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WAX ALLA WIXII KU SAABSAN BAJALLADA WAA
IN LAGU SOO HAGAAJIYAA
WASAARADDA CARSOORKA IYO DIINTA
MUQDISHO
JAMHUURIYADDA DIMOQRAADIGA SOOMAALIYA

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TUSAALOOYINKII MADAXWEYNAHA

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Bulsha kasta oo Caafimaad ku dhaqanta, horukac gaarta, aasaaskeedu waa Caddaaladda, Caddaaladduna waxay ku taxaluqdaa bulshada dhaqankeeda iyo kasmadeead.

21.12.1976

TAARIIKHDA IYO HORUMARKA GARSOORKA SOOMAALIYEED

GARSOORKA GUUD AHAAN

Garsoorku waa awood shicbigu iska leeyahay, kuna aaminey, dad isagoo ka mid ah, karti iyo awoodna u leh, wuxuuna ku dhisan yahay isku kalsoonaan iyo isku aamin qabid la kala beddesho, iyagoo labada dhinaca ku wada shaqaynayaan xeer ay wada degsadeen, sabablaoo ah, haddii shicbigu awooddaas Garsooraha u dhiibay kuna aaminay, waa in awooddaas shicbiweynuhu u dhiibey kuna ilaashanayo, markaas u sidaas arrinta Garsooruhu u garto, wuxuu isia markaas garanayaa, in hawshaas iyada ah, lagu fiirinayo, si hagaagsanna markaas ayuu u gudan karayaa.

Haddii shicbigu awooddaas aad u culus u dhiibto dad aan awood iyo karti u lahayn, amase mas'uuliyadda qaadi karin. amabase haddii Garsoorihii muhiinnadaas weyn lagu aaminey awooddii la siiyey, danahiisa gaarka ah ugu shaqeysto, markaas ayaa wareer iyo is afgaran wax meeshaas soo galaan, qayladuna badataa.

Dadyowga adduunka jooga sida ay isugu khilaafsan yihiin, Diinta, Caadooyinka, Hiddaha Dhaqanka, oo ay ugu kala tagsanyihiin: wax garashada, horey u marka, luqada, ayay isugu khilaafsan yihiin, uguna kala tagsanyihiin Garsoorka iyo Ummuuraha la xiriira.

Waxaa jirey Adduunka Waddamo badan oo la isticmaarsaday, xuquuqdoodii oo dhanna looga qaalib noqday, xeerarkoodii iyo caadadkoodiina, wixii isticmaarsadihii lagu beddelay, welina xeerarkii isticmaarka iyo dhaqankiisi lagu xukumoo iskastoo ay xornimco magaca ah qaateen, amase ayan isticmaarkiiba ka bixin. sida Suud Afrika, Namiibiya, Rodeesiya iyo kuwo kale.

Waddanna xor ma noqon karo, haddii Garsoorka xagiisa uusan xor ka ahayn, sababtoo ah, Waddanka horey u kiciisa, amaankiisa, sinnaanta dadkiisa. Caddaaladdiisa ijtimaaciga ah, iyo wixii la mid ah oo dhan. waxaa lagu heli karaa, Garsoor toosan, oo dadka Waddankaas u dhashay niyo sami iyo kalsoonaan ku maamulayaan.

Waxaa jira. waddaammo badan oo xornimadooda qaatay 1960, tagsoo ahayd waqtigii Da.keennu qaatay Xornimadiisa, waddannadaas oo aan laa iyo maanta ka xoroobin xaggaa Garsoorka, sababtoo ah

in ay weli Garsoorkooda maamulayaan Garsoorayaal shisheeye ahi amase xeerar shisheeye, nasiib wanaagse waddankeenna arrintaas iyada ah tallaabooyinkii ku habboon ayuu ka qaaday. eexr shisheeye iyo Garsoore shisheeye ah waa ka xoroobay.

Haddii la doono in laga hadlo taariikhda Garsoorka ee da.ka Soomaa.iyeed, waxaa lama huraan ah in loo qaybsho, waqtiyada hoos ku qoran, si loo ogaado waqtiga sidii uu ahaa:

1) Waqtiyadii ka horreeyey isticmaarka, taasoo aynu orankarno: ilaa intii Diinta Islaamka.ay Soomaa.iya soo gashay.

2) Waqtiyacii isticmaarku dalkeenna haystay magac kastaba ha sheegtee:

3) Waqtiyadii magaca istiqlaal ku sheegga lagu maamulayey:

4) Waqtigii kacaanka barakaysani, maamu.ka hayey.

B) Waqtiyadii ka horreeyey isticmaarka

Diinta Islaamku markii ay soo gaartay da.keenna Soomaaliyeed, taasoo sida aan qabo ahayd sannadihii hore oo uu ka soo dhashay Jasiirada-Al-Carab, haddii ay ugu dambeysana ahayd. Qarnigii hore oo Hijradii Nebi Maxamed Naxariistii Korkiisa ha ahaatee, bartamaheedii, ilaa iyo markii isticmaarku soo galay dhulkeenna, Garsoorka waxaa loo cuskan jirey labada masdar oo hoos ku xusan;

1) Shareecada Islaamka, oo aad kalsooni iyo aqoon .abadaba loo qabey,

2) Caadada iyo dhaqanka, kuwaasoo dadka waxgaradka ahi ay maamuli jireen, taasoo mararka qaarkoodna ay shareecadaba ka hormarin jireen oo ay oranjireen (war Shareecadu inama nooneyso) iyadoo aad Ulajeeddada ka fahmeyso in ay xuddundda (qiyaasta karbaashka gacan gooynta iyo wixii la mid ah) dhibsanayaa:

Shareecada Islaamka, dadku si aad ah ayay u dhawrijireen, uguna camalfali jireen. khaas ahaan, wax a.la wixii ku saabsan xeerka qoyska (Axaa.ushakhsiya), kuwaasoo ay ka mid yihiin: Nikaaxa-furriinka Dhaxalka Dardaaranka Waqafka Nasabka iyo Dacwada Ilmaha haddii laysku qabto anaa dhalay iyo maye anaa dhalay, nafaqada iyo wixii la mid ah.

Waxaa kale oo Shareecada kali ah loogu camalfalijirey, wax alla wixii ku saabsan cibaadada Ilaaheen, iyadoo si aad u waafasqan Diinta Islaamka locgu dhaqmi jirey. Caadadu waxay ahayd wax aad laysula eggel yahay, laguna wada dhaqmo, qof diidi karana uusan jirin. Sabbtoo ah, dadku in uu la dhacsanaa in dan ay u tahay: ammaankooda guud, haddii ayan u hoggaansaminna, xasilloonaani ayan jirayn.

Garsoorka shareecada waxaa maamulijirey, niman culimo ah oo Dawladdu Garsoorayaal u magacawday, Sharcigana aad u yaqaan. bal eega maqaalada ku qoran wargeyska «Horseed» lam. 238, soo baxay 6.7.1976, oo cinwaankeedu yahay: Mamlakatu Muqdisho Soomaaliya taariikhda baro), taasoo uu ku faafiyey waxyaalihii laga qoray: Ibna Baduuda oo Carab Reer Maqribaha.

Ibna Baduuda wuxuu ka sheekeeyey Dawladdii Soomaaliyeed ee xukumeysay Muqdisho muddo hadda laga joogo 645 sano, taasoo markaas uu xukumahayey nin Sultaan ah oo la oran jirey Sultaan Abuukar sheekh Cumar, sannadku markuu ahaa 1331 Dh. N. Ciise.

Ibna Baduuda markii uu ka warbixinayey Shir weyn oo Caadi ahaa lagu qaban jirey Daarta Sultaanka maalinta Sabtida wuxuu yiri: (markay tahay maalinta Sabtida, waxaa albaabka Daarta Maligga Abuubakar sheekh Cumar shir ahaan u imaan jirey: Shaqaalaha iyo Madaxda Beledka, waxayna fariisan jireen Daarta dibeddeeda. Waxaana hortaa soo geli jirey Garsooraha hore. waxaa ku xiga Culimada Diinta, Asharaafta, Mashaa'ikhda Xujeyda.

Garsooraha hore wuxuu ku fariisan jirey kursi khaas ah, markaas ka dib ayaa Sultaanku Fariisan jirey markaas kaddib ayaa waxaa soo gala Xoghayayaasha Dawladda, madaxda jeyshka.

Nidaamkaas Ibni Baduuda ka war bixiyey dhaqanka Soomaaliidu sida uu ahaan jirey muddo haatan laga joogo 645 sano. wuxuu soo gaaray ilaa iyo markii isticmaarku la wareegay xukunka dalkeenna, muddo hal qarni ku dhowaad laga joogo. Wuxuuna ku tusinayaa, sida Diinta Islaamka iyo Garsoorka, iyo weliba dadka labadooda ku shaqa lihi, ay ugu horreeyey dhaqanka Soomaaliyeed.

Caadada iyo dhaqanka

Sidii aan horey u soo sheegnay, caadada iyo dhaqanka, waa wax-

yaalaha Soomaalidu aad ugu dhaqanto, iyagoo u fiirinaya maslaxadooda guud, in aan weyni ugu jirto, inkastoo ayan caadada iyo dhaqanku ahayn wax qoran, si Diinta Islaamka la mid ah ayay ugu dhaqmaan. sida Dawlado waaweyn oo Ingiriisku ka mid yahay ay ugu dhaqmaan, waxaana maamuaa Duqowda iyo ragga indheergaratada ah.

Xagga Garsoorka haddii aan u bayrno, si aad ah loogu shaqayn jirey caadada. iyagoo ku magacaabi jirey «Xeer khaas ahaan waxaa xeerka looga dhaqmi jirey, meelaha Baadiyaha ah, oo bilaanka ka fog, maxaa yeelay, had iyo jeer dacwooyin waaweyn oo xataa dad la dilay iyo dhaqan la kaa qaaday. ayaa baadiyaha ka dhacaan, iyadoo beledka aadistiisu, ama kharaj badan keenayso, amase lagaba yaabo in daahintu dhibaatooyin waaweyn u keento.

Haddii laba qolo ay dad iska dilaan, waxa markiiba soo dhexgeli jirey Duqowda deriska labada qolo u ah. waxayna ku qancin jireen in aan dagaal dambe loo noqon, waxayna arrinta ku dhammayn jireen in dayo la kala qaato, iyagoo sii hormarinaya 10 halaad oo lagu magacaabi jirey «Rafiso» Magta inteedii kalana, muddo ayay u qaban jireen taasi waxay ahaan jirtey Garsoor aad u qaayo weyn oo Soomaalidu ku dhaqmi jirtey.

Mushkiloyinka yaryar oo laba qof dhexmara waxaa la horgayn jirey, nin masha'ikhda deriska ah ka mid ah, iyadoo laysla oggol yahay. Markii Sheekhaas go'aan gaaro. nin aan ku raali ahayni, wuxuu afmuggii ku oran jirey «Sharcu-Ilaahi cinda qeyrik Gartaadii waan ceshay»

Nin kale ee Culimada ka mid ah, ayaa gartaas mar labaad loo geeyaa. Haddii go'aankiisa la oggolaan waayo. Shiikh Saddexaad ayaa la horgeeyaa. iyadoo mar walba sidii nidaamka dacwaddu ahayd lagu socdo, taasoo ah,in horta hore dacwooduhu bilaabayo dacwadiisa. marka ku xigana dacweysanuhu ka jawaabayo, mar saddexaadkana Garsooruhu markhaatiyada dhegeysanayo, kaddibna go'aan kama dambeystii ah. ayuu soo saarayaa, go'aankaas saddexaad, nin waliba waa og yahay in uusan garta ka soo baxda celin karin ee uu kama dambeystii yahay taas macneheedu waa nidaamka caalamiga ah, ee Racfaanka ee maanta aaduunka oo dhami ku shaqeeyo. Soomaalidu na weligeed ku soo dhaqmi jirtey.

Nin odayaasha Soomaaliyeed ka mid ahaa ayaa wuxuu yiri: Haddii dacwo la ii keeno, shan waxyaalood ayaan go'aankeyga ku qaata ee bal mid lixaad ha lagu daro; muddaci muddacaa caleyhi marag dhaar iyo maslax).

GARSOORKA WAQTIYADII ISTICMAARKA

Garsoorka Dalkeenna waqtiyadii isticmaarkii xukumayey. magac kastaba ha wato wuxuu ahaa mid isticmaarka gacanta ugu jirta, sidii hadba isaga dani ugu jirto ayuuna ku maamuli jirey, wuxuuna weligii ku dadaali jirey, Ummadda dalka ku nool inuu dhaqan rogo, asagoo in yar yar ugu baabi'inaya intii uu karikaro, Diintii, Caadooyinka, dhaqankii iyo hiddihii dadku ku dhaqmi jirey, isla markaasna ku abuuraya intaas aan soo sheegnay oo waddankiisa lagaga dhaqmo.

Xagga Garsoorka wuxuu ku dadaalay in uu yareeyo awooddii Shareecada Islaamku Dalka iyo dadkaba ku lahayd. wixii dacwooyinka hoos ku xusan ku saabsan asagoo la wareegay, asagoo ku xukumay. sharciyadii dhulkiisa: dacwooyinka ciqaabta, dacwooyinka Idaariga, amase maamulka, dacwooyinka waaweyn ee Madaniga, dacwooyinka dagaalka ka dhexdhaca laba qolo, dacwooyinka dadka Soomaaliya u dhaxhay iyo dad ajnebi ah dhexmara wax kastaba ha ahaadeen amase qola kastaba ajnebiga ha ahaade.

Isticmaarku awoodda Garsoorka, asaga kaligii ayaa maamuli jirey, nin uu ka tala gelin jireyna ma jirinin. Maxkamadda Sare, Maxk. Gobolka iyo Xafiiska Xeer Ilaaliyaha, Rag caddaan ah ayaa madax u ahaan jirey, ilaa kacaanka dhalashadiisii looga soo dhowaado.

Isticmaarku midab kala sooc ayuu ku samayn jirey Garsoorka iyo Garsooradaba, sidaas darteed, Garsoorrada caddaanka ah wuxuu ku magacaabi jirey Garsoorihii caadiga ahaa (Ciudice Ordinario) Garsoorihii Waddaniga ahaana wuxuu ku magacaabi jirey, Garsooraha Shareecada (Ciudice Shareitico), asagoo ulajeedoodiisu ay tahay Garsoore aan caadi ahayn.

Sannadku markuu ahaa 1957, nin Garsoore ah oo Talyaani ah. lana oran jirey Dr Millano, Maxkamadda Rafcaanka Muqdisho Guddoomiye ka ahaa, dersine ka bixinayey xeerka Nidaamka Garsoorka, ayaa dersigii dhexdiisii wuxuu yiri Garsoorayaasha Soomaaliyeed awoodihii ay Garsoorka ku lahaayeen. waa laga wareejiyey waxaana ugu dambeeyey diyooyinka, oo loo wareejiyey Maxkamadda Gobolka

Sidaan horey u soo sheegnayna Maxkamadda Gobollada waxaa ka wada shaqeynayey Garsoorayaal Talyaani ah. Aniga nafteyda ayaa su'aal u jeediyey, waxaana iri: (Diyada shareecadu waxay u kala qaadday, diyo kas qof loo dilay ku saabsan, mid kas la'aan loo di-

ley iyo kuwokale. Diyo fudud iyo diyo culus, waxaana cad inaan Garsooraha loo wareejiyey uusan waxba ka aqoon qaybahaas. Sideeduu u xukumi doonaa? Xeerkeebuuse u cuskan doonaa? Jawaabtiisii waxay noqotay (Nin sharciga yaqaan ayuu kala shawrayaa). Su'aal baan ku celiyey oo waxaan iri maxaa Garsooraha sharciga aad u yaqaan loogu qaaday, haddii kan loo wareejiyey, marwalba nin aan Garsooreyahay u warsanayo, sidii qofkaas loogu xukumi lahaa? wuxuuna yiri waa amuur siyaasad ah)

Horey baan u sheegay in isticmaarku weligii ku talo jirey in uu baabi'iyo Diinta Islaamka, caadadka iyo dhaqanka wanaagsann ee dadweynaha Soomaaliyeed ku soo dhaqmi jirey, asagoo isla markaasna dalka iyo dadkaba dhaqan rogay, oo kuwii dalkiisa ku abuurayo, si uu uga dhigo dhul uu leeyahay, waxyaalo badan banaan ka sheegi karaynaaee warka dheeraantiisa ayaan ila habboonayn qisooyikaan gaaban waxaan idiinku sheegay, miisaa ahaan waana kuwo aan ka dooday, oo aan daahirsaday in aan ka soo horeedo waqtigoodii

Sannadku markuu ahaa 1954, Annagoo dhowr iyo toban Garsooree ee Soomaali ah, waxaa Xafiiskiisa noogu yeertay, Guddoomiyihii degmada Banaadir oo dhalashadiisuna Talyaani ahayd. wuxuuna nagu yiri: (Waqti dhow Waddankiinnu Istiqlaal ayuu qaadanayaa, waxaana idinka hor imaanaya mashaakil badan oo aan xeer u dhignayn, hadhowna idinka Garsoorayaasha ah xal'i idinka doonaya loona baahan yahay in aad xeer u heshaan, mashaakilkaas oo ka mid yihiin; Diyada, Yaradka, dhibaadda, Sooryada gabdhaha iyo wixii la mid ah.

Sidaas darteedna waxaa la idin farayaa in aad sharci u soo suubisaan. adinkoo misaal ahaan, ninkii la dilo Diyadiisa, qabiilkii wax dilay, guud ahaan ugu xukumaya, yaradkii ninka gabadhiisa la guursado, kii guursaday ugu xukumaya.

Jawaab ahaan waxaan ugu celinay: (Annagu Garsoorayaal ayaannu nahay, xeerkii waddanka u degsan ayaan wax ku xukumaynaa, ee ma ahin xeer dejiyeyaal) markaas kaddib xeer foolxun ayay samaysteen.

Qisadan yarta ah waxaa ka muuqata in shisheeyihii waddanka Siyaasaddiisa hayey, ay xata ilaa muddadaas kor ku xusan ay raadinayeen, wax xeer ku sheega oo ay ku kala geynayaan Ummadda is haysata, Garsoorayaasha waddankana ay gaashaan uga dhigtaan oo dadweyna-

ha tusaan,. in Garsoorayaasha Soomaaliyeed soo samayn sharcigaas, waanse ku gacan sayrnay

Garsoorayaasha Soomaaliyeed, guri iyo gunno midna ma lahayn mushaarkooduna waxay ahayd Garsooraha Shisheeyaha tiisa oo toban meelood loo dhigay meesheed, waa ka sii yarayd wuxuuna ku noolaa badeecadda waddankiisa iyo nolosha dadweynaha oo iska fududayd darteed.

Muddadii isticmaarka waxaan ku soo xirayaa, inaan Garsooruhu ku shaqayn jirin iraaddo iyo awood shacbiga soomaaliyeed u leeyahay, usan una shaqaynayn maslaxad iyo dano dadka waddanku ay wataan.. ee uu ku shaqaynayey, danaha isticmaarka iyo iraaddadiisa, dadkuna weligii ku ducaysan jirey: (Ilaahow naga qaad oo naga koryeel isticmaarka iyo waxa uu wataba). Ilaahayna ugu dambeyntii ka aqbalay.

WAQTIGII ISTIQLAALKA

Istiqlaal ku sheeggii muddadii dalkeenna uu maamulayey oo 9 sano ahayd, dadweynuhu wuxuu maleynayey, in arrimaha Garsoorku sidii hore ay dhaami doonaan, waxna laga beddelidoono, sida ay u maleysanayeen oo kale, in xaaladaha kale: Siyaasadda, dhaqaalaha, tacliinta iyo ammuuraha kale oo Ijtimaaciga ahi ay isu beddelayaan. Hase yeeshee taasu ayan dhicin, sababtoo ah, ilaa iyo kacaanka horyareydiisii, Garsoorka waxaa maamulkiisa hayey, nimankii shisheeyaha ahaa, oo waqtigii isticmaarkii maamuli jirey, waqtigaasoo ninkii Guddoomiyaha ka ahaa Maxkamadda Sare, laga saaray Guddoomiyanimadii looma diray dalkiisii.

Inkastoo ninkaas eryiddiisa, dhinac ahaan loo haystey, in ay tahay Garsoorkii dalkeenna oo la xoreeyey. xaqiiqdu waxay ahayd, in loo eryey siyaaso ay wadatay xukumadii markaas dhulka maamuleysay, iyadoo ulajeedday, in uusan Intikhaabka soo dhowi caddaalad ku dhicin,, maxaa yeelay, waxay ku tuhumsanayeen, in uu caadilnimo, uu ku xukuma dacwooyinka ka inaan kara Elesyoonahaas.

Hadalkayga waxaan ku soo xirayaa, in aan wax isbeddel ahi ka dhicin xagga Garsoorka muddadii sagaalka sano ahayd, oo kacaankii barakaysan ka horeysay, Istiqlaal ku sheegana dalku ku dhaqmayey, ha ahaato xagga xeerarka Garsoorka, amase xagga Garsoorayaasha ba

iskabadaa in wax iska beddelaane, waxaan orankaraa, in muddaqaasi ahayd tii ugu xumeyd. intii Garsoorka Dalkeennu soo maray. maxaa yeelay, boqolkii sano oo isticmaarku dalka maamulayey, ma ay dhicin, inkastoo awoodda Garsooraha Soomaaliga ahi u leeyahay ay xagga xeerka maxduud ay ka ahayo, haddana ma ayan dhicin in Garsooraha Soomaaliga ah lagu soo fara geliyo, kiis uu markaas faraha kula jiro, maxaa yeelay, taasoo kale way ka xishoon jireen shisheeyihii dalka maamulayey. Istiqlaalka musayafkaa intii aan haysanneyse, way dhici kartey ragga madaxda ahi in ay soo farageliyaan kiis khaas ah oo nin Garsoore ahi gacanta ku hayo, ilaa iyo intii uu Garsooraha ku qanciyo, inuu sameeyo: eex laaluush, qaraabokiil iyo wax la mid ah. Sidaasina waatan ugu xun oo waddan Caddaaladdiisa iyo horay u marintiisa lagu qarribi karo.

Waqtigii Istiqlaalka ayaa meel laba qolo ku dirirtay nin ku dhaawacmay Garsoore Soomaali ah ayaa dacwaddii qaaday, Ninkii dhaawacay geystay wuxuu ku xukumay 175 neef oo geel ah, asagoo waliba macaan ee aan is daaficin loogu yeerin waxna qiran, taasina ay ku wacnaya niman madax ah, oo Garsoorihii ku riixeen in uu sidaas sameeyo, nimankaasoo markaas awood u lahaa in ay Garsooraha wax yeeleeyaan, haddii uusan sidaas yeelin.

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Ninkii geela lagu xukumay Rafcaan ayuu qaatay markuu arrintii ogaaday. Maxkamadda Sare ayaa waxay xukuntay. in Maxkamadda Rafcaanka oo dacwaddaas awood u lihi kiiskaas ay gasho. Nin weyn oo masuul ahaa oo ninka geela loo xukumay ay qaraabo yihiin, ayaa Garsoore Degmo oo aan weligii Maxkamadda Rafcaanka ka shaqayn iska magacowday, in Rafcaankaas uu galo: Degmo aad u yar oo aan ahayn magaalooyinkii Gobollada oo Rafcaanka lagu geli jirey.

Garsoorihii oo Wasiirkii magacowday la ballamay ayaa Degmadii yarayd tegey, kaddibna asagoo aan waxba is shiddeyn,, Maxkamadna fariisan, dadna isu wicin, Rafcaanle iyo Rafcaansane midna, ayuu xukun uu maqsuud kaga dhigyo Wasiirkii magacowday soo qortay, una keenay, Wasiirkuna in loo fuliyo weydiistey.

Waxyaalihii waqtigaas Garsoorka Gudihiisa ka dhici jirey, waa waxaan la soo koobi karin, inkastoo aan ka mid ahaa Ragga Garsoorayaasha aima mabsuud kama ahayn, wax aan qaban karaana ma jirin, waana Caddaalad darradu kacaanku ka gilgishey.

WAQTIGII KACAANKA

Muddadii yarayd ee kacaanku dalkeenna maamulayey, ahaydna7 sano, waxyaalo waaweyn oo la taaban karo lana arkikaro ayaa Garsoorka iska beddelay, sida dabeecaddii, iyo habkii dhismaha oo dhan isu beddeleen. xagga siyaasadda. xagga dhaqaalaha, xagga taciinta, xagga amuuraha ijtimaaciga, xagga bulshada iyo dhan walba oo loo fiirsho.

Haddii aan waxyaalo yaryar ka taataabto waxyaalaha iska beddelay Garsoorka, waxaa ka mid ah kuwa hoos ku xusan:

1) Nin shisheeye ah jinsiyad kasta ha watee, waa laga dhawray imuu Garsoorka Dalkeenna sifo kasta ku soo dhexgalo, isagoo kacaanku waaya aragnimadiisa iyo waxyaalihii hore ee Soomaaliya ay soo martay ku taamilo qaadanaya waxaana Garsoorihii lagu aaminey, soo man Soomaali ah oo waddanno dibedda ah, iyo waddanka gudihiisaba wax ku soo bartay, Shahaadooyinka Sharciyadana wata.

Arrintaas shisheeyaha ka kaaftoonkiisu, ma aha Garsoore oo keli ah ee meel walba ee Dawladda laameheeda ka midaba kacaanku sidaas ayuu ka yeelay, iyadoo ulajeeddadiisu tahay, haddii aynu weligeen hawlaheena ay inooga shaqeeyaan dad shisheeye ah, goormaynu weexeenna qabsanaynaa, amase aynu si habboon u baranaynaa hawlaheenna? taasi waxay dhaqsay isku kalsooni iyo geesinnimo, dhallinyaradii Sharciyada soo baratay isku kalsoonaato, shaqadoodana si wacan uga soo baxaan;

Halkaan waxaan idiinku baraarujinayaa tirakoob yar oo aan idinku caddeynayo faraq ku jira, dadkii Garsoorka ka shaqayn jirey markii kacaanku dhashaya 1969, iyo inta uu gaaray maanta oo toddoba sano laga joogo:

	Sannadka	1969	Sannadka	1976	faraqa
1)	Garsoorayaal	110		230	120
2)	Kaaliyayaal	64		200	136
3)	Gaarsiiyayaal	50		150	100
		224		580	356

Ruux ahaan tiro koobkaas, iyo isbeddelka aad u weyn oo muddada toddobada sano gudaheeda ku dhacay, wuxuu ku tusinayaa sida kacaanku ihtimaan xoog leh u saaray, sidii Garsoorka waddanka aad ugu hormarin lahaa.

2. Xeerarkii Garsoorka ee kacaanka ka hor waddanka yiilley, oo tiro ahaanna u yaraa, tayo iyo wax tarnimaana ahaayeen kuwii isticmaarku horey danihiisa u degsadey, ay kana dhadhameysey inay ku jiraan waxyaalo danihiisa ahaa, waa laga wada beddelay, wax alla wixii aan dadka Dalka Soomaaliyeed, dani ugu jirin. Waxaa xeerarkaas ka mid ah: xeerka ciqaabka, xeerka habka ciqaabka, xeerka Nidaamka Garsoorka xeerka Jeelasha, xeerka Shaqaalaha iyo waxyaabo la mid ah. Xeerar cusub oo Garsoorka Dalkeenna aad muhiim uga ah hortiina booskooda Xeerar shisheeye. loogu shaqaysan jireyna, si degdeg ah ayaa loo sameeyey, Xeerarkaas oo ay ka mid yihiin: Xeerka madaniga ah, xeerka Habka madaniga, xeerka qoyska, Xeerka Garsoorka ka qayb galka Dadweynaha, Xeerka Iskaashatada Qoreennada, Xeerka Guddiga dhaxalka iyo xeerar kale oo wada muhiim iyo lagama maarmaan waddanka u ahaa. Warkii oo kooban, wax allawixii xeer Garsoor sheegta oo waddankeennu u baahnaa, amase danihiisa gaarka ahi ku jireen, muddadii gaabnayd oo kacaanku jirey, ayaa la wada sameeyey.

Xeerarka cusub oo intii kacaanku Dalka maamulayey haddii aan yare faaleyno waxaan orankaraa sida hoos ku qoran:

b) xeerka Qoysku, waa xeerka luqda Carabiga lagu yiraahdo (Al-Axwaal-shakhsiya) luqda Talyaanigana lagu yraahdo: Diritto Personale). waa xeer gooniiisa loogu camal fala, wuxuuna weligii dhinaca ku hayaa xagga Diinaha, sidaas darteed, ayaa dadyowga Diinta Caabuda, qalaba sidii Diinteedu qabto ugu maamulato; wuxuuna badiba ka kooban yahay sidaan horeyba u soo sheegnay: Nikaaxa, Dhaxalka, Dardaaranka, Waqafka, xannaanada Ilmaha. Nafaqada, iyo wixii kuwaas la xiriira. ujeeddada kacaanka uu ka lahaa xeerka qoyska sameyntiisa in Waddanka xeerar cusub guud ahaan loogu sameeyo ka sokow, waxaa ka mid ahaa,in haweenka Soomaaliyeed, oo qiyaas ahaan Ragga labagoor ku soo laabma, muraalkooda kor loogu soo qaado, oo ayan u muuqan in ay Ragga ka qiima yaryihiin. waxaana run ahaantii caddaatay, in shaqooyinka waddanka laga qabto ay qayb libaax ka qaateen, tan iyo intii kacaanku dhashay, niyadii haweenkuna kor u soo

kaaday raggina ay kaba shaqo wacnaadeen.

T) Xeerka Madaniga

Xeerka Madaniga waa xeer aad u ballaaran una nafci badan wuxuuna nidaamiyaa waxyaalo badan oo ku saabsan, maamulka iyo calaaqaadku u dhexeeysa dadka waddanka deggan dhexdooda, iyo dadka waddanaka iyo Dawladda, iyo dadka waddanaka deggan. iyo dadyowga shisheeyaha ah.

J) Xeerka Habka madaniga ah.

Xeerka habka madaniga ahi, waa xeer aad muhiim iyo lagama maarmaan ah, sababtoo ah, wuxuu fasirayaa oo sharax iyo caddayn u yahay xeerka madaniga ah.

kacaanku markuu qabtay waddanka, wuxuu ku tallaabsaday haddiiba, inuu waddanka u sameeyo xeerar kala gedaisan oo waddanka lagu maamulo, si uu uga xoroobo xeerarkii lagu maamuli jirey muddadii isticmaarka. iyo isticmaar la shaqaystayaalku haysteen kacaanku arrintaas iyada ah. waa ka gun gaarey, wax alla iyo wixii xeerar ah oo laan kasta oo Dawladdu u baahan tahayna, waa sameeyey, si degdeg ah ayuunaugu tallaabsaday.

x) Xeerka Dadweynuhu inuu ka qayb galo Garsoorka.

Kacaanku markuu arkay, in qaylo badani ka taagan tahay xagga Garsoorka, dadweynuhuna Caddaalad darro iyo laaluush aan meel dayad lahayn iyo musuqmaasuq sheeganayo maragna u noqotay, in Garsoorayaal fara badan iyo kaaliyayaal cad lagu qabtay. wuxuu u dhashayba ay ahaayeen danaha dadweynaha iyo maslaxaddooda guud. Sidaas darteed, wuxuu saaray «Xeerka dadweynuhu inuu ka qayb galo Garsoorka» Nasiib wanaag, sidii xeerkaasu u soo baxay, wixii qaylo iyo eed sheegadka taagnaa xagga Garsoorka way baabe'een, laaluushkii dalkoo dhan hortii caamku ahaa hadal hayntiisii waaba la waayey Garsoore dambe iyo Kaaliye la xirana, ama laaluush lagu qabtaana waqtigeedii wuu dhamaaday, Tallaabaaii fadligeedana kacaankii 21 Oktoobar 1969, ayaa iska leh.

Hadalkii oo kooban, dadweynihii Soomaaliyeed, markii ay ogaadeen in maamulkii Caddaaladdoodu gacantooda ugu jiro, oo qof kas-

ta oc iyaga ka mid ihiba, ka qayb geli karo Garsoorkii. ayay maqsuud ka noqdeen, caddaaladdiina ku kalsoonaadeen.

Siyaalahaa aan soo sheegnay. ayaa xeerarkaas iyo kuwo kale oo badan ulajeedadooda iyo waxtarkooduba ku dhasheen. Sidaas oo kale ayaana kacaanku meel kastaba Wasaaradaha, Wakaaladaha, Shirkadaha, Hay'adaha dawladda oo dhan wax alla wixii xeerar ah oo horay u markooda ku habboon ayuu u sameeyey, iyadoo xeerarkaas loo habeeyey, si run ahaan u waafaqsan; Hiddaha, Dhaqanka, Caadaadka, Diinta waddanka iyo Ummaddaba ku habboon kuna hagaagsan.

W. Q. Shiikh Maxamed Maxamuud.

Agaasimaha Waaxda Garsoorka.

AWOODD ISKU QABSI GARSOOR MAXKAMADEED

Sida la ogsoon yahay waddan kasta oo adduunka ka mid ah wuxuu leeyahay Nadaam Garsoor oo habaynaya awoodda Garsoor iyo xibnaha garsoorkaas sida ay u dhisan yihiin iyo mid walba awooddiisu inta ay la ogtahay, annaguna waxaan ka mid nahay waddanadaas, waxaanan leenahay Xeerka garsoorka ee soo baxay 22 seb. 1974 horayna waxaan u lahaan jirney X.N.G. Haddaba, mar haddii ay jiraan xibnahaas Garsoorka oo u qaybsan heer degmo, heer Gobol, heer Rafcaan iyo heer sare, waxaan laga fursanayn in ay dhacdo Awoodda isku qabsi, arrinta awood isku qabsigana waxaa habeeyey X.H.M.S. iyo HHC; hase yeeshee waxaan wax badan la kulmaa ama i soo mara Qareenada qaarkood oo ku doodaya markii ay Maxkamaddu soo saarto amar caddeynaya awood la'aan ama awood lahaansho in dacwadda loogu gudbiyo Maxkamadda Sare si ay u cayinto cidda leh awooddaas Gobol ahaaneed, iayda oo wax diiddo ama oggolaansho ah aan laga helin Maxkamaddii la yiri ayadaa leh awoodda, waxaana dhacday Maxkamadda Sare inay gasho waxyaabo caynkaas oo kale ah, go'aanna ay ka gaartay ayadoon dareensan haba yaraatee arrintaas.

Marka waxay nala noqotay inaan ku qoraa Majallada Xeerka si looga qoodo shaacana looga qaado.

Awood isku qabsi

Awood isku qabsi goormuu jiri karaa si ay Maxkamad Sare u soo dhex gasho? Awood isku qabsi wuxuu u qaybsamaa saddex qaybood:-

1) Tan hore waa in dacwad laga oogaa laba meelood oo xubnaha Maxkamadaha ka mid ah dabadeedna mid kastaaba ay tiraahdo aniga ayaa qaadaya oo leh awoodda qaadista, waxaana la yiraahdaa markii ay taasoo kale dhacdo iskupabsi «II jaabi ah» Positivo waxaana loo shardiyaa (A) in ujeeddada dacwadda la isku hayso isku mid tahay (b) in dacwaddii ay taagan tahay inta laga qaadayo awoodda la isku haysto.

Waxaa kale oo jirta haddii ay dooddii ku dhammaato Maxkamadhii mid ka mid ah Xukun kama dambays ah waxa baaba'aya dooddii isku qabsadka lamana aqbali karo wax dalab ah oo ku saabsan awood isku qabsi in la dhagaysto maxaayeelay waxaan jirin awood isku qabsi oo ka dhex taagan laba Maxkamadood.

Tan labaad waa inay labadii jaho ee Garsoorka oo awoodda isku

haystay ay diiddo inay ka tanaasusho ra'yigeeda oo ay ku dheganaato awoodda oo weliba ay go'aan ku soo saarto inay awooddaas ayadu iska leedahay ayna dhegeysan doonto dacwaddaas.

2) Qaybta labaad oo awood isku qabsi wuxuu imaan karaa markii dacwad laga oogo Laba maxkamo hortood dabadeedna mid kasta ay diiddo galidda ama dhegeysiga dacwadda, markaas waxa jira awood, isku qabsi saabi ah (negativo) markaasna waxaa loo shardiyaa awood isku qabsiga in la helo go'aan ka soo baxay labadii Maxkamadood oo caddeynaya awood la'aanta (Incompatenza) si loo ogaado Maxkamaddhii in awoodda ay diideen. Haddii anay sidaasi dhicinna Maxkamaddii kala saari lahayd awood isku qabsiga ma soo geli karto.

Qaybta 3 Xaad ee adood isku qabsiga waxay tahay:

1— Inay laba Xukun oo is burinaya ay ka soo kala baxaan Maxkamado. Qodobka 26 X.M.M. Wuxuu sj. caq u sheegayaa in uu awood isku qabsi jiri karo oo kali ah markii Maxkamado ay ku doodaan awood darteed.Sidaas si la mid ahna waxaa caddeynaya Q. 9 XHMC. Marka Xukunka Maxkamadda Sare ee ku saabsan caddeyn la haansho awood Maxkamaddeed ayadoon labadii jaho ee Maxkamaddu go'aan awood ku saabsan ka soo wadabixin waxaan dhihi karraa wuxuu khilaafsan yahay habka awood kala saaridda ee ku cad Q. 26 X.C.S. Isla mar ahaantaas soo gudbinta Maxkamadda Gobolka ay u soo gudbisey Dalab caynkaas ah isagana wuxuu khilaafsan yahay habka awood isku qabsiga Maxkamadeed.

Tillaabada noocaas oo kale ah waxay u muuqataa in ay degdeg tahay oo ay ka hor martay meeshii ay ku habboonayd oo ah in la helo awood isku qabsi buuxa oo oofsaday sharuuddaas aan kor ku soo sheegnay Waxaana wanaagsan in Garsoorayaasha qaba ra'yi kale in ay ku soo bandhigaan Majallada Xeerka.

Qore: Cabdullahi Daahir Barre

Guddoomiyaha Max. Gobo. Banaadir

Mushkiladu ma aha tadbiiqa Qaanuunka ee waxaa weeye habka leesu guursado waqtiga la joogo taasoo dooneysa in laga hortago si loo helo Qoys dhisan. Iminka waxaan tusaalooyin ka bixinayaa dhibaatooyinka ka timaada guurka, keentaana furidda.

B) In laba ruux is guursadaan iyadoon labada midna heysan Hanti iyo shaqo, oid ay la kaashanayaan ayna jirin, ayadow Ninkii ku leeyahay inantii uu guursanaayay Bisha soo socota ayaan Shaqo helayaa oo aan aqal gelaynaa ee guurkeygu ha noqdo mid qarsoodi ah taasoo ayna ku oran markii aad Shaqo heshid ee aad sameysid guri ayaan is guursaneynaa, markii Inantii uu ku qanciyo hadalkiisa khiyaaliga iyo Riyadda ku dhisnaa: kol kaas waxaa dhacda in ay is raacaan oo laba Ruux oo ay saaxiib yihiin u yeertaan. kuwaasoo ay saaxiib ku yihiin oo ay isku fikrad yihiin saas baa lagu mahrjyaa, waxaa dhacda markii ay ka soo wareegto qabitaankooda muddo dhan lix Bilood oo kaliya ee Ninkii shaqo heli waayo ee Inanta reerkeedina ogaado Meherka Qarsoodiga ah ayay Inantii reerkeed. Eryaan ayakoo ku Canbaareynaya Meherkaas qarsoodiga ah ee khiyaaliga. Inantii markii ay u timaado Ninkii ay arrintii usheegto ayuu ku yiraahdaa wax Guri ah oo diyaar ahj majiro sababtoo ah shuruudooda ay ahayd in ay Aqal galaan markii uu helo shaqo, Inankii wax shaqo ah ma helin, halkaas ayuu khaskii ka bilaawdaa oo ay Maxkamadda isla yimaadaan ayadow dacwooneysa in uu beenbeen ku Mehersaday debadeedna halkii ay isku furaan Awoodarro awgeed.

T) Waxaa dhacda in Ninku guursado isagoo shaqo heesta mushaarkiisu yahay 340 shilin ilaa 600 shilin oo aqal awdiisa ah la gale. dabadeedna naagtiina aqalkii ka soo cararto bil dabadeed oo ay Maxkamadda dacwad u soo qorato iyadoo ku daoodeysa in aysan aqal heysan marka loo yeero Ninka wuxuu ku jawaabaa aqal waan geeyay haddii doonayso Maxkamaddu ha soo Eegto, markii la tago guriga waxaa caddaata in uu Ninku heysto aqal awooddiisa ah ay doonayso naagtu Alaabta Guryaha Ja dhigto ee qaaliga ah taasoo aan ahayn Ninka awooddiisa sidaas ku dhacdaa furista.

J) Waxaa jirta in qoysaska qaarkood oo is qabaan jn aysan u Madax banaaneyn arrimahooda qoys ee gaar ahaaneed maxaa yeelay Ninka iyo naagtaba waxay ka dambeeyaan reerkooga mid walaba waxaa lagala taljyaa xagga Reerkiisa, haddii aan wax ka soo qaato xagga reerka

Haweenayaa waxaa dhacda in Ninka laga wato Afadiisa iyakoo waaa haqnaya amba ay aaddo reerkooda dibna aysan u soo noqonin wadashadaas amaba ka tagiddaba waxa ka dhasha khilaaf iyo is afgarasha waa. ugu dambeestii ay kula tagaan Ninka iyo Afadiisa sidaas oo kale kale waxaa dhacda in Ninka reerkiisa ayaguna ku yiraahdaan jska fur Naagta waayo nala ma heshiin karto.

X) Waxaa dhacda in dhallin yarada qaarkood ay isu guuriyaan Waalidadood markii ay mudda ka soo wareegto wada nooshadaas waxaa dhacda in ay is afgaran waayaan sababtoo ah iyakoo aan u bislayn mas' uuliyadda Qoyska ha noqoto xag dhaqaale ee ku culus asaga iyo reerkiisaba iyo bulshadow waxna u qaban karin saas bey ku kala tagaan.

Kh) Waxaa dhacda in Naagtu ay ka boodsan tahay danta oo ay doonayso dhar qaali ah dahab amase Ninku uu ka boodsan yahay dantiisa oo laeagtiisa uu ku bixiyo wax aan loo baahnayn oo ah khamri, qaad iyo Naaga kale oo uu la tunto ilaa intii ay ka dhacdo in uu bixin kari waayo masruufkii saasna lagu kala tago.

D) Waxaa dhacda in Ninka iyo Naagta ay ku kala Sarreeyaan xagga Tacliinta, Fikradda iyo da'daba, taasuna ay keento furitaan waayo lays kuma keeni karo.

Inkastoo ay jiraan sababahaas aan kor ku soo sheegnay Tirakoobka Sannadkaan 1976kii: guurka 5046 furitaanka 2560 isku Noqoshada Rajiciya 136 .

Qore Garsoore Axmed Mac. Xasan Jumcaale.

Maxkamadda Guurka iyo Furinka ee Dawladda Hoose

FAALOOYIN XUKUNNO KU SAABSAN

DACWADDA MADANIGA AH EE DAWLADDA DHINAC KA NOQON KARTO IYO XIRIIRKA KA DHEXEEYA XUKUNKA CI-CAABTA AH IYO DACWADDA MADANIGA:

Wuxuu Yaasiin Xaaji Xuseen ku qoray Majallada Xeerka cadadkaadii 9aad ee bisha Luliyo 1976 faalooyin xukunno maxakamadaha dalka ka soo baxay.

Sida runta ah Yaasiin aad iyo aad ayuu ugu mahadsan yahay tallaabadaas ay qaaday, waayo runtii, taasu waxay ka dhalinaysaa xeeryaqaannada dhexdooda doodo iyo faalooyin miro wanaagsan u keeni karta garsoorka iyo fiqigaba.

Sidaan filayo faallooyinkaasu waxay u qaysanaayeen labo qaybood. Tan hore waxay ku lug leedahay qaanuunka Lam. 14 taariikh 4.2.76 kaasoo sida runta ah maxkamadaha qaarkood si aan habooneyn u fahmeen.

Haddeynu ku noqono qaanuunkaas qodobkiisa hore wuxuu leeyahay «dacwoodaha madaniga iyo kuwa idaariga ah (civil and aministrative cases) ee Dawladdu dhinac k tahay waxaa awood loo siiyey Maxkamadda Badbaadada Dalka oo keli ah».

Shakj kuma jiro in uodobkaasu siiyey dacwadaha madaniga ah ee dawladdu dhinac ka tahay awooddeeda Maxkadda Badbaadada Dalka. Hase yeeshee noogaa waxaa faallo u baahan baad mooddaa, goorta la oran karo dacwad dawladdu dhinac bay ka tahay. Dhinacse maxaa loo ga jeedaa? Ma markay dhinac asal ah ka tahay dacawadda baa loola jeedaa oo qudh ah mise xataa mararka ay u dumeyso dhinac kalena waa la mid?

Waxay nala tahay dacwadda madaniga ah haddii dawladda lagu furto, ama cid kale ayadu ku furto, dacwaddaas iney dhinac ka tahay cidi iskuma hayso, waayo markaas waa dhinac asli ah, laakiin dacwadu haddaay dhinacyo kale ka dhexsocotey kaddibna dawladda la soo geliyo ama ay soo gasho iyadoo danaheeda ilaalineysa, markaas ayaa maanka galyaqaannadu ku kala baydheen.

Yaasiin wuxuu kala saarayaa markay dawladdu dhinac asli ah ka tahay dacwadda iyo marka ayan dhinac asli ah ka ahayn, oo ay goor dambe dacwdda soo gashay, oo marka hore ma ahee, marka dambe wu-

xuu qaabaa in dacwaddaasoo kale Maxkamadda Badbaadadu ayan lahayn (ka fiiri faalladiisaas qaybta hore).

Si kastaba ha ahaatee, annagu waxaannu qabnaa in dacwadda, haddayba dawladdu dhinac ka tahay inaan loo fiirin dhinac asli ah inay ka tahay iyo in kale ee awoodeeda waxaa leh Maxkamaddaas Badbaadada sida uu qorayo qaanuunkaas (lr. 14) kor ku tilmaaman sababtoo ah, waa mare: si guud ayuu u hadlayaa oo ma kala saarayo qaanuunkaas dhinac asli ah iyo mid kale. Waa mar labaade, kala saariddaasu xjkmad kumafadhido waayo, marba haddii dacwadda ay soo gasho dawladda dhinac kastaba ha la jirtee) ama ha la soo geliyo xukunka dacwaddaas ka soo baxaa xujo ayuu ku noqonayaa ama uu u noqonayaa. Sidaas baa kol haddii la kala saaro dantii xeerdejiyuhu ka lahaa qaanuunkaas lam. 14.4.2.75 u dhimaysaa.

Hase yeeshee, runtii waxay tahay, sida uu tilmaamay Yaasiin, in hirgelinta qaanuunkaas sidii loo rabay aan la samayn oo maxkamadaha badankood ayaan marin habka hufan oo caafimaadka qaba.

Tusaale ahaan haddeer, xukunkaas hore ee Yaasiin tilmaamay Wakaaladda Caymisku hor dhinac kama ahayn dacwaddaas, gadaalna dacwaddaas uma soo geljn, waayo doodda uu ku dooday qof dacwaddaas ku jiray in baabuurka dhibaatada geystay ku jiray caymiska, hadalkaas keligiis dawladda dhinac uga dhigimaayo dacwadda, waayo waa in si rasmi ah loo dalbadaa jney sharikaddaasu ka soo qaybgasho dacwadda, tallaabooyinka xeer habka uu qorayana la maraa markaas kaddib oo uu caymisku ka noqdo dhinac dacwadda ayey maxkamaddda ku haboonayd go'aankeedaas inay qaadato.

Maxkamadaha qaarkood sida runta ah waa iska mala awaalaan, markii dawladda la soo badal qaadaba, waxayna gocshaan inay dhinac ka tahay iyadoo run ahaan dhinac dawalddu ka ahayn.

Tusaale ahaan waxaa dhaeday dacwad saddexda maxkamadood ay ka weecdeen qaanuunka, dacwaddaasuna waxay ku soo kocban tahay Ninkna baabuur ninkii lahaa waday ka dhacay, markaasuu dacwag madani ah Maxkamadda Gobolka Bay ka furay isagoo dalbaya in loogu xukumo dacweysanahaas magdhow dhibaato ka gaartay baabuurkaas darteed. Dacweysanuhu waa diidsanaa usagoc ku doodaya in aanu ninkaas saarin kana warqabin, dhibaadana sidaas darteed isagaa isku keenay, baabuurkana khushigiisa uga booday. Maxkamaddaasu go'-

aan waxay ku gaartay, markii marag la dhgeystay inay ku xukuntay dacweysanaha magdhawga qaarkiis (Shs. 1000), sharikada caymiska oo aan qofna soo dhexgelin dacwaddaas iyaduna soo gelinna, lana dacweynna waxay ku xukuntay magdhawga qaarkiisii kale (2.000 shilin.

Haddaba labadii dhinac iyo Wakaaladda Caymiskuba rafcaan ayey u qaateen Maxkamaddaa Rafcaanka Bay, isagoo rafcaanlaha hore ka cabanaya in lagu xukumay lacagtaas aan lagu lahayn, kan labaadna saluugaya intii loo xukumay, sharikadda Caymiskuna ka doodaysa lacagta lagu xukumay iyadoo dacwadda dhinaca ka ahayn, dhinacna soo gelin.

Maxkamaddaas rafcaanku waxay qaadatay go'aan yaab leh, waayo waxay goysay, iyadoo cuskanaysa qaanuunka kor ku tilmaaman (LDr.14 taariikh 4.2.75 in dacwadda maxkamadda Badbaadada loo wareejiyo, markay caddaysay in xukunka Maxkamadda Gobolka baaba'yahay sababana waxay uga dhigtay in Maxkamadda Gobolkaasu awood dacwaddaas u lahayn. waxaase dhacday Maxkamadda Sare iyaduna inay ayiday xukunkaas Maxkamadda Rafcaanka kuna ayiday asbaabtiisa?!!!

Runtii Maxkammadda Gobolkaasu waxay ku gaftay inay xukunto qof dacwadda dhinac aan ka ahayn, layskumana soo qaadin (fiiri 77x. h.m.) oo Maxkamadda Rafcaanka waxaa la rabay in gofkaas ay saxdo. qaar jebiso xukunkaas oo magdhawga caymiska tuurto kaddibna wax ka tiraahdo dulucda dacwadda ee dacweysanaha iyo dacwoodaha ka dhaxaysa. Inse yeeshee Maxkamadda Rafcaanku iyadaba waa gaftay waayo: rafcaanka waxa laga soo qaatayba ma eegin ee waxay mala awaashay in dawladdu (sharikadda caymiska) dacwaddaas dhinac ka ahay. **Runtii dacwaddaas dawladdu dhinac kama ahayn sidaynu sheegnay Maxkamadda hoose magdhawgaas** ayey isaga xukuntay sidaas darteed **Maxkamadda Sare, haddii tii Fafcaanku** khaladkaas ku dhacday waxaa la rabay in ay saxdo oo baabi'iso xukunkaas Maxkamadda Rafcaanka. asbaabtaynu soo sheegnay dartood. umartana in mar labaad dacwadda qaaddo, saxdana xukunkaas Maxkamadda Gobolka Bay ee ma ahayn inay ayiddo oo ku ayiddo asbaabtiisa gafka ah.

Si kastaba ha ahaatee Maxkamadaha sharafta leh waxaa u fiicnaan lahayd in ya ka fiirsadaan qaanuunkaas lam. 14 taariikh 4.2.75 iyo goorta la dabiqikaro iyo tallaabooyinkay u baahantahay hirgelintiisu

Qaybta 2aad ee faalladaas Yaasiin waxay ku lug leedahay dacwadda madaniga ah markay raacsan tahay tan ciqaabta ah; iyo inay socon karto hadday dhacdo tan ciqaabta ahi iyo in kale iyo iney xoog ku

leedahay taas ciqaabta ahi tan madaniga ah markaasoo kale.

Yaasiin xukunkaas uu uga faallooonayo qaybtaas labaad si fiican meelaha uu wax ka sheegayo uma caddeyn, ra'yigiisana si cad uma bandhigine waa kor meeray. Si kastaba ha ahaatee, waxaad u malaysaa in Yaasiin qabo haddii dacwaddaas dhinaceeda ciqaabta ah noqday mid dhammaaday (Passato in giudicato) inaan rafcaan dhinaca madaniga ah laga qaadan karin. isagoo weliba tilmaamaya waqtiga rafcaanka la qaatay.

Runtii annaga waxay nala tahay in dacwadda madanlga la wadi karo qof kasta oo maslaxad ku leh in u bannaantahay in uu wado oo uu rafcaan ka qaato, hase yeeshee waxaa isbeddelaya oo qudh ah, habkii iyo nidaamkii lagu waday markii hore. Waayo markii hore waxay raacsanayd tan ciqaabka ah, haddase waa madani qeexan inkastoo isla maxkamaddii ciqaabka ahayd qaadayso dacwadda. Sidaas waxaan u leeyahay, haddii tusaale ahaan, dacwaddaas rafcaan ay ka qaadan lahaayeen eedaysanaha ama X.X. Guud; dhinaca dhibaatadu gaartay (Parte offesa) hadduu rabi lahaa inuu qaato usaguna rafcaan, waxaa waajib ku ahaan lahayd in uu usaguna la qaato rafcaankii isla muddada dacwadda ciqaabta tan ahna dhawro, waayo tanmadaniga ah markeer waxay la socotaa tan ciqaabka ah waxayna qaadanaysaa tan ciqaabka ah habkeeda meela yar yar mooyaane.

Qodobka 220(2)x.h.c. Wuxuu ka hadlayaa marka X.X. Guud iyo eedaysanuhu midkoodna qaadan rafcaan, ee dhinaca dhibaatadu gaartay rafcaanka ka qaato xukunka dhinaca madaniga ah. wuxuuna caddaynayaa. markaas oo kale in lagu dhaqi doono saldhigyada xeerka madaniga haddiiba la dabaqi karayo, oo tusaale ahaan, markaas oo kale, muddada rafcaanku waa soddon maalmood oo laga bilaabo maalinta dhinacaas xukunkaas la ogeysiiyo, haddaanse la ogeysiin xukunka dhinacaasu wuxuu rafcaankaas qaadan karaa hal sano dhexdood, laga bilaabo maalintii la faafiyey xukunka oo waxaan uga goleeyahay in la dabaqayo markaa oo kale qaanuunka madaniga lana wadikarayo dacwaddii dhinaceeda madaniga ahaa. haba noqdo dhinaca ciqaabka ah, hadduu doono mid dhammaaday waayo xaq ma aha in rafcaan dhinaca dhibku gaaray qaadankariwaayo, sidaasna xukunkii ku xirmo haddiiba eedaysanuhu ama X.X.I. Guud aanu qaadan rafcaan.

Waxaa haray inaanu sheegno in markaas oo kale, ee Xukunka dlhiniciisa ciqaabka ahi dhammaado, in dhinacaas Ciqaabka ahi xoog

ku lahayn dhinaca madaniga ah, waayo qodobka 403 X.M. iyo Qodobka 273,274 X.H.C. waxay ka hadlayaan dacwad madani ah oo asli ah oo gacnideeda loo qaadayo ee ma aha sidaan oo kale. Sidaas baa kolka Maxkamadda Rafcaanka ahi markay qaadayso dhinacaas madaniga ah oo kali ah u baari kartaa caddeyn cusubna moogu hor marin kara kana ra'yidhiiban kartaa dacwaddoo idil sidii Maxkamadda hoose, waayna ka soo saari kartaa dhinaca madaniga ra'yi khilaafsan kan Ciqaabta, oo xukunkaas dhiniciisa Ciqaabta inkastoo dhammaaday, dhinaca madanigii ma dhammaan, oo iney Maxkamadda Rafcaanku ka ra'yi bixiso waa waajib. awood bayna u leedahay inay falan-

qayso xataa kan ciqaabka ah si ay u soo saarto mid khilaafsan Xukunkii hore, iskhilaafka labada Xukuna iskhilaafeen markaas oo kale ma aha dalool qaanuunka ku jira ee waa ceeb ku lug leh hirgelintiisa oo waxa la rabay in Xeer Hadiyaha Guud ka [illegible] Rafcaan. Waayo inkastoo dacwadda labadeeda dhinac (Madani iyo Ciqaab) ka dhasheen sabab keli ah, hase yeeshee qulucdeedu weys khilaafsan tahay. Tan kalana, haddiiba qaanuunku siiyey dhibanaha inuu rafcaan qaadan karo Xukunka dhinaca ku saabsan Xuquuqdiisa madaniga ah macnahiisu waxa weeye inuu Maxkamadda Rafcaanka siiyey inay dacwadda wax ka tiraahdo dhammaanteed, sidii tii hoose wax xidhidhana aysan jirin.

Qore Maxamed Axmed Cumar

La taliyaha Maxkamadda Sare

DHALIILID XUKUN KA SOO BAXAY MAXKAMADDA SARE

Waxaan Guddiga sharafta leh u sheegayaa in nin la yiraahdo Naaraan Laaji Daanji, 31 jir ah, uu si sharci darra ah u naagaystay gabadha la yiraahdo Raxma Macow Xasan, 13 jir ah, kadib markii uu gurigiisa dhexdiisa kharma ku siiyey markii ay sakhraantayna uu naageystay.

Markii arrinta la keenay Maxkamadda Gobolka Banaadir wuu qirtay inuu gabadha naagaystay isla markaana wuxuu Xafiiska Xeer Ilaaliyaha Guud keenay markhaati caddaynaysa in eedeysanuhu gabadhaas kharma siiyay aqalkiisana la galay oo ku xidhay kana soo baxday iyadoo dhac dhacaysa iyo Refeerto muujinaysa in loo tegay Raxmo.

Caddayntaas aan Maxkamadda hor keenay way ku fiilaatay Maxkamadduna waxay eersanaha ku xukuntay 10| sano oo xarig ah markii ay u aqoonsatay inuu u gafay qod. 398 X.C.S;

Eersanuhu wuxuu xukunkaas ka qaatay racfaan, waxayna Maxkamadda Racfaanku ku xukuntay ka 7| sano oo xarig ah m arkii ay u aqoonsadeen inuu denbiila yahay.

Eersanuhu mar labaad ayuu rafcaan ka qaatay xukunkii lagu eedeeyey, hasa yeeshee Maxkamadda Sare si qaloocan oon sharciga waafaqsanayn u bedeshay qod. 405 X.C.S. waxayna ku xukuntay 2 sana oo xarig ah iyo 1.000 shiiin oo ganaax ah.

Haddaba haddii aan sida denbigu u dhacay fiirino taas oo kor ku soo sheegnay waxaa si dhab ah oon shak ku jirin u muuqata inuu u gafay qodobka 398 X.C. maxaa yeelay wuxuu qodobkaasi leeyahay: «Ninkii xoog ama handad ku fuula naag waxaa lagu xukumayaa 5 laga b laabo ilaa 15 sano». Qodobkaas xubintiisa labaad waxay leedahay: «Ninkii naag aan ahel u ahayn raal.nimo (naag waalan ama miyir la' oo suuxsan ama khamraysan amase aan qaan gaadha ahayn) ama saga dhiga qof uusan ahayn waxaa lagu ciqaabayaa 5 sano ilaa 15 sano oo xarig ah».

1. Haddaba haddii aynu rabno inaynu kiskan ku dabaqno qodobkaas waxaan inoo muuqata in eersanuhu gabadha uu kuday oos naagaystay, iyada oo miyir la', isla markaas ma aysan ahayn qaangaar oo waxay ahayd 13 jir.

2. Qod.405 X.C. waxaa looga dan leeyahay in la cirib tiro shar-

muudnimada oo ah in laga baayac mushtaro jir (jidhka) naagaha. Haddaba nin denbigaas ma gel. karo maxaa yeelay jirkiisa uma aha caado inuu nin ka baayac mushtaro ee waxaa geli kara naag oo qur ah. Balse aan u raacno maxkamuddu sida ra'y.geeda ah nin iyo naagba ay denb.gaas geli karaan, maxay maxkamadu u xukumi wayday Raxmo Macow oo maxaa ku kalifay inay Naaraan Laaji Daanj. keligi xukunto?

Waxyaalahaas oo dhan haddii aan f.iriyay iyo danta guud oo ku jirta inaan xeerka dalka u degsan la khilaafjn iyo inuu xukunku caddaaladda waafaqsanyahay, waxaan ka qaadanaynaa racfaan aan caadi ahayn xukunka Maxkamadda Sare ee uu ku eedaysanyahay Naaraan Laaji Daanji, anagoo codsanayna in la baabi'iyo xukunkaas khilaafsan xeerka iyo runta.

(Jaalle Dr. Maxamed Xasan Taani) Xeer Ilaaliyaha Guud ee Qaranka

FAALLO KU SAABSAN SHARCIGA QOYSKA IYO GARSOORKA DADWEYNAHA

Waxaan jacelahay inaan wax idiinka sheego Sharciyada soo baxay intii Kacaanka barakaysani jirey, kuwaasoo aan taataabndoono kuwooda aad qiimaha u leh. Qawaaniinta aad qaayaha u lihi wey fara badan yihiin, hase yeeshee waxaan ka soo qadanayaa inta khusaysa Maxkamadaha.

Xeerka Madaniga iyo Xeerka Habka Madanigu waxay mideeyeen Sharciyadii Gobolka Koonfureed iyo Gobolka Waqooyi lagala kala dhaqmi jirey, waxaanay fududeeyeen socodsiintii Caddaaladda.

Xeerka Nidaamka Garsoorku isaguna wax weyn ayuu u tarayaa Nidaamka iyo Habka Maxkamadaha iyo Wasaaradduba u shaqaynayaan oo hore uma jiri jirin qorshayn inta Garsoore iyo inta Kaale ee Maxkamadaha looga baahan yahay.

Hashe yeeshee ujeeddada aan ka leeyahay faaladan waxay tahay inaan wax ka sheego Xeerka Garsoorka Dadweynaha iyo Xeerka Qoyska.

(1) XEERKA QOYSKA:

Sida la ogsoon yahay 9kii sano ee ka horreeyey dhalashadii Kacaanka iyo intii Guumaystuhu Dalka joogay, waxa jirtey in Maxkamaduhu dhib weyn ku qabeen Garsooridda Qoyska, taasoo ay ugu wacnayd inaanu jirin wax nidaam ah oo la raaco oo u dhignaa Qoyska. Waxa dhici jirtey in Garsoore waliba uu ayido Kitaabka uu akhristay, taasuna ku ridday Garsoorayaashii jaahwareer, hase yeeshee iyadoo ay ka mid tahay guulihii waaweynaa ee Kacaanka barakaysani gaadhay waxa soo baxay Xeerka Qoyska. Xeerkaasu wuxuu mideeyey Kutubtii faraha badnayd ee Garsoorayaashu ku jaahwareern, islamarkaana wuxuu baabi'iyey khilaafkii badnaa ee dhexyaalay Garsoorayaashii.

Xeerkaasu wuxuu kaalin weyn ka qaatay dhismaha Bulshada Soomaaliyeed, maxaa yeelay hortii waxa dhici jirtey in Qoysku si fudud u baabi'i jirey koika labada qof isfuraan sabab la'aan ama ninku intuu doono kaguursado dumarka isagoon awood dhaqaaleed u lahayn, taasuna keeni jirtey inay lumaan caruurta Soomaaliyeed iyo halkaas in qoyski ku rogmado.

Hase yeeshee waxa dhacday in Afmiinshaarku ceebeeyo Xeerkaas isagoo sheegaya inaan cid isfuri kartaa jirin cid isguursan kartaana jirin.

Arrimaha Afmiishaarku sheegay waxa beeniyey Qodobada 13, 36 iyo 43 ee xeerkaas oo sheegaya in laysfuri karo laysna guursan karo.

Sidaas darteed waxaan leeyahay mar labaad Xeerkaasu wuxuu u dhashay ama u soo baxay dhismaha Bulshada Soomaaliyeed maxaa yeelay sida haantu gunta uga tolanto ayaa Bulshaduna ka dhisantaa Qoyska.

Intaa waxaan ku dari lahaa in Xeerka Qoysku si fiican uga hirgalay Degmada Burco kaddib kolkii aanu tababarro isdabajoog ah uga furnay Culumada iyo Guddiyaasha Xaafadaha, Maxkamadihii aad iyo aad uga nasteen dhibihii haysan jirey.

(2) XEERKA GARSOORKA DADWEYNAHA:

Waxa jirtey in laga faafiyey dacaayad Xeerka Dadweynaha kolkii uu soo baxay, taasoo la yidhi waxa Maxkamadihii la fadhiisiyey dad jaahiliin ah, hase yeeshee waqti yar kaddib waxa muuqatay in ruux kastaa fahmay ulajeeddadii laga lahaa Xeeraas, taasoo waafaqsanayd Warqaddii kobaad iyo tii labaad ee Kacaanka barakaysan. Waxa dhacday in markii Dadweynuhu fahmay inay beeneeyeen ceebtii ama eeddii loo jeedin jirey Garsoorayaasha iyo Wasaaradda Garsoorka labadaba, taasoo loo haystey inuu yahay ninka Garsooraha ahi nin keligiitashada ah oo wuxuu doono yeela wuxuu doonana qaata oon ahayn nin meesha u fadhiya Caddaalad. Hase yeeshee waxa dhacday in markii ay fahmeen ay dadkii ku faafiyeen wanaaggiisii. Waxa kaloo ay isku hanuuniyeen inay iska daayaan maragga beenta oo Maxkamadaha runta u sheegaan si Maxkamada ay ugu fududaato hawshoodu oo ay runta u helaan. Sidaas darteed Xeerkaas guul weyn ayaa laga gaadhay, guushaasna waxa iska leh Ilaahay iyo Kacaanka barakaysan.

Ugu dambayntii, labadaas Xeer kaalin weyn ayey ka galeen in la dhiso Bulsho Soomaaliyeed oo caafimaad qabta iyo in lagu xukumo Caddaalada iyo Sinnaan.

(Dr. Maxamuud Cabdi Axmed)

Guddoomiyaha Maxkamadda Degmada Burco,

Gobolka Togdheer.

JAMHUURIYADDA DIMUQRAADIGA SOOMAALIYEED

MAXKAMADDD GOBOLKA BENAADIR

MAGACA DADWEYNAHA SOOMAALIYEED

Maxkamadda oo ka kooban:-

1) Cabdullaahi Daahir Barre ———— Guddoomiye

2) Xaawa Cabdulle Nuur ———————Xubin ————————

3) Abuukar Xaaji Maxamed ———————— Xubin ————————

Waxay ka soo saartay

X U K U N

dacwadj madaniga ahayd ee ka dhaxeysay:
Caacsha Salaad Xersi-Qareen Xasan Sheekh Ibraahim-Dacwooto

I Y O

Cali Maxamed Xalane-Qareen Maxamed Cabdalla-Dacweysane-

SIDII WAX U DHACEEN

Dacwootada dacwadeedi taariikhdeedu ahayd 20. 11. 75, waxay ku soo weydiistay **Maxkamadda in loogu xukumo dacweysanaha** Maxamed Cali Xalane magdhaw lug jabtay, iyo kharajkii ka gaaray jabkaas, ayadoo qadarineysa magdhawgaas, ha la raaciyo kharajkii dacawada iyo xushmadii Qareenka. **Dacwootada waxay u cuskatay qod. 171 X. M;** Maxkamaddu doodi ay qabatay 22. 4. 76, labada dhinac waxay sheegeen **in ay isku dayayaan heshiis, Maxkamadda waxay muddo siisay ilaa** 6. 5. 76;

Doodii 6. 5. 76, labada dhinac waxay sheegeen in ay isku afgaraan waayeen **heshiiskii, dhinaca dacweysanaha wuxuu codsaday in** dacwada dib loo dhigo si uu u soo qoro jawaab celin una yeesho Qareen Maxkamadduna dacwadii waxay dib ugu dhigtay 13. 5. 76,

Doodii 24. 5. 76, Qareenka dacweysanaha Maxamed Cabdalla, **wuxuu keenay jawaab celin murtidiisuna tahay: In dacwadi aan la wadin**

maxaa yeela waxay khilaafsan tahay qod. 119/5 X.H.M. wuxuu ceebeeyeydacwa kordhiska uu sameeyey Gareenka dacwoodaha, warqadda takhtarka oo tirtiran halka taariikhda ku qoran tahay ay tahay meel la tirtiray (manomesso) intaas oo hordhac ah wuxuu weydiistay qareenka dacweysanaha in Maxkamadda ay go'aan ka gaarto, haddii weydiintiisa la diido wuxuu weydiistay in loo ogolaado in la dhageysto marag afar ah ee caddeynaaya in kolkii shufeerku shilka galay uusan shaqo dacweysanaha hayn ee iskii isaga watay baabuurka oo sidaa owgeed wax mas'uuliyad ah dacweysanaha ka saarneyn. Qareenka dacwooduhu wuxuu ku dooday in habka Sharciga ah ee loo baahan yahay in dacwadaha loo qoro uu yahay in la garto ula jeedada eeg. qod. 82 X,H,M., tan ku saabsan mas'uuliyadda dacweysanaha caddeynteeda, waxaa daliil cad ah in dacweysanaha Maxkamadda horteeda uu ku sheegay in uu hayo shiis doonayo taasoo macnaheedu yahay in uu ictiraafsanyahay mas'uuliyadda. Tan ku saabsan tirtirka warqadda dhakhtarka wuxuu sheegay in uu ku raacsan yahay Qareenka dacweysanaha hase yeeshee Maxkamaddu ha soo hubiso run ahaanteeda.

Maxkamadda waxay go'aan ka gaartay doodahaas oo waxay garatay in la aqbalin tan ku saabsan joojinta dacwada maxaa yeelay xubinta 5aad ee qod. 119 X.H.M, waa mid tandiimi ah (formalita') intaas waxaa dheer in qod. 133 X,H,M, uu ogol yahay dhinacyada in ay beddelaan dacweysanaha, tan ku saabsan daliilka dacwoodaha Maxkamadda waxay sheegtay in looga baahan yahay daliil dheeri ah, waxaa kale oo ay aqbashay in la dhageysto maragga uu weydiistay Qareenka dacweysanaha in la dhageysto Maxkamaddu waxay dib ugu dhigtay 7.6.76 si loo dhageysto maraggii dacweysanaha Maxkamaddu waxay dhegeysatay maraggii dacweysanaha waxayna sheegeen ayagoo dhaartay.

1) Sheekh Maxamed Raage, war u ma hayo shil uu galay baabuurka Cali Maxamed Xalane ee uu waday Abuukar Xayeesi, waxaana ogahay in baabuurkaas laga gadi lahaa nin la yiraahdo Xuseen Maxamed, markaas oo Xuseen asagoo tijaabinaya baabuurka sheegay in uusan freno lahayn, dacweysanuhuna wuxuu amar ku bixiyey in Shufeerka baabuurka geeyo garaashka Maxamed Luungo, hana ku shaqeynin baabuurka, maraggu wuxuu cadeeyey in uusan war u hayn waqtiga iyo meesha shilku ka dhacay. Maxkamadda waxay dib ugu dhigtay dacwadda 19.9.76 si loo dhageysto maragga haray.

Doodii 20.9.76 waxaa la dhageystay.

2) Cusmaan Maxamed Afrax, oo asagoo dhaartay sheegay in habeenkii arrinku dhacayey dacweysanuhu ku yiri raac baabuurkan ee loo wado garaash, Shufeerkii wuxuu igu yiri furaha waxaan celinayaa ka dib markii aan casheeyo, dabadeed waxaan maqlay in baabuurkii uu shil galay, aniga iyo Cali waxba nooma dhexeeyaan.

3) waxaa loo yeeray Xuseen Maxamed oo markii uu dhaartay dheegay: baabuurka shilka galay waxaan rabay in aan gato oo tijaabo ayaan u wadnay aniga iyo Shufeerka, waxaan ogaaday in baabuurku freno la hayn, sidi ayaan ugu soo celinay baabuurkii Cali Maxamed Xalane oo isla markaas amar ku bixiyey in baabuurka garaash la geeyo, subaxdina waxaan maqlay in baabuurkii shil galay. Qareenka dacwoodaha wuxuu u soo gudbiyey Maxkamadda:

Qoraal Booliska Nabadgelyada Wadooyinka:-

Xukun Maxkamadda Gobolka Benaadir (Madani ah);-

Xukun Maxkamadda Rafcaanka (Madani ah):-

Xukun Maxkamadda Sare (Madani ah):-

Xukun Maxkamadda Sare (Madani ah):- oo ka wada dhacay dacweysanaha, kuna lug leh isla shilkii dacwootada ku dhaawacantay;

Horay wuxuu u keenay warqad dhakhtar oo dhaawac muujinta oo tilmaamaysa dhaawac culus oo jab ah:-

Labada dhinac waxay weydiisteen in 7 casho gudaheeda ay ku keenaan qoraal gunaanadkii dacwadooda. Maxkamadduna waa ka ogolaatay:- Qoraal Qareenka dacweysanaha wuxuu gabagabeyntii daaficiisa ku sheegay ayadoo qoran in wax mas'uuliyad ah ee ka saaran Cali Maxamed Xalane dhaawaca gaaray dacwootada ayan jirin maxaa yeelay baabuurka markii uu shilka galay kuma socon danta iyo amarka dacweysanaha midna taasoo uu qirtay wadihii baabuurka, caddeeyeyna maraggii Maxkamadda la horkeenay, sidaas daraadeed qod. 160-171 X.H.M, meesha soo ma geli karaan, wuxuu Maxkamadda weydiistay in la diido dacwada dacwootada laguna xukumo makhaasiirtii dacwada iyo xuslmadii Qareenka.

Qareenka dacwootada gabagabeyntii dacwadiisa oo qoran wuxuu ku caddeeyey in uu ku taagan yahay weydiintii hore u soo sameeyey, waxaa kale uu ku adkeeystay qodabadii uu soo cuskaday ay yihiin kuwa

ku habboon dacwadan, qoraalkii booliska ee dacweysanaha, asagoo Maxkamadda horteeda heshiis ku dalbay, xukunnadii ilaa Maxkamadda Sare ee ku saabsanaa dadkii isla shilkaas dhaawacmay, dhammaan waxay muujinayaan in dacweysanahu mas'uul ka yahay dhaawaca gaaray dacwootada, maraggii Maxkamadda la horkeenay ma aha mid caddeynta aan kor ku soo tilmaamay burrin kara, sidaa daraadeed wuxuu weydiistay in dacweysanaha lagu xukumo magtii dacwootada, Makhaasiirtii dacwada iyo xukumaddii Qareenka.•

XEERKA IYO GO'AANKA

Maxkamaddu haddii ay dib ugu noqotay dooddii ay soo jeedlyeen albada dhinac iyo daliilladii ay Maxkamadda horkeeneen, ha noqodeen kuwo qoran oo ay ka mid yihiin warqadda dhakhtarka, xukunnada Maxkamadaha ee ku saabsan dadkii isla shilkan wa ku gaareen, ama ha noqdeen marag ay dhagaysatay Maxkamaddu oo wax ka sheegeen markii shilku dhacay wadaha baabuurka wadcigii uu ku sugnaa, waxaa lagama maarmaan ah in arrimahaas ayaga ah la kala caddeeyo oo la kala guro.-

Doodda kama oogna in baabuurka dhibaatada gaarsiiyey Caasha Salaad uu leeyahay dacweysane Maxamed Cali Xalane; sidoo kale waxaan doodu ka taagneyn in baabuurka uu waday nin la yiraahdo Abuukar Xayeesi u shaqeysanayey dacweysanaha; waxaa kale oo aan dood la gelin in darawalku uu khalad galay markii uu shilku dhacayey, maxaa yeelay dhinaca dacweysanaha difaacooda kuma dhisnayn arrintaas in kastoo maraggii dacweysanaha ay sheegeen in baabuurku freno la' aan ahaa:•

Difaaca dacweysanaha wuxuu ku dhisnaa oo kali ah waxyaalihii ku saabsanaa habka dacwada oo Maxkamaddu horay uga jawaabtay iyo in wadaha baabuurka markii uu shilka galayey uusan hayn shaqo uu leeyahay dacweysanaha Maxamed Cali Xalane.-

Kol haddii arrinku sidaa yahay waxa kali ah oo in la caddeeyo u baahan oo doddu ku wareegeyso waxa weeye su'aasha ah: «Ma yaha shilka uu geystay wadaha baabuurka, mid uu mas'uul ka yahay dacweysanaha? Maxey caddeeyeen markhaatigii dacweysanaha .

Markhaatigii 1aad iyo kan 3aad waxay sheegeen in Xuseen Maxamed uu doonayey in uu iibsado baabuurka shilka galay, ka dib markii

uu tijaabiyey uu ogaaday inuusan freno lahayn, kuna soo celiyey baabuurkii dacweysanaha oo markaas amar ku bixiyey in baabuurka garaash la geeyo.

Maragga 2aad wuxuu sheegay in baabuurka uu ku daray dacweysanaha si garaash loo geeyo, kolkaas oo shufeerkii yiri markii aan casheeyo ka dib ayaan furaha geynayaa, dabadeedna uu maqlay in baabuurkii shil galay.-

Haddii aan eegno mabda'a mas'uuliyaddatana oo ku cad qod. 171 X.M. ee leh: «qofka loo shaqeynayo wuxuu mas'uul ka yahay wax alla wixii dhib ah ee uu geysto ninka u shaqeynaya oo sharciga khilaafsan oo kuna geysto shaqadiisa dhexdeeda amase sabab ay leedahay shaqada» qodobka intiisa kale ka hadlid uma baahna haseyeeshee waxaa waxaa ka hadlid u baahan oraahda leh «uu ku geysto shaqadiisa dhexdeeda ama sabab shaqadu leedahay» maxaa la dhihi karaa sabab shaqadu leedahay? Sabab shaqadu leedahay waxaa la dhihi karaa wixii ku dhaco munaasabadda shaqada, oo uusan la yimaadeen qofka haddii uusan hayn shaqadaas.-

Taasna waxaa soo gelaya waxyaallo badan oo aan halkan ku wada sheegi karin; hase yeeshee tanu in ay tahay mid ka timid munaasabada shaqada iyo in kale, Maxkamaddu waxey leedahay tanu waa tilmaan tii ugu weynayd ee lagu masaaliyo arrinta tan, maxaa yeelay haddii uusan wadaha hayn shaqada tan, oo ahaa wadihii baabuurka, oo furihii hayey fursad uma heleen in asagoo amar la siiyey inuusan baabuurka ku shaqeyn, sii wato baabuurka, dabadeedna uu dad wax ku yeelo, taasu waa haddii la yiraahdo dacweysanahaayaa amar ku bixiyey in baabuurka la dhigo; wuxuuna ka bori noqon lahaa arrintaas haddii dacweysanuhu kala wareegi lahaafuraha darawalka ilaa baabuurka la sameeyo, kuna amri lahhaa inuu baabuurka u dhawaan ilaa laga sameeyo.-

Sidaa daraadeed ayey caddahay inuu dacweysanuhu mas'uul ka yahay arrintan.-

S. D.

Maxkamaddu haddii ay dhagaysatay doodihii labada dhinac;
Haddii ay aragtay wixii waraaqo ahaa ee galka ku jira;
Haddii ay araktay dhagaysatayna daliilihii labada dhinac;
Haddii ay araktay Qod. 160-171-218 X.M.

WAXAY GOYSAY

In wadihi baabuurka uu khalad sameeyey, maxaa yeelay waxaa la sheegay in baabuurka uusan fareno lahayn, khaladkaas wixii ka yimid uu mas'uul ka yahay ninki baabuurka lahaa oo ah Cali Maxamed Xalane (dacweysanaha).

WAXEY AMREYSAA

In dacweysane Cali Maxamed Xalane uu siiyo dacwooto Caasha Calaad Xirsi.

1) Shs. 22,000/— (labaatanlabakun —) oo ah magdhawga dhibta gaartay dacwootada.

2) kharajki dacwada iyo xusshmaddii Qareenka hadba intii ay noqdaan.

Ciddi aan ku qanacin xukunka waxaa u bannaan rafcaan muddada **Sharciga ah dhexdeeda.**

K A A L I Y E GUDIGA GARSOORKA

Cabdulqaadir Ibraahim 1)Cabdullaahi Daahir Barre

2) Xaawo Cabdulle Nuur

Xeer Wasiirka Dawladda iyo Arrimaha Diinta 20 Nof. 1976 Magacaabid Guddiga Xeer Dejinta iyo La-tashiga L. 99

W A S I I R K A

ISAGOO ARKAY: Xaashida 1aad, labaad iyo tan saddexaad ee Kacaanka;

ISAGOO ARKAY: Xeerka lambarkiisu yahay 61 soona baxay 10.3.-1975;

ISAGOO ARKAY: In lagama maarmaan ay tahay in la cusbooneysiiyo Guddiga Xeer Dejinta iyo La-tashiga ee xaruntiisu ay tahay Wasaaradda Garsoorka iyo Arrimaha Diinta Waaxda Xeer Dejinta.

WUXUU SOO SAARAYAA

Dekreetadan hoos ku qoran

Qodobka 1aad

Magacaabid

Waxaa la magacaabay Guddiga Xeer Dejinta iyoLa-tashiga oo ay xaruntiisu tahay Wasaaradda Garsoorka iyo Arrimaha Diinta — Waaxda Xeer Dejinta.

Qodobka 2aad

Guddiga wuxuu ka kooban yahay Sharciyaqaannada hoos ku qoran:

1.	Dr. Cabdirisaaq Cali Xaaji	Guddoomiye
2.	G/Dhexe Dr. Maxamuud Caseyr	Xubin
3.	Prof. Dr. Maxamuud Cali Daahir «Guure»	Xubin
6.	Dr. Shiikh Aadan Maxamed	Xubin
4.	Dr. Yuusuf Cilmi Rooble	Xubin

5.	Dr. Yaasiin Xaaji Xuseen	Xubin
7.	Dr. Yaslam Cabdalla Saciid	Xubin
8.	Dr. Ibraahim Xaaji Xaashi	Xubin
9.	Dr. Axmed Islaw Cumar	Xubin
10.	Dr. Manjit Singh	Xubin
11.	Cali Axmed Geelle	Xoghaye

Qodobka 3aad

Baabi'is

Waxaa la baabi'inayaa Guddigoo ku soo baxay Xeerka Lam. yahay 61 soona baxay 10.3.1975.

Qodobka 4aad

Dhaqan Gelin

Dekreetadan si degdeg ah bay u dhanqan geleysaa. waxaana lagu soo saari doonaa Faafinta Rasmiga ah ee Dawladda Soomaaliyeed.

Dekreetada kale ee lambarkeedu yahay 17 ee 22.1.77 waxay sheegeysaa in: Dekreetada Xubnaha Guddiga Xeer Dejinta iyo La-tashiga ee lagu magacaabay Dekreetada lambarkeedu yahay 99 soona baxay 20 Nofember 1976 waxaa lagu kordhinayaa Jaalleyaasha Magacyadoodu hoos ku qoran yihiin:

1.	Dr. Xasan Cumar Maxamed	Xubin
2.	Dr. Nuurta Xaaji Xasan	Xubin

Wasiirka Garsoorka iyo Arrimaha Dijinta

(Jaalle Dr. Cabdisalaam Shiikh Xusen)

THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE.

DECLARATIONS UNDER THE «OPTIONAL CLAUSE» OF THE STATUTE OF THE ICJ.

The international Court of Justice (hereafter refered to as the ICJ) is open to the States parties to the Statute of the Court (1) All memebers of the UN are ipso fact parties to the Statute, while non-members of the U.N. may become parties to the Statute on conditions to be determined in each by the General Assembly upon the recommendation of the Security Council (2). The Court is aslo open to non-members of the Statute subject to the conditions laid down by the Security Council, although in no case shall such conditions place the parties in a position of inequality before the Court (art. 35(2) of the Statute) On this context, the Security Council adopted resolution 9 (1946) on 15.-10.1946 which established a system of declarations uuder art. 35 (2) by non-parties to the Statute accepting the purisdiction of the Court (3).

The judicial work of the Court is two-pronged.

a) it decides on contentious cases submitted to it and in which it has jurisdiction (see below)

b) it gives advisory opinions on matters submitted under Art. 65 of the Statute of the ICJ and Art. 69 of the Charter of the U. N.

In contentious cases, the Court's jurisdiction is based on the consent of the Statutes to which it is open. Moreover the Court has the power to decide the question of its own jurisdiction (Art 36(6) of the Statute). The conсent of the states concerned usually comes or is acsertained by the existence of a special agreement (compromis) concluded by the parties or the matter concerned may be provided for in a compromisory clause in a treaty or a convention in force (4) or the states concerned may recognise the compulsory jurisdiction of the Court. It is the last from of aequisition of jurisdiction which concerns us here in this short paper.

The compulsory jurisdiction of the ICJ and its mode of acceptance is set out in Art. 36 (paras 2-5) of the ICJ Statute, which reads as as follows:

2. The States parties to the present Statute may at any time declare that they recognize as compulsory ipso fact and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

(a) the interpretation of a treaty;

(b) any question of international law:

(c) the existence of any fact which, if established, would constitute a breach of an international obligation;

(d) the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of receprocity on the part of several or certain States, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations who shall transmit copies there of to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International justice and which are still in force shall be deemed, as between the parties to the present Statute to be acceptance of the compulsory jurisdiction of the International Court of justice for the period which they still have to run and in accordance with their terms.»

Accordingly as such declarations are made, the Court's jurisdiction becomes compulsory provided that the dispute is of a legal character and it falls within the specific types mentioned in the article.

By 31 July 1975, the declarations made under art. 36(2) and which have not expired by effluxion of time or been withdrawn before that date were 45. (5). Note in contrast, on December 1971, there were These countries are

Australia	Colombia
Austria	Costa Rica
Belguim	Denmark

Botswana	Dominican Republic
Cambodia	Egypt
Canada	El Salvador
	Finland
Gambia	Nicaragua
Hairti	Nigeria
Honduras	Norway
India	**Pakistan**
Israel	Panama
Japan	**Philippijnes**
Kenya	**Portugal**
Liberia	**Somalia**
Luchenstein	Sudan
Luxembourg	**Swaziland**
Balawi	Sweden
Malt	**Switzerland**
Mauritius	Uganda
Mexico	**U.K.**
Nettherlands	**U.S.A.**
New Zealand	**Uruguay**

It is interresting that no socialist country has yet made any declaration under art. 36 accepting the compulsory jurisdistion of the ICJ. The view of most Socialist countries is that any compulsory settlement of disputes between States runs counter to the well setablished principle of State Sovereignty. Since these methods of compulsory settlmente procedures are outside the control of the soveregn states, they are tantamount to usurpation of the sovereignty of States. This explains why the Soviet Union has, for example, opposed the compulsory judicial procedures for settlement of disputes arising under the Vienna Convention on the Law of Treaties 1969; and its refusal

to accept the compulsory jurisdiction of the IJC. The Socialist view of International law does not reject all norms of International law but on the contrary as Professor G.I. Tunkin (6) points out, «Soviet International lawyers are of unanimous opinion that general international law, regulating relations between all the States irrespective of their Social System, not only can exist, but has good prospects of progressive development». He further mentions that it is true that «The Soviet Union did not except all the norms which at the time of her emergence were considered as norms of general international law. But the Soviet Union refused to recognise only reactionary norms such as norms relating to colonial domination, spheres of influence etc.»

This view is also held by emerging nations of third world which were born in the last twenty years. On soveriegnty V.A. Vassilenho (7) states that «independent as they are, soveriegn states must volontarily and on the basis of equality enter into mutual relations in the course of which general norms of international law are created and particular rights and obligations are given rise to. In this process, the State cannot act arbitrarily, disregarding obligatory norms and principles of international law worked out by States themselves in in their own interests. And there is no contradiction here between sovereignty and international law». He geos on to say that if the relations among states are based on the principles of volutariness, equality and mutual benefit and if the results of relations satisfy and secure the interests of the States, this means the strenghening of its sovereignty and is not limitation but realization of its sovereignty. Novertheless the fact still remains that the socialistcountries regard the compulsory settlement of disputes as a limitation of State's Sovereignty. Professor S.B. Krylov, (8) a Soviet jurist, talking about the countries which accepted the compulsory jurisdiction of the ICJ says that: «The USSR is not one of their number and did not give the under-taking under Art. 36 (2) of the Statute, on the grounds that the jurisdiction of the Court should be voluntary. Many states made their recognition of the compulsory jurisdiction of the Court subject to reservations which almost nullified it.»

Somalia has made a declaration under the so-called «Optional Clause» (art. 36(2) of the Statute of the ICJ) on March 25, 1962. So far as I could ascertain, this declaration is still in force and it has been included in the ICJ yearbook of 1974-75 at P. 74. The declara-

tion runs as under:

Declaration made by the then Foreign Minister of the Somali Republic on 11.4.1963 (Note — Somalia joined the U.N. on 20.9.1960) «I have the honour on behalf of the Government of the Somali Republic that the Somali Republic accepts as compulsory ipso facto, and without special agreement, on condition of reciprocity, the jurisdiction of the International Court of Justice, in conformity with praragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to terminate the acceptance, over all legal disputes arising other than disputes in respect of which any other party to the dispute has accepted the compulsory jurisdiction of the International Court of Justice only in relation to or for the purposes of the dispute, or where the acceptance of the Court's compulsory jurisdiction on behalf of any other party to the dispute was deposited or ratfied less than 12 months prior to the filing of he application bringing the dispute before the Court.

The Somali Republic aslo reserves the right at any time by means of a notification addressed to the Secretary General of the United Nations, and with effect as from the momement of such notification, either to add to, amend or withdraw any of the foregoing reservations, or any that may hereafter be added.

Mogadisho, 25 March 1962.)»

The Somali declaration is similar to a number of ther declarations made under art. 36(2) of the ICJ Statute. It makes out a number of points which would discussed more widely. The salient points of the declaration are:

(b) It rules as unnecessary any special agreements with respect to those issues which the jurisdiction of the Court is accepted.

(t) It makes the acceptance of the jurisdiction of the Court conditional on reciprocity. As could be seen below, this condition entails a number of legal issues and is very much used.

(c) It makes certain reservations in respect of disputes which any other party to the dispute has accepted the compulsory jurisdiction of the Court only for the purposes of this dispute and in respect of any

other declaration which was deposited or ratified less than a year prior to the application bringing the dispute before the Court. Both these reservations preclude any acceptance of the Court's jurisdiction made inorder to gain a favourable stand in realation to Somalia in any dispute which have to be taken to the Court.

(d) It sets out the right of the Somali Government to add to amend or even withdraw any of the reservations mentioned above in (c) by means of a note addressed to the secretary general of the U.N. These changes will be effective from the date of notifications:

(e) It clearly spells out that acceptance of the Court's jurisdiction may be withdrawn at time by notice, hence the declaration can be withdrawn.

RECIPROCITY

The majority of the present declarations in force are subject to a condition of reciprocity. Blacks Law Dictionary defines the use of the word reciprocity in international law as «to denote the relation existing between two states when each of them gives the subjects of the other certain privileges, on condition that its own subjects shall enjoy similar privileges at the hands of the latter state.» But here we are not concerned with the subjects of states but rather the states themselves who give certain privileges to each other on condition that the other states reciprocate. The effect of conditions of reciprocity on declaration accepting the jurisdiction of the ICJ can be seen below.

When State A makes a declaration subject to a condition of reciprocity, and State (B) seeks to invoke the compulsory jurisdiction of the Court against State A, State A has a right to resist the excercise of the jurisdiction of the Court by taking advantage of any wider reservations made by State (B) on its declaration.

The point is well illustrated in the decision of the ICJ Court in the Norwegian Loans Case (9) (preliminary objections) between france and Norway where France brought this claim against Norway under the «Optional Clause» on behalf of Franch holders of Norwegian bonds. Norway objected to the Court's jurisdiction on several grounds, including its reliance on France's declaration which stated a reservation relating to matters which are essentially within the Franch natio-

nal jurisdiction as understood by France. Norway, on a preliminary objection contended that although in has no reservation in its declaration, it has the right to rely upon the restrictions in France's declaration, and hence since the dispute is within the domestic jurisdiction of Norway' the Court has no judisdiction. The Court decided that its jurisdiction «depends upon the Daclarations made by the parties in accordance with Art. 36 (2) of the Statute on condition of reciprocity; and that since two unilateral larations are involved, such jurisdiction is conferred uqon the court only the extent to which the Declarations Coincide in referring it. A comparison between the two Declarations shows that the French Declaration accepts the Court's jurisdistion within the narrower limits than thte Norwegain Declaration, consequently the common will of the Parties, which is the basis of the Court's jurisdiction, exist within the narrower limits indicated by the French reservation». Hence the Court considered Norway is entitled, by virtue of the condition of reciprocity, to invoke the reservation contained in the French declaration.

Thus the condition of reciprocity dictates that jurisdiction is conferred on the Court only to the extent to which the two declarations coincide at their narrowest, But this bilateral effect does not apply in favour of a respondent state except on the basis of wider reservations actually contained in the claimant state's declaration The fact that the claimant state would, if proceeding had taken in the Court against it by the respondent state havee been entitled to reject jurisdiction, on the ground of a wide reservation in the respondent State's declaration, is not sufficient to bring into play the bilateral principle.

In the Interhandel Case (10) between the Switzerland V. USA, the US Declaration which was effective Aug. 26th 1946, contained the clause limiting the Court's jurisdiction to disputes «hereafter arising», while no such qualifying clause was contained in the Swiss Declaration which was effective July 28th 1948. On a preliminay objection by the U.S, it was contended that since the dispute in the case arose after the date of entry of the U.S. Declaration, but before that of the Swiss Declaration, the reciprocity principle requires that as between the U.S. and Switzerland the Court's jurisdiction be limited to disputes arising after the date of entry of the Swiss declaration (i.c. after july 28th 1948) because if Switzer-

land was respondent it could have invoked the principle of reciprocity and claimed, that in the same way as the U.S. is not bound to accept the Court's jurisdiction with respect to disputes arising before its acceptance. the Court rejected the U.S. objection deciding that «Reciprocity enables the State which has made the wider acceptance of the jurisdiction of the Court to rely upon the reservations to the acceptance laid down by the other party. There the effect of reciprocity ends. It cannot justify a State, in this instance, the United States, in relying upon a restriction which the other party, Switzerland, has not included in its own declaration».

RESERVATIONS

many declaration made under the «Optional Clause» include reservations excluding certain categories of disputes from the compulsory jurisdiction of the Court. An examination of these reservations reveals that they exclude, inter alia:

a) past disputes or disputes relating facts or situations which have risen before the declaration was made.

b) disputes for which other methods of settlement, such as arbitration, are available and can be used;

c) disputes as to issues coming within the domestic or national jurisdiction of the declaring State;

d) disputes arising out of war or hostilities;

e) disputes between the member states of certain political organisations such as the Commonwealth countries.

Starke on «Introduction to International Law» (11) argues that «too many of the reservations are merely escape clauses or conciously designed loopholes» and that «such a system of » Optional «compulsory jurisdiction verges on absurdity». But it should be noted that it is the prerogative of any state to first accept the jurisdiction of the Court which would entail that it has also the right to define how it accepts thie jurisdiction at the time of its acceptance. The concept of State sovereignty, the consensus of State opinion in international law, and the

underlying concept of the article being «Option» all suggset a wide latitude for the mode of State acceptance of the compulsory jurisdiction of the Court.

A case of a specially contentious reservation is the so called «automatic» or «self-judging» form of reservation contained in, for example, the U.S. declaration 12 of Aug. 1964. Proviso (b) of this declaration (known as the Connelly Amendment) reserves any «dispute with regard to which are essentially within the jurisdiction of the U.S.A. as determined by the U.S.A.» This been suggested to be incompatible with the power of the Court to settle disputes as to its jurisdistion (Art.-36(6) of the Statute) and that such a reservation is inconsistent with any proper acceptance within the meaning of the «Optional Clause» of compulsory jurisdiction. The «self-judging» reservation is also criticised on the hasis that it usurps the Court's power of deciding by ifself its own jurisdiction ifowever, it should be noted on the principle of reciprocity, suel. reservation could also be used by other States as against the declarant State whicl, sets in itsdeclaration such a reservation (see the Norwegain Loans Case supra). Moreover, in general, if a dispute between states relates to matters exclusively within the jurisdiction of the respondent State, it is not within the category of legal disputes referred to in Art., 36(2). But because of the adverse decision of the Court in the Norwegian Loans Case certian States which have made «automatic» reservations have withdrawn them.

The Somali declaration contains two reservations excluding (1) disputes in which the other State has accepted the compulsory purisdiction of the ICJ only for the purpose of the dispute, and (2) disputes where the other State has deposited or ratified its declaration iess than 12 months prior to the commencement of the proceedings in Court.

These two reservations in the Somali declaration are very similar to reservation (III) of the U.K. Declaration (3) made in 1.1.1969. However, it should be noted that the court has decided that a declaration made almost immediately before and for the purpose of an application to the Court is neither invalid, nor an abuse of the Court process (see the Right of Passage Case preliminay objections (14). These resenvations are not expressly permitteduncler Art. 36, in practice, however, it has been accepted that states may attach reservations to their declarations other than those referred to in Art. 36 (3).

JUDICIAL CHARACTER OF A DECLARATION

There has been some controversy over the juridical character of the declaratios made under Art. 36 (2). Such a controversy could be seen in the decision of the Court in Anglo Iranian Oil Case (U.K.V. Iran) ICJ Reports 1952 at p. 150, where the majority of the court on a contention by the U.K that a declaration is tantamout to a legal text and should be interpreted in such a way that a reason and meaning can be attributed to every word in the texe, decided that «the Iranian Declaration is not a treaty text resulting from negotiations between two or more State. It is the result of unilateral drafting by the Gov't of Iran, which appears to have shown a particular degree of caution where drafting the texe of the Declaration». Dissenting from the Court's judgement, judge Read stated that he did not accept the contention that the principles of International law which govern the interpretation of traeties cannot be applied to the Iranian Declaration because it is unliteral «... it was related, in express terms, to Art. 36 of the Statute, and to the declaration of other Statutes which had already doposited or which might in future deposit reciprocal declaration. It was intended to establish legal relationships with such States, consensual in their character, within the regime established by the provisions of Art, 36».

Also the international law Commission when considering «what agreements» were within the scope of its Draft Articles on the law of Treaties treated Declarations under the «Optional Clause» as being within them. However their final text omits the point, although as Harris in «Cases and Material in international Law» on P. 709 says «it is not clear that this is because the opinion previously expressed has been revised.»

TERMINATION OF A DECLARATION.

The value of a state making a declaration terminable uqon notice was demonstrated in 1954 when Australia withdrew its declaration of 1940 which had been valid for 5 years and then became terminable upon notice, and made a new one adding a reservation concerning pearl fishing off the Australian coast. At the time it seemed likely that Jaqan might bring a clain against Australia with this subject matter before the Court under «the Optional Clause». Australia's declaration (15) is now one deposited on 17 March 1975.

Another example of this point is the Canadian declaration (16) (deposited on 7.4.70) which added anew reservation on conservation. When giving notice of its 1970 legislation on Artic Water brought an immediate protest from the U.S. Canada terminated its declaration and made this new one with a new reservation excluding disputes concerning the proposed legislation. The Canadian explanation was

that its «new reservation... does not in any way reflect lack of confidence in the reflect lack of confidence in the Court, but takes into account the limitation within which the Court must operate and the deficiencies of the law which it must interpret and apply».

But if a matter has properly come before the Court under the optional clause, the Court's jurisdiction in not taken away by a unilateral act of the respondent State in terminating its declaration in whole or in part.In the Rights of Passage Case (preliminay objection) (supra) between Portugal and India, India made a first preliminary objection against a condition in the Portugese declaration, which inserted a reservation giving Portugal a right to exclude at any time any given categories of disputes, by notifying the Secretary General of the U.N and with effect from the moment of such notification India's objection, inter alia, was that such acondition gave a right to portugal to wthdraw from the jurisdiction of the Court a dispute which

has been submitted to it prior to such a notification. The Court decided inter alia, that «it is a rule of law generally accepted as well as one acted upon in the part by Court, that once the Court has been validly seised of a dispute, unilateral action in terminating its Declaration, in whole or in part, cannot divest the Court of jurisdiction.»

Art. 36(3) of the ICJ Statute allows States to make declarations conditional on certain time limit. Of the 47 Statute that had made declaration under the optional Clause in force by December 31, 1971, 21 declarations were terminable upon notice, 3 were terminable upon six months notice, 2 were terminable upon one year's notice, 7 were valid for a 5 year period which were automatically renewed in the absence of notice to the contrary before the expiry and one was valid for a single 5 year period. 12 contained no time limit and 1 was for an indefinite term.

It has been debated whether a declaration terminable upon notice (as that of Somala and another nearly 20 countries) is one that is made for a «certain time» within the meaning of art. 36(3). The practice of States seem to suggest so as nearly half of the States who have made declarations have included a provision of its termination or amendment upon a notification addressed to Secretary Ceneral of the U.N.

Another pertinent question is whether a declaration with no time limit (there are 12 such declarations in force now) or one for an indefinite term (as in the Honduras declaration) can be terminated? Harris (17) gives an example of paraguay which in 1938 after it had withdrawn fromthe League of Nations because of action by the League concerning a dispute between Paraguay and Bolivia which the latter was threaterning to bring before the Permanent Court of International Justice (the precurser of the ICJ) denounced its declaration under Art. 36(2) which contained no provision for termination. Six States including Bolivia, questioned the legality of this action However the Court Registry continued to list the declaration with other declarations until the mid 1950s, when it was omitted. But it is submitted that the compulsory jurisdiction of the Court comes as a result of States declaring to be willing to submit to it, revocation of such a declaration tantamount to the States wish in that it no longer accepts the jurisdiction of the Court is enough to remove the Court's jurisdiction eventhough the State did not express such an intention before in its declaration.

DEPOSITING THE DECLARATION WITH THE SECRETARY GENERAL

In the Rights Passage Case (2nd Preliminary Objections) Iidia contended that as Art. 36 requires not only the deposit of the Declaration of Acceptance with the Secretary General but also the transmission by the Secretary General of a copy of the Declaration to the Parties of the Statute, the Declaration of Acceptance does not become effective until the latter obligation has been discharged. The Court, however, decided that it is only the first of these requirements that concerns the State making the declaration. The latter is not concerned with the duty of the Secretary General or the manner of its fulfilment. The legal effect of a Declaration does not depend upon subsequent action or inaction of the Secretary General. Moreover unlike some other instruments, Art. 36 provides no additional requirement, for instance, that the information be transmitted by the Secretary General must reach the Parties to the Statute or that some period must elapse subsequent to the deposit of the Declaration before it can be effective. Any such requirement would introduce an element of uncertainty into the operation of the Optional Clause system.

Moreover, by the deposit of its Declaration of Acceptance with the Secretary General the accepting State becomes a Party to the System of the Optional Clause in relation to the other declarant States with all the rights and obligations deriving from Art. 36. The contractual relation between the Parties and the compulsory jurisdiction of the Court resulting therefrom are established, «ipso facto and without Special Agreement» by the fact of making the declaration. Accordingly, every State which makes a declaration of Acceptance must be deemed to take into account the possibility that, under the Statute, it may at any time find itself subjected to the obligations of the Optional Clause in relation to a new signatory as the result of the deposit by that signatory of a Declaration of Acceptance. A State accepting the jurisdiction of the Court must expect that an Application may be filed against it before the Court by a new declarant State on the same day on which that State deposits with the Secretary its declaration. It is on that very day that the Consensual bond which is the basis of the Optional Clause, comes into being between the States concerned.

REFERENCE

1) The Statute of the ICJ art. 35 (1)

2) The Charter of the Un art. 93

3) Resolution 9 (1946) of the Security Council could be found in ICJ year book 1974-75 at P. 36.

4) Resonne, «the Law and Practice of the International Court» 1965 Volume I.P.P. 333-334.

5) International Court of Justice Year book 1974|1975 PP. 49-97

6) Tunkin, «Co-existence and International Law» 95 Hague Receuel 1 at P. 51 (extracts in Harris).

7) V. A. Vassilenko Soviet Vearbook of International Law 1971 «State soveriegnty and International Law».

8) Pacific settlement of International disputes» by Professor S. B. Krylov in »International Law» (prepared by the Academy of Ssiences of the USSR, Institute of State and Law) at P. 393.

9) ICJ Reports (1957) at P. 9

10) ICJ Reports (1959 at P.6

11) Starke «Introduction to International Law» P. 466

12) ICJ Yearbook 1974|75 at P. 78

13) Ibid at P. 77

14) ICJ Reports (1957) at P. 127

15) ICJ Yearbook 1974/75 at 49

16) Ibid at P. 52

17) Harris «Cases and Materials on International Law» at P. 709.

by Ibrahim Hashi Jama LL.B.

THE NEW ADVOCATES LAW OF SOMALIA

On the 21st October, 1975 came into force the New Advocates law of the Somali Democratic Republic. According to the new law all advocates of the Somali Democratic Republic shall join to form an Advocates Cooperative The aim of this law is to organise the legal profession with the purpose of safeguarding the interests of the Somali people.

Before the new law on advocates came into force there were two different laws on advocates in force in the country, Legal Practitioners Rules No. 44/1957 in the nothern Regions of the Republic and Law No. 21 of 27.6.1958 in the sounthern Regions. The new law repeals these laws and with it also comes to an end the concept of «wakils» in the Somali legal system.

From the date of entry into force of the new lew the only persons that can practice legal profession are Advocates i.e. law graduates. It so happened, before this law came into force that persons who were not law graduates called «wakils» were permitted to appear in courts and defend thier cleints.

The new law however confines the legal profession to Advocates only. The main task and duty of an advocate according to the law is to give citizens and juridical persons the necessary legal aid by making use of all the means and ways provided for by the law, and to assist people in defending their rights in courts, using all statutory means.

The task of the of the advocates as numerated in Article 3 of the law are as follows:

1) The advocates shall defend their clients in the Courts in a responsible manner safeguarding the interests and rights of their clients;

2) They shall contribute in strengthening the Socialist legality and in broadening the legal consciousness of citizens;

3) Contribute towards establishing the truth in criminal caes by presenting all circumstances that can attenuate the criminal liability of the accused.

4) Defend the citizens in civil, famiy, labour and administrative cases, contribute to their clarification and wherever possible try that a settlement is reached between the parties.

5) Give legal advice to their clients and assist them in protecting their rights and interests, explaining to them the laws.

The Advocates Cooperative shall function under the overall supervision and control of the Minister of justice (Art. 4).

The Roll of Advocates shall be kept in the Supreme Court and shall be maintained by an Advisory Committee presided by the President of the Supreme Counrt. All applications for enrollment shall be dealt with by this Committee.

The Conditions for enrollment are:

1) The applicant should be a Somali;

2) He should believe in the principles of the Revolution

3) He should have completed the age of twentyone years;

4) He should be law graduate;

5) He should have passed the Bar Examination to be conducted by the Ministry of justice;

6) He should have completed six months training under a practising advocate;

7) He should not have committed an offence punishable with imprisonment of more than three years. (Arts. 5,6,7,).

An advocate after enrollment shall, however have to apply to the Administration Committee of the Cooperative for membership of the Advocates Cooperative when he wants to practice as an advocate. (Art. 8).

Advocates from foreign countries may be authorized by the Minister of Justice to practice in the Courts of the Somali Democratic Republic provided that their countries of origin offer the same facility to the Somali Advocates. (Art. 10)

The new law lays down some strict disciplinary provisions i.e.,

I) Reprimand
II) Fine upto Sh. S0. 200
III) Suspension from work for not more than six months.
Iv) Expulsion form the membership of the Cooperative.

These disciplinary provisions shall be applied if an advocate does not fulfill any of the tasks provided by Art. 3 of the law or violates any of the following provisions:

1) discloses information received from his clients which may prejudice their interests excluding however any information that may concern National Security and National Unity.

2) accepts gratifiction form anyone other than whom he is defending.

3) Procures, directly or indirectly, any gratification for anyone employed or is in any way connected with the administration of justice.

4) takes any instructions from anyone excepe the person whon he is defending or his representative.

5) builds his defence by evading the law or resorting to fraud.
6) takes more fees than what is allowed under the law.
7) refuses to go to the place he is asked to by the advocates Cooperative for defending a case.

8) gets engaged in fraudulent practices unbecoming of the legal profession.

The disciplinary measures taken against the advocate may be appeoled to the Advisory Committee already mentioned herein the appeal shall be in the from of an administrative petition and shall be dealt with according to the procedure laid down in the Law on the Organisation of judiciary. The decisions of the Advisory Committee shall be subject to approval by the Minister of Justice.

The law gives every client the right to shoose his own advocate regardless of the place he works or lives. The client may ask directly for any advocate personally known or recommended to him. If he

does not specify anyone in particular the President of Cooperative may assist him in making his choice.

Before this law came into force an Advocate could charge his client any amount of fees he liked. But now the fee that an advocate may charge his client is fixed by the law and is laid down in the schedules attached to the law. The Courts can however increase the fees upto 1/3rd of the maximum laid down in the schedules under extraordinary circumstances. The fees has to be deposited with the Cooperative and cannot be paid to the Adcovate directly.

Now let us have a look upon the organs of the Cooperative. The Advocates Cooperative consists of the following organs;

a. The General Assembly

b. The Administrative Committee

c. The President

d. The Audit Committee

e. The Accountant.

The General Assembly has among others the following powers:

1. To approve the internal regulations of the Cooperative.
2. To elect the administrative and audit Committees.
3. To remove any advocate from the Roll.
4. To approve the development plans for the Cooperative.
5. To approve the yearly financial report.
6. To decide on the distribution of the income and administration of the funds of the Cooperative.
7. To decide on the branches of Cooperatives to be established.

The Administrative and the Audit Committees are elected by the General Assembly and shall each consist of three to four members and shall function according to the law and the decisions of the General Assembly.

The President of the Cooperative shall administer the Cooperative scientifically according to the law, and the decisions of the General Assembly and the Administrative Committee. The President along with the administrative committee shall recruit the necessary staff for the tivities of the Cooperative.

The Accountant shall be responsible for the proper accounts of the Cooperative and shall give the President of the Cooperative and the administrative committee periodical reports on the financial ac-Cooperative.

Ae already stated the clients shall deposit the fees with the Cooperativo according to Article 17 of the Annex attached to the law. Article 17 provides the nett income of the Cooperative after the deductions of the expenses, the income tax and the social and security funds shall be distributed among the members of the Cooperative according ot the ratio in which the earned for the Cooqerative Every member shall be entitled o recieve 50% of the income at the end of each month and the semaining 50% shell be given to him at the end of the year after relevant duductions, after the approval of the General Assembly.

The Social and Security Funds mentioned above shall be used for the activities of the Cooperative and the benefit of its members.

Going through the provisions of the law it is quite apparent that the new law on Advocates is yet another step in building the new Somail Socialist Society. We see for ourselves that work of the Somali Advocate shall have nothing in common with the unscruplous use of «all means and methods» to safeguard the interests of his client. Somali legal doctrine firmly rejects the use by an advocate of any illegal means and forms of defence running counter to law and morality. The Somali advocate must not build up his defence by evading the law or resorting to fraud. During the trail he must take all measures at his disposal to ascertain all the circumstances of the case exonerating the accused or the defendant and to tell the Court everything that corroborates the defendant's version or mitigates his guilt.

As we all known the advocates speeches and performance in Court have a great educational impact on the persons who attend the trial. So this makes him morally responsible for a correct ethical behaviour and actions af the persons he defends.

Thus to be able to cope with the noble tasks confronting him, the Somali Advocate shall have to fully dedicate himself to the administration of justice. He must provide an example of strict and undeviating observance of che Somali Laws, must constantly improve his political and legal knowledee and take an active part in the dissemination of the knowledge of law among the population.

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THE LAW THEORY OF SENTENCING

(In Relation TO ADULT OFFENDERS)

PART II

In the first part of this Article, the laws governing the punishments which a court can pass and how the sentence is to be decided have been discussed. In this part the main theories about punishment are analysed.

Ever since society has organised itself into communities and the need for keeping law or simply the social order was felt by the ruling classes, punishment was imposed on any deviations from the accepted modes of behaviour. An extensive number of theories have been developed to justify these measures. Today, the use of penal philosophy is to find out whether the purposes and objectives of punishment tally with the realised outcome. This is very difficult to ascertain since research into the field of efficacy of sentences has been scanty and is often hampered by so many invariables.

The question is then ar penal measures meant to be a deterrent, or an opportunity for reform or a form of elimination for the protection of society? Occaionally laws promulgating these measures specify explicitly the purpose of the measure e. g. Article 163 of our Penal Code stating that «Security measures applied against persons who are a danger to society,» which is obviously a way of restricting their danger from the rest of Society.

In this brief synopsis of the main theories of punishment, we would discuss the prevalent theories and then pass on to the concepts underlying punishment in Socjalist countries. There are two ways in which the basic theories of punishment are ascertained. These are:-

a) To look at the theories propounded by crimonologists, penologists and people dealing with penal measures.

b) To ascertain the basic assumptions of the legislation imposing penal measures.

The main aims of punishment are thus:

I. Retribution — The infliction of loss or suffering on the offender has been one of the early aims of punishment, comprising

the idea of «an eye for an eye and a tooth for tooth». so that the offender should atone for the crime that he has committed. In modern times, it is argued that while the punishment may have other aims its unpleasantness should not exceed what is «retributively appropiate». This from of «quantitive retribution» can be seen in modern statutes which fix statutory maxima for fines and improsonment and allow reduction of sentences by appellete Courts.

2. Deterrence — The rational of punishment has also contained the notion that those who undergo or witneess punishment will be deterred from offending in a similar manner Deterrence thus implies individual deterrence i. e. the individual who undergoes punishment may be deterred from committing a similaroffence; and general deterrence, i. e. the public at large would be deterred from committing similar offenees.

3. Elimination and prophylaxis — These are the temporary or permenent elimination of the offender from the community. Deportation and capital punishmente are its main forms and is used in serious crimes. Prophylaxis is a form of elimination whereby the offender e. g. a mentally subnormal offender, is detained in special hospitals or prisons. Here the idea is that the offender is temporarily or permanently removed from the society.

4. Social defence — The safeguarding of public order and the protcction of the community is also an aim of the penal system. This concept has recently been widely accepted. It implies a large scale endeavour to prevent crimonogenic situations developing and the building of institutions and social services for the prevention of crime. Although this concept may not imply any punishment as such it may include preventive detention and other sanctions necessary for the combating crime in its early tages.

5. Reform — The prevailing assumptions of modern penal systems in that punishment should be reformative in character and that necessary aids to reforming convicted offenders should be provided.

These are also a number of other aims of the penal system propounded new and then, such as providing compensation or action as dennuciation etc., but the main themes which recur in any discussion of the theories off punishment are of the reformatory humanitarian theme and the retributionist punitive theme.

Another pertinent question is then mhy should anyone be engaged in the task of defining the theories or the aims of a penal system? Infact the disussion of the aims of punishment and the philosophies underlying it is not a futile excercise but rather an appriasal of a ption inherent in its operation. Offcourso it is very difficult to analyse the efficacy of certain penal measunes but research into whether penal meaptions inherent in its operation. Offcourse it is very difficult to efficacy of certain penal measunes but research into whether penal measures provide the desirable results is of paramount importance. The reform of the criminal justice system have been based on a desire to modernise and bring in humanitarian and reform principles into the imposition of penal measures.

In a number of countries, the aims of sentencers and the objectives punishment are axplicitly set out in legislation. The same is true in most socialist countries. The theories of punishment are thus concretised into law and provide a guideline for the courts, and other institutions dealing with offenders. For example the Yoguslav Code of 1951 Art. 3 states the purpose of punishment as:-

I. to prevent activity perilous to society.

II. to prevent the offender from committing criminal offences and to reform him.

III. to excercise educational influence on other people inorder to deter them from committing criminal offences.

IV. to influence development of social morals and social discipline among citizens.

In the GDR, the tasks of the Penal Law are stated as to.

1. Protect the Socialist state and social order and cittizen against all criminal attacks.

2. Educate offenders properly in socialist discipline and responsible conduct in their social end individual life.

3. Prevent crimes and crimes and other violations of the Law, and to mobolise members of society to take an active part in the fight to drive crime out of social life step by step.

Again Art. 20 of the Fundamentals of Criminal Legislation of USSR and Union Republics says that «Punishment shall not only be chastisement for a committed crime but shall also have the aim of

correcting and re-educating convicted persons in the spirit of an honest attitude to work, strict observance of the law, and respect for the rules of Socialist community life, and also of preventing the commission of new crimes by convicted and other persons». Also Art. 1 of the Fundamentals of Corrective Labour Legislation of the USSR and the Union Republics defining the purpose of corrective labour is of a similar wording it could be seen then that emphasis is on education and reform of offenders.

In the case of Somalia, there has not yet been any comprehensive definition of the aims of our penal system. However the prevailing current is that of reforming offenders. An attempt to include a directive on reform has been made in Art. 3(2) of the judiciary Law. It states that in the in the pronouncement of sentences, the court should provide directives to convicted persons on how he could be reformed. Of interest here is a policy statement made by the President of the Republic. In a speech to the corrections Corps on April 18 1976, the President said, «the earlier policy of just keeping offenders in jail and punishing them should be changed to a new one b-ased on training, reform and re-orientation in line with the objectives of the new Somali Society».

Perhaps with introduction of a new Penal Code in the Coming few years, a more detailed difinition of the aims of our Penal system would be included.

By Ibrahim Hashi Jama LL.B

L'ORGANIZAZZIONE AMMINISTRATIVA TERRITORIALE DELLA REPUBBLICA DEMOCRATICA DELLA SOMALIA

Gli ordinamenti giuridici statuali moderni sono caratteizzati dalla presenza di una organizzazione amministrativa ben sviluppata e capillare, estesa su tutto il territorio statule. le. organizzazioni amministrative e l'attivita' da esse svolte sono (e' questa una cosa importante) regolat del diritto. Questo concetto di amministrazione pubblica. la' cui attivita' e' in tutto per tutto regolata dal diritto e' una conquista relativamente recente come e' del resto recente lo stesso concetto di Stato di diritto.

Nella realta' attuale degli ordinamenti statuali. non possiamo non accorgerci della grande importanza, asuunta dalle pibbliche amministrazioni che si accollano compiti sempre piu' vasti al fine di essicurare alle collettivita' destinatarie delle loro attivita,' il massimo del benessere materiale e spirituale possibile.

Se' cosi' vaste sono i compiti e le finalita' che lo stato deve raggiungere per mezzo della pubblica amministrazione, questa deve presentare una organizzazione rammificata e diffusa che copre e raggiunge i punti piu' lontani del territorio dello stato.

Possiamo dire che, le funzioni statuali non hanno e non avessero mai avvuto la stessa importanza, e, che funzione immancabile, potremo, dire co essenziale allo stesso concetto di stato, sia la funzione amministrativa, a tal punto che qualcuno ha chiamato gran parte degli stati della presente realta' stati amministrativi.

La conclusione di queste note a carettere generale, riteniamo che il nostro ordinamento amministrativo rientri fra i tipi strutturali a normazione pubblica, vale a dire l'amministrazione e' regolata da norme giuridiche pubbliche. Carattere saliente dell'amministrazione a tipo strutturale pubblicistico e' che essa presenta un forte componente di autoritarieta' rispetto al tipo strutturale a normazione comune.

Dopo questa rapida rassegna sull'organizzazione amministrativa in generale. volgiamo l'attenzione e vediamo da vicino il tipo di amministrazione positivamente adottata dallo stato Somalo, prescindendo, per ora, e rovesciando la tradizione che vole si tratti prima lo am-

ministrazione centrale ci occopiamo in questa sede delle organizzazione amministrativa territoriale.

Stando alla legge numero 52 dell'8 Giugno 1972 sulla riforma dell'amministrazione locale, all'articolo (2) si afferma che il sistema dell'Amministrazione locale addottata in Somalia si base sul centralismo democratico socialista. Il principio del centralismo democratico sancito solennamente all'articolo (2) della legge e' un principio a cui, seppure collocato nella legge sull' amministrazione locale si ispirano tutti gli atti e l'organizzazione statale. Esso significa che la derettive importite dell'autorita' centrale sono obbligatorie per le autorita' locali. d,altra parte le direttive degli organi centrali tengono in piena considerazione quelle che sono le condizioni e le pecularieta' locali.

In questo modo le autorita' preposte negli enti locali attuano quelle linee politiche e economiche impartite dagli organi dirigenti del governo centrale, in modo che con l'intervento del governo centrale si assicuri uno sviluppo armonioso dell intero teritorio nezional.

Secondo la legge di riforma all'articolo 3 intitolato ordinamento territoriale, il territorio della Repubblica Democratica Somala e' suddiviso in Regioni. ogni regione a sua volta si divide in Distretti e Villegge secondo l'estenzione della giurisdizione della Regione o del distretto.

Un primo merito della legge di riforma (che speriamo che sia la legge base anche in caso di futuro domifiche) e'che in essa ha trovato accanto agli organismi territoriali tradizionali una autonoma nilazione il Villaggio quale entita' territoriale indipendente, capace di darsi un proprio sviluppo economiso e sociale. Infatti se noi ci rifacciamo alla storia dei nostri enti territoriali ci accorgiamo che i villaggi quale entita' territoriale, non hanno avuto alcuna considerazione o interessamento, pur essendo essi fonti di ricchezza naziona le'Bene ha fatto il legislatore Rivoluzionario conscio come era, che, i villaggi erano di gran lunga piu' numerose rispetto alle citta', e che di conseguenza era ingiunsto non interessarsi delle masse residenti nei villaggi. A nessuno si nasconde l'importanza dei villaggi agricoli quali fonti produttori del reddito nazionale. Il fatto che la legge abbia menzionato espressamente i villaggi, tiene nel debito conto questa esigenza sentita specialmente quando si vuole edificare una societa' socialista.

Concludendo sul punto, oggi, la nostra amministrazione territor-

iale e' strutturata in amministrazione regionale, distrettuale e dei villaggi, e che ognuna di queste amministrazioni puo' svilupparsi secondo le sue possibilita' demografiche e le proprie risorse economiche.

Secondo la legge di riforme di amministrazione locale, le regioni, loro confini e loro capoluoghi sono stabiliti con decreto del presidente del Consiglio Rivoluzionario Supremo sua proposta del Segretario di Stato all'Interno; la stessa procedura siseggue per quanto riguarda l'istituzione dei Distretti. Va relevato che per quanto riguarda la modificazione o la soppressione delle Regioni e dei Distretti e necessario sentire il consiglio dei Segretari di Stato.

Va rilevato che qui c'e' una differenza per qaunto riguarda l'istituzione dove non e' necessario sentire il Consiglio Dei Segretari di Stato, mentre per la estinzione e' necessario il parere del Consiglio dei Segretari di Stato.

A noi sembra che trattandosi di un atto politico fosse necessario l'intervento degli organi politici dello Stato.

Aden Mohamed Ibrahim Docente di diritto Amministrativo nell'Universita' Nazionale Somala

LESIONE GRAVE E GRAVISSIMA COMMESSA DA MADRE DI FAMIGLIA

La lesione grave e gravissime sono disciplinati nel nostro codice penale nei commi 2-3 dell'art 440.

Questi due articoli come si sa insieme ad altri elencati nell'art. 35 del codice di procedura penale, l'emissione del mandato di cattura a carico dei loro violatori é obbligatoria e di conseguenza la libertà provvisoria non é concedibile (vedi l'art. 59/3 C.P.P,)

Accade però speesso che madre di famiglia commettino questi reati, donne che per futili creano la discordia fra di loro, nei quartieri, e si cogionano lesioni che all'avviso del medico sono valutati gravi e gravissime.

Il problema sorge quindi quando queste donne vengono arrestate delle stazioni di polizia competente e poi tradotte al carcere dopo la brevia convalida del loro arresto da parte del guidice.

Come madre di famiglia, quasi di sicuro c.e' hanno a casa hambini da badare che alla loro assenza sono soggetti ad irieperabili danni.

I Padri, pertanto corrono alle corti competenti inoltrando la richiesta di libertà provvisoria, risciesta motivata da comprensibili ragioni che come é prevvisto della legga (art. 59/3 CPP, in relazione agli artt. 35|b/7 CPP. e 440 2-3-CP,) vengono guistamente respine dalle corti.

A mio avviso questo é una lacuna del codice penale e di procedure che dovrebbe essere sopressa, eleminta e coretta. La madre di famiglia non dovrebbe essere arrestata per reati di questa natura, od i, peggiore delle ipotesi dovrebbe essere denunciati in stato di libertà Ormai nei centri di orientamento nei quartieri.

Vi sono istituiti le commissioni di conciliazioni popolari capacissimi di definire contraversie del genere di più gravi ancora, percio mais ad indirizzarle le contraversie di nature penalistica ed civilistice sorte fra madre di famiglia.

Penso quindi per una soluzione più sistematica ed urgente del problema inserire nel codice penale un articolo che vedrebbe disciplinare il caso in una migliore ipotesi per non vederci costretti a mandare in carcere madre di famiglia che hanno infronto

articoli come quello tarattato quanto ormai il codice permette concessione delle libertà provvisoria ad altri peggiori cas. come quello della truffa, peculato, falsita' in genere, etc.

Come soluzione, suggerirei aggiungere nel codice un articolo che venisse ad spiegars. in questo senso cause concernenti:

1) Le lesioni (semplici, gravi oo gravissime) cagionate da madre di famiglia debbono per prima essere trattato dalle commissione conciliatrice dei centri di orientamento.

2) In caso di mancato conciliazioni la commissione dovra trasmettere un rapporto alla corte competente ed al pubblico Ministero.

3) La corte, visto il rapporto della commissione puo infliggere la parte indicata come imputata, una multa fino a sh. so. 1000 per lesione semdice. fino a sh. so. 3000 per la lesione grave e fino a Sh.SO. 6000 per la lesione gravissima ed una eguale ammontare come risarcimento dei danni civilistici se é richiesta della parte offesa.

Dr. AbdirashidShiikh Ahmed Consigliere della Corta suprema

L'ESERCIZIO ED INIZIO DELL'AZIONE PENALE.

L'Organo che permamentamente promuove e che ha obbligo ad esercitare l'Azione penale, secondo il nostro Ordinamento e' il Pubblico Ministero. L'esercizio dell'azione penale avviene d'Ufficio da parte del P.M. purche' non sia necesaaria la richiesta (art. 81 c p), in questi casi, infatti, e' subedinato al verificarsi di una condizione indiazione penale, avente per oggetto l'accertamento del fatto — reato, o fatto guiridico che subordina all'avverarsi del verifica non impedisce la legale costituzione del processo, ma conduce ad un provvedimento di non doversi procedere. Tale condizione ricorre per alcuni reati e percio' questa condizione particolare e' la richiesta detla parte offesa nonche l'autorizzazione a procedere, che condiziona la funzione e qualita di persone. Il P.M. e' l'organo preposto per l'esercizio dell' azione penale, avente per oggetto l'accertamento del fatto — reato, identificazione dell'autore o partecipa e l'applicazione a costui della legge penale.

L'azione penale, infatti, il cui esercizio spetta al P.M. il suo scopo non e' solo quello di pervenire ad una condanna, bensi' di accertare il vero in ordine al fatto reato (criminoso) ed al suo autore, tanto e' ormai qiu' non si discute che il P.M. possa concludera a favore dell'imputato (revoca dell'imputazione, richiesta di non doversi procedere ad esempio).

L'azione penale e' un diritto soggettivo e strumentale attribuita al P.M. che ha obbligo di attivarsi non appena rivevuto la notizia del reato (denuncia, rapporto richiesta, referto o la relazione sommaria della polizia guidiziaria).

L'azione penale deve essere considerata come una attivita meramente processuale che tende all'instaurazione del processo ed all'attuazione della legge penale, essa e' un potere-dovere esercitato da un organo statuale (P.M.) sottoponendola ad un altro otgano statuale che e' quello guirisdizionale allo scopo di verificare l'esistenza o meno di un fatto che l'organo agente (P.M. ritiene sia reato e poi dal reato nasce la pretesa punitiva.

Orbene, come va concepita, che l'azione penale e' attivita. a far verificare se ricorrano, o meno le condizioni di legge per far con-

dannare o assolvare l'imputato, e' contraverso nella dottrina circa l'inizio della medesima azione.

Per alcuni autori, 'inizio dell'azione penale non equivale allinizio del procedimento in quanto essa puo' iniziarsi anche la sola attivita' corrispondente alla reppressione dei reati svolta dalla polizia giudiziaria, senza che sia necessaria (l'intervento del Ciudice o del P.M. cio' vale a dire che l'azione penale inizia anche con semplice della persona indiziota di reato da parte della Polizia giudiziaria o da perzio colla produzione dell'atto di imputazione da parte del P.M.

sona privata (art. 34-cPP).

Per altri autori, sostengono che l'inizio dell'azione penale corrisponda all'atto col quale l'organo a cui e' attribuito il diritto di azione penale (P.M.) manifesta la volonta' di esercitare tale azione, chiedendo al giudice una decizione su una determinata notizia criminosa. Cio' vuol dire, che il momento di inzio dell'azione penale coincide col momento iniziale del rapporto processuale che avra' inizio colla produzione dell'atto di imutazione da parte del P.M.

L'opinione seconda la quale, il momento iniziale dell'azione coincide con quella dell'acquisto della qualita di imputato e' diffettosa e viene obbietata anche se l'art. 73 cpp. sancisce che l'inizio dello azione penale coincide col momento dell'assunzione dell qualita di imputato come prevede l'art. 13 cpp.

La mia obbiazione va concolidata dalla idea per cui l'acquisizione dellaa qualita' di imputato per semplice stato di arresto ad opera di agenti di polizia o di persona privata, viene a privare il P.M. del Manopolio dell'azione penale che e' la sua prorogativa, iniziativa ed indipendenza dell'esercizio dell'azione penale, di questa allora sarebbero partecipi anche agenti di polizia e di persona privata che di loro iniziativa avessero proceduto all'arresto di una persona indiziata di reato.

In altri termini, ritengo che l'inizio dell'azione penale corrisponde al momento in cui il P.M. formula l'atto di imputazione e gli altri suoi provvedimenti relativi ad un determinato processo, e non con l'acquisizione della qualita' di imputato che puo' avere luogo nelle ipotesi antecedenti. quanto l'esercizio dell'azione penale e' affidato

al P.M. che e' propulsore dell'esercizio dell'azione medesima, essendo necessario che tale esercizio sia riservato ad un organo diverso da quello giurisdizionale in conformita' al sistema accusatorio disciplinato dal nostro codice,

Dr. Dahir warsame Mahamed Giudice

MARXISMO — LENINISMO E STATO

DI ABUKAR HASAN YARE

Vorrei occuparmi di alcuni tratti riguardanti la teoria generale dello Stato e il marxismo — Leninismo.

Prima dei classsci del marxismo — Leninismo la critica dello Stato e' trattata da molti filosofi, sociologi' guiristi. econimisti e uomini politici. Ne' tale critica e' nuova I filosofi come Platone, Aristotale, J.J. Raussa Lock e altri si eccupavano del problema dello Stato, risolvendo secondo le loro convinzioni ideoligiche.

V.I.lenin pralando della problematicita' della questione in argo-

Rivoluzione; (1), Il problema dello Stato assume ai nostri giorni una particolare importanza, sia dal punto di visto teorico che dal punto di vista pratico.

Questa frase di Lenin corrisponde alla realta' contemporanea e mette in rilievo la chiarezza e la validita' del marxismo per Quento concerne lo stato esendo in polemica con il rinnegato kautsky e Co.

Il Marxismo ha scoperto la natura e l'essenza dello stato, analizzando il processo dello sviluppo storico di ogni sociata' Marx ed Ento concerne lo stato esendo in polemica con il rinnegato kautsky e Co. gels applicarono ad ogni problema della societa' il loro metodo scientifico del materialismo storico e dialettico.

«La Storia di ogni societa' sinora esistita e' la storia di lotta di classi (2)». In questa proposizione si puo' racchiudere tutto il materialismo storico e dialettico: storico, perche' solo la considerazione dell' effettivo svolgimento dei fatti puo' farci interdere la realta' presente dialettica perche' sono le incessanti contraddizioni che la storia porta con se' e le lotte che ne conseguono, cioe' quelle che determinano tale svolgimento. E quindi appar un nuovo elemento: la lotta di classe. Partendo da questo punto Marx afferma che lo stato e' il prodotto dell'antagonismo della societa' divisa in classi e il suo amico Engels scrive in modo chiaro in «L'origine della famiglia, della proprieta' e dello Stato (3)»: lo Stato non e' affatto una potenza imposta alla societa' dall'es-

(1) Questa opera fu scritta nell'agosto — settember 1917

(2) Marx — Engels, Manifesto del Partito Comunista, scritta

(3) L'autore pubblico' questa opera nel 1884 a Zurigo nel 1848

terno e nemmeno la realta' dell'idea etica «l'imagine e la realta' della ragione» come afferma Hegel. e' piuttosto un prodotto della societa' giunta a un determinato stadio di Sviluppo, e la confessione che questa societa, si e' svolta in una contraddizione insolubile con se' stessa, che si e' scissa in antogonism inconciliabile che e' impotente a eliminare. Ma perche' queste classi con interessi economici in conflitto non distruggano se stesse e la societa' in una sterile lotta, sorge la necessita' di una potenza che sia in apparenza al di sopra della societa, che attenui il conflitto, lo mantenga nei limiti dell'ordine, e questa potenza che emana dalla societa' ma che si pone al di sopra di essa e che si estranea sempre piu' di essa e' lo stato».

Sviluppando questa teoria Lenin scrive nella summenzionata opera: Lo Stato e' il pdodotto e la manifestazione degli antagonismi inconciliabili tra le classi. Esso appare, nel momento, quando e nella misura in cui gli antogonismi di classi non possono oggettivuamente inconciliabile».

La teoria generale del Marxismo — Leninismo sullo stato del pressuposto che lo stato nasce in mezzo al conflitto delle classi. Inoltre Engels afferma che lo Stato e', per regola la Stato della classe piu' potente, economicamente dominante, che per mezzo suo diventa anche politicamente dominante e cosi' acquista un nuovo strumento per tenere sottomessa e per sfruttare la classe oppressa. Quindi lo Stato e' l'organo di dominio di una o piu' determinate classi.

Nella societa' classista borghese, la classe economicamente dominante e' la borghesia, che ha nelle sue mani tutti i mezzi di produzione, mentre la maggioranza viene sfruttata dalla minoranza, cioe' dalla borghesia. Spiengando profondamente la teoria del Marxismo sullo stato in modo storico e dialettico, Eegels scrive che non solo lo stato antico e lo stato feudale erano organi dello sfruttamento degli shciavi e dei servi, ma che anche lo stato rappresentativo moderno (4) e' lo strumento per lo fruttamento del lavoro salariato da parte del capitale.

(4) Lo Stato rapprsentativo moderno, si intende lo Stato borghese (La nota e' mia).

Il marxismo — Leninismo pienamente riconosce senza esitazioni i grandi meriti che aveva avvuto la classe borghese nel combattere in ogni forma la angusta organizzazione della societa' feudale (5)

Con il Suo attivo senso del commercio essa aveva spezzato i ristretti limiti del'economia medioevale, aprendo in ogni continente nuovi mercati, superando ogni barriera nazional e portando le sue idee di Progresso e di vicilta' con l'introduzione di macchine sempre perfezionate e di nuovi sistemi di produzione applicati su grande scale nelle proprie industrie, aveva potuto mettere a disposizione di una piu' vasta rete di consumatori prodotti prima riservati solo a poche persone' allargando cosi' i gusti e creando nuovi bisugni; con la sua dottrina del liberalismo (Constant e Mill) aveva saputo diffondere in ogni paese l'amore per la liberta', che valse a far sentire come un peso insopportabile la politica dei governi assoluti.

Ma se tutto questo appariva positivo riguardato dal punto di vista della lotta contro il sistema feudale, quando si trattava di dar giuco alle nuove forze che in esso erano sorte, di sostituire i vecchi rapporti di proppricta' ai nuovi che modificano la struttura giudidica degli Stati, questo sistema e la sua struttura s'andavano progressivamente trasformando in catene per i proletari.

Ma la borghesia non ha soltanto fabbricato le armi che le recano la morte, essa ha anche creato gli uomini che useranno quelle armi: i moderni proletari, L'epoca nostra, l'epoca della borghesia si distingue. perche' ha semplificato i contrasti tra le classi. Essa ha lacerato senza pietta' i variapinti legami che nella sociata' feudale avvincevano l'uomo ai suoi superiori e non ha lasciato tra uomo e uomo altro vincolo che il nudo interesse, lo spietato pagamento in contanti» (6).

(5) Nella sua lotta contro il regime feudale la borghesia propago' alcuni principi eterni nella natura degli uomini e per consolidare le basi del capitalismo nato nel XVI — XVII secoli vennero introdotte nuove dottrine nella scienza giuridica. Una di queste dottrine e' il giusnaturalismo.

(6) Marx — Engels il manifesto del partito Comuniste rapporti vengono mutarsi le contraddizioni materiali di esistenza di forze ancor piu' evolute, cosi' essi a loro volta divengono ostacoli al loro dispiegarsi e sono costretti infine a dissolversi al pari degli altri.

Lo stato non esiste dunque, lo disse Engels, dall'eternita' in un determinato grado dello sviluppo economico necessariamento legato alla divisione della societa' in classi, proprio a causa di questa divisione lo stato e' diventato una necessita'.

Evidentemente la divisione della societa' in classi porta con se' la lotta. Questa lotta, l'antagonismo che sorge dalla contraddizione insita in una societa' e' in un primo tempo sempre tra le forze produttive e i rapporti di produzione che esso ha generato. Questi ultimi sono caratterizzati dalla costante tendenza a conservarsi, entrando cosi' presto in conflitto con le forze produttive, il cui sviluppo piu' celere esige un parallelo evolversi di rapporti di produzione: questo contrasto causa, a lunge andare, un'epoca di rivoluzione sociale, dove le forme di diritto esistenti vengono distrutte per dare luogo a nuove forme piu' consone alle forze produttive che sono imposte. Ma quando in seno ai nuovi.

Allora, come si possono eliminare questi contrasti?

In verita' la risposta non si trova in Aristotele, in Polibio in Hegel o in Kelsen, ma la si trova nei classici del marxismo Leninismo. Solo la revoluzione socialista, secondo loro, capeggiata dalla classelavoratrice puo' sopprimere lo stato borghese, e naturalmente con i suoi contrasti, trasformando tutti i mezzi di produzione in proprieta' socialista.

Ecco perche' Marx scrive, condividendo l'opinione con il suo vecchio amico Engels, che la classe lavoratrice sostituira' nel suo corso di sviluppo, l'antica societa' civile in un'associazione che escludera' le classi e il loro antagonismo, e non vi sara' iu' potere politico poiche' il potere politico e' precisamente il riassunto ufficiale dell'antagonismo nella societa chanista (7).

Oggi nessuno puo' iguarare la dottrina marxista. La Grande Rivoluzione d'Ottobre nel 1917 dimostre, che la classe oppressa puo' mantenere il potere politico e creare una nuova societa' senza classi. La storia e' l'unico imparziale tribunale in cui riceve la sua sentenza ogni programma di riforma che sia svolto verso l'avvenire: come essa ha fatto giustizia delle astratte fantasie di un Moro, di un Campanella, di un Owen e di altri, cosi' ha dimostrato in pieno la validita' dottrina marxista.

Abucar Hassan Iare

Lo stato socialista puo' nascere anche dalla rivoluzione democratica della classe oppressa e di tutti gli strati progressivamente coscienti nei paesi in via di sviluppo.

Di questo ultimo ci occuperemo nel prossimo.

(7) Marx — Miseria della Filosofio, pubblicata nel 1847

٢ ــ يطالب الدول العربية والجامعة العربية :

ــ بمبادرة الدول العربية التى لم تصدق بعد على الاعلان العالمى لحقوق الانسان والاتفاقيات الملحقة به، الى سرعة التصديق عليها والانضمام اليها فورا.

ــ وبالتصديق على الاعلان العربى لحقوق الانسان ووضعه موضع التنفيذ، واتخاذ الاجراءات اللازمة لتكوين محكمة عدل عربية تتمتع بصلاحية الفصل فى القضايا المتعلقة بانتهاكات حقوق الانسان.

٣ ــ يدعو كافة المحامين العرب وكل المنظمات القانونية والنقابية والشعبية والسياسية وجميع المواطنين على الارض العربية ، للنضال من أجل اطلاق سراح المسجونين والمعتقلين بسبب الراى والعقيدة والضمير ، ومن اجل اعلاء حقوق الانسان العربى واحترام كرامته ، ومن أجل الغاء القوانين الاستثنائية.

٤ ــ ويكلف نقابات وجمعيات المحامين فى الوطن العربى بزيارة السجون والاطلاع على احوال المسجونين، والعمل على ضمان حقوقهم الاساسية وفقا لمبادىء حقوق الانسان وللقواعد الدولية.

واتحاد المحامين العرب اذ يبعث بهذا النداء الانسانى للحكومات والمنظمات العربية، يؤكد ان الحرية والكرامة الوطنية لانساننا العربى فى وطنه هما سبيل امتنا لتحقيق مجتمع العدل والكفاية. وهما طريقها لمجابهة التحدى الحضارى وللنصر فى معركتها مع الصهيونية والاستعمار الجديد.

شفيق الرشيدات

الامين العام لاتحاد المحامين العرب

نـــداء

من اتحـــاد المحـــامين العـــرب

حـــــول

المعتقلين والمحكومين بسبب الرأى والضمير

ان المكتب الدائم لاتحاد المحامين العرب، الذى اخذ على عاتقه واجب الدفاع عن الحريات العامة وحقوق الانسان وسيادة القانون فى الوطن العربى ، يعلن انضمامه الى الحملة الانسانية التى تقودها المنظمات الدولية حول اعتبار عام ١٩٧٧ عاما دوليا من اجل المسجونين والمعتقلين بسبب الـــرأى والضمير .

وهو اذ يتبنى مضمون هذا الاعلان واهدافه الانسانية العادلة .

١ ـــ يناشـــد الحكومات العربية :

ـــ اصدار العفو عن المحكومين السياسيين واطلاق سراح المعتقلين بسبب الراى والعقيدة ، والعمل على احترام وتطبيق مبادىء الاعلان العالمى لحقوق الانسان، واتاحة الفرص لجميع المواطنين للمشاركة الوطنية المخلصة فى معركة التحرير والبناء.

ـــ والغاء الاحكام العرفية والمحاكم الاستثنائية المنـــافية للمبـــادىء الدستورية السليمة والمتعارضة مع حرية الانسان وكرامته الانسانية وحقه فى التعبير وممارسته لحقوقه السياسية والوطنية والاجتماعية .

ـــ وتحريم كافة صور الكبت والقهر والقمع والتـــعذيب الجســـدى والنفسى، المنافية للكرامة الانسانية والوطنية . وتطبيق مبدأ سيادة القانون واستقلال القضاء العادى، وتمكينه من اداء واجباته بحرية تامة . وانهاء كل حالات الاعتقال الكيفى واطلاق سراح المعتقلين او احالتـــهم علـــى القضاء لمحاكمتهم محاكمات عادلة وعلنيه، يؤمن لهم فيها حق الدفاع. وتحترم فيهـــا حقوقهم الاساسية.

بالزواج والطلاق بواسطة السلطات القنصلية.

٤ ــ يسجل العقد فى اقرب محكمة او أحد المكاتب المخصصة لهذا الغرض خلال خمسة عشر يوما من تاريخ ابرامه ، وتمتد هذه الفترة الى اربعين بالنسبة لسكان البادية.

٥ ــ تقع مسئولية تسجيل العقد على الشخص الذى أبرمه.

٦ ــ كل من الا يلتزم بتنفيذ ما ورد ذكره فى النص السابق، يعاقب بغرامة مالية مقدارها مائة شلن صومالى.

٧ ــ تعتبر الرقابة على تسجيل العقد وفرض الغرامة المالية ضمن اختصاص محكمة الاستئناف للمقاطعة.

ويتضح من الفقرة الثالثة من هذه المادة ان القنصلية الصومالية هى المسئولة عن اجراء مراسم الزواج للصوماليين بالخارج سواء اكان زواجهم بصوماليات او اجنبيات وطبعا يراعى فى ذلك شروط انعقاد الزواج وشروط صحته طبقا لقانون الاسرة الصومالى والشريعة الاسلامية وتقضى المادة ١٤ من القانون المدنى الصومالى الرجوع الى القانون الصومالى فى حالة الزواج بين صومالى واجنبية او بين صومالية واجنبى بشرط ان يكون لاطرف الاجنبى ذكرا او انثى اهلا للزواج وقت عقد النكاح وفقا لقانون الدولة التى ينتمى اليها وهذا نص المادة ١٤ : (اذا كان احد الزوجين صوماليا وقت انعقاد الزواج يسرى القانون الصومالى وحده، فيما عدا شرط الاهلية للزواج .

ويترتب على قاعدة الاسناد هذه وجوب اتباع القانون الصومالى فى هذه المسألة وبالتالى تطبيق شروط صحة الزواج فى قانون الاسرة والشريعة الاسلامية على الزواج بين الصومالى والاجنبية او بين الصومالية واجنبى .

ومعروف به شرعا ان لصحة الزواج شرطان :

١ ــ حضور الشاهدين

٢ ــ ان تكون المراة محلا للعقد وفيما يتصل بتفصيل هذين الشرطين وشرحهما فانه يرجع بهما الى الشريعة الاسلامية التى هى من المصادر الرئيسية للقانون الصومالى حيث تقول المادة الاولى من قانون الاسرة : ــ

تطبق نصوص هذا القانون فى جمع الحالات التى يشملها ، وفى حالة عدم وجود نص معين تطبق الآراء الراجحه فى مذهب الامام الشافعى ثم المبادىء العامة للشريعة الاسلامية والعدالة الاجتماعية .

هيئة التحرير

اما اذا كان استحقاقه للحقوق التى يدعيها بمقتضى قانون العمل رقم ٦٥ الصادر فى ١٨/١٠/٧٢م فانه يجب ان تتوفى شكوته الشروط المنصوصة عليها فى المادتين ٣٣ ١ و ١٣٤ من هذا القانون قبل رفعها الى المحكمة المختصة.

وبما ان قانون رقم ١٤ الصادر فى ٧٥/٣/٤ جعل جميع الدعاوى المدنية او الادارية التى تكون الحكومة او احد مرافقها او الهيئات الهيئات والمؤسسات او الوكالات العامة طرفا فيها من اختصاص محكمة الامن القومى بدلا من المحكمةالعليا التى كانتسابقا مختصة بنظر الطعونفى القرارات الادارية النهائية فان على العامل المشتكى ان يرفع دعوى الطعن الادارى فى قرار الوكالة النهائى الذى يتظلم منه الى المحكمة المختصة وهى محكمة الامن القومى ذات الاختصاص غير العادى.

واذا كان غير قادر على تعيين محام لنفسه ودفع الاتعاب مقدما فان من حقه الاستفادة من مادة ٤ من قانون النظام القضائى التى تقرر الدفاع المجانى للمواطنين المعوزين.

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ورد فى رسالة وصلتنا من السلطات القضائية السويدية مجموعة اسئلة حول القوانين المتعلقة بالاحوال الشخصية المعمول بها فى الجمهورية الديمقراطية الصومالية ومن بين هذه الاسئلة ما اذا كان يوجد فى القوانين الصومالية اجراءات لصحة الزواج بين صومالى واجنبية يقيمان خارج الصومال وما اذا كانت هناك شروط لصحة الزواج بين صومالية واجنبى ؟

واجابة عن هاتين المسألتين : فان المادة الخامسة من قانون الاسرة الصومالى تنص على الاتى : —

١ — يتم عقد الزواج امام القاضى او من تفوضه وزارة العدل والشئون الدينية لذلك.

٢ — فى حالة عدم امكانية عقد الزواج امام القاضى او من فوضته الوزارة لذلك، يجوز عقده امام من تتوفر لديه الدراية التامة بأحكام الشريعة الاسلامية.

٣ — بالنسبة للمواطنين الصوماليين بالخارج، تنفذ كافة الاجراءات المتعلقة

أسئلة وأجـوبة شرعيـة

يسأل المواطن حسن عمر تكر عن الطـرق القانونية التى تسمـح لـه بمطالبة حقوقه المستحقه على وكالة التنمية الزراعية التى كان يعمل بها من سنة ١٩٧٠م الى ١٩٧٣م والتى رفض مديرها أن يصرف له علاواته التـى استحقها بالقانون طيلة هذه المدة.

وهل من حقه الالتجاء الى المحاكم للحصول على حقـوقه واذا كـان الجواب بجواز الالتجاء الى القضاء فما هى الخطوات التى يجب عليه القيام بها للمطالبة بحقه امام المحاكم ؟

من حيث المبدأيجوز لكل عامل بالهيئات والوكالات والمؤسسات العامة المطالبة بحقوقه المستحقة على الجهة العامة التى يعمل بها سواء أكانت هذه الحقوق علاوات او معاش او اى حق آخر استحق بمقتضى القوانين والمراسيم واللوائح المعمول بها فى الجمهورية وذلك اذا لم تصرف له بمـوجب النظام المالى المتبع به فى الوكالة التى يعمل فيها.

وتكون مطالبة هذه الحقوق عن طريق الشكوى الادارية التـى يرفعها العامل المتظلم الى رئيس الوحدة او الوكالة التى يشتغل بها واذا لم ينصفه قرار اورد المسئول عن الهيئة وكان قراره بالرفض نهائيا بشأن طلبات العامل المشتكى او سكتت جهة الادارة العامة عن الرد عليه لمدة ستين يوما مـن تاريخ رفع الشكوى اليها فانه يكون من حق العامل المتظلم رفع دعوى طعن ادارية ضد تلك الجهة لمطالبة حقوقه خلال ثلاثين يوما ابـتداء من تاريـخ استلامه القرار الادارى النهائى وفى حالة سكوت الجهة العامة المشتكـى عنها فان ميعاد الطعن يبتدأ من تاريخ وصول التظلم الى الجهة العامة او من تاريخ تقديم الطلب الرسمى اليها لابداء رأيها (انظر المادة ١٣ ـــ بند ب من قانون النظام القضائى رقم ٣٤ الصادر فى ١٩٧٤/٩/٢٢م وفقرة ٤ من مادة ١١ من المرسوم رقم ٣ الصادر فى ١٩٦٣/٦/٢٢م الذى لم يلغ كليا) .

ويجب على العامل رفع شكواه الادارية الى الجهة المختصة وفقـا للمواعيد والشروط الانفة الذكر محددا مقدار الحقوق التى يدعيها والسنـد الذى استحقها بمقتضاه سواء أكان هذا الاستحقاق بموجب اللائحة العامة للعاملين فى الشركات والمؤسسات والوكالات العامة او بقانون الموظفين او بلائحة خاصة.

وهناك ايضا عدم التوافق الفكرى بين الزوجين ، مع الاختلاف فى النواحى الثقافية بينهما مما يؤدى الى عدم الانسجام فى التفكير والسلوك والتصرف بصفة عامة . وكذلك جهل الزوجة باحتياجات الزوج النفسية والجنسية ، وعدم محاولتها معرفة ذلك مما يؤدى ايضا الى يأس الزوج وعدم احساسه بالراحة فى بيته.

علاج مشكلة الطلاق

اعتقد ان العلاج لهذه المشكلة المعقدة يكمن فى القضاء على العوامل والاسباب التى تسبب الطلاق سواء أكانت اسباب اقتصادية واجتماعية ونفسيه او اسباب خاصة بالاضافة الى ذلك ينبغى ان يتقيد ويلتزم الرجال والنساء جميعا باحكام قانون الاسرة الذى يخدم مصالحهم ويوجههم الى الحل السليم للمشاكل التى تعترض سبيلهم فى الحياة الزوجية كما ان لجنة المصالحه المنصوصة عليها فى المادة ٣٦ من قانون الاسرة وشروط الطلاق وتعدد الزواج كل هذا كفيل لضمان حياة الاستقرار للاسرة كما أن التطور الثقافى والتقدم الاقتصادى والاجتماعى الذى تحققه الثورة الاشتراكية سيقضى على جميع هذه المشاكل وسيجلب الرخاء والهناء والتماسك للمجتمع ان شاء الله ...

القاضى ــ احمد مظهرحسن

قانون الاسرة ومشكلات الطلاق فى المجتمع الصومالى

من المعروف ان الاسرة هى خلية المجتمع الاولى فاذا صلحت صلح المجتمع كله واذا اصابها خلل او انحلال فان المجتمع القائم عليها ينهار ويندثر ولاشك ان من اسباب تفكك الاسرة وانحلالها كثرة الطلاق وتهدد الزوجات بدون ضابط او وازع دينى وقد عانى مجتمعنا من كثرة الطلاق وآثاره السيئه التى لحقت بالعائلة وهزت المجتمع . وعلى الرغم من انخفاض نسبة حالات الطلاق بعد صدور قانون الاسرة رقم ٢٣ الصادر فى ٧٥/١/١١م اذا قورنت بحالات الطلاق التى حدثت قبل صدور هذا القانون كما يتبين من الكشف الآتى : —

٣٤٦٤ حالة طلاق لسنة ١٩٧٤م

١٨٥١ حالة طلاق لسنة ١٩٧٥م

٢٥٦٤ حالة طلاق لسنة ١٩٧٦م

على الرغم من ذلك الا انه ما زالت هناك حالات طلاق وتفكك عائلى تسبب اضرارا جسيمة للمجتمع . وقد اتضح لى خلال ممارستى لعملى القضائى بالمحكمة الملحقة بالحكومة المحلية لمدينة مقديشو .

انه توجد اسباب عامة وخاصة تؤدى الى وقوع الطلاق ،

وان الاسباب العامة تتنوع الى أسباب اقتصادية كانخفاض مستوى دخل الاسرة مع ارتفاع أسعار المواد الضرورية او الغلاء الفاحش فى المعيشة واسباب اجتماعية كتدخل اهل احد الزوجين او كلاهما معا فى شئونهما وتأليب احدهما على الآخر لاغراض اقتصادية او لعوامل اخلاقية او بسبب حزازات عائيلية كما توجد اسباب خاصة تؤدى الى حدوث الطلاق ويرجع اغلبها الى عدم نضوج الزوجين او احدهما للحياة الزوجية او ما يعرف بالزواج المبكر ومعظم هذا النوع من الزواج ينتهى الى الفشل ويحدث غالبا فى السنة الاولى للحياة الزوجية او بعد الانجاب لمرة واحدة ، كما ان نقص الثقافة الجنسية لدى الزوجين او احدهما يؤدى فى بعض الاحيان الى فشل الحياة الزوجية لعدم التوافق الجنسى بينهما لجهل احدهما او كلاهما فى هذه الناحية الهامة وعدم فهم احد الزوجين او كلاهما وعدم تقديره لمشاعر الاخر وان انعدام الثقة المتبادلة فى بعض الامور او كلها، وعدم مشاركة الطرف الآخر فيها يؤدى الى احساس كل منهما بانه يعيش بمفرده بعيدا عن الآخر.

اليس هذا اخلالا بمبدأ المساواة امام القانون ، واذا كان سبب امساك المحكمة الموقرة عن ادانة المجنى عليها بسبب صغر سنها اليس هذا بينة قاطعة بأنها ليست اهلا للرضى وانها خدعت واستغلت ثم اسكرت للاعتداء على شرف عرضها وهى فاقدة الوعى والارادة .

لهذا الاسباب كلها مجتمعه وباعتبار اننا نرى انه يجب ان تكون الاحكام وخاصة احكام المحكمة العليا عادلة وموافقة للقانون نقدم طعنا فى هذا الحكم البعيد عن الحقيقة والمناقض لوقائع هذه الجريمة والمخالف للقانون راجين الغائه ومحوه وتأييد حكم محكمة المقاطعة المؤيد بحكم محكمة الاستئناف المطابق للحق والقانون.

محمد حسن ثانى

النائب العام للجمهورية

تلك الحالات حالة الانثى المخمورة والمجنونة والصغيرة التى لم تبلغ السن القانونى والنائمة او الفاقدة للوعى والرضا بأى وضع من الاوضاع.

وأن الوقائع والشهود واعتراف الجانى نفسه كلها تجتمع على أن المتهم قد واقع الفتاة وهى فى حالة سكر، وقد اثبتنا ذلك بورقة طبية عرضت امام المحكمة وأنها كانت صغيرة لم تبلغ السن القانونية التى تجعلها اهلا للرضا حتى ولو فرضنا انها كانت راضية او دخلت فى بيته برضاها ذلك لانها ليست اهلا للرضاء والظاهر انها وقعت فى حبائل ذئب مفترس خدعها وستغل حالتها وظروفها.

الغرض من المادة ٤٠٥ عقوبات هو مكافحة البغاء واستئصال شأفة الساقطات اللاتى يتأجرن فى اجسادهن ويبعن عرضهن وانسانيهن بثمن بخس.

ونحن نرى ان هذه الجريمة لا تتوافر الا اذا اجتمعت العناصر الآتية :

١ ــ كون الفاعل انثى

٢ ــ أن يكون اللقاء الجنسى بمقابل ثمن او غيره وهذا يستلزم فتح بيت لممارسة الدعارة الذى يفهم منه ان الفاعل قد احترف البغاء وباع جسمه وشرفه بمقابل . ومعنى ذلك ان هذه الجريمة لا يمكن ان يرتكبها ذكر بهذا الشكل المنصوص عليه فى المادة ٤٠٥ عقوبات . وحتى ولو فرض ان المتهم ارتكب فعلا ذا صلة بالبغاء او الدعارة ضد الطبيعة وباستغلال انثى فانها تخرج عن نص هذه المادة وتعتبر جرائم مستقلة عنها منصوصة عليها فى مواد اخرى من قانون العقوبات.

وما دام لا يرتكب هذه الجريمة المنصوصة عليها فى المادة ٤٠٥ غير انثى يشترط ان تباشرها بمقابل فان حكم المحكمة العليا يكون بعيدا عن التكييف القانونى الصحيح للوقائع وبالتالى مخالفا للقانون .

كما ادانة المحكمة العليا للجانى فى جريمة الدعارة دون المجنى عليها يوحى الى الذهن انها اعتبرت الذكر او انثى وهو وضع مقلوب غير مستاغ وحتى ولو فرضنا جدلا ان رأى المحكمة العليا يذهب الى ان هذه الجريمة المنصوصة عليها فى مادة ٤٠٥ عقوبات يمكن ان يرتكبها الذكور والاناث معا فلماذا ادانت الجانى فقط وامسكت عن المجنى عليها .

مكتب المدعى العام لجمهورية الصومال الديمقراطية

الطعن فى حكم معيب صادر من المحكمة العليا ...

نقدم طعنا غير عادى فى الحكم الصادر على لاجى ناران وانجى هندى الجنسية حيث انه اغتصب فتاة قاصرة اسمها رحمه معو حسن وعمرها ١٣ سنة وذلك بعد أن واقعها فى بيته وكانت فى حالة سكر بين بفعل الخمر الذى قدمه اليها الجانى . وقد بنى مكتب المدعى العام صيغة الاتهام ضد الجانى على مضمون مادة ٣٩٨ عقوبات ، حيث قد اعترف المتهم بارتكابه لهذه الجريمة أمام محكمة المقاطعة بطريقة لا تقبل الشك او اللبس، واحضر مكتب الادعاء العام شهودا يثبتون بأن المتهم قد اعطى الفتاة خمرا وانه اختلى بها فى حجرة نومه وكانت مغلقة الباب مدة من الوقت، وقال الشهود ، بأن البنت خرجت من الغرفة وهى فى حالة سكر، وعرضنا على المحكمة ورقة طبية تثبت بأن البنت قد بوشرت جنسيا حيث وجد فى فرجها منى لرجل.

هذه الادلة الدامغة التى قدمناها كانت كافية ، واضحة كالشمس جلية لا تقبل الريب، وقد اقتنعت بها المحكمة واصدرت الحكم ضد الجانى بسجن عشر سنوات طبقا لمادة ٣٩٨ عقوبات.

استأنف المتهم الحكم الصادر ضده. ولم تر محكمة الاستئناف اى وجه تعيب به حكم الدرجة الاولى ولكنها خفضت العقوبة الى سبع سنوات طبقا لظروف مخففه رأتها هى.

طعن المتهم مرة اخرى فى حكم محكمة الاستئناف ولكن المحكمة العليا اخطأت طريق الصواب، وغيرت الحقيقة ومسخت الواقعة واعطت القضية تكييفا جديدا بعيدا عن الواقع والقانون ، وادانت المتهم فى جريمة بمقتضى المادة ٤٠٥ عقوبات وحكمت بعقوبة سجن ٢ سنة وبغرامة مالية قدرها ١٠٠٠ الف ش. ص. ونحن مقتنعون ان الجانى اركتب الجريمة المنصوص عليها فى المادة ٣٩٨ عقوبات بشكل لا يقبل الشك واللبس والايهام وأن حكم محكمة العليا جانب الصواب وخالف حكم محكمة المقاطعة الذى ايده حكم محكمة الاستئناف، بدون سند من القانون والوقائع ذلك ان نص هذه المادة يقول (كل من واقع بالعنف او التهديد يعاقب بالسجن مدة تتراوح بين خمس سنوات و ١٥ سنة.

وتقول الفقرة الثانية «توقع نفس العقوبة على الشخص الذى يواقع انثى ليست اهلا للرضا او يواقع انثى مدعيا انه شخص آخر . ومن بين

محتويات العدد