

Criminal procedure lecture note; husen

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The very general and broad question of this (criminal procedure) course is “how do we enforce criminal law?” As most of you can easily guess, before deciding for an act to be a crime, we have to investigate whether that act is really a criminal act or not. For example, for accusing someone in the crime of murder, one has to identify murder from natural death. The question is, how do we make a distinction between murder and natural death? First, we have to establish cause and effect relationship, we could establish cause and effect relationship by gathering evidences.

As you’ve repeatedly stated in your criminal law class, criminal law establish certain obligations or duties on a citizen by expressly providing for what to be done and not to be done (act or omission). But the ascertainment of this branch of law will always requires investigation of some facts. Because a criminal law can only be violated by individuals and we have to first ask ourselves, “Who has gone against the rules of criminal law?” In doing these things, there is one thing we should always do; we have to dig for facts. So, for finding out these facts, we have to make an investigation is the whole point here.

The machinery of justice cannot move forward by the application of substantive laws only; it always requires rules and ingridience. The machinery of justice could only be triggered if there is a combination of facts and legal rules. Therefore, the whole idea of criminal procedure is to guide us how to make investigation whenever there is an apparent violation of criminal law. Whether the real violation of criminal law will be determined at a later stage if there is a suspicion that the substantive rules prescribed under criminal law have been violated or if there is a report to that end, then, we have to dig for facts first for completing the machinery of justice. So, the whole purpose of criminal procedure is to guide as to the

investigation, prosecution and judgement process. We can generally say that criminal procedure is a kind of collection of rules, rules that help us in investigation, prosecution and adjudication of criminal law.

As you could obviously know, there are civil and criminal cases. Criminal procedure is relevant in criminal cases and a criminal case is a case that is brought by public prosecutor. One of the distinction between the criminal and civil case is, “who is bringing what?” the public prosecutor comes to the court alleging that there is a violation of the provision of criminal law.

Whenever there is a violation of criminal law, there are two possible interests that usually come in to conflict. Let’s say, for instance, Mr X is in suspicion of having murdered Mr Y. The two paramount interests in this case are, maintaining peace and security on the side of state on the one hand and respecting the inviolable and inalienable rights of the suspect on the other. For the interest on the side of the state, it’s enough of remembering art. 1 of the criminal code of Ethiopia. The main purpose of criminal law, according to art. 1 of the same, is maintaining peace and security of the society and it’s worth noting that criminal procedure code of Ethiopia is interested in enforcing the criminal law. If there is an act that threatens the peace and security of the society, the state machinery should react against it. So, there is state interest of making sure that the community lives in peace.

But, there is also another interest, the interest of individuals, who may not have committed the crime or may have committed the act, but may not be criminal for the same for reasons that we will discuss through time in this course.

The criminal procedure code of Ethiopia tries to strike a balance between these two conflicting interests.

If, for instance, Mr. A have suspected of murdering Mr. B, should he be send to jail till the investigation is completed?

There are two conflicting interests in this case, the state on one hand wants to maintain the peace and security of the society by sending Mr. A to jail until the investigation is completed in order to prevent other crimes by the same person till the said process is finalized. On the other hand, Mr. A may also have an interest in the case; because, he may not have murdered Mr. B.

Detaining the person may have resulted in another conflicting interest of the laws; criminal law and the constitution of Ethiopia. The constitution of Ethiopia, specially, under chapter three, advocates for the liberty, movement, freedom and etc of individuals to be respected. On the other hand, the criminal code, especially under the first article advocates for the peace and security of the community is maintained. But, the police officer comes to your house, show you a warrant, inform you the act you've suspected of and take you to police station before establishing you're a criminal. Because, all criminal justice system tries to strike a balance between these two conflicting interests. But the question is, "how we come up with a solution for such problem?"

Criminal justice systems of the world have designed so differently. But we can speak of two different models; crime control model and due process of law. A criminal justice system will adopt crime control model if it has a primary interest of controlling a commission of crimes. To this end, anyone who has committed any crime has to be sent to jail. That is what he/she deserves. Because, if there is a violation of criminal law, the state should respond forthwith; Any-one who violates strict provisions of criminal law has to be arrested. It is obvious that this model sometimes requires the sacrifice of some rights of individuals. So, the point of departure of this model from other models of criminal justice systems is that it tries to

protect crime in whatever means even in sacrifice of individuals right for the fact that it hates crime.

The other alternative turns out to be due process of law model. This model is also interested in controlling crimes, but it gives priority to the protection of individual's right than strict control of crime. This model advocates that controlling crime without protecting individual's liberty is not a right way.

Adversarial vs. inquisitorial system;

The fundamental and underlying difference of these two systems is drawn from founding truth in any litigation. We've once already said that for a machinery of justice to operate correctly, facts and laws has to go hand in hand. The combination of two will obviously resulted in something which is deemed to be a product of the litigation. That product is called judgement. So, the truthfulness of outcomes is a fundamental value in every legal system of the world. The question which follows thereafter is, "how do we discover truth?" the fundamental difference of the two major legal systems of the world (civil and common law legal system) do not have a fundamental difference as to the outcome of every litigation must be correct. But, the difference highly lies on answering the "how" question raised above. Because, the two legal systems have a fundamental difference in the way of arriving at the truth.

The common law legal system thinks that the truth could only be found if the two parties collect evidences and present to a court of law by themselves; This legal system, indeed, does not believe in absolute truth. It says that truth is only procedural; there is nothing called absolute truth; that can never be discovered.

On the other hand, the civil law legal system which follows the inquisitorial system says leaving the discovery of truth for individuals is just a joke and truth could only be discovered if only if government gets involve in it. In

other words, this legal system says that truth could only be discovered if proper investigation is made by proper organ which is a state/government.

A few provisions towards the beginning of the criminal procedure code of Ethiopia:

Some of the provisions under criminal procedure code have been changed over the last 50 years. We have already noted that the legal regime that governs the criminal proceeding in Ethiopia today is not exclusively governed by the criminal procedure code. There are so many other legislation which have been enacted by the federal government there after; the most important of which are the FDRE constitution itself; the federal court establishment proclamation, federal police establishment proclamation, anti corruption proclamation and etc are other instances.

The principle of non-retroactivity of criminal law:

There is a general principle that criminal law should never be applied retroactively. The general idea of non-retroactivity of criminal law is that whatever rules laydown in legislations should not apply to acts that were committed before the date of enactment. In other words, the legality or illegality of any act can only be inferred in light of the law that was effective on the date of the commission of that act. But, the only exception is that if the new rules in terms of punishment which were laydown in the new legislations are in favor of the defendant, the new law will apply.

But the question is “what happens if there is a new procedural rules?” if there is a substantive criminal law, it can never be applied to acts committed prior to its enactment. But what about new procedural rules?

To begin with, most of the time, the principles that govern substantive and procedural law are usually different like the principle of period of limitation. In civil matters, the period of limitation has to be raised by the defendant in

substantive matters. But the procedural period of limitation has to be raised by the courts.

Art. 2. application as to time.

1. The provisions of this code shall apply from the day of its coming into force to all cases pending on such day and occurring thereafter.

2. Any case pending on the coming into force of this Code shall be completed by the court having jurisdiction under the law repealed by this Code:

Provided that where any case is pending before a court not mentioned in this Code, such case shall be completed by the court having jurisdiction under this Code.

As it's easy to understand from the reading of this article, the criminal procedure code is not interested in the non-retroactivity of criminal law; rather it's interested in when is the case pending. So, if a case committed before the enactment of the procedure was pending on the effective date the case will be governed by the new procedure.

Ethiopian legal system has a number of proceedings; these proceedings could be classified as ordinary and special proceedings and the rules that govern ordinary proceedings are completely different from the rules that govern special proceedings; article 5 of the criminal procedure code mentions two types of special proceedings which are still relevant. One of those special proceeding is the case of young criminals.