



International Law

Elixir Inter. Law 112 (2017) 48968-48970

Elixir
ISSN: 2229-712X

Remand in Ethiopia: A Critical Legal Appraisal.

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ARTICLE INFO

Article history:

Received: 20 September 2017;

Received in revised form:

3 November 2017;

Accepted: 13 November 2017;

Keywords

Remand,
The right to liberty,
The right to presumption
of innocence and human
rights.

ABSTRACT

Pre-trial detention of people on remand is against the very fundamental human rights of an individual as those peoples are presumed innocent until proven guilty.¹ Under the criminal procedure code of Ethiopia and other laws an individual appearing before the court to face charges is entitled to a presumption in favor of bail unless he is charged with an offence which falls in the scope of article 63 and 64 of the code. Detained persons do have also the right to be brought before the court of law within 48 hours and have a fair and public trial. However, the courts have used their stretched discretion to manage people via custodial remand before testing the evidence produced against them. The standard of the evidence that can be relied up on to justify remand to custody is vague and apparently uncontrolled by the principle of presumption of innocence which goes against the spirit of the FDRE constitution and other international human rights instruments. Hence, this article concludes that remand is the battered right.

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1. Introduction

It has been said a lot that remand is considered as a punishment which results in the deprivation of liberty and other fundamental human rights. The remanded persons are suffering from different problems like confinement in a congested cell which in fact is older and more crowded than those sentenced prisoners. Besides, even a relatively short period in custody, remand results in homelessness, family break-down, and loss of employment and social stigma. The uncertainty of their status and the deprivation they experience causes an emotional distress.

Furthermore, unnecessary remand is also a cause of losses of public fund. The wider cost of unnecessary remand is illustrated by the impact that it has on women and children who are more likely than men and adults respectively to be remanded to prison for offences which would not lead to a custodial sentence. As a result, this costs for the society and the government in looking after children until their release from prison. There are wider long term effects on individual's future employment prospect and their education thereof.

In Ethiopia, where the suspect appears before the court for the first time, the court may decide that such person shall be kept in custody (remanded) up on the application by the police officer¹. Operationally the term 'remand' can be defined as sending or returning something back.

But how many times would the maximum 14 days remand be granted as this related to the right to speedy trial? is a worth raising issue. When we see the court practice in Eat Gojjam Zone the frequency of remand is somewhat abused. For instance in the case of PP vs Mesenbet zewdu the Debre Markos city woreda court has allowed 56 days remand (four times).²

In principle, within the meaning of the Ethiopian imperial criminal procedure code, Court should see the development of police investigation on each period of remand. The Federal Democratic Republic of Ethiopia constitution (Hereinafter called the FDRE constitution) under article 19(4) provides a guideline as to how many 14 days the courts should remand by apparently stipulating that "...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. Nevertheless, the practice goes in contradiction with the spirit of the FDRE constitution.

2. The remand process in Ethiopia

The remand process begins with the police office when custody officers decide whether or not to release a suspect on police bond³ to appear the nearby court on a given date or to hold them in overnight custody of two days to be taken to appear at the court after 48 hours.⁴ The power to release the arrested person on bail conditions is up to the court.⁵ However, when the defendant appears before the court of law for the first time, the public prosecutor can oppose a defendants release on bail and/or request certain conditions be attached to any grant of bail.⁶ At this juncture the court might request the production of evidence about the opposition but practically in vain. At the first hearing in the court, the defendant chooses whether or not to apply for bail by himself or through his representative. The court after having heard of the evidence and the bail application of the defendant make a remand decision.

³ .See Article 28 of the imperial criminal procedure code of Ethiopia

⁴ .See Article 19 of the FDRE constitution.

⁵ .See Article 59 of the criminal procedure code of Ethiopia

⁶ .See Article 63 and 67 of the criminal procedure code of Ethiopia

¹ See Article 59 of The criminal procedure code of Ethiopia proclamation no.185 of 1961

² See PP vs Mesenbet zewedu Cr.F.No 0204647

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The court has three options on remand decisions.⁷ As we can clearly understand from Article 59 of the CPC there are three grounds of remand on which the court decides. The first ground is not related to the police investigation. This type of remand is to be ordered by the court where the accused is not allowed to be released on bail as per article 63 and 67 CPC. It is a mere alternative available to the court. The second type of remand is given based on the police investigation or to enable the investigation to be completed.

The third ground of remand is where bail is granted but the arrested person refuses or is unable to find and produce sureties. The defendant can make a bail application based on the same factual and legal information as it has been stipulated in the public prosecutor charge and the criminal procedure code of Ethiopia. But if bail is refused, the court must state its reasons in open court and the defendant should be given a written copy of this information so that they are in full possession of the facts for any possible future application for bail. The court can remand defendants in custody for up to fourteen days initially but for unlimited frequency.⁸

3. The Legal frame works governing remand in Ethiopia.

The FDRE constitution is the first law which is supposed to provide the right of the arrested person who is detained in the police custody or to be detained after the courts order of remand. Article 19 of the constitution states that a person arrested or detained has the right to be brought before the court of law and informed of the charges against him within 48 hours of arrest, though extra time is required for travel to the court.⁹ Besides, other Laws have also provided different rights to pre-trial detainees that will be familiar to other jurisdictions. For example the right to remain silent, the right not to be self-incriminated, the right to be informed in a language that the detainee to understand of the charges against him or access to legal counsel. The FDRE criminal code, state constitutions and other Federal anti-corruption and vagrancy proclamations adhere to the 48 hour rule or other protections given to the pre-trial detained persons. Nevertheless, the practice reveals that several persons including women are remanded arbitrarily and the protections given by the laws are failed to be implemented by the courts.

4. Should the court give an opportunity to be heard before granting the remand so as to maintain fair proceeding?

The court as the ultimate guardian of human rights should act proactively in maintaining the due process right of the accused before rendering its final decision. Hence, a fair opportunity to be heard should be given to the accused as remand decision goes against the fundamental right to liberty of the suspect.

5. Is the court decision on remand is appealable?

No provision is made as to the effect that the court decision on remand is appealable though for bail is possible under the 1961 Ethiopian imperial criminal procedure code. However, I am of the opinion that as the bail and remand is the two faces of one coin and both interlocutory it is not justifiable to deny appeal for decision of remand.

6. The status of International laws governing persons human rights on custodial remand.

Article 9(4) of the FDRE constitution has made all international agreements which are accepted and ratified by the Ethiopian government to be an integral part of the law of the land. Hence, the international human rights instruments should be placed at equal footing with the other Ethiopian laws and invoked before the courts of law for safeguarding custodial remand.

7. What are the fundamental Rights of persons remanded?

As it has been pinpointed so far in this article, The FDRE constitution provides significant protections for human rights of accused persons. The FDRE constitution has provides the following rights for arrested persons; persons arrested have the right to be informed promptly in a language they understand of the reasons of their arrest and of any charge against them¹⁰ have the right to remain silent and the right to be informed properly in a language they understand that any statement they make may be used as evidence against them in court¹¹ have the right to be brought before a court within 48 hours of their arrest and the right to petition the court to order their physical release when they fail to appear before the court within the prescribed time.¹² The right not to be compelled to make confession or admissions which could be used against them¹³ The right to be released on bail¹⁴ All persons held in custody have the right to treatments respecting their human dignity¹⁵ All persons shall have opportunity to communicate with and be visited by their spouses and partners, close relatives, friends, religious councilors, medical doctors and their legal counsel.¹⁶

As the suspect held in custody has the right to be presumed innocent via article 20(3) of the FDRE constitution. All of his fundamental human rights and freedoms stated so far shall be respected. Especially, his right to counsel, which is recognized as per article 61 CPC and article 20(5) of the FDRE constitution, shall be respected. As per article 61 of CPC the suspect is allowed to discuss with his advocate and write the results of such discussion or other things.

For accused person they shall be represented by legal counsel at the state expense if he couldn't afford the cost of legal counsel or miscarriage of justice would occur. (20(5)). The court grants legal representative only to the person whom he is alleged to have been committed a serious crime.

8. Effects of remand

Despite the fact that there are legal frameworks furnishing various protections for persons held in custody, the practice reveals different violations of human rights. For example though the FDRE constitution and other laws require the detainees be brought to court and charged within 48 hours of arrest, in different cases this requirement was not respected in practice. With court approval persons suspected of serious offenses can be detained for 14 days without being charged and for additional 14 day periods if an investigation

¹⁰ .See article 19(1) of The FDRE constitution

¹¹ . See Article 19(2) of the FSDRE constitution

¹² .See Article 19(3) and (9) of the FDRE constitution

¹³ .See Article 19(5) of the FDRE constitution

¹⁴ .See Article 19(6) of the FDRE constitution

¹⁵ .See Article 21(1) of the FDRE constitution

¹⁶ . See Article 21(2) of the FDRE constitution

⁷ .See article 59 of the Criminal procedure code of Ethiopia

⁸ . See article 59(3) of the imperial criminal procedure code of Ethiopia.

⁹ .See article 29 of the imperial criminal procedure code of Ethiopia.

continues. But if he is detained for lengthy time his constitutionally guaranteed human rights will be at stake. Trial delays were most often caused by lengthy legal procedures, judicial inefficiency and staffing shortages.

9. Conclusions

The decision of remand made in the court is not in line with the spirit of the FDRE constitution. The court is failed to see the reasons of remand properly and the defendant is held in custody for several fourteen days. The court has accepted the allegation of the police officer without making further investigation about the status of investigation. The reasons

that are provided by the public prosecutor or the police officers are not sufficient to hold the defendants on custodial remand. They always said to the court that the investigation is not completed and seek repeated remand up to fourteen days. It has been remarked that a prolonged and unnecessary remand is directly goes against the human rights of the defendants. Particularly, courts should not allow remand for interrogation as it would amount to prolonged proceedings which may result in involuntary confession. The defendants who are held on remand is under bad conditions as they are malnourished, unhealthy conditions