Chapter 5

The Charge [Arts 108-122]

- The ***purpose*** of a charge is to tell an accused person as precisely and concisely as possible of the matter with which he is charged and must convey to him with ***sufficient clearness*** and ***certainty*** what the prosecution intends to prove against him and of which he will have to clear himself.
- Form/formality and content/substance of charge
- Joinder of offences and accused
- Amendment of charges

- Charge could be defined as a formal document containing an allegation that a person named therein has committed a crime by describing the necessary facts and evidence.
- A charge or indictment is written information to an accused.
- It is used to ***communicate*** to the accused the legal provision alleged to be violated and the particulars of the offence in order that one gets the opportunity to challenge the truth or otherwise of the charge. Thus, framing a charge is a requirement of due process of law.
- It should be ***precise***. But, it should not be ***general***. It must explain with ***reasonable clarity*** the alleged offence with its particulars. The satisfaction of these criteria has to be seen on a case by case basis.

- **The charge is so important that it must be made in writing.**
- **Art. 20(2) of the FDRE constitution recognize the right of the accused to get a charge.**
- **Art 108 expressly prohibit conduct of a trail without a charge, except petty offences.**
- **Even for the petty offences the code requires the summon to recite the name of the accused, the circumstance of the offence committed. Art 167(2)**

Joinder of offences and accused [Arts 116-117, 113]

- **If a person is suspected more than one offence, to save time and resources, It is advisable that he be tried for all the offences at one time. Such an approach is particularly appropriate in cases where the prosecutors allegations are to be proved by the same witness, especially when the accused is suspected for crimes committed at the same time.**

- As per Art 116, the indictment could contain ***several counts*** against a single accused in the case of ***concurrent crimes***. But, one count should be restricted to the case of violation of an independent offence. In other words, it should avoid duplication.
- According to Art 117 it is also possible to charge *several persons at a time in case there is a link between them with the alleged crime*. [Joinder of defendants]
- A court could order separate trial whenever justice requires it.
- Besides, according to art 113, there could be ***alternative charges***. It is also possible to convict a person for an offence not mentioned in the indictment. However, there has to be a nexus between the law found in the charge and the one to be used as a substitute. The accused should get the chance to defend.

Aggravated crimes Art 114

- **Where an accused person may be charged with an aggravated offence by reason of *previous convictions*, he shall be charged with the un aggravated offence and the charge shall be filed in the court having jurisdiction to try the aggravated offence.**
- **Where the accused is convicted of the un aggravated offence the public prosecutor may, after conviction and before sentence, prove the previous convictions of the accused which, had they been proved at the trial, would have resulted in his conviction of the aggravated offence. The court may sentence him as though he had been convicted accordingly.**

- The FDRE Constitution has guaranteed for the accused persons to be informed of criminal charges in writing.
- The CPC, too, has provisions dealing with the charge. But it lacks the necessary detail and some clarity. Unlike the Civil Procedure Code, the CPC does not authorize the registrar and court to enforce the formal and legal requirement of a charge. It seems prudent to assume the power. But, the registrar should be limited to checking technicality. For instance, the registrar can order correction or reject a charge not mentioning a criminal law violated. It does not have the mandate to evaluate the appropriateness of a law cited. In case no criminal law is stated, it becomes a technical matter.

- The prosecution has to frame and file a criminal charge ***within 15 days***. The absence of a clear sanction has the effect of disregarding it. The FDRE Constitution also contains a vague "***reasonable time***" test. Its justiciability is subject to controversy. Art 114 of the CPC is intended to prevent prejudice of judges as there may be a tendency to be biased by past record. It was targeted to apply provisions like Art 635/3/a of the repealed PC. In the new CC, the requirement of past record for aggravating theft has been left from Art 669/3 of the CC.

Form and content of the charge[Art 111-112}

An indictment now consists of three ***parts***:

(a) the commencement,

(b) the statement of offence, and

(c) the particulars of offence…

(a) The commencement

- This states the place of the court's jurisdiction,

(b) The statement of offence

- The statement of offence, with which every count must begin, merely names the crime charged, Under the Act of 195 it must use ordinary language, avoiding technical terms as far as possible, and need not set out all the essential elements of the offence. If the offence be a statutory one, the statute and the particular section must be specified in the statement.

(c) The particulars of offence

- The particulars of offence follow, in order to inform the accused as to the **circumstances-e.g**. time, place, conduct, subject matter-of the crime which has thus been alleged against him, in fact, such particulars as may be necessary for giving reasonable information as to the nature of the charge. Here again, ordinary language is to be employed, and the use of technical terms is not to be necessary The particulars may, too, be very brief. But they must be sufficient to indicate to the accused 'with reasonable clearness' the occasion and the circumstances of his crime. This is necessary for that he may be able to know what defence to offer and, moreover, he may be able to know whether he be prosecuted a second time for this same misdeed, to protect himself by showing…that the identical charge has already been dealt with.

- **Every charge shall be dated and signed and shall contain:**
  - **The name of the accused;**
  - **The offence with which the accused is charged**
  - **Its legal and material ingredients; and**
  - **The time and place of the offence(where appropriate),**
  - **The person against whom or the property in respect Which the offence was committed**
  - **The law and article of the law violated.**
  - **Even if the Cr.Pr. dictates that evidence will be attached later, the practice reveal that both oral and documentary evidences are attached to a charge.**

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<u>አዲስ አበባ</u>

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የፖ.መ.ቁ_____

ከሣሽ ..... የፌደራል የሥነ ምግባር እና የፀረ ሙስና ኮማሽን ዐቃቤ ሕግ

ተከሳሽ.....አቶ እንደፍቃዱ ዋይ

ሰራ ..... የመንግስት ሰራተኛ

አድራሻ .....ፒያሳ 02 ቀበለ

<u>ወንጀሉ</u>

በ1996 ዓ.ም የወጣውን የኢ.ፌ.ዴ.ሪ. የወንጀል ሕግ አንቀፅ 32(1)፣411(1) (ሐ) እና 2 ላይ የተመለከተውን በመተላለፋቸው፣

<u>የወንጀሉ ዝርዝር</u>

ተከሳሹ በኢትዮጵያ ገቢዎችና ጉምሩክ ባለሥልጣን ሰራተኛ ሲሆኑ፤ ስልጣንና ኃለፊነቱን በመጠቀም የማይገባ ጥቅም ለራሱ ለማግኘት ለሌሎች ሰዎችም ለማስገኘት በማሰብ፣ በ26/07/2001 ዓ.ም ጐለጐል ትሬዲንግ ኃ/የተ/የግ/ማኅበር የተባለ ድርጅት ያለቫት ደረሰኝ ግብይት እንደሚፈፅም ለገቢዎችና ጉምሩክ ባለስልጣን ጥቆማ ቀርቦ እውነተኛነቱን ለማረጋገጥ የባለሥልጣኑ ሠራተኞች ተልከው እንደጥቆማው አቀራረብ እንደሚፈፅም በወቅቱ በተላኩት ሠራተኞች ከተረጋገጠና ተጠርጣሪዎችም ከተለዩና ምርመራ መዝገቡ ተደራጅቶ እንደሚያስከስስ ከተረጋገጠ በኋላ ተከሣሹ የባለሥልጣኑ የሥራ ኃላፊዎች በተገኙበት የድርጅቱ ባለቤት አቤቱታ ስለቀረበ ጉዳዩ በድጋሚ መታየት አለበት በሚል ሽፋን ምርመራው እንደገና እንዲጣራ በማድረግ ቀደም ሲል በጉዳዩ ዙርያ ከተሰጠው የምስክርነት ቃል በተለየ ጉዳዩን ሊያዳክም የሚችል አዲስ ተጨማሪ ቃል እንዲቀርብ በማድረግ መዝገቡ ውጤት እንዳይኖረው ካመቻቸ በኋላ ምርመራ መዝገቡ እንዲዘጋ በማስደረጉ፣ በዋና ወንጀል አድራጊነት ተካፋይ በመሆን በፈፀመው የመንግስት ሥራን በማያመች አኳሃን መምራት የሙስና ወንጀል ተከሷል።

ማስረጃ

ሀ. የሰው ማስረጃ

ለ. የሰነድ ማስረጃ

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Amendment [Art 118-119, CPC]

Amendment of Indictment

- Prosecutors are human beings. It is possible to make error during the preparation of a charge. As a result many jurisdictions allow amendment of charge. But, it should be made before judgment is given. The order could be given upon the initiation of the court, prosecution, or accused.
- The CPC is not clear with regard to the ground for amendment. It seems to benefit the accused. It is possible that a public prosecutor may cite an improper provision. But the amendment is prejudicial to the accused. The charge is clear on every standard but the problem is only with the severity of the provision of the criminal law cited. Thus, amendment of a charge is possible at any time before judgment. But, the purpose for which the amendment allowed is not clear under the CPC. It seems to prohibit amending the charge to cite a more severe penal provision.

- **The charge framed by the public prosecutor may not comply with the law. Some thing might have been omitted from the charge or another type of error might have been committed**
- **A discrepancy might also arise from the charge and the proof. These and other factors may call for some sort of amendment to the charge.**
- **As stated in Art. 118 errors in stating a fact will be considered as material and will result in invalidity of a charge if such error is material and ,**
  - **if they relate to essential point of the accused**
  - **The accused will be mislead**
  - **Justice is likely to be defeated.**
- **When such essential errors happen the court may by its own motion or by application can order the charge to be altered or added to or a new charge to be framed, at any time before judgment .**

Effects of amendment

- **Once the amended charge is brought by the public prosecutor and explained to the accused, the court has to ask whether the accused is ready to be tried on the amended charge.(Art 120)**
- **If the accused confirms that he is ready, the court shall proceed with the trial.**
- **When the accused stated otherwise the court will asses the reasons of the accused.**
- **If the court found the reasons of the accused important it will adjourn the trail but if the court is not convinced, the trial will continue.**
- **When there is addition and alteration the public prosecutor or the accused are allowed to present their evidence to the extent of such alteration and further evidence.(Art 121)**

- **Discussion Questions**
- 1. Can a public prosecutor request the amendment of a charge for the exclusive reason of using another criminal law provision stipulating a more severe penalty?
- 2. Is it possible to correct minor mistakes of the charge, such as name, and type errors without the need to frame a new charge?