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A Study on the Role of the Minor OFFENSE Screening Committee in Republic of KOREA

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Abstract

Recently the Korean police organization has faced the domestic and international changes; the rapid social changes and increasing desires of various civil human rights. So social asks for the quality-improvement of the procedure of investigation have been increasing and various ways for satisfying their needs have been focused. In connection with this situation, the academic world has been interested in the minor offense screening committee to guarantee appropriateness of investigation. The police invited citizens and formed the minor offense screening committee that decides which offender should go to summary trial or be dismissed on warning. Korea minor offence screening committee is the system to preserve civil right through rapid procedures.

Therefore the purpose of this study is to analyze present condition and problem of minor offense screening committee. Consequently this study will offer effective ways to guarantee human right. First of all the minor offense screening committee shall screen the following matters: Larceny, Embezzlements of Lost Articles, Fraud (free riding, eating without paying a bill), Crime of Violence, Object of Summary Judgments in a criminal offence and so forth. And Subject for Screening shall be following persons; the person who has no criminal history record, the person who needs social the person who has no summary judgments record within the limit of one year and economical protection in the reason of disabled person and basic living security received people and so on.

And the committee shall be comprised of at least seven but not more than nine members, including the chairperson. Consultants are chosen three to five people who have much knowledge and experience in and take respect from community. The terms of office for the consultant shall each be three years and they may be reappointed or recommissioned only once. The chiefs of police stations may dismiss any consultant of the Committee who falls under politicians who are elected, party member and the persons who are concerned in policing.

Also committee can make a decision on the minor crime by the summary judgements or initial disposition maintenance and on the summary judgements by the dismissal with a caution or initial disposition maintenance. The chief of committee makes a decision by over two thirds of attendant members including the chief and members record the opinions on the report of the minor offence screening committee. Also the chief of the police station can take a support action to prevent the repeated crime of the subject of screening: the connection to the welfare department of the local government.

On the basis of above study result, this study suggested some necessary ideas on managing and administrating the minor offense screening committee effectively in the future. Concretely, this study proposed exclusion, recusal and refrainment of minor offence screening committee members. Also this study suggested Procedure for raising an appeal and mediation.

[Keywords] *Minor Offense Screening Committee, Human Right, Police Discretion, Investigation Authority, Criminal Mediation*

1. Introduction

Recently, Korean police has made an effort on preserving the human right[1][2][3]. They have taken various actions to preserve civil rights in welfare and other parts[4][5].

In a bid for support, the National Police Agency operates the minor offence screening committee to keep the law and enhance the law enforcement for social disadvantages: basic living security received people and old ages.

To put it concretely, The National Police Agency invited citizens and formed the minor offence screening committee that decides which offender should go to summary trial or be dismissed on warning.

Even if the offence crime constitute for elements of crime, it is better to save the criminal by the minor action for civil right than to make ex-convicts.

The National Police Agency conducted the minor offence screening committee at 17 police stations from March 23rd to October 30th 2015 for 8 months and has operated at middle scale police stations. This system is very important in dividing the investigation authority in the nations which don't give investigation authority to police[6].

So this study will propose various ways through the introduction of this minor offence screening committee.

2. Composition and Management of Minor Offense Screening Committee

2.1. Purpose and subject-matter of examination case

The National Police Agency is preparing an administrative rule for minor offence screening committee. The purpose of these rules is to prescribe the basic structure for composition and management of minor offence screening committee[7].

The minor offence screening committee shall screen the following matters:

Larceny, Embezzlements of Lost Articles, Fraud(free riding, eating without paying a

bill), Crime of Violence, Object of Summary Judgments in a criminal offence and so forth.

Also, the minor offence screening committee shall screen object of summary judgments which is claimed by the chief of the competent police station except object of summary judgments claimed by disposition of notification and nonpayment.

2.2. Subject for screening

Subject for Screening shall be following persons.

-The person who has no criminal history recodes.

-The person who has no summary judgments recode within the limit of one year

-The person who wasn't wanted to take criminal punishment or summary judgement by the crime victim.

In addition, the minor offence screening committee shall screen the following persons exceptionally.

-The person who has no crime history recode and over 70 years old.

-The person who needs social and economical protection in the reason of disabled person and basic living security received people.

2.3. Organization of screening committee, the terms and dismissal of members

2.3.1. Organization of screening committee

First, the committee shall be comprised of at least seven but not more than nine members, including the chairperson. And the chairperson is the chiefs of police stations who manage administer general affairs and has an equal right to vote on a resolution. When the chief of police stations is unable to perform his/her duty due to unavoidable circumstances, police affairs section chief corporal shall act on his/her behalf.

And, section chief, criminal section chief, investigation section chief or office of complaints and internal affairs. Substitute can attend if he/her has advance agreements.

Lastly consultants are chosen three to five people who have much knowledge and experience in and take respect from local community. For example, consultants of the jecheon police station minor offence screening committee are composed of legal expert, educator and doctors. Appointment letter and Confidentiality used for consultant choice are followed by special form.

2.3.2. The terms and dismissal of consultant

The terms of office for the each consultant shall be three years and they may be reappointed or recommissioned only once.

Chiefs of police stations may dismiss any consultant of the committee who falls under any of the followings:

- Politicians who are elected: member of the National Assembly, head or assemblyman of self-governing community and member of political party: party member, person related to election affairs.

- The person who are concerned in policing.

Also when consultant falls under any of the following, they may be dismissed by the speaker with the committee.

- The case of bringing on public criticism and injury to dignity.

- The indolence in the performance of consultant's duties.

- The case of being unable to his/her performance(physical condition) and so forth.

2.4. Authority and duty of members

Members can exercise his/her vote and suggest opinions on committee screening case. And members must not reveal the information he/she becomes aware of in the course of carrying out his/her duties and harm the fair of screening.

2.5. Screening procedure

2.5.1. Committee opening

Committee opens on the 1st day every month and over two consultants have to be attended. But, if there is no case, committee opens in next month.

But because this rule is an obstruction to rapid criminal procedure, it needs to be revamped.

2.5.2. Minor offense screening committee procedure

The chief of the police station chooses cases suggested by the public-safety section chief, criminal section chief and investigation section chief by the three days before the opening day.

Subject of screening has to attend. But if the subject of screening is unable to attend due to illness or old age, the committee can proceed the screening procedure without the subject by the decision of committee.

Also the chief of committee can listen to the statement to figure out the specific fact in attendance of the case police officer, (including chief constable) the victim and the reference witness and so forth.

And committee can make a decision on the minor crime by the summery judgements or initial disposition maintenance and on the summery judgements lay the dismissal with a caution or initial disposition maintenance.

The chairperson of minor offence screening committee makes a decision by over two thirds of attendant members including the chief and members recode the opinions in the report of the minor offence screening committee.

2.6. Budget execution and support action and so on

The chief of the police station can pay the consultant fee within budget. But, consultant fee is 100,000won by a month. And the chief of the police station can purchase necessary articles within budget.

Also the chief of the police station can take a support action to prevent the repeated crime of the subject of screening: the connection to the welfare department of the local government. This refers to community policing. Also, it is affiliated with problem oriented policing. Outside of that, the chief of committee makes a decision operation details which

are not scribed by this rules by the decision of committee members.

3. Conclusion

The purpose of this study is to analyze present condition and problem of minor offense screening committee. Consequently this study will offer effective ways to guarantee human right.

Korean minor offence screening committee is the advanced system for guaranteeing civil human right. And Screening of minor offence has no parallel in Korea police history. But reform measures have to be asked to solve the early performance problems. First of all, it is important to guarantee the fairness of committee members[8]. So it is necessary to add the exclusion, recusal and refrainment of members. We suggest the followings.

3.1. Exclusion, recusal and refrainment of Members

Any consultant who falls under any of the following cases shall be excluded from the Commissions's deliberation and resolution:

-Where a member or his/her current or former spouse is a party, joint right holder, or joint obligor with respect to the relevant matter.

-Where a member is or was a relative of the person directly involved for the relevant matter.

-Where a member conducted testimony, appraisal, legal counsel or damage assessment with respect to the relevant matter.

- Where a member has participated in an audit, investigation or research with respect to the relevant matter before he/she becomes a member.

-Where a member is or was involved in the relevant matter as an agent of the person directly involved.

Where a party having an interest in the deliberation and resolution of the Commission has a ground to believe that he/she can hardly expect impartiality from a member,

the party may make an application for recusal of the member.

If a member finds that he/she is subject to exclusion or recusal on the ground referred to in the above, he/she may voluntarily refrain from the deliberation on and resolution of the relevant matter.

Introduction of exclusion, recusal and refrainment of minor offence screening committee will improve dramatically the fairness of the judicial system and investigation authority.

3.2. Procedure for raising an appeal

Also committee has to prepare procedure for raising an appeal to guarantee appropriateness of investigation. We suggest the followings[9].

First, objections raised too late in time or evidently aiming at delay of procedure shall be dismissed by decision of committee: Provided, that if the objections raised too late in time are related to important matters, the objections shall not be rejected only for the reasons for being too late.

Second, when the court deems the objections unreasonable, it shall dismiss them by decision of minor offence screening committee.

Finally, when the chief of police station or committee deems the objections reasonable, it shall, by means of a Committee's decision, take such corresponding measures to the objections such as suspension, rescission, cancellation, and change of action, disposition or ruling.

Introduction of procedure for raising an appeal of minor offence screening committee will improve relief of human right in criminal justice procedure. And this system improves the trust of police investigation.

3.3. Mediation suggestion

We suggest mediation of minor offence screening committee. Mediation of committee will fulfill social asks for the quality-improvement of the procedure of investigation[10][11][12]. We suggest the followings.

If deemed necessary for prompt and fair resolution of a civil petition for grievance which involves multiple persons or is deemed to have a significant impact on society, a minor offence screening committee may mediate the petition on the request of the parties concerned or ex officio.

Mediation shall be constituted when the details agreed by the parties concerned are entered in a written mediation on which the parties concerned affix their signatures and seals, and the minor offence screening committee confirms it.

Mediation shall have the same effect as the reconciliation under the Civil Act.

We expect the effective operation and improved systematic change of minor offence screening committee.

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