files and found that simply after observing the police criminal investigation file & report making charge on the offender if there is sufficient evidence according to article 38 of the criminal procedure.

Or make closure according to article 39, of the criminal procedure code and there is refusal if there is no sufficient evidence to justify a conviction, according to criminal procedure article 42, and 43 in the closed files refused cases of both the police criminal investigation & public prosecutors, files I found that most of the

files or (reports) are delayed in the police office for investigation & the suspected person is detained in the custody by the order of the court in accordance With the criminal procedure code article 59 for a long period of time with out any evidence, or annexing a value less evidence to the investigation files.

Most of the evidences are confession of the arrested person in the police criminal investigation office while he is under detention by the court order according to the criminal procedure code article 59.

Where proceedings are not instituted or the police investigation file is closed by the public procreator, the accused person is released free after a long period of time in detention with out any compensation. Because nothing is prescribed by the law

Through my study around law enforcement authorities such as court, public prosecutors office and federal police criminal Investigation. I found that the criminal procedure code article 59 is affecting the speedy trial. Through their interviews the police and the public prosecutors are trying to express that keeping the arrested person in police custody for Many occasions is not un necessary delay because it is for criminal investigation purposed but keeping a person in custody for more than 60 days is un necessary delay if we see. My data table most of the remand times are for more than 60 days that means for four occasions, 14 days in each occasions, 60 days is a minimum time. There is also 90 and 180 days and more than that of remand in custody this is a punishment it self. After all this punishment it is nothing for person after his economy is destroyed and his Moral damaged even if he is released from custody. Some people do not like to come back to their works after their moral is damaged,

They do not like to work and they are simply wandering her and there with out Job.

So it is load to a country where such citizens became unprofitable.

So purposely, it is necessary to amend the criminal code article 59 to save such citizens from such moral and material damage.

In my research study I have also made interview with some law concerned peoples such as lawyers, and law students, and other law professionals.

From lawyers interview they expressed that when ever their customers are arrested they face problems to release their customers from police custody because of the grant of remand in custody according to the article 59.

The law students also says that because of the criminal procedure code article 59 has defect & vague and because of it is not clear it needs some amendments which limits that for how Many occasions the remand is granted to keep the arrested person in custody.

The law students lawyers, and law professionals, such as Fisher, Stanley and Nigatu tesfaye argues the Ethiopian criminal code article 59 in their literatures. (Ethiopian criminal procedure a source book) and (••••• •/•/•/•/•/•/••••• •••••).

The defect of the criminal procedure article 59, is made by the drafters of this code by silently omitting to the imitations of the law for how many occasions that the remand is granted, it is simply left for the court by the drafters.

Under the constitution of the federal democratic republic of Ethiopia it is prescribed as follow article 19-3- “ persons arrested have the right to be brought before a court within 48 hours of their arrest “. Article 19-4 “all persons have an alienable right to petition the court to order their physical release where the arresting police of fiery or the law enforcement bails to bring them before a court with in the prescribed time and to provide reason for their arrest.

- Where the interest of justice requires the court may order the arrested person to remain in custody or when requested, remand him for a time strictly required to carry out the necessary investigation. In determining the additional time necessary for investigation the court shall insure that the responsible law enforcement authorities carry our the investigation respecting the arrested persons right to speedy trial”

In these articles of the constitution it is simply left to court to determine the occasion.

Conclusion and Recommendation

From this study I found that many articles of the criminal procedure code has defects. These articles must have reexamined and amended. Especially the criminal procedure code article 59 has effect and side effect on proceeding criminal investigation and on the speedy trial.

On the criminal investigation it has strong effect to dig out and found strictly to investigate the crime committed where the investigation is not completed while the suspect is detained in the custody.

According to criminal law article 60 any arrested person shall be detained on the conditions prescribed by the law under the criminal procedure code article 67 it is prescribed as follows.

- A. Where the arrested person is set at liberty is likely to committer offences.
- B. The arrested is likely to interfere with witnesses or tamper with the evidence the arrested person shall be detained in the custody and the investigation must be done and at this circumstances the real offenders may not scope from punishment after committing a crime.

In other circumstances the article has side effect on the right of the arrested person.

The side effect may be on the detention of the arrested person.

Where the court grants remand it he date is prescribed by the law that it must be 14 day a in each occasions. But it is not prescribed by the law for how many occasions that the remand cans be granted. So that the remand is granted for many occasions again and again.

This affects the right of the arrested person and has side effect on speedy trial.

When I argue that it has side effect, I am not concluding that detention must be prohibited. But I recommend that detention for a long period of time must be prohibited and the criminal procedure code article 59. Must be amended and the occasion for remand must be limited by the law.

Suggestion

The criminal procedure code article 59. Shall be amended as follows.

On the criminal procedure code article 59 the following new sub articles has added.

Sub article 4 No remand shall be granted for more than 3 occasions.

Sub article 5 where the arrested person is detained in custody for long time and released free a compensation for his moral and material damage appropriate to it must be paid to the person from the government.

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In here by declare that this paper is my original work and take full responsibility of for any failure to observe the conventional rules of citation

Name M ullisa Edgeta

Signed -----