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The Right to Bail under Ethiopian Federal Anti-corruption laws: Implications on the Right of the Accused (Case-oriented study)

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A Thesis Submitted to the Graduate School of Law and Governance of Addis Ababa University in Partial Fulfillment of the Requirements for the Master of Art in Human Rights

Addis Ababa

May, 2013

I the undersigned graduate student declare that this thesis is my original work and has never been defended in any undergraduate or graduate program of any university. I have also credited accordingly the references I have used in this work.

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Acknowledgment

First and foremost I would like thank my advisor, Ato Getahun Kassa for his welcoming approach and fatherly advice since beginning of this paper, and even before. Without your continuous advice this couldn't happen.

Next to my advisor, my wife Merhawit Mebrahatu and my sister Fireweiny Hadush, also deserves my heartfelt gratitude for all what they have done for me. Their assistance has contributed a lot for my success.

Finally, I want to thank you my friends Commander Danel Kebede, Tsegay Birhane, Meressa Birhane, Yonas Bayru, Shewit G/her and Gidey meles for your supportive friendship through out the two years stay.

Abstract

One of the fundamental rules that guide decisions during criminal justice administration is the presumption that a suspect is innocent until his guilt has been established by a court of competent jurisdiction. This presumption is enshrined in the FDRE constitution as fundamental human rights. Consequently, the rights of suspects remain largely protected during the process of criminal justice administration, from arrest to conviction. Full and non-discriminatory realization of rights of human beings during criminal proceedings requires administration of criminal justice in full compliance with human rights standards. This research examines the Constitutional, Procedural and Judicial significance of bail in criminal justice administration in the Federal Courts of Ethiopia. Thus, the practice in the federal courts of ensuring protection of rights to be presumed innocent and to be released on bail as an element of fair trial guarantees are examined. The research therefore has analyzed the factors that influence bail decisions and just administration of bail in Federal Courts, with emphasis on laws and practices on criminal proceedings of corruption offences. With a view to inform the study with evidences from the practice the study besides to the legal framework has examined cases and proceedings of corruption offences and investigated the enforcement of essential bail rights in the course of the proceedings. Based on these investigations the study has found that the practice in the federal courts seen diminishing the protection that should be given to fundamental guarantees of person accused/suspected of corruption offense. Firstly, article 4 (1) of the revised anti-corruption proclamation which provides that an arrested person suspected of a corruption offense punishable for more than ten years shall not be released on bail has denied the court its important role in regards to protection of the rights to release on bail and to be presumed innocent of an accused person. This opens a space for arbitrary application of the commission's power and prevents the court from playing its role by examining seriousness of the offense, the nature of evidence and behavior of the suspect. This observation is further confirmed by analysis of cases examined by this study which shown that suspects were detained for longer period and finally found innocent. In another note the study also found that article 5 (2) of the same proclamation undermines the right of suspect because it automatically authorizes suspension of a lower court decision to release the suspect on bail based only on filing of appeal by the prosecutor or investigator. This coupled with the fact that the appeal process usually takes longer time it results in punishing suspects before conviction. Moreover, the fact that article 7

(4) of the proclamation mandatorily provides that matters related to bail shall be tried only by the court that has jurisdiction to hear corruption offence cases makes realization of the right to bail difficult. This is so due to the fact that federal courts are not permanently present in all parts of the country and hears cases on a circuit court arrangement which in between the suspect faces lengthy detention before trial. Owing to this the study found that the current legislative framework and practice has weakness in dealing with right to bail of suspects of corruption offense. Thus the legislative framework and the practice of federal courts in connection to bail rights of person suspected of corruption offence needs to be revised so that it becomes compatible to the constitutional guarantees and international human rights standards.

Acronyms

ACHPR	African Charter on Human and Peoples' Right
Art	Article
CBC	Commercial Bank of Ethiopia
CPC	Criminal Procedure Code
EPC	Ethiopian Penal Code
EU	European Union
FDRECC	Federal Democratic Republic of Ethiopian Criminal Code
FDRE	Federal Democratic Republic of Ethiopia
FEACC	Federal Ethics and Anti-Corruption Commission
FGD	Focus Group Dissection
ICCPR	International Covenant on Civil and Political Rights
IMF	International Money Found
Proc	Proclamation
SNNPR	Southern Nations, Nationalities and Peoples Regional State
UDHR	Universal Declaration of Human Rights
UN	United Nations
USA	United States of America

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CHAPTER ONE

1.1 INTRODUCTION

The right to bail of an accused/arrested person is one of the fundamental rights recognized under FDRE constitution and international human right treaties to which Ethiopia has acceded, and it is a best remedial right to avoid unfair pre-trial detention of a presumably innocent person.

Since unfair pre-trial detention has an effect of imposing punishment before conviction, the right to bail has a role to regulate proper implementation of several basic rights that are enshrined under the constitution such as presumption of innocence, prohibition against deprivation of liberty without due process of law. So when one views release on bail in this respect, it enables an accused/arrested person not to be punished in the form of imprisonment prior to conviction and also serves another function in that it gives the accused a fair opportunity to prepare his defense.

Even though the right to be released on bail is recognized in principle, the constitution as well as, the international conventions provide for possible limitations depending on the nature and severity of the crime committed. One such restriction specific to corruption offence is provided under the Revised Anti-corruption Special Procedure and Rule of Evidence Proclamation No. 434/2005 article 4(1).

This article prohibits release on bail if an arrested person charged with a corruption offence is punishable for more than ten years. The problem that arises in relation to application of this law and rights of a suspect is that a person may be charged of an offense that is punishable for more than ten years and in the end could be sentenced to a punishment which is less than that. Shouldn't the law provide an alternative way to prevent such kind of punishment before conviction? Should punishment be a sole ground for denying or granting bail by statute? If it were so, would it not be presuming guilt than innocence? In short, what does "punishable for more than ten years" mean? As the practice reveals, there are different understandings in implementing this provision, which in fact amounts to inconsistent application. Moreover, there are also different restrictions contained in the proclamation with regard to the right to bail of arrested/accused person of corruption offence. Thus, currently, there is different position in granting or denying bail for persons arrested/accused of corruption offence.

Following such an extremely inconsistent application including the previous practice of absolute denial of bail for corruption cases by Anti-corruption Proclamation No. 239/2011 and later changes which proclamation 434/2005 which has partially modified the approach towards release on bail of persons suspected of corruption offense, there is still lack of clarity as regards whether corruption offence is bailable or not.

The main objective of this study is therefore to examine the right to bail of persons arrested/accused on corruption offence in the Federal Courts. To achieve this objective, the paper is designed to have five chapters followed by a conclusion.

1.2 Background of the Study

In today's globalized world, nation states are increasingly interconnected through trade, investment, financial transaction and communication. However, corruption is a challenge to this globalized world,¹ this is to mean that corruption offence harms and undermines the international, national trade and investment opportunities of a given country. Moreover, as stated in the preamble of the United Nation's Anti-corruption Convention, Corruption poses a serious threat to the stability and security of societies.²

Moreover, spread of corruption in a given country has unfavorable effect on the citizens of that state. Since corruption violate political and civil rights of the citizens by distorting the political institution such as the judicial administration and law enforcement agencies it disrupts the economic and social rights of the citizen by denying equitable access to public services such as health, education and other socio-economic rights.³

Corruption offense includes a wide range of offenses from the higher level embezzlement of public fund to the petty corruption of authorities selling licenses. Yet there is no internationally and agreed definition of corruption. But Transparency International and international organizations such as the World Bank defined "corruption as abuse of entrusted power for

¹. Seleshi Zeyohannes, An overview of the Prevention of corruption, (Addis Ababa University), (1999), unpublished, p.111

². United Nations Declaration Against Corruption and Bribery in International Transactions, (1997), as quoted by G.R. Sullivan, "Reforming the corruption Laws-The law commission proposals", Criminal Law Review, P.735.

³. Heiden Heimer, Political Corruption; Readings on Comparative Analysis, (1978), P.42

private gain.” However, these abuses may be perpetrated by a person with decision making power in the public or private sector.⁴

Unlike the above mentioned international institutions, both the United Nation and the African Union Anti-corruption Conventions do not define the term corruption but they made more emphasis on the standard and requirements to prevent.⁵ However, the conventions give legal protection for the accused person who is charged or suspected with corruption offense.

As far as the realization of the right to bail of arrested/accused person is concerned, international instruments imposed duty up on the state party to the agreement for the realization of these rights. The FDRE Constitution under article 9(4) recognizes that all international human rights agreements ratified by Ethiopia to be integral part of the law of the land. Article 13(2) of the same Constitution also expressly stated that the fundamental right and freedoms recognized under the Constitution to be interpreted inconformity with the rules and principles of the international human right instruments; which Ethiopia has ratified. Therefore, the right of an accused person which is protected under article 19 (6) of the FDRE Constitution will be interpreted according to the principles, rights and rules of the international Covenant on Civil and Political. Therefore, arrested/accused persons who are charged with the corruption offence have these constitutional rights. Court is duly bound to enforce this constitutional right of the arrested/accused right to be release on bail according to the rules and principles of international human rights.⁶

However, unlike the FDRE Constitution and international human right instruments, the Revised Anti-corruption Special Procedure and Rules of Evidence proclamation has made some restriction upon the rights of arrested/accused person charged with corruption offense.⁷ Therefore, in this study implementation of the rights of arrested/accused person of corruption offence in Federal Courts were examined based on the case analysis with the Constitution and international human rights standards.

⁴. Susan Rose, Corruption and Development, (Yale University Washington D.C), (1997), P.1

⁵. United Nations Handbook on Practical Anti-corruption Measures for Prosecutors and Investigators, June 2005, Vol.05-89574, P.21

⁶. The Constitution of the Federal Democratic Republic of Ethiopia, Proc .No. 1/1995, Nez.Gaz,1stYear No.1, article 13(1)

⁷. The Revised Anti-corruption Special Procedure and Rules of Evidence, Proc. No. 434/2005, Fed.Neg.Gaz., 11 year No. 19, article 4(1), 5, 6, and article 7(6)

1.3 Statement of the study

Aware of its fundamental importance for the realization of many other rights, the right to bail is provided under many international human rights instruments. At the national level, the Constitution of the Federal Democratic Republic of Ethiopia stipulates very important provisions that set for persons arrested/accused have the right to be released on bail.

When the Federal Ethics and Anti-corruption Commission were established and fight against corruption was declared, enactment of relevant laws was one important step towards that end. In the establishment proclamation the commission was granted the power to release on bail in accordance with the law.⁸ The law envisages Criminal Procedure Code concerning the release on bail of persons arrested for corruption offence since there was not any other procedural or substantive legislation that regulates bail. However, later, the Anti-corruption proclamation was amended. This amended proclamation among other contains a provision that deny the right to release on bail of persons arrested on suspicion of having committed a corruption offence.⁹ This was a time where the issue of bail and corruption began to be area of controversy.

Yet fundamental human rights principles require that the restraint on the right to bail should be limited. Limitation on the right to bail of arrested/accused person on corruption offence provided under the revised Anti-corruption Special Procedure and Rules of Evidence proclamation which grounds punishment for denial of bail,¹⁰ has created a disagreement and has brought about inconsistent implementation of the proclamation among judges in the Federal Courts.

When we look at proclamation No. 434/2005, there are also different provisions containing further restrictions on the right to bail of arrested/accused person of corruption offence, such as the case of jurisdiction under article 7, which brings a problem in connection to access to courts and the issues of appeal under article 5(3) of the same proclamation recognized the right to appeal to the prosecution and investigation for the Anti-corruption commission hampers the enforcement of a decision rendered by lower courts, which results in violation rights of the

⁸. Federal Ethics and Anti-Corruption Commission Establishment Proclamation No. 235/2001, Fed.Neg.Gaz. 7th year

No.23, article 7(6)

⁹. Anti-corruption Special Procedure and Rules of Evidence (Amendment), proc. No. 239/2001, Fed. Neg. Gaz., 7th year No. 27, article 51(2).

¹⁰. Supra Note 7, article 4(1)

suspect because it allows to keep a suspect under custody despite his/her being granted release on bail by the decision of the lower court.

The effects of all these limitation and problems related to the implementation of the right to bail of person arrested/accused of corruption offence on the enjoyment of the right to bail merits to be examined in this study. Accordingly, the study calls for an investigation of research questions below.

1. Is Proclamation No.434/2005 (Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation) compatible to right to bail provisions of the FDRE constitution and applicable international human rights standards?
2. Is the practice in Federal courts, in relation to protection of the right to bail, compatible to the right to bail guarantees provided by the FDRE Constitution and international human rights standards?

1.4 Objective of the Study

As stated earlier, Ethiopia has signed and ratified a number of international human right instruments. Under these instruments, the right to an arrested/accused person to enjoy the right to bail is protected. In addition, the FDRE Constitution expressly states that fundamental rights of the arrested/accused person to be interpreted in conformity with of the rules and principles of the international human right instruments.

However, Proclamation No. 434/ 2005 that established the Revised Anti- corruption Special Procedure and Rules of Evidence restricted right to bail of the arrested/accused person, who is charged by corruption offence.¹¹ But courts are duty bound to enforce the rights of arrested/accused person according to the FDRE constitution and international human right principles. Therefore, the study will have the following main objectives.

1. To identify legislative and institutional mechanisms for protection of the right to bail in relation to corruption offences and legal gaps created as a result of enactment and

¹¹. Ibid

implementation of the Revised Anti-corruption Special Procedure and Rules of Evidence proclamation No. 434/2005.

2. To examine the enforcement of the right to bail of arrested/accused person of corruption offence in Federal Courts.

1.5 Scope of the Study

Any study can't cover all issues and effective study has to restrict itself to a manageable size. Besides, various factors such as time; finance and nature of the study may affect the scope of any study. Similarly the scope of this study is limited to the following matters.

The right to bail is one of the fundamental fair trial guarantees. This right therefore is applicable to individuals or group of persons charged for committing a criminal offence. However, the scope of this study is limited to the assessment of the situation of the right to bail particularly relevant to the law of (for example, FDRE constitution, FDRE Criminal Code, Ethiopian Criminal Procedure Code, ICCPR and UDHR) the right to bail of arrested/accused person of corruption offences.

Thus, this study examines the extent to which proclamation No.434/2005 guarantees protection of person/s arrested/accused on alleged corruption offense and the weaknesses that same law in regards to protection of the rights of person/s arrested/accused for corruption offenses in accordance with provisions of the FDRE constitution and international human right instruments.

1.6 Methodology

The main objective of this study is to examine the right to bail of an arrested/accused person on corruption offence in the Federal Courts. To that end, international human right instruments, constitutional provisions, proclamations and Ethiopian Criminal Procedure Code were analyzed so as to identify the legal framework in relation to the issue under consideration.

The study also examined federal court cases and judgments on corruption offence and investigated the enforcement of the essential bail rights of an arrested/accused person in Federal Courts. Moreover, in this study the researcher mainly employed analytical case study approach research methodology. Besides, interviews and focus group discussions were held with

respondents such as persons who have served prison sentences on corruption charges, private practicing lawyers, judges, prosecutors and investigators.

With regard to data sources, both primary and secondary sources were employed to gather adequate and reliable information on the topic. Therefore, the following sources were considered.

1.6.1 Primary Sources

Data were gathered on specific rights of arrested/accused person based on court judgments on corruption offences. As a result, interview with individuals arrested due to sentences for corruption offences were conducted. Moreover, information from practicing attorneys, Judges, Prosecutors, and Investigators were gathered through interviews and eighteen judgments on corruption offenses were critically analyzed. Furthermore, Proclamation No. 434/2005 which established the Federal Ethics and Anti-corruption Special Procedure and Rules of Evidence were examined critically with a view to critically assesses compatibility with human rights guarantees recognized by the constitution and international human rights instruments.

1.6.2 Secondary Sources

Necessary, data from various kinds of published and unpublished materials, for example from the books, journals, magazines, bulletins, International Human right instruments (International Covenant on Civil and Political Rights and Universal Declaration of Human Rights), Regional Human Right Instrument (African Charter on Humans and Peoples Right), the United Nation Convention Against Corruption, African Union Anti-corruption Convention, Constitution of Federal Democratic Republic of Ethiopia, Ethiopian Criminal Procedure Code, FDRE Criminal Code, the Revised Special Penal Code of Ethiopia and other relevant materials from libraries were used in this study.

1.7 Significance of the Paper

The study, as stated above, primarily examines the legal and practical inconsistency and identifies legal gaps in the Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation No.434/2005 regarding right to bail of arrested/accused person of corruption

offence and also the practical problem that exists in the practice of Federal Court in the enforcement of right to bail for the arrested/accused person of corruption offence.

Moreover, this study among others has the following specific benefit.

- It may provide to the concerned government organs relevant information regarding the issue under examination; identify the existing problems regarding the enforcement of the right to bail of arrested/accused person suspected on corruption offence; and give an opportunity to take possible solution to solve the problem.
- This study will hopefully make some contribution to the existing literature in the area. Moreover, academician, researcher, Judges, Prosecutors, Investigators, arrested/accused person of corruption offence and other may get relevant information by referring to it.
- The issue, which is addressed in this study may motivate other researchers to conduct further studies
- This paper can also be an input for those who are working in the area of drafting and making a law for amendment of the Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005 regarding the right to bail and other restrictions on the rights of person/s arrested/accused for corruption offences.

1.8 Limitation of the Research

One challenge faced during the research was the record keeping of Court cases of the legal system. The absence of a systematic information collection and classification of cases by the legal system delayed the identification of cases. The collection of cases had thus to mainly rely on the memory of judges and prosecutors. That made the process of identification and selection of relevant cases time consuming. The other point in this regard was the sensitivity of the issue. From the researcher's observation, most people who were contacted were unwilling to give information in the area. They felt that it was political and giving information might bring accountability.

The other challenge encountered the researcher during collecting primary data was regarding prosecutors, investigator of the Federal Ethics and Anti-corruption Commission, and Judges of

the Federal Courts. Due to the nature of the issue most respondents were unwilling to allow the researcher take voice recording of the discussion. Similarly, the researcher faced the same challenge while collecting data from victims of Federal Ethics and Anti-corruption Commission. For the reasons, the researcher has taken notes of the discussion by writing.

1.9 Structure of the Study

The study is organized in five chapters. The first chapter is an introductory, this explains to the background of the study, statement of the problem, objective of the study, scope of the study, methods of the study, significance of the paper and limitation of the research.

Moreover, the second chapter deals with Literature Review. This gives a general overview of what bail is, justifications for release on bail, historical overview of bail, the link between right to bail and corruption offence, experience of some foreign countries and the impact FDRE Criminal Law upon the right to bail.

Furthermore, the fourth chapter presents the analysis and case study of the research such as: the Anti-corruption laws and practice of bail in Federal Courts, the right to movement, the right to speedy trial, the right access to courts, the right to appeal of prosecutor and investigator recognized under the Revised Proclamation No. 434/2005, the role of the courts to enforce right to bail and the Impact of FDRE Criminal Law upon right to bail of arrested person on corruption offence were analyzed. The last chapter is the Finding and the Conclusion part of the Research.

CHAPTER TWO

LITERATURE REVIEW

2.1 Human rights aspects of the bail: an overview

The right of an arrested person to be released on bail is a fundamental human rights aspect which is conceptually integrated with the right of suspected persons to be presumed innocent until proved guilty by a court of law. International and regional human rights conventions as well as national constitutions and subsequent laws have duly recognized this right. Therefore, even though the right to bail of an accused/ arrested person has to pass through a series of legal criterion and also discretionary power of the justice machineries, it is an important issue to strike a balance between the interests of justice on the one hand and freedom of accused individuals on the other. Thus the effect of bail as stated by Peet M. Bekker, et al is that when bail is granted, an accused that is in custody shall be released from custody upon payment of, or the furnishing of, a guarantee to pay the sum of money determined for his/ her bail.¹² He must then appear at the place and on the date and specific time appointed for his trial, or to which the proceedings relating to the offence in respect of which the accused is released on bail are adjourned.¹³ Bail is procedural right of the suspected person/s that should be respected by the criminal justice system actors as well as in national and international human right instruments.

As Abraham S. Goldstein defines the term “Bail” as:

Bail means the release of a person from custody upon the undertaking with or without sureties for him that he will abide the judgment and orders of the court in appearing and answering the charge against him. It is essentially delivery or bailment of a person to a person to his sureties- the jailors of his own choosing- so that he is placed in their friendly custody instead of remaining in jail.¹⁴

Professor .J.Nnamdi also defines bail as,

‘Bail’ refers to the release of a suspect from detention after arrest, pending the completion of the investigation and the trial. It is aimed at securing a balance between two competing interests.

¹². Bekker, P.M. et al, Criminal Procedure: Hand Book, 9th edition, (2009), p. 147

¹³. Ibid

¹⁴. Abraham S. Goldstein, et al, Crime Law and Society, New York, (1965), P.309

*First, the state seeks to bring offenders to trial and to dispense. Second, the protection of the rights of citizens and the presumption of innocence dictate that no one, without justification, should be deprived of personal liberty, especially freedom of movement and association. Bail ensures that suspects are relived of or released from detention after extracting guarantees from them (and their sureties) that they will not interfere with the criminal investigation and will be available for investigation and trial. Therefore bail plays a critical role in the dispensation of criminal justice and the protection of human rights.*¹⁵

Moreover, other authors have defined bail in similar terms. For example, Doherty defines bail as ‘the procedure by which a person arrested for an offence is released on security being taken for his appearance on a day and place certain’. Alubo defines bail as ‘setting at liberty a person arrested or imprisoned on security being taken for his appearance on a day, and a place certain.’ He also states that: ‘Bail is a written undertaking by an accused person and his surety or sureties, if any, conditional upon the appearance at a specified time and place to answer a criminal charge’. senna and siegal define bail as ‘representing money or some other security provided to the court to ensure the appearance of the defendant at every subsequent stage of the criminal justice processes’.¹⁶

Similarly Tsegaye in his thesis entitled the law and practice of bail in Ethiopia has described bail as:

*Bail is an old procedure utilized as a device to insure the presence of persons accused of crime at trail it is supposed to guarantee a maximum of certainty to society while imposing a minimum of hardship upon the defendant. Its sole purpose is to determine whether or not the accused would be provisionally released before trail.*¹⁷

Furthermore, The American Law Institute defines the word bail as; “the security requirement and give for the release of a person who is in the custody of the Law, that he will do, or retrain from

¹⁵. Professor J.Nnamdi, et al, Bail and Criminal Justice Administration in Nigeria, (The theory and Practice of Criminal Justice in Africa), (2009), P.86

¹⁶. Ibid, P.87

¹⁷. Tsegaye Bekele The Law and Practice of Bail in Ethiopia, (Addis Ababa University), unpublished, (1979), P.11

doing, such things as are stipulated in the bail bond.”¹⁸ From the above discussions one can draw that bail is a security or guarantee given to assure that the accused person will appear in court when so required.

The main purpose of bail therefore in any kind of crime is to secure the attendance of the accused person in Court whenever required but not to punish him before conviction. This is so because the arrested person is presumed to be innocent until his guilt is proved in court. Otherwise pre-trial detention results in the punishment of a suspect before conviction that results in the deprivation of liberty which also limits his right to movement.¹⁹

As a pre-trial conditional release of the arrested person, the right to bail is an important guarantee concerning the personal liberty of the accused. But in the wake of new forms of criminality like terrorism, corruption and sexual crimes against women, etc it begins to revive. Nevertheless, there have been some leading judicial decisions in recent times that aim at balancing the liberty of the accused with the prosecution interest of making the accused available for investigation and trial.²⁰

Although the main objective of bail is ensuring the suspect’s subsequent appearance at the place and time agreed on, it serves as protection against wrongful detention while investigation and trial are on course. Okagbue emphasizes that “Bail serves to give life to the abstract concept of the right to liberty by acting as a reconciling mechanism whereby the defendant’s interest in pre-trial liberty and security’s interest in the defendant’s presence at trial are both accommodated. Bail also serves to give substance to the presumption of innocence under which every person who is charged with a criminal offence is presumed innocent until he is proved guilty.”²¹ The effect of this presumption is that persons should not be punished until they have been found guilty by due process of law.

Oshodi connects the question of bail with the liberty of the arrested and also observed that, “bail is important because it affects the liberty of the subject. It is the only example in peace time

¹⁸. American Law Institute Code of Criminal Procedure, Sec.16

¹⁹. Wondwossen Demissie, Ethiopian Criminal Procedure Text Book, (School of Law, Addis Abba University), (2012), P.210.

²⁰. K.I. Vibhute, Criminal Justice, (2004), p.110

²¹. Supra note 15, at P. 88.

where a man can be kept in confinement for an appreciable period of time without proper sentence following conviction after a proper trial.” Wayne and Israel analyzed the American laws governing all of the major steps in the criminal justice process starting from investigation to post appeal procedures. They described that the goals for having such law is to respect the dignity of the individual.²²

Furthermore, Bekker et al , analyzed the right to bail and the need for and nature of bail as a method of securing liberty pending the outcome of fair trial and bail and some fundamental principle of criminal justice.²³ Moreover, their study focuses on the presumption of innocence. This presumption considers a suspected person as innocent until proven his guiltiness through fair trial. And the right to appeal, an accused person must have the right to have the sentence and conviction reviewed by a higher tribunal or court, according to law. The higher court should re-examine the facts and application of the law in order to challenge or verify the decision of the lower Court.²⁴

Another important concept related to bail is the presumption of innocence. Presumption of innocence is one of the bases for pre-trial liberty. It is also an expression of the belief that there should not be deprivation of liberty without due process of law.²⁵ Bert Swart put “presumption of innocence” as:

*As far as the first aspect of the presumption is concerned, courts or juries to declare an accused guilty of the charges only if the accused guilt has been proven beyond reasonable doubt.*²⁶

In light of the gravity of these consequences, the presumption of innocence is crucial. In addition, the Canadian case further stated about the presumption of innocence as:

It ensures that until the state proves accused person guilty beyond all reasonable doubt, he or she is innocent. This is essential in a society committed to fairness and social justice. The presumption of innocence confirms our faith in human

²². Lofaver R. Wayne Jeral H. Israel, *Criminal Procedure*, (2nd ed.), West publishing, (1992), P. 312

²³. Bokker Geldenhug et al, Vander Me, *we Criminal procedure handbook*, (9th ed.) (2009), p. 410

²⁴ Ibid,

²⁵ Harvared Law Review, Vol.79. (1966) P.15o

²⁶ Bert Swart, *Towards a Procedural Regime for International Criminal Court*, (2002), P.68

*kinds; it reflects our belief that individuals are decent and law-abiding members of the community until proven otherwise.*²⁷

From the above explanation, we can conclude that the theoretical justification behind the principle of presumption of innocence is the assumption that a human person does not commit crime and be treated accordingly until proved to the contrary.

Furthermore, Worku explained that, “the presumption of innocence is a compound term that encompasses two words: presumption and innocence.” The word “presumption” in law has a variety of meanings and types. “The type of presumption which is relevant for this study is the one that signifies the legal burden of proving an issue to the extent of convincing the court.” In addition, the author conceptualized presumption of innocence as both procedural and human rights claims.²⁸

There are various justifications with regard to the proper application or enforcement of fundamental human rights principles such as the right for presumption of innocence. First, the presumption of innocence serves to minimize the possibility of mistaken conviction of innocent individuals and protects suspects from being treated as criminals before conviction.²⁹ If, for example we take presumption of innocence, it is one of the bases for pre-trial liberty, i.e. release on bail. ‘Presumption of innocence is an expression of the belief that there should be no deprivation of liberty without due process of law.’ Therefore, maintaining the right to bail serves to prevent the infliction of punishment prior to conviction.³⁰ Secondly, it enables the accused to prepare his defense by providing him with ample opportunities to meet his lawyer on his will, gather evidence and prepare his defense.³¹

One finds that the right to be presumed innocent is also one of the procedural rights of accused recognized in international and regional human rights instruments. Article 14 of the International Covenant on Civil and Political Right (ICCPR), regional conventions on human rights such as

²⁷. Ibid.

²⁸. Worku yaze, Presumption of Innocence and the Requirement of proof Beyond Reasonable doubt: reflections on meaning; scope and their place under Ethiopian human rights law series volume 3, (2010), p.120

²⁹. Wondwossen Demissie, Human Rights in Criminal Proceedings Normative and Practical Aspects, Vol. 3, (2010), pp. 118-119

³⁰. Ibid, p.119

³¹. Stanley Z. Fisher, Ethiopian Criminal Procedure, (School of Law, Addis Ababa University), (1969), P.150

the European convention for the protection of human rights and fundamental and the African charter on human and people's rights similarly guarantee man rights of accused person including this right.

The right to bail in criminal law is intended to prevent breach of rights of person arrested on suspicion of committing a criminal offence. Thus, the pre-trial release on bail emphasizes the importance of fundamental rights of accused persons. So, bail is considered as a sort of security device. In general bail is an important mechanism to guarantee protection of right to liberty at the trial in the administration of criminal cases and without jeopardizing the interest of the community.

In theory, if the presumption of innocence is to be given full effect, prisoners ought to be unconditionally released before trial. Nevertheless, a countervailing consideration limited the scope accorded to this presumption. The state must make sure that the accused will appear for trial. It is in this ground that the requirement of posting bond is justified as a financial deterrent. For the same reason the otherwise absolute right to bail has been made discretionary with the judge.³² The original reason for releasing prisoners pending trial has been developed in different instances. It emphasizes the importance of the presumption of innocence in criminal justice and decries the imposition of sanction prior to trial and conviction. A related purpose is to give the accused maximum opportunity to prepare his/her defense.³³

Another important concept related to bail is the speedy trial. As K.L. Vibhute, accordingly, explains that 'Speedy trial is one of the fundamental principles of fair judicial system.' He emphasizes that it is not to be neglected because delayed trial means denial of justice.³⁴

Moreover, L. Winers also added that 'the right to speedy trial is an important safeguard to prevent undue and unfair imprisonment and to limit the possibilities of harm that could result from long delay which could harm ability of the accused to defend his case.'³⁵ The protection of the right to speedy trial is not activated only when a criminal prosecution has begun and extends

³². Ibid, P.151

³³. Supra note 19, P.209

³⁴. K.L., Vibhute, Criminal Justice, (2004), P.110

³⁵. Loyd L. Winers, Criminal Process, 15th Ed, New York, (1993), P.153

only to those persons who have been accused.³⁶ From this point, we can infer that the right to speedy trial started from pre-trial stage of criminal proceeding and goes up to the final disposition of the case.

J.Paul also stated that fair trial is a hearing by an impartial tribunal; a proceeding which hears before it convicts and renders a judgment only after trial. It also supposed that fair trial is a trial without discrimination, an orderly trial before an impartial jury, and before judge whose neutrality is guaranteed. It is further said that a trial, in order to be fair, the accused must get an opportunity to present full defense and must have the assistance of counsel. The prosecutor proof must proceed on the basis of relevant evidence and the testimony on which the prosecution relies must be produced in the courtroom.³⁷ This is basic because the accused has the right to confront, to cross-examine, everyone who present material evidence against his innocence.

The FDRE Constitution recognizes the right to fair trial. Article 20 of the constitution provides the essentials that are meant to ensure fair trial. An accused is entitled to public trial by an ordinary Court of law which expectedly is impartial and independent.³⁸ It is further the constitution recognizes the independence of the judiciary which means that “every judge is free to decide the matter with his assessment of the fact and his understanding of the law without influences, inducements or pressures, direct or indirect, from any sector or for whatever reason.”³⁹ Judges are expected to be impartial and independent so that criminal trial will be conducted in conformity to the constitution.

The Ethiopian Criminal Procedure Code also provides procedural right so that an arrested/accused is assured of fair hearing. Article 106 of the Criminal Procedure Code indicates that an accused has the right to fair and impartial trial. This provision lays down the conditions and procedures for change of venue. An application for change of venue could be filed, before a trial has started, to the high court. One of the grounds for filling such application is that ‘a fair and impartial trial cannot be held in any criminal court subordinate.’⁴⁰ This implies that an

³⁶. Ibid

³⁷. J. Paul, Criminal Justice, Law Freedom and Mass Communication, P. 6

³⁸. Supra note 6 article 20

³⁹. Ibid article 79(3)

⁴⁰. The Criminal Procedure Code of the Empire of Ethiopia, Proc. No. 185/1961, Neg. Gaz. Extraordinary Issue. No.1 of 1961 article 106

accused has the right to fair and impartial trial otherwise he wouldn't have the right to request the transfer of his case from a court of jurisdiction to another.

When we say an accused has the right to fair trial, it means that he is entitled to a trial where his rights are protected and respected. In order to guarantee fair hearing, the law recognizes the fundamental rights of an accused so that determination of guilt or innocence will only be based on evidence as weighed by independent judges.⁴¹

In conclusion, the purpose of criminal law is to ensure, peace and the security of the state. This can be achieved by reforming the offenders not to commit crimes again. But, if we punish the innocent by punishing him/her before conviction nothing will be achieved except disrespect to the administration of justice. To avoid this, the criminal administration system needs to provide guarantee so that the right to fair and impartial trial of person accused on such as by ensuring released on bail of a suspect until his/her guilt or innocence is determined by court proceeding.

2.2 The Right to bail: historical overview

The bail system is an old procedure in England evolving as the result of challenges faced in prisons and custodies. It is originated in medieval era as a device to provisionally release those detainees who were awaiting trial. In England, many accused died because of unsanitary conditions in the prisons since trials were delayed by the infrequent visits of the judge. As a result, the practice of releasing accused upon their or other person's posting bond was standardized. Though the sheriffs were authorized to release or hold suspected criminals, some sheriffs exploited the bail for their own gain. In addition, the absence of limit on the power of the sheriffs was stated as a major objection leading to the statute of Westminster.⁴² This statute eliminated the discretion power of sheriffs with respect to which offences would be bail able and define what offences would be appropriate for bail in England legal framework.⁴³

The conditions under which pre-trial release was permissible and the powers of the sheriffs in determining sufficient security were specified. To ensure that the accused would appear on the

⁴¹. American Bar Association Project on Minimum Standards For Criminal Justice,(1996), Standards Relating to Fair Trial, New York, P.36

⁴². Supra Note 19, P.208.

⁴³. Ibid.

date set for his trial, a third party to assume a personal responsibility for the accused on penalty of forfeiture of his own property.⁴⁴

In the United States of America, bail practice was derived from the United Kingdom practice of bail.⁴⁵ In the United Kingdom it is the discretion of the Courts either to allow or not to allow bail. Even if the offence the accused is charged with is bailable. And, the accused may be refused bail for reasons that he would add to his offence or that he would interfere with the witness. On the contrary, in the United States, the sole purpose of bail is limited to assure the presence of the accused to stand at the trial and submit to sentences if found guilty. In the United States in jurisdictions which claim to have an absolute right to bail presumably no one should be detained before trial in noncapital case if he is prepared to give bail.⁴⁶

As far as the knowledge of the researcher goes Ethiopian modern bail system was introduced through Ethiopian Criminal Procedure Code of 1961 has detailed provisions on pre-trial release on bail. In these provisions many issues are addressed. For instance, the police officer may grant bail to alleged criminal offender arrested by him. This provides that the police officer has the discretion to release the suspect on bond, if it is doubtful that an offence has been committed or the offence is not punishable with rigorous imprisonment as a sole or alternative punishment.⁴⁷ While if the police officer refused to release the accused on bail, the accused has the right to bring him before the nearest court within forty-eight hours of his arrest.⁴⁸ According to the Criminal Procedure Code, the court before whom the arrested person is brought shall decide whether such person shall be kept in custody or be released on bail.⁴⁹ When the arrested person is not brought before the court within the time specified in the Criminal Procedure Code, he can apply to the court of his nearest convenience to release him on bail.⁵⁰

Moreover, who so ever has been arrested may be released on bail where the offence with which he is charged does not carry the death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offence was committed

⁴⁴. Supra note 31, P.150

⁴⁵. Dowling and Edward, American Constitutional Law, (1954), p. 557

⁴⁶. Ibid

⁴⁷. Supra note 40, article 28

⁴⁸. Ibid, article 29(1)

⁴⁹. Ibid, article 59(1)

⁵⁰. Ibid, article 64

dying.⁵¹ This legal provision has been controversial one before court of which the application of bail right is lodged. As the point of the debate is not the central theme of this paper, the researcher will not do well on it at length. The researcher simply desires to show how bail was incorporated in one of the modern laws of Ethiopia.

2.2.1 Countries experiences

In many countries, regardless of its form, the purpose of bail is to release a suspect from jail on the understanding that the suspect will return for trial. In some countries granting bail is common where as depending up on the system of court and the accusations bail is not always available. Thus, the experience of bail may differ from country to country.

In England, the bail system developed through many years. In principle an arrestee has the right to be released on bail. But where the defendant is charged with murder, attempted murder, rape, attempted rape and if the offender was previously convicted in England courts one of these offences he has the burden to establish in order to convince the court that there are circumstance which justify release on bail. Finally, the court decides on the question of bail.⁵² Normally, in England in principle an arrested person has the right to be released on bail but not absolute right.

In United States of America, the law allows pre-trial detention of individuals based upon their dangerousness to the community. If an accused charged with a non-capital offence in the Federal Courts, the accused persons have the right to be released on bail. The USA Code, provided for the granting of bail by any court. But, specifically makes an exception in capital cases. In addition to this in the Code there is another section which grants the right to an accused to be admitted to bail up on an amount to be determined by USA commissioner court judges.⁵³

Moreover, the Code provides that only persons who fit in to certain categories are subject to detention without bail. For instance, persons charged with a crime of violence an offence for which the maximum sentence is life imprisonment or death. There is a special hearing held to

⁵¹. Ibid, article 63(1)

⁵². Wondwossen Demissie, The Right to Bail in Ethiopia Respective Roles of the Court and the Legislature, Journal of Ethiopian Law, (2009), Vol. 23 No.2 p. 25

⁵³. Awan, Ali, Ahmed, Law of Bails Bonds, (Lahore: law Times Published Nowise Print. Press) (1970)

determine whether the defendant fits within these categories; anyone not within them must be admitted to bail.⁵⁴

In Nigeria on the other hand, the power of a court to admit an accused to bail depends on two factors: the court before which the accused is being charged; and the nature of the offence leveled against the accused. The Criminal Procedure Act states that where a person is charged with a felony other than one that is punishable by death, the court may, if it thinks fit, admit to bail. When a person is charged with any offence other than those: the first is the nature of the offence and the punishment prescribed for it. If the offence is a serious one and carries a heavy penalty, for example in a homicide case, the court may not grant release on bail. Second, the criminal record of the accused may also be taken into account. If the accused could show that he/she is a person of good character and has never been convicted of a criminal offence, the court may grant bail to the accused. Third, the possibility of the accused committing further offence while on bail must be considered. If an accused is unlikely to commit further offences the Court admit to bail. Fourth, the consideration is the possibility of interfering with the investigation of the offence. If the accused is likely to obstruct the investigation, bail will be refused.⁵⁵

From this point of view, we can conclude that in England, in principle, an arrested person has the right to be released on bail but not absolute right. As well as in USA, an arrestee has the right to be released on bail except person's charged with a crime of violence an offence for which the maximum sentence is life imprisonment or death penalty and deemed to be dangerousness to the community. Along with, in Nigeria the right to bail of an accused person depends on the nature of the offense for which the accused is charged and the nature of the offence leveled against the accused.

2.3 The link between corruption offence and right to bail

In the previous topic, different consideration of bail and its justification, particularly, when granting or denying bail has been discussed. At this point it's worth to enquire how corruption offence and the right to bail are interconnected. The researcher opinion regarding this inquiry is explained accordingly. As the main title of the research emphasizes, the right to bail of accused

⁵⁴. Ibid

⁵⁵. Supra note 15, P.94

person on corruption offence and its implementation in Ethiopia will bring us to the issue of bail in relation to corruption offences.

Corruption is a universal challenge that has been described differently by diverse Schools of thought and institutions. It takes many forms and countries have experienced it in different levels. The one universal truth is that it prevails in one form or another practically in all countries. The search for strategies to combat corruption has acquired increasing importance among the citizens of these countries and their Government. Accordingly, fighting corruption has become more urgent than other. As our knowledge of the phenomenon expands we realize the extent of the harm it causes corruption impoverishes national economies, under mines democratic institutions and the rules of the law, and facilitates the emergence of other threats to human securities. As a result, many countries have begun the establishment of a new system of combating corruption in their legal system.⁵⁶

As corruption is a global issue, it is crucial to mention the key expression of the United Nations Convention against Corruption. The preamble of this Convention stated that “the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy ethical values and justice and jeopardizing sustainable development and the rules of law.”⁵⁷ In doing so, it also acknowledges the fundamental principles of due process of law in criminal proceedings.⁵⁸

Criminal procedure also regulates, the duties and powers of the criminal courts and prosecutors as well as prosecutorial authority; the duties and powers of the police specially in the course of investigation of a offence; the rights of suspects and arrested/accused persons; pre-trial procedural matters; bail right, the course of the criminal trial, and specially the rights and duties of the prosecutor (the state).⁵⁹

⁵⁶. Rose, Ackerman S., Corruption and Development, (Yale University, World Bank Annual Conference) (1997), P.22

⁵⁷. Compendium of International Legal Instruments on Corruption, (2005), UN, New York, (2nd. Ed.)

⁵⁸. Ibid.

⁵⁹. Supra note 12, P.6

From this one can conclude that the interrelationship of corruption offence and the quest for the right to bail for those arrested/accused of corruption offence was common ground that bail right as one component of human right from the individual aspect and protecting of corruption offence is from the society aspect and both regulates by criminal justice system.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK

3.1 International

Bail is recognized as a right in various international human rights treaties. It is stipulated under Article 9 of the UDHR that no one shall be subjected to arbitrary arrest or detention. The right to bail is also considered as part of the Civil and Political Rights that prohibits arbitrary arrest, or detention.⁶⁰ At the same time, individuals are entitled to fair and public hearing by independent and impartial tribunal⁶¹ as well as the right to be presumed innocent until proved his guiltiness that encourages free movements.⁶²

After the Universal Declaration of Human Rights of 1948 has been ratified, the questions of human rights become very important in the international field. Despite the influence and non-binding nature of the declaration, it is used in promoting and ratifying conventions and declarations. It is also used as a basis for introducing bail right that obliges state to respect and enforce.

The International Covenant on Civil and Political Rights, another international instrument, was ratified and states pledged to respect the rights defined therein and to adopt measures to put them into effect. Article 14 of the Covenant provided that all persons shall be equal before the courts and tribunals. In the determination of any criminal charges against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, sub-article 2 of the same article states that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law, and to be tried without undue delay.⁶³

Moreover, article 9(4) of the same covenant provides anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceeding before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is

⁶⁰. Universal Declaration of Human Rights, General Assembly Resolution 217 A (III), (1948), article 9; International Covenant on Civil and Political Rights, General Assembly Resolution 2200 A (XXI), (1966), article 9

⁶¹. Ibid, article 9

⁶². Ibid, article 10

⁶³. International Covenant on Civil and Political Rights, General Assembly Resolution 2200 A (XXI), (1966), article.14

not lawful.⁶⁴ To put these international instruments of political and civil rights in practice, each state party supposes to take steps, individually and through international assistance and cooperation to achieving the realization of the rights recognized in the covenant by all appropriate means.

3.2 Regional

African (Banjul) Charter on Humans and Peoples' Rights was adopted by the Organization of African Unity in 1981. Following the ratification of the Charter, OAU established a system that protect and promote human rights as per the institutional framework of the OAU.⁶⁵ The basic obligation of the African states is spelled out in article 1 of the Charter. It provides that member states of the OAU are required to recognize the rights, duties and freedoms enshrined in this charter and undertake to adopt legislative or other measures to give effect to them. This obligation is complemented by article 62, of the Charter which demands the states parties to report biannually they have adapted to giving effect to the rights the charter guarantees.⁶⁶

The charter recognized individual rights such as, equality before the law, the right to liberty and to the security of his person⁶⁷ and no one may be arbitrarily arrested or detained, the right to an appeal against acts of violating his fundamental rights, the right to be presumed innocent until proved guilty by a competent Court,⁶⁸ the right to be tried within a reasonable time.⁶⁹

3.3 National

The principle of bail is enshrined in the FDRE Constitution and other relevant laws by respecting the bail right of accused person. Thus, it provided that persons arrested/accused have the right to be released on bail. In exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release of the arrested person.⁷⁰ As the Constitution is the supreme law of the land, in principle it protects the right to bail for

⁶⁴. Ibid. Article 9(4)

⁶⁵. African Charter on Human and Peoples' Rights, (Adopted 27 June 1981, OAU, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58(1982), entered into force 21 October 1986)

⁶⁶. Ibid. article 62

⁶⁷. Ibid, article 2(1)

⁶⁸. Ibid, article 6

⁶⁹. Ibid. article 7.

⁷⁰. Supra note 6 article 19(6)

arrested/accused person; but exceptional circumstances prescribed by law. The law which provided for the bail right should be consistent with the Constitution.

As one can understand from the constitution, the bail right is not absolute right and it has limitations for exceptional matters. However, these exceptions must be interpreted in a manner compatible with principles of the Constitution. As a result bail under the Ethiopian constitution is recognized as part of human rights and freedoms that emanate from the nature of mankind.

Moreover, the Criminal Procedure Code of 1961 provides that determination of the issue of release on bail partly is the discretion of the court and the Police officer. The relevant articles with regard to bail are article 28, article 63 and article 67. Article 28 of the Criminal Procedure Code gives discretionary power to the investigation police officer to release suspects with or without surety, where the offence committed or complained of is not punishable with rigorous imprisonment as a sole or alternative punishment, or where it is doubtful that an offence has been committed or that the summoned or arrested person has committed the offence complained.⁷¹

Where the police do not release under such provision, the arrested person may apply to the Court to be released on bail in accordance with article 64.⁷² The court depending on article 63 of the Criminal Procedure Code, where the offence with which he is charged doesn't impose the death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person on whom the offence was committed will die the court allow release with bail bond.⁷³

The other exception to this principle is article 67 of the Criminal Procedure Code, that is, where the arrested person is of such nature that is unlikely that he will comply with the conditions laid down in the bail bond i.e. does not appear before the court or police officer when required, where the suspect, is likely to commit other offences; and likely to interfere with witnesses or tamper with the evidence. The court may not allow Bail. To decide this, the court should ensure the conditions that stated under article 67.⁷⁴

⁷¹. Supra note 40 article 28

⁷². Ibid article 64

⁷³. Ibid article 63.

⁷⁴. Ibid article 67.

To conclude, the right to bail is basic right that is explicitly recognized by international and regional human right instruments. In addition to this, in Ethiopia bail right is guaranteed by the FDRE Constitution and the 1961 Criminal Procedure Code. These international and regional human right instruments and national laws lay the basis for protection of the right to bail of an arrested/accused person of corruption offence.

CHAPTER FOUR

Analysis

This chapter deals with the results and discussions made based on the collected data from the research participants through interview, Focus Group Discussion and Document analysis. Thus, in line with the objective of the study, this section incorporates different issues; the right to bail of an arrested/accused person on corruption offence under the Proclamation No. 434/2005, the right to movement of an arrested person on corruption offence, the right to appeal of prosecutor and investigator recognized under the Federal Anti-corruption Commission Law, the role of the courts to enforce bail right on corruption offence, the right of access to Courts of arrested/accused Person on corruption offence, the right to speedy trial of arrested/accused person on corruption offence and the impact of FDRE Criminal Law upon right to bail of person arrested/accused on corruption offence.

4.1 Legal Analysis

Right to bail is a fundamental human rights aspect which is conceptually integrated with the right of suspected persons to be presumed innocent until proved guilty by court of law. International and regional human rights treaties as well as national constitutions and subsequent laws have duly recognized this right.

Bail is a right recognized in international treaties. It is stipulated in article 9 of the UDHR provides that no one shall be subjected to arbitrary arrest or detention. The right to bail is considered as part of the Civil and Political Rights that prohibits arbitrary arrest.⁷⁵ In addition to this, international Covenant on Civil and Political Rights also recognized right to bail by providing, any arrested or detained person on a criminal charge shall be brought promptly before judge or other authorized by law to exercise judicial power and be entitled to trial within a reasonable time or to release.⁷⁶

In principle the right to bail is enshrined in the FDRE Constitution and other relevant domestic laws by respecting the bail right of accused person. Thus, it is provided that persons arrested/accused to have the right to be released on bail. In exceptional circumstances prescribed

⁷⁵. Supra note 60, article 9

⁷⁶. Supra note 63, article 9

by law, the Court may deny bail or demand adequate guarantee for the conditional release of the arrested person.⁷⁷ As the Constitution is the supreme law of the land, in principle it protects the right to bail for arrested/accused person except under exceptional circumstances prescribed by law. The law which provided for the bail right should be consistent with the constitution. As one can understand from the Constitution, the right to be released on bail is not absolute right and it can be denied under exceptional matters. However, these exceptions must be interpreted in manner compatible with the Constitution.

Furthermore, the Federal Ethics and Anti-corruption Commission was established by Proclamation No. 235/2001 for the first time as an independent Federal Government Body, for it has been deemed necessary to establish an independent government body capable of investigating and prosecuting, checking and preventing corruption and other improprieties as well as fighting corruption and impropriety through the promotion of ethical values in the society.⁷⁸ The commission is vested with various powers and duties of which one was about bail. The proclamation states that the commission had the power to detain, without court warrant, persons suspected of corruption offences for a period not exceeding forty-eight hours in accordance with the Criminal Procedure Code, to release on bail in accordance with the law and to take fingerprints and photographs.⁷⁹

This provisions of the law does not clearly state how the commission releases arrested person suspected of corruption offence. It rather states releasing on bail is one of the powers of the commission as per the existing law of the land.⁸⁰ In this case, the law that governs about bail was the Criminal Procedure Code. Therefore, it was believed that the commission was subject to discharge its power of releasing on bail the arrested person suspected of corruption offence according to the Criminal Procedure Code. Therefore, it was believed that the commission was subject to discharge its power of releasing on bail the arrested persons suspected of corruption offence according to the Criminal Procedure Code. However, this condition did not continue. It was totally changed when the Anti-corruption Special Procedure and Rules of Evidence amendment proclamation No. 239/2001 came into force as of the 12th day of June 2001. This

⁷⁷. Supra note 6, article 19(6)

⁷⁸. Supra note 8

⁷⁹. Ibid, article 7(6)

⁸⁰. Ibid, article 7(5)

proclamation has a provision in article 51(2) that reads, “A person who is arrested on suspicion of having committed a corruption offence shall not be released on bail.”⁸¹ According to this amended proclamation, the case of bail right regarding corruption offence was absolutely denied by the law. This provision seriously diminishes the role of the court in the protection of the right to liberty.

As a result arguments for and against this provision of the amended proclamation were raised by different people. One view is a view that argued the amended Proclamation No.239/2001 is Constitutional according article 19(6) of the FDRE Constitution. This view invokes justification by reference to this provision of the constitution that reads ‘exceptional circumstance prescribed by law’. This phrase refers to the special laws to be issued by the parliament which can prohibit the right to be released on bail in case of some offences may be dined. The Ethiopian Herald News Paper quoted senior officials of the Ministry of Justice justifying constitutionality of the provisions as follows:

*The right to bail granted to corruption suspects would undermine the government’s initiatives to stamp out the prevailing threat of corruption in the country. Preferential treatment should not be attributed to corruption, as it would have a devastating impact on the development endeavors and democratization process underway in the country. The need to eliminate loopholes and promote zero-tolerance moves in the fight against the rampant corruption and improper ties in the country. Allowing bail could actually block the root that leads to the discovery of the greater problem relating with evidence.*⁸²

The other view argued that the amended proclamation is unconstitutional because the constitution does not grant to the parliament the power to enact laws, which automatically deny the right to be released on bail in the absence of court decision. The legislature can only make laws that indicate the exceptional circumstances whereby the court may deny the arrested person the right to release on bail. Since the FDRE Constitutional article 19 (6) provides “persons arrested have the right to be released on bail” shows the courts power in denying or granting bail

⁸¹. Supra note 9, article 51(2)

⁸². The Ethiopian Herald, May 31, 2001. P.4

according to legislation. Therefore, a legislation, which absolutely disregards the power of the court in effect, is unconstitutional.⁸³

The researcher is in favor of the second argument. Because as principle, bail right is a fundamental human right and then an arrested/accused person has the right to be released on bail. Based on this principle the lawmaker with regard to fundamental human rights, can only make laws that point out the exceptional condition based on which the police or the court could deny or grant bail. But the amended proclamation, the case of bail right regarding corruption offences was absolutely denied by the Proclamation. Therefore, the result of this denial the police and the courts have no power either granting or denying bail of an arrested/accused person of corruption offence. This is in effect against article 19(6) of the Constitution.

After three and half years, in February 2005, both the Establishment Proclamation and the Special Procedure and Rules of Evidence with the amendment proclamation were repealed and replaced by the Revised Anti-corruption Special Procedure and Rules of Evidence proclamation No. 434/2005.

In this Revised Proclamation it is clear that some detailed provisions on the regulation of bail right are enshrined. After the coming to an end of the absolute denial of bail in corruption offences the right to bail of an arrested persons on corruption offence, is declared under article 4(1) of the Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation No.434/2005. This provision provides an arrested/accused person for a corruption offence may apply to court to be released on bail. Though, “An arrested person charged with a corruption offence punishable for more than ten years may not be released on bail.”⁸⁴ In this regard, as the researcher interviewed Ato Gugssa Ketema who was former Prosecutor of the Federal Ethics and Anti-corruption Commission explained that the phrase “An arrested person charged with a corruption offence punishable for more than ten years may not be released on bail.” is clear. Hence, it is possible to enforce taking ten years and more as the lower limit of punishment.⁸⁵ On the other hand, prosecutor Ato Taye Mokenen stated that phrase “an arrested person charged

⁸³. Belachew Mekuria, Corruption and Human Right: Theoretical Overview on their Relationships, (Addis Ababa), Unpublished, (2001), P.45

⁸⁴. Supra Note 7, Article 4(1).

⁸⁵. Interview with Ato Gugssa Ketema, Former Prosecutor of the Federal Ethics and Anti-corruption Commission Currently private legal adviser. Office No.3 March 10, 2013

with a corruption offence punishable for more than ten years may not be released on bail” is open to take less than ten years as a lower punishment. Because article 404(3) of the FDRE Criminal Code expressly state that there are about 23 articles specified as a corruption offence. So, when we see the punishment stated under these articles, it starts from one year, five years, seven years or ten years, as a lower limit of punishment and 10 years to 25 years as a maximum upper limit of punishment. This shows the lower limit of punishment in all articles is less than ten years and the upper limit of punishment is from 10 to 25 years. Thus according to the position of taking ten years and more as the lower limit of punishment in corruption offences under the FDRE Criminal Code are bailable which in fact amounts article 4(1) of Proclamation 434/2005 is inoperative.⁸⁶

In general, it is arguable. But, the researcher is in favor of the view of the first interviewee. Because when we look at article 404(3) of the FDRE Criminal Code, there are about 23 articles specified as corruption offences. So, the punishment stated under these articles starts from one year to ten years as a lower limit of punishment and 25 years as a maximum upper limit of punishment. This shows the lower limit of punishment in all cases of corruption offence is less or equal to ten years. In addition to this, another relevant law is the Special Penal Code Proclamation No.214/81. This Code contains 19 provisions mainly deal with corruption practices and the punishment provided under these provisions starts from three year to ten years as a lower limit of punishment and imprisonment for life or death as a maximum upper limit of punishment. This shows the lower limit of punishment in all cases of corruption offence is less or equal to ten years. So it is possible to enforce taking ten years and more as the lower limit of punishment.

To be concluded with this issue, according article 4(1) of Proclamation 434/2005, the role of Courts for denying or granting bail on corruption offence became possible. Hence, an arrested person for corruption offences may apply to court to be released on bail. Other than the court, the investigator is also empowered to release a person arrested for corruption offence on bail with or without surety. A person arrested for corruption offenses where; it is doubtful that the offenses complained of has been committed, or it is doubtful that the arrested person has committed the

⁸⁶. Interview with Ato Taye Mokomen, Group leader of Prosecution and Investigation in the Federal Ethics and Anti-corruption Commission, Office No.313 April 11, 2013

offence complained of or the offence for which the person arrested is not punishable with rigorous imprisonment.

Moreover, with the issue of right to movement, article 32 of the FDRE Constitution provided that, any Ethiopian or Foreign national lawfully residing in Ethiopia has the right to movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes and the right to return to his country.⁸⁷ Accordingly, the right to movement is fundamental human right and that can exercise freely their freedom of movement and to choose their residence within as well as abroad.

However, the Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation No.434/2005 empowered the court to restrain the right of movement of the arrested/accused persons suspected of corruption offence. Article 6 of the proclamation provided that: Where the suspect is released on bail, the court may order the following cautionary measures alternatively or cumulatively: restrict the movement of the suspect in a limited region or place; prohibit the suspect from reaching places where he might tamper with evidence; instruct the suspect to report to the relevant authority within a prescribed time and prohibit the suspect from going abroad.⁸⁸

The researcher interviewed Ato Gebru Gebeyehu, Director of the Prosecution and Investigation Directorate of the Federal Ethics and Anti-corruption Commission, who explained that normally the Revised Special Procedure and Rules of Evidence Proclamation is good, it allows bail right of the arrested/accused person of corruption offence, it provides in conformity with article 19(6) of the Constitution, this according to him is a development one step further. But the right to freedom of movement is not restricted by the Constitution for the person's released on bail. However, article 6 of the Revised Special Procedure and Rules of Evidence restricts right to freedom of movement for the person released on bail: Such as by prohibiting travel abroad, and requiring the suspect/accused to report to the commission and confining his/her movement to limited place. In fact, the provision seems contradict with the constitution. But inherently before this proclamation the repealed Proclamation No. 239/2001 article 51(2) used to totally deny bail right. However, the Revised Special Proclamation amended this provision as provided from article 4, 5 and article 6 of the Proclamation. Therefore he is of the view that article 6 of the

⁸⁷. Supra Note 6, Article 32(1)

⁸⁸. Supra Note 7, Article 6

Revised Proclamation facilitates right to bail of a suspect/accused and do not contradict the Constitution.⁸⁹

On the other hand, Mekonen Gebrehiwet, Judge at the Federal Supreme court, believes that injunction of the right to movement provided under article 6 of Proclamation 434/2005 affects the right to be presumed innocent and his/her ability to defend his/her case. He deemed to be Thus; he is of the view that such limits placed on the right to movement also negatively impacts on the right to defense of a suspect/accused. The defendant restricted to collect his witnesses on the hand the prosecutor well organized government structure. So, it contradicted with article 32 of the constitution.⁹⁰

The researcher is of the same view with the later argument because such restraint order directly affects the ability of the accused to prepare his/her defense, access to evidence and presumption of innocence. This provision hampers these rights and contradicts with article 32 of FDRE constitution as well as with article 9 (1) of International Covenant on Civil and Political Rights which deals with the right to liberty.

The right of access to courts of arrested person is a basic one guaranteed by the international human right instruments. As the International Covenant on Civil and Political Rights provides that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.⁹¹ In addition, article 37 the FDRE constitution provided everyone have the right to bring a justifiable matter to, and to obtain a decision or judgment by, a court of law. As well as article 20 (1) of the constitution provided, an arrested person shall appear before a court of law within forty-eight hours of his arrest. It also guarantees all persons have the right to a public trial before an ordinary court of law within a reasonable time after having been charged.⁹² The Criminal Procedure Code also provides that any Court to which a claim for bail is made shall consider it without delay and shall call upon the

⁸⁹. Interview with Ato, Gebru Gebeyehu, Director of Prosecution and Investigation Director at the Federal Anti-Corruption Commission, Office No. 217,(Addis Ababa) Dec 26, 2012

⁹⁰. Interview with Ato Meconen Gebrehiwot Judge of Federal Supreme Court Cassation Division at Federal Supreme Court Building Office No.225 (Addis Ababa) Feb, 21, 2013

⁹¹. Supra note 63, article 9(4)

⁹². Supra note 6, article 20(1)

prosecutor or the investigating police officer in his absence for comments and recommendations.⁹³

In relation to the jurisdiction of courts the amended proclamation provides that any application for arrest, search, remand restraining or any other similar applications or issues related to investigation of corruption offences ought to be heard by the court which has a jurisdiction to hear corruption cases.⁹⁴ Although, the proclamation contains a provision that denies the right to be released on bail and provides that any person who was arrested being suspected of having committed a corruption offence shall not be released on bail. This is to mean that corruption offences were not bailable. For this reason, jurisdiction on application for bail was not an issue.

However, the Revised Anti-corruption Special Procedure and Rules of Evidence proclamation changed the case and declared the jurisdiction of courts over corruption offences that the Federal High Court should have first instance jurisdiction over corruption offences that fall under the jurisdiction of the Federal Government other than those cases for which the Federal Supreme Court has first instance jurisdiction.⁹⁵

The jurisdiction on corruption offences the issue of application for bail is determined under the Revised Anti-corruption Special Procedure and Rules of Evidence proclamation No.434/2005. Article 7(4) of the proclamation read as, “Matter related with arrest, search, remand, bail, restrains order or any other related, bail, restrains order or any other related matter with investigation of corruption offences shall made to the court which has jurisdiction to hear cases of corruption offences.”⁹⁶

Because of this people arrested or accused of corruption offence shal apply for bail to a Court that has jurisdiction to hear the case. This means, in effect, the provision is completely different from the Criminal Procedure Code and provides that any Court to which an application for bail is made shall consider it without delay and shall call upon the prosecutor or the investigating police officer in his absence for comments and recommendations.⁹⁷

⁹³. Supra note 40, article 66

⁹⁴. Supra note 9, article 7

⁹⁵. Supra note 7, article 7(1)

⁹⁶. Ibid, article 7(4)

⁹⁷. Supra note 40, article 66

As it has been noted, for corruption offences the application of bail should be made to the court that has jurisdiction to hear the case. At this stage, one can inquire which court has a jurisdiction to hear cases of corruption offences at Federal levels. According the Revised Anti-corruption Special Procedure and Rules of Evidence if any one who is arrested or accused of corruption offense on Federal matters, may apply to be released on bail not in any courts as non-corruption offences, but to the Federal High Court or to Federal Supreme court as the case may be.⁹⁸ This causes a problem during implementation. If in case, a person who is employed in one of these Federal organizations found in Afar, Somali, Banshangul-Gumuz, Gambela and Southern Nations Nationalities' and People Regional State (SNNPRS) and is arrested on suspicion of corruption offence that fall under the jurisdiction of Federal courts he/she is expected to lodge application for release on bail to the Federal High or Supreme Court.

As regards to this issue the researcher has interviewed Vice President of Federal High Court and he said the Federal High Courts establishment proclamation No. 332/2003 declares the establishment of Federal High Courts in States of Afar, Benshangul-gumuz, Gambela, Somali and SNNPRS. But, so far due to the problem of Federal Government or House of Peoples Representative Federal High Court is not yet permanently established in these Regional States.⁹⁹

As a temporary measure mobile court arrangement is being used whereby federal courts convene in these regions in one or two month's time travelling to the regions from Addis Ababa. But, practically due to lack of Judges mobile courts did not even move every two month. Since the Federal High Court is not permanently established in these Regions anyone arrested of corruption offence has violated constitutionally guaranteed right of access to courts. And have no other option than waiting for the visit of the Federal High Court as a mobile bench from Addis Ababa or waiting for the prosecutor of the Federal Anti-corruption commission produces his charge to the Federal High Court.¹⁰⁰

In the Regions mentioned above the application of bail couldn't be decided even after a month. Where it is not as such easy for the government to establish Federal High Courts in these Regions within a short period of time, and also difficult to maintain temporary solution like

⁹⁸. Supra Note 7, article 7(1)

⁹⁹. Interview with Ato Habte Fichala Vice President of Federal High Court, Addis Ababa, at Lideta High Court Building, Office No.202, Feb. 1, 2013

¹⁰⁰. Ibid

working by Mobile Courts effectively, it is difficult for those arrested on corruption offence which isailable.¹⁰¹

In addition, the second interviewee said the following with regard to access to Courts:

Since the Special Procedure and Rules of Evidence proclamation No.434/2005 is applicable on matters of corruption offences of Federal Government arrested persons on corruption offences on Federal matters are supposed to make their application to Federal High Court. As a result, this is not easy for arrested/accused persons who are found in the rural areas where Mobile Bench of Federal High Court has no visit frequently. Thus, when the application for the bail is not accessible for them, to make things worse, the nearest courts are not empowered to treat their application of bail.¹⁰²

Consequently, they will be forced to stay under custody until the prosecutor of the Federal Anti-corruption Commission produces his charge to the Federal High Court. This will be more painful for those suspects arrested ofailable corruption offences and affect right access to courts, right to speedy trial as well as presumption of innocence of the suspected person of corruption offence¹⁰³

The right to speedy trial of the arrested/accused person is recognized under International Covenant on Civil and Political Rights. article 9 (3) of ICCPR clearly states “any person arrested or detained on a criminal charge shall be brought promptly before a judge or other official authorized by the law to exercise judicial power and shall be entitled to a trail within a reasonable time or release.” The article imposed a duty on the law enforcement officials to bring the accused before the court immediately after arrest.¹⁰⁴ Article 14 (1) of the same Covenant provided everyone charged with criminal offense shall have the right to be tried without undue delay.¹⁰⁵The African Charter on Human and Peoples’ Rights, also states, “Every individual shall

¹⁰¹. Ibid

¹⁰². Interview with Ato Teklit Yemesel Judge of Federal Supreme Court in Cession Bench, Addis Ababa, at Federal Supreme Court Building, Office No.311, Mar. 27, 2013

¹⁰³. Ibid

¹⁰⁴. Supra note 63, article 9(3)

¹⁰⁵ Ibid, article 14

have the right to be tried within a reasonable time by an impartial Court or Tribunal.” The accused shall have his fair trial within a reasonable time.¹⁰⁶

Article 20 (1) of the FDRE Constitution also stated that all persons have the right to a public trial before an ordinary Court of law within a reasonable time after having been charged. It also guarantees the same right to an arrested person shall appear before a court of law within Forty-eight hours of his arrest.¹⁰⁷ Article 19 (4) of the same constitution also authorizes that a court can order a remand in custody of the accused for a period no longer than the time required in order carrying out the necessary investigation.¹⁰⁸

The law provides that decision on bail application shall be made within short period of time. That is within Forty-eight hours.¹⁰⁹ The reason bail case is not a substantive litigation, it is a procedural case, and decision should be given as promptly as possible otherwise it will affect the presumption of Innocence. When the bail has been entered into and all formalities such as the guarantor when secured the bail bond and other formalities fulfilled the accused shall be released from custody.

Thus, there is no other limitation, and litigation of bail between the prosecutor or investigating police officer and arrested person. Except when certain new facts disclosed which were unknown bail was guaranteed.¹¹⁰ As provided by the Criminal Procedure Code any court to which an application for bail is made shall consider it without delay and shall call upon the prosecutor or the investigating police officer in his absence for comments and recommendations. It shall make its decision within Forty-eight hours.¹¹¹

However, as discussed in the previous sections, the Revised Special Procedure and Rules of Evidence Proclamation secure the right to appeal to the investigator or prosecutor, when appeal is taken by the prosecutor or investigator objecting the decision of the lower court that grant bail or the amount of bail the decision and allow stay of decision from being executed. The arrested person suspected of corruption offence remains under custody until the appellate court considers

¹⁰⁶ Supra note 65, article 7(1) (d)

¹⁰⁷ . Supra note 6, article 20(1)

¹⁰⁸ . Ibid, article 19(3, 4)

¹⁰⁹ . Supra note 40, article 66

¹¹⁰ . Ibid, article 74

¹¹¹ . Ibid, article 66

the application of the prosecutor or investigator. On the other hand, the arrested person suspected of corruption offence is not found guilty still presumed innocent. However, the appellate court do not treats the issue in a speedy manner.

Human Rights can be respected through properly functioning courts when the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected. Unless the independence of the judiciary is guaranteed, the Courts cannot be in a position to give decisions free of influence and guarantee the protection of human rights of citizens.

The United Nations resolution on the independence of the judiciary requires that judicial process and judicial decision be undertaken without any interference,¹¹² because the principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly. In addition, as provided under the FDRE Constitution, the judicial power is vested in the courts. Accordingly it is an independent body to interpret, decide and enforce the law.¹¹³

With regard to this issue the researcher interviewed Judge Amare Amogh of the Federal Supreme Court and he said that in order to protect human rights and fundamental freedoms of parties to a dispute courts must be free from any influence. However, article 5(2) the Revised Special Procedure and Rules of Evidence itself is a ground for influence upon courts. This provision restricts the enforcement of the decision granting bail of the arrested/ accused person on corruption offence by providing where an appeal is taken objecting the decision of granting bail, the decision of the Lower Court shall stay from being executed. This can be taken as one influence on the Lower Courts decision since the time for how long the enforcement of the decision stay is not clearly specified under the provision.¹¹⁴

In addition, article 5(3) of this Proclamation is another influence upon Courts. The provision recognizes the Power right to appeal of prosecutor and investigator are put down in a general manner that where the prosecutor or the investigator of the commission objecting the decision

¹¹². United Nations General Assembly Resolution No. 40/32 (1985), article 4

¹¹³. Supra note 6, article 79, (1, 2, 3,)

¹¹⁴. Interview with Ato Amare Amogh, Judge of Federal Supreme Court Cession Bench at Federal Supreme Court Building, Office No.225 (Addis Ababa) Feb, 21, 2013.

granting bail, the decision of the Lower Court stay from being executed and this gives a wide discretionary power to the public prosecutors and investigators of the commission.¹¹⁵

When proclamation number 434/2005 came into force, accused person on corruption offence began to lodge application for bail in order to be released on bail, since an arrested person for a corruption offence may apply to Court to be released on bail.¹¹⁶ But, in most cases the prosecutor was charging person arrested of corruption offence based on the Revised Special Penal Code Proclamation No. 214/81. For instance, breach of trust and offence against the interest of the government (article 13), forgery of governmental public documents (article 17), corrupt practices, acceptance of undue advantage and traffic in official influence (article 20), abuse of authority (article 23) were common articles cited and except article 13(1) and article 26, other provisions were considered as non bailable offence.¹¹⁷ Majority of the arrested persons thus were accused of this non bailable corruption offences remained under custody.¹¹⁸

However, when the FDRE Criminal Code has come into force beginning 9th of May, 2005, an application for bail restarted by the accused of corruption offence by raising article 6 of the FDRE Criminal Code to be released on bail since the Revised Penal Code Proc. No. 214/1981 was expressly repealed.

Regarding this issue, the researcher discussed with the prosecutor of the Commission and they said that the Revised Special Penal Code proclamation No. 214/1981, and the Penal Code of 1957 were clearly repealed based on the FDRE Criminal Code. However, for an offence prior to the coming in to effect of the Criminal Code, it shall be treated in accordance with the repealed laws, as this article only relevant after conviction for purpose of imposing punishment. So, there is no reason to raise article 6 of the Criminal Code as a ground for release on bail for persons accused on corruption offence. If it is applying it contradict with article 5(1) of the criminal code.

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¹¹⁵. Ibid

¹¹⁶. Supra note 7, Article 4(1)

¹¹⁷. The Revised Special Penal Code, Proclamation No.214/1981, Neg. Gaz. No.2, November 5, 1981.

¹¹⁸. For Example Accused persons in the Federal High Court Criminal Case File No. 14372, 14373, 14374, 14375, 33690, 336991, 33692, 33693, 33695, 33697, 33698, 33700, 33702, 33703, 33704, 33705, 33706, 236228, 33140, 23628, 20326, 343554

¹¹⁹. FGD with the Federal Anti-Corruption Commission Prosecutors and Investigators, at Federal Anti-Corruption Commission Building, office, No. 307, Addis Ababa Dec. 26, 2012

On the other hand, the other group said that, article 6 of the FDRE Criminal Code provide that where the criminal is tried for an earlier crime after the coming into force of this Code, the provisions shall apply if they are more favorable to the accused/suspect than the laws in force at the time of the commission of the crime.” This article indicates as far as the new provision is favorable to the accused, can be raised as a ground for each case including release on bail.¹²⁰

Argument of the second interviewee appears to the researcher because when we look at article 6 of the Code with the basic right to bail of the accused person court shall decide in each case whether, having regard to all the relevant provision as the new law is more favorable. So it is true the accused raised this article as a ground and for the court to reconsider their application to be released on bail.

4.2 Case Analysis

In this Case study the researcher discussed about the right to bail under Proclamation No. 4343/2005 and examines the effects of denial of bail for persons arrested/accused person’s right to movement, the role of the courts to enforce bail right of the accused, speedy trial of the accused person arrested/accused on corruption offence, and discussed the impact of FDRE Criminal law upon right to bail of accused person on corruption offence.

4.2.1 Right to bail of an arrested/accused person under proclamation No. 239/2001

After the amended proclamation contains a provision that does not allow a release on bail of person’s arrested on suspicion of having committed a corruption offence, the application of bail for all arrested persons on corruption offence was rejected. Suspects who were released on bail previously were rearrested.¹²¹ Once a person is suspected on corruption offence he/she will stay in prison without the right to be released on bail and until he proves his innocence. The power of the Court to grant release on bail in corruption offence was waived at any circumstance. From this one can conclude that the right to bail for those arrested on suspicion of having committed a corruption offence was an issue in the country. It is thus necessary to examine the application these restrictions that limit the right to be released on bail. So, what happened later? The discussion below describes the first practical case in the Federal Courts.

¹²⁰. FGD with the Judges of Federal High Court First Criminal Bench, at Lideta High Court Building, Office No. 202, Addis Ababa, Feb. 20, 2013

¹²¹., printed in U.S.A. signature of printing, (2002) 95

Case 1: Asefa Abraha and others

After the enactment of the laws, Ato Asefa Abraha and others were arrested on May 29, 2001. Consequently, they were brought to the Federal First Instance Court Arada Criminal Bench which hears the charges as stated out by the Federal investigating police officers.¹²² The court after hearing the charges began releasing some of the prisoners. For example, Ato Asmelash Abraha and Temnit Abraha were released on bail, in the first week. Towards the end of the second week, on Friday, June 8, 2001, the court ordered the release of Ato Seye Abraha on bail.¹²³ Despite the orders of the court, Ato Seye was not, however, released. Instead the police officers appealed to the Federal High Court to repeal the orders of the lower court. But still the High Court confirmed the decision and again ordered the release of Ato Seye Abraha to which the police officer failed to obey.¹²⁴ Instead, they reported it and a new law prohibiting the bail right of suspected/accused person of corruption offence was immediately drafted and printed on Negarit Gazette, hours before it was formally presented to the parliament for consideration. This law, which is popularly known as “*Seye’s Law*”¹²⁵ was enacted on June 12, 2001, (the amended) Proc. No. 239/2001 i.e. four days after the order to release Ato Seye was given by the Court.¹²⁶

According to the FDRE Constitution, laws do not apply retroactively such law can be applied if it is advantageous to the accused or convicted person. Since the new law denying the right to bail was enacted after the ruling to release Ato Seye was given by the court, the Federal First Instance Court again ruled that this new law does not apply to Ato Seye’s case. Ato Seye was therefore released from the court and allowed to go home on June 19, 2001.¹²⁷ With his right to bail effectively blocked, Ato Seye along with others, was never to come back to First Instance Court. Since July 2001 was made to appear in the Federal Supreme Court.¹²⁸

¹²². The Federal Police Investigator vs. Ato Seye Abraha et al, May, 29, 2001_Federal First Instance Court Criminal File No. 5126/93, Arada bench, (Addis Ababa)

¹²³. The Federal Police Investigator vs. Ato Seye Abraha et al, May, 29, 2001_Federal First Instance Court Criminal File No. 5126/93, Arada bench, ordered on June 8, 2001, (Addis Ababa)

¹²⁴. Ethiopian Human Right Council, Disabling a Political Rival under the cover of fighting Corruption in Ethiopia, August, 2004, p.4, (Addis Ababa) unpublished

¹²⁵. Supra note 121

¹²⁶. Ibid

¹²⁷. The Federal Police Investigator vs. Ato Seye Abraha et al, May, 29, 2001_Federal First Instance Court Criminal File No. 5126/93, Arada bench, ordered on June 19, 2001, (Addis Ababa)

¹²⁸. FEACC- Prosecutor Vs. Seye Abraha et al, July 2001, Federal Supreme Court Criminal File No.9086 (Addis Ababa).

With their bail rights denied and no charges coming forward, the Supreme Court passively allowed the indefinite imprisonment of Ato Seye and others for six months, until October 30, 2001. It was by this date that the first charge against Ato Seye and others were read out in the Supreme Court.¹²⁹

By the end of February 2003, all the witnesses as against the defendant had been heard; the next step was, therefore, the ruling by the judges.¹³⁰ The first ruling came on Friday, July 11, 2003. As read out by the presiding Judge, the court made a detailed analysis of the charges against Ato seye, Dr. Abdi Adem and Timnit Abraha. After thoroughly analyzing the evidences, the judges unanimously decided to drop the whole case and acquit all the three defendants. File No.9086 was therefore closed; Timnit Abraha was released from jail after one year and eight months of imprisonment. Dr. Abdi Adem who was being tried in absentee was also acquitted, while Ato Seye had to stay in prison because of the other charges in File No.7366.¹³¹

With regard to the above case, the researcher interviewed one of those were accused in this case, and he said that “the charges against us was to face our bail right denied and no charges coming forward, the Supreme Court passively allowed indefinite imprisonment of the entire family for six months until October 30, 2001. The basic aim of all the efforts during the first six months was to make sure that Ato Seye gets locked up in prison along with his brothers and sister. This was, finally, achieved through the untruthful use of all the powers of the State, the parliament, the Executive and the Judiciary wings, all combined in one.”¹³² The second interviewee added the amended law Proc. No. 239/2001 was unlawful and unconstitutional, because it was made to apply retroactively to my families contrary to the provisions of the FDRE Constitution. The law stood against both the FDRE Constitution and many other international laws on human rights.¹³³

¹²⁹. FEACC- Prosecutor Vs. Seye Abraha et al, October 30, 2001, Federal Supreme Court Criminal File No. 7366, (Addis Ababa)

¹³⁰. FEACC- Prosecutor Vs. Seye Abraha et al, February 2003, Federal Supreme Court Criminal File No. 9086, (Addis Ababa)

¹³¹. FEACC- Prosecutor Vs. Seye Abraha et al, July 2001, Federal Supreme Court Criminal File No.9086 Orders of July 11, 2003, (Addis Ababa)

¹³². Interview with Ato Mehereteab Abraha one of the victim, Kirkos kifleketema Office No.3, Addis Ababa, Feb 18, 2013

¹³³. Interview with Ato Asmelash Abraha one of the victim, Kirkos kifleketema House No.394/55 Addis Ababa, Feb 18, 2013

The researcher can conclude from the above case that according to the amended Proclamation No.239/2001, the case of bail right regarding corruption offence was absolutely rescinded by the law. The courts can do nothing other than enforcing the law or denying bail; because the discretion of the Courts was taken by the amended proclamation.

4.2.2 Right to bail of arrested/accused person under Proclamation No. 434/2005

According to the Revised Anti-corruption Special Procedure and Rules of Evidence, arrested person for a corruption offence may apply to court to be released on bail. However, the right to bail in the same case is exceptionally denied. “An arrested person charged with a corruption offence punishable for more than ten years may not be released on bail.”¹³⁴ In this provision it has created an argument as to the understanding to its implementation. At this point it is worth to examine how Federal Courts interpret the phrase “An arrested person charged with a corruption offence punishable for more than ten years may not be released on bail.” in one count and in concurrent corruption offence cases?

Case 2: Moges Mulugeta

In the case of FEACC-Prosecutor vs. Moges Mulugeta the accused was charged of corruption offences in abuse of power contrary to Art.23 (1) (A) of the Revised Special Penal Code Proclamation No. 214/1981. In this case the suspect was an applicant while the public prosecutor was a respondent. The case involved an application for bail submitted by the suspect to the Federal High Court First Criminal Bench. According to the facts of the case, the applicant was arrested of corruption offences in abuse of power contrary article 23 (1) (A) of the Revised Special Penal Code Proclamation No.214/1981, the FEACC-prosecutor protested the application and requested that the accused should not be released on bail based on article 4(1) of proclamation No. 434/2005 stating that the article cited against the applicant prescribes punishment of three up to fifteen years, which is more than ten years.¹³⁵

Then, the court accepted the application of objection and rejected opinion of the prosecutor on the base of article 4(1) of proc. No. 434/ 2005 to which this provision does not clearly state whether to refer to the lower limit of punishment or the upper limit of punishment. The person

¹³⁴. Supra note 7, article 4(1)

¹³⁵. FEACC Prosecutor Vs. Moges Mulugeta, 2005, Federal High Court Criminal File No. 01316, (Dire Dawa)

accused in the case at hand may be punished if found guilty from three years to fifteen years. So, in such a case, taking the upper limit of punishment and denying bail right hampers the right of the accused and is unjustified. Therefore, if the accused is found guilty, he may be punished between three years to fifteen years. Following this opinion the court ordered (by majority decision) that the accused should be released on bail. A judge in this case dissented because he shares the argument of the prosecutor thus he was of the view that the bail right of the accused should have been denied.¹³⁶ From this one can observe that there is a different understanding even among judges sitting in the same bench.

Case 3: Asnake Mokonnen and others

Interestingly the Federal High Court with same level took an opposite stand from the position of the majority in the above stated case and adopted similar position with the reasoning of the dissenting judge. For example the case of FEACC–prosecutor vs. Asnake Mokonnen and others also were charged with one count corruption offence.¹³⁷ In this case, the suspects were applicants while the prosecutor was respondent. The case involved an application for bail submitted to the Federal High Court First Criminal Bench. According to the facts of the case, the defendants were charged of corruption offence in abuse of power contrary to article 23 (1) (A) of the Revised Special Penal Code proc. No. 214/1981. The applicants were detained for being accused of committing a corruption offence punishable with three to fifteen years imprisonment. The court denied bail because the prosecutor objected their application for bail on the ground that their crimes of corruption were not bailable as per article 4(1) of proc. No.434/2005. Since the possible punishment is more than ten years.¹³⁸ As noted, the decision of the court is taking ten years as the possible lower limit to punishment in order to deny bail, that is, practically different from the above court.

¹³⁶. Ibid

¹³⁷. FEACC-Prosecutor Vs. Asnake Mokenne et al. 2005, Federal High Court Criminal File No. 93146, (Addis Ababa), In this case the suspect were convicted and finally punished for one year imprisonment

¹³⁸. Ibid

Case 4: Okok Ujula and others

In the case of FEACC-Prosecutor vs. Okok Ujula the persons accused were charged with concurrent corruption offence.¹³⁹ The case involved an application for bail to Federal High court. According of the facts of the case, the applicants were charged of corruption offences in breach of trust contrary to article 13 (1) and procurement of undue advantage contrary to article 26 (1) the Revised Special Penal Code proc. No. 214/1981. The suspects were arrested being accused of committing concurrent corruption offences where each counts of the charge are punishable not more than ten years. The court to which the application is referred, having heard the comment of the public prosecutor for denying bail based on adding the possible punishment when the offence is concurrent, ordered denying bail of the suspects.¹⁴⁰ By reasoning, the suspects were arrested being accused of committing concurrent corruption offences where each counts of the charge are added the possible punishment is more than ten years.

Case 5: Getachew Gebregewergis and others

On the other hand, the other case of FEACC- prosecutor Vs. Getachew Gebregewergis and others also were charged with concurrent corruption offence.¹⁴¹ The case involved an application for bail to Federal High Court. According of the facts of the case, the defendant were charged of corruption offences in breach of trust contrary to article 13 (1) and procurement of undue advantage contrary to article 26 (1) of the Revised Special Penal Code proc. No. 214/1981 which contains two counts and the prosecutor protested the application for bail raised by the accused on the ground of article 4(1) of proclamation No. 434/2005 saying that although each counts of the charge is punishable for not more than ten years but, cumulatively the charges are punishable more than ten years imprisonment may not be released on bail. On the other hand, the defendants also strongly argued that the bail case should be treated on each count of the charge not cumulatively but alternatively and so that article 4(1) allows bail right. The court rejected objection of the prosecutor and granted bail for the accused on the ground that each count of the

¹³⁹. FEACC-Prosecutor Vs. okok Julu et al. 2005, Federal High Court Criminal File No. 23628, on May, 20, 2005 (Addis Ababa), in this case the defendants found guilty and punished for five years imprisonment

¹⁴⁰. FEACC-Prosecutor Vs. okok Julu et al. 2005, Federal High Court Criminal File No. 23628,(Addis Ababa order

¹⁴¹. FEACC-Prosecutor Vs. Getachew Gebregewegis et al, 2011, Federal High Court Criminal File No.92020, (Addis Ababa)

charge produced is punishable for not more than ten years, therefore, as the law does not require there is no reason to add punishment of each count to deny bail.¹⁴²

As it has been discussed above, which Court properly implement article 4(1) of Proclamation No.434/2005 in line with the Constitution can be questioned? As far as enforcement of the provision is concerned the phrase which reads “An arrested person charged with a corruption offence punishable for more than ten years may not be released on bail” is deemed to be the point of departure for each court. The researcher believes that the provision seems open for different understanding with regard to the punishment. But the position specially the Court (looking case 2 and 5) way of implementation seems best when it is viewed with granting the bail right of the accused. Because the lower limit of the two cases were less than ten year of punishment.

Concerning concurrent corruption offences the courts have two views, one says court (looking case 4) for it is aggravated circumstance the punishment will be added before convocation and no doubt that the punishment is possibly more than ten years. Thus, bail is denied. The other says court (looking case 5) however it is concurrent for purpose of bail it should be seen on the separate counts of the charge. Hence, bail should be granted. For this view the court cited which bases article 4(1), which provides that “a corruption offence punishable for more than ten years...” since the word a corruption offence has a singular connotation whenever an accused is charged with a single corruption offence which is punishable for more than ten years the court should grant bail. But, simply adding the punishment of each count before conviction is similar to making a new condition that is not found in the proclamation.

Furthermore, the prosecutor would be forced to produce more than one count even when it is not necessary. This will endanger the bail right of the accused since the only chance of the court is to simply wait for the outcome of the proceeding. So, this case invokes the violation of the right to be presumed innocent of the accused which is a fundamental human rights principle. Therefore, the court should not start with the presumption that the accused has committed the offence and likely to be punishable for which he is charged. Moreover, the fact that the accused person

¹⁴². Ibid

alleged for different counts in a single charge it should not be a decisive factor to adding the punishment prescribed as his guilt is not established.

4.2.3 Right to movement of an arrested/accused person under Proc No.434/2005

The Revised Anti-Corruption Special Procedure and Rules of Evidence empowered the court to restrain the right of movement of person accused or suspected on corruption offence. Article 6 of the proclamation provided that: Where the suspect is released on bail, the court may order the following cautionary measures alternatively or cumulatively: Restrict the movement of the suspect in a limited region or place; Prohibit the suspect from reaching places where he might tamper with evidence; instruct the suspect to report to the relevant authority within a prescribed time and prohibit the suspect from going abroad.¹⁴³ Below are cases discussed in view of the issue of right to movement of person arrested/accused of corruption offense.

Case 6: Haimanot Hadgu

In the case of FEACC-Prosecutor vs. Haimanot Hadgu, the accused submitted application for bail to Federal High Court First Criminal Bench. The prosecutor responded that the accused is charged with article 23(1) (a) of proclamation No. 214/1981 of the Special Penal Code. Even if it treated by the FDRE Criminal Code, article 407(1) it is punishable for more than ten years. Thus, if released on bail, the accused is likely to escape. By raising these reasons the prosecutor objected the application of bail.¹⁴⁴ But, the court in its decision stated the accused if found guilty, the relevant provision under the FDRE Criminal Code is article 407(1) and this article is punishable from one to ten years. If the case is so, the court based on article 407 (1) of proclamation No. 434/2005 rejected the prosecutors' objection and allowed bail right with restriction of the right to freedom of movement of the accused ordering warning measured as follows:

- 1. Beginning from the day she is released on bail she is ordered to report monthly to the investigation department of the Federal Ethics and Anti-corruption Commission.*

¹⁴³. Supra note 7, article 6

¹⁴⁴. FEACC-Prosecutor Vs. Haimanot Hadugu et. al, 2005, Federal High Court Criminal File No. 40054 (Addis Ababa)

2. *Prohibit the suspect from going abroad by ordering to immigration authority.*¹⁴⁵

As the practice in the Federal High Court shows that almost every time release on bail is followed by restraint on the right to movement of the accused person. When we see in light of the Criminal Procedure Code such restriction on the rights to movement of accused person after allowing bail does not exist. This restriction affects the right to be presumed innocent and the accused before making guilty. He deemed to be guilty and punishable by restricting his right to freedom of movement. So, it contradicts with article 32 of the constitution.

4.2.4 Access to courts under Proclamation No.434/2005

In relation to the jurisdiction on corruption offence, the issue of application for bail is determined under the Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation No.434/2005. article 7(4) of the proclamation read as, “Matter related with arrest, search, remand, bail, restrains order or any other related, bail, restrains order or any other related matter with investigation of corruption offences shall made to the court which has jurisdiction to hear cases of corruption offences.”¹⁴⁶ As far as the issue of access to courts is concerned, there is a practical case we can discuss.

Case 7: Amshaw Mengesha

In relation to this issue in the case of FEACC-Investigator vs. Amshaw Mengesha, the suspects were arrested on May 29, 2012 on suspecting of corruption offence breach of trust and the suspected person made an application for release on bail to Arbaminch Zonal High Court on June 7, 2011. However, for they were suspected of corruption offence that fall under Federal jurisdiction, the Zonal High Court rejected their application and closed the file.¹⁴⁷ They again made application to the Supreme Court of the region on June 14, 2011. The Supreme Court of the Region also rejected their application and closed the file with the same reason of the Zonal High Court. Furthermore, the suspects made an application to release on bail to Federal High Court Mobile Bench in Addis Ababa. The court accepted their application and called up on the

¹⁴⁵. Ibid

¹⁴⁶. Supra note 7, article 7(4)

¹⁴⁷. FEACC-Investigator Vs. Amshaw Mengesha et al, 2011, Federal High Court Criminal File No.112328, (Addis Ababa)

FEACC investigator. The court was required to wait for the comments of the investigator. Finally, after the prosecutor submitted his comments the Federal High Court give its decision on July 3, 2011 and release the accused on bail bond amounting 2000 Birr.¹⁴⁸

From this case one learns that due to the problem of access to Federal Courts in this region, the applicants were arrested for more than a month. But had the case been treated according to the Criminal Procedure Code, any nearest court would have examined the application and give its decision within forty-eight hours, so that the fundamental principles of human right can be respected. One can then see that determination of jurisdiction on application of bail for corruption offence has a difficulty. Therefore, the researcher argued that the provision has a problem related with a right to access to courts. So that any court nearest to it should be empowered to receive applications for bail on corruption offence and make a speedy decision on it in order to protect right to bail of arrested person on corruption offence.

4.2.5 The right to speedy trial of an arrested/accused person under Proc. No. 434/2005

With regard to speedy trial, the law provides that decision on bail application shall be made within short period of time. That is within Forty-eight hours.¹⁴⁹ The reason is that bail case is not a substantive litigation, it is a procedural case as well as procedural right, and accordingly should be speedily determined because failure to do so affects presumption of innocence. When the bail has been entered into and all formalities such as the guarantee when secured the bail bond and other formalities fulfilled the accused shall be released from the custody.¹⁵⁰

But, as discussed in the previous sections, the Revised Special Procedure and Rules of Evidence of Anti-corruption proc. No.434/2005 secure the power right to appeal to the investigator or prosecutor, when appeal is taken by the prosecutor or investigator objecting the decision granted bail or the amount of bail the lower court decision shall stay from being executed.¹⁵¹ The arrested person on suspicion of corruption offence remains under custody until the appellate court considering the application of the prosecutor or investigator. At this point it is worth to

¹⁴⁸. Ibid

¹⁴⁹. Supra note 40, article 66

¹⁵⁰. Ibid, article 72

¹⁵¹. Supra note 7, article 5 (1)

discuss the practical case with regard to how Federal Courts treated right to bail of arrested person on suspecting corruption offence at the appeal and trial stage respectively?

Case 8: Tarekegn Tesema

The case at appeal stage is the case of FEACC vs. Tarekegn Tesema. The accused was charged in the Federal High Court with the misuse or waste of government or public property contrary article 14 (2) of the Revised Special Penal Code Proc. No. 214/ 1981. The accused regarding the bail case brought to the Federal High Court. The court allowed bail on July 28, 2006. But the Federal Anti- corruption Commission prosecutor objected the decision and lodged its appeal to the appellate court. The appellate Court maintains the Lower Court decision as it is on October 25, 2006 after three months of the lower court decision.¹⁵²

As one can understand from the above case, the speed on which the appellate Court considered and treated the appeal bail case was similar to that of the substantive case. But, the appealed bail case is procedural; as a result, it requires decision by speedy process than the substantive case. Otherwise innocent person will be penalized before found guilty.

Case 9: Tilahun Abay and others

The other case at trial stage is the case of FEACC vs. Tilahun Abay and others.¹⁵³ The Federal Ethics and Anti-Corruption Commission prosecutor instituted the first charge on December 21, 2001. The charge consists of 25 bankers of Commercial Bank of Ethiopia (CBE). The two bankers have been in arrested in May 2001 and the rest in August 2001. Including the president, Ato Tilahun Abay, were sent to jail, the same day the prosecutor filed his case at the Federal High Court. These include the vice presidents, assistant vice presidents, regional managers, branch managers, credit analysts and loan officers. The accused regarding the bail case brought to the Federal High Court First Criminal Bench and the court denied bail because the prosecutor

¹⁵². FEACC-Prosecutor Vs. Tarekengn Tesema et al Oct. 2006, Federal Supreme Court Criminal File No. 20888 (Addis Ababa)

¹⁵³. FEACC-Prosecutor Vs. Tilahun Abay et al. Dec, 21, 2001, Federal High Court Criminal File No. 14371, 14374, 14375, (Addis Ababa)

objected their application for bail on the ground that their crimes of corruption offence were not bail able.¹⁵⁴

With their bail rights denied, the prosecutor filed four charges in one application. The basis of charges was proclamation 214/1981 article 23(1) (A & B and article 33 of the 1957 Penal Code. The charge in its particulars of offense stated that the bank while working in various capacities in the CBE, committed illegal acts to benefit the accused borrowers and their respective business enterprises thus violating bank polices, rules and procedures. When the defendant were expecting a ruling on their objections both to the charges and the evidences leveled against them, the prosecutor changed the first charge on September 30, 2002 after wasting one year and four months of the defendants' time.¹⁵⁵

The second charge based on the 1957 Ethiopian Penal Code, article 32(1) (A), article 33 plus the Revised Special Penal Code proclamation 214/1981 article 23(1) (A). The prosecutor indicated that the defendants breached these laws. The bank officials abused the power entrusted to them by law unlawfully benefit the subject client and their businesses. Accordingly;

1. *The accused bank officials caused approval and provided the borrowers with loans without adhering to the bank's policies and procedures contained in the loan manual being in use since 1980, directive issued on February 8, 1996 and related decision by the bank's board of directors, and Overdraft Financing Policy and Procedure Manual of March 1999.*
2. *The accused bank officials caused approval and provided the borrowers with Overdraft facilities without adhering to the bank's policies and procedures contained in the loan manual being in use since 1980, and Overdraft Financing Policy and Procedure of March 1999.*

¹⁵⁴. Ibid

¹⁵⁵. FEACC-Prosecutor Vs. Tilahun Abay et al. Sep. 30, 2002, Federal High Court Criminal File No.14371, (Addis Ababa).

3. *The bank official's approval and utilization of an overdrewal loan without complying with OFPPM of March 1999 that required overdrewal requests to be presented to only the president or his designate.*¹⁵⁶

The responses of the defendants to the prosecutor's charge were prepared in August 2002. The main points that were raised in the objections to the second charges are as follows:

1. *The charges cover events that happened between 1993 and 2001. Proclamations No. 235/2001 and 236/2001 were proclaimed on May 24, 2001. Therefore, they should not be applied retroactively. Particularly, those investigations that were started prior to the proclamation should not be handled as per the proclamations' procedures.*
2. *Proclamation No. 214/1981, which was quoted in the charge, was enacted by the defunct Socialist Dergu Regime to suppress the opponents. At that time, the proclamation itself dictates the use of a special Court to implement it. This means the proclamation cannot be implemented without a special court. With the removal of Dergu Regime the special court has been completely abolished by law. Therefore, proclamation No. 214/1981 cannot be implemented without the existence of a special court and hence, should be revoked.*
3. *The charge cannot constitute a crime because a crime is committed only when individuals have the motive, and to achieve that motive breach the law which was specifically enacted. The deeds and the breach of law must exist. The charge simply states that bankers violated procedures to benefit the borrowers. But the motive was not indicated in the charge and the evidence.*¹⁵⁷

Lastly, the court overruled the objection raised by the defendant and gave an order to continue the litigation. After six years of litigations and 39 times of adjournment the defendants were convicted on May 27, 2008 and punished; Tilahun Abay for seven years and six months imprisonment and three thousand birr fine, Kidane Welde, Gondere Ayana, Hailu Legese,

¹⁵⁶. Ibid

¹⁵⁷. Ibid

Habteslase Hagos, Niguse Tadese for every one punished for seven years imprisonment and two thousand and five hundred birr fine, Alazar Desse for five years and six months imprisonment and two thousand birr fine, Baysa Gemeda, Mulugeta Gebremedihin, Hailemical Abraham, Girma Negash for every one punished for five years imprisonment and two thousand and five hundred birr fine, Alachew Admasu, Solomon Asfaw, Yeshimebet Demsa, Efreem Negash, for every one punished for three years and six months imprisonment and one thousand and five hundred birr fine, Tilahun Taye, Kelemework Birhane, Gemal Mussa, Zalashwinshet Asfaw, Belay Gebremarim, Girma Aredo, Asrat Belachew, Nasr Hassen for every one punished for two years imprisonment and one thousand birr fine.¹⁵⁸

As one can understand from the above case, the decision of the Federal High Court took very long time. As a result except Kidane Welde, Gondere Ayana, Baysa Gemeda, Efreem Negash, and Nasr Hassen, almost all of them the defendants were arrested more than the Court punished on his decision.

In this issue, the effects of delay caused violation of right to speedy trial of accused persons on suspecting of corruption offence. As stated above the right to speedy trial is adopted under various international human right instruments and recognized by FDRE constitution. Delay results in the violations of the accused fundamental human rights. The constitution as a supreme law of the land guarantees the accused to speedy disposition of cases instituted against him. However, instead of enforcing these fundamental rights the Federal Courts were found contributing to the breach of these rights.

4.2.6 Right to Appeal under Proclamation No.434/2005

According the 1961 Ethiopian Criminal Procedure Code, the right to appeal is only given to the accused or to the person arrested when a court refuses bail. For that reason, the accused may apply in writing within twenty days against such refusal to the court having appellate jurisdiction and the application shall set forth the reasons why bail should be granted.¹⁵⁹ From this one can infer that appealing on the issue of bail was only the right of the accused. Thus, the prosecutor or

¹⁵⁸ . Ibid

¹⁵⁹ . Supra note 40, article 75(1)

investigator was not allowed to make application of appeal on bail issue where the accused is released on bail in accordance to the Criminal Procedure Code.

However, In accordance with the Revised Anti-corruption Special Procedure and Rules of Evidence Proc. No. 434/2005 article 5 provides, any one aggrieved by the decision of the Lower Court on the issue of corruption offence parties, the Prosecutor, the Investigator, and the accused have the right to appeal on the issue of bail for the Court having appellate jurisdiction.¹⁶⁰The case below illustrates how granting the right to appeal of prosecutors and investigators affects protection of the rights of accused person.

Case 10: Soliana Kidane

In the case of FEACC-Investigator vs. Soliana Kidane and others, the suspects on corruption offence, who were under investigation made an application to be released on bail to the Federal high court first criminal bench. On the other hand, the investigator of the FEACC replied that the investigation was not yet completed, further remand is required and the suspects should also wait until the prosecutor of the commission lodged a charge.¹⁶¹

But, the court rejected the comments of the investigator and guaranteed bail for suspects posting a bond amounting Birr 12000 and as per article 5(3) of proclamation No.434/2005 the court was duty bound to state a time before the decision is executed if the investigator is to take an appeal objecting the decision. So, the court gave seven days for the investigator.¹⁶² And the investigator of the commission appealed to the Federal Supreme court objecting the bail decision given by the court and the investigator produced evidence which shows he has lodged an appeal to the appellate courts,¹⁶³ as the effect of this evidence is not to execute the decision until the appellate court gives the final decision. In the mean time, the appellate court adjourned the appeal for decision to Nov 28, 2012.¹⁶⁴

¹⁶⁰ . Supra note 7, article 5(2)

¹⁶¹ . FEACC-Investigator Vs. Soliane Kidane et al, order of Nov. 8, 2012, Federal High Court Criminal File No. 124755, (Addis Ababa)

¹⁶² . FEACC-Investigator Vs. Soliane Kidane et al, order of Nov. 7, 2012, Federal High Court Criminal File No.124755, (Addis Ababa)

¹⁶³ . FEACC-Investigator Vs. Soliane Kidane et al, order of Nov. 9, 2012, Federal Supreme Court Criminal File No. 84407, (Addis Ababa).

¹⁶⁴ FEACC-Investigator Vs. Soliane Kidane et al, Order of Nov 28, 2012 Federal Supreme Court Criminal File No. 84407, (Addis Ababa).

However, in case of non-corruption offences the Criminal Procedure Code envisages that the bail decision shall be made within forty-eight hours.¹⁶⁵ But, as we have seen from the above practical case for bailable corruption offences, the decision on bail may extend for more than one month.

The problem seen by the researcher under this legislation is where an appeal is taken objecting the decision granting bail or the amount of bail, the decision of the Lower Court shall stay from being executed without order of the appellate court. This can be taken as one limitation on the right to bail of the suspected or accused on corruption offence since the time for how long the execution of the decision stay is not clearly specified under the Revised Anti-corruption Special Procedure and Rules of Evidence.

4.2.7 The role of courts on the right to bail under proclamation No.434/2005

Human Rights can be respected through properly functioning courts when the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected. Unless the independence of the judiciary is guaranteed, the courts cannot be in a position to give decisions free of influence and guarantee the protection of human rights of citizens. In addition, as provided under the FDRE Constitution, the judicial power is vested in the courts. Accordingly it is an independent body to interpret, decide and enforce the law.¹⁶⁶ At this point it is worth to discuss about the practical case during protecting the right to bail of the accused person on corruption offence whether the independence of the courts is restricted or not?

Case 11: Mohamed Juhar

In the case of FEACC-prosecutor vs. Mohamed Juhar, the applicant was charged of corruption offences in abuse of power contrary to article 23 (1) (A) of the Revised Special Penal Code proc. No. 214/1981. The applicant regarding the bail case brought to the Federal High Court and the court allowed bail right on July 5, 2005.¹⁶⁷ The prosecutor objected the decision of the lower court to grant bail and lodged its appeal and produce evidence that show it has lodged an appeal,

¹⁶⁵. Supra note 40, article 68

¹⁶⁶. Supra note 6, article 79, (1, 2, 3,)

¹⁶⁷. FEACC-Prosecutor Vs. Mohamed Juhar, ordered on July 5, 2005, Federal High Court Criminal File No.33140, , (Addis Ababa)

on date August 3, 2005. The appellate court also maintained the Lower Court decision by majority vote on 21 July 2005.¹⁶⁸ Finally the prosecutor appealed to the Federal Supreme Court Cassation Division by objecting the appellate court decision. The Cassation Division also closes the file November 9, 2006 by reasoning that there was no error of law.¹⁶⁹ Until then the allowed bail was not enforced and the applicant was made to stay in prison for five months.

The other case with regard to this issue was the case of FEACC vs. Tarekegn Tessema. The applicant suspected on corruption offences of abuse of power contrary to article 23(1) (A) Special Criminal Code of 214/1981. The defendant applies bail before the Federal High Court First Criminal Bench. The Court allowed bail to the suspect as on July 23, 2005 on Criminal File No.40054, by 2000 Birr bail bond. In addition, the court passed restraint order on his right of movement and freedom to leave out the country (abroad).¹⁷⁰

As soon as the allowed bail right, the anti- corruption prosecutor objected the release of suspect on bail and taken notice of appeal to the register of the decision court.¹⁷¹ The court given seven days time to the prosecutor in order to produce evidence showing it has lodged an appeal against it.¹⁷² The prosecutor produce evidence showing it has lodged an appeal against it from the registrar of the appellate court a letter written in No.20888 and signed date July 27, 2005 the latter given from the appellate court read as, “The litigation issue of bail between the FEACC-Prosecutor vs. Tarekegn Tessema and others the appeal has lodged by prosecutor objecting the Lower Court decision.”¹⁷³ And until the Federal Supreme Court maintain the Lower Court decision on October 25, 2006 the allowed bail right was not enforced.¹⁷⁴

As one can understand from the above cases the decision of the Federal High Court to allow release on bail of accused person were not being enforced because of the conditions provided

¹⁶⁸. FEACC-Prosecutor vs. Mohamed Juhar, ordered on August 3, 2005, Federal Supreme Court, Criminal File No.20654, (Addis Ababa)

¹⁶⁹. FEACC-Prosecutor vs. Mohamed Juhar, ordered on Nov. 9, 2006 Federal Supreme Court Cassation Division, Criminal File No. 21800, , (Addis Ababa)

¹⁷⁰. FEACC-Prosecutor vs. Tarekegn Tessema et al, July 23, Federal High Court Criminal File No. 40054, 2005. (Addis Ababa)

¹⁷¹. FEACC-Prosecutor vs. Tarekegn Tessema et al July 26, 2005 Federal Anti-corruption Commission File No. 40/□□ .□□5/1909, (Addis Ababa)

¹⁷². Supra note 149

¹⁷³. FEACC-Prosecutor vs. Tarekegn Tessema et al. July 27, 2005, Federal Supreme Court Criminal File No. 20888, (Addis Ababa)

¹⁷⁴. Order of Oct. 25, 2006. FEACC-Prosecutor vs. Tarekegn Tessema et al, Order of Oct. 25, 2006, Federal Supreme Court Criminal File No. 20888, (Addis Ababa)

under article 5(2) of the revised Proclamation No.434/2005 that “the Lower Court decision shall stay from being executed.” As a result of law restrict the freely enforcement of decision of allowed bail by the Court and the interference of prosecutor and investigator to stay the allowed bail of the accused person of corruption offence from being executed influence up on court to freely enforce their decision.

4.2.8 The Impact of FDRE Criminal Law on right to bail of person accused of Corruption Offence

When the Revised Proc. No. 434/2005 came into force, accused persons on corruption offence began to lodge application for bail in order to be released on bail, since an arrested person for a corruption offence may apply to court to be released on bail.¹⁷⁵ But, in most cases the prosecutor was charging persons arrested of corruption offence based on the Revised Special Penal Code proc. No. 214/81. For instance, breach of trust and offence against the interest of the government (article 13), forgery of governmental public documents (article 17), corrupt practices, acceptance of undue advantage and traffic in official influence (article 20), abuse of authority (article 23) were common article cited except article 13(1) and article 26, other provisions were considered as non bail able offence based on punishment.¹⁷⁶ Majority of the arrested persons were accused of this nonailable corruption offences remained under custody.¹⁷⁷

However, when the FDRE Criminal Code has come into force beginning 9th of May 2005, an application for bail restarted by persons accused of corruption offence by raising article 6 of the FDRE Criminal Code to be released on bail since the Revised Penal Code Proc. No. 214/1981 was expressly repealed. At this point, it is worth to discuss the practical case with regard to how Courts treat article 6 of the Criminal Code?

Case 12: Adamu Abiy

The case of FEACC-Prosecutor vs. Adamu Abiy and others. The defendant restores an application for a release on bail on the following grounds. We are charged for abuse of power

¹⁷⁵. Supra note 7, article 4(1)

¹⁷⁶. The Revised Special Penal Code, Proclamation No.214/1981, Neg. Gaz. No.2, November 5, 1981

¹⁷⁷ For Example accused persons in the Federal High Court Criminal Case File No. 14372, 14373, 14374, 14375, 33690, 33691, 33692, 33693, 33695, 33697, 33698, 33700, 33702, 33703, 33704, 33705, 33706, 236228, 33140, 23628, 20326, 343, 554

according to article 32(2) (A), 33 of the 1957 Penal Code plus article 23(1) (A) & (B) of the Revised Special Penal Code of proc. No.214/1981. This article punished with imprisonment from three to fifteen years. However, the FDRE Criminal Code has come into force. So in light of article 6 of this Code an earlier crime after the coming into force of this Code shall apply, if it more favorable to the accused. Thus, the relevant provision under the Criminal Code is article 407(1) and this article is punishable from one to ten years. If the case is so, the court based on article 4(1) of proc. No.4343/2005 may guarantee us bail. But, as the FEACC- prosecutor replied that, article 6 of the FDRE Criminal Code provides for exception case whereby the court shall decide based on the Criminal Code when it is more favorable to the accused during imposing punishment. This provision is not relevant for the application of bail.¹⁷⁸

The Federal High Court accepted the opinion of the prosecutor and refused to release the defendant on bail invoking article 4(1) of proc. No. 434/2005 on the ground that the defendants are charged with abuse of power according article 32(2) (A); 33 of the 1957 Penal Code plus article 23(1) (A) & (B) of the Revised Special Penal Code of proc. No.214/1981 crime of corruption offence, which could be punishable for more than ten years.¹⁷⁹ As a result, the position of the Court in this regard complies with the principle of executing punishment after conviction. As has been stated, after the issuance of proc. No. 434/2005 article 4(1) created a difference on the application of bail right of accused person of corruption offence and was viewed in different directions and left unsettled, and again the FDRE Criminal Code has come into force providing article 5(1) which created more problem on the case of bail issue in relation with article4 (1) of Proc. No. 434/2005.

¹⁷⁸. FEACC-Prosecutor Vs. Ato Adamu Abiy et al, 2005, Federal High Court Criminal File No. 23628, (Addis Ababa)

¹⁷⁹. Ibid

CHAPTER FIVE

FINDING AND CONCLUSION

5.1 Finding

The right to bail is internationally accepted right and many countries have recognized and enshrined right to bail of an arrested/accused person in their legal system. However, when it comes into implementation, countries have set their own conditional circumstances to determine grant or denial of the right of the accused to be released on bail. Accordingly the right to be released on bail is an accepted practice in almost all countries. It is also true in Ethiopia that the right is recognized according in article 19(6) of the FDRE Constitution. And article 63 of the Criminal Procedure Code sets out three cumulative effects which is more or less objective standard, where as article 67 of the same Law gives discretionary power to the judge whether to permit or deny the accused right to be released on bail. However, article 4(1) of the Revised Anti-Corruption Special Procedure and Rules of Evidence; Courts have no discretion to grant bail for arrested/accused persons charged with corruption offence punishable for more than ten years. There is no justifying condition whether pre-trial release has relevance or not, the most important thing is the accused be charged with a corruption offence punishable for more than ten years. The seriousness of corruption, the nature of the evidence and the character of the suspected are disregarded. Whatever the case might be, a person arrested/accused charged with a corruption offence punishable for more than ten years shall not be released on bail.

As far as the realization of the right to bail of arrested/accused person, international instruments imposed duty up on the state party for the realization of these rights. Based on this international obligation, the FDRE constitution under Article 9(4) recognizes that all international human right agreement which are ratified by Ethiopia to be integral part of the law of land. In addition, article 13(2) of the constitution expressly stated that the fundamental right and freedoms recognized under the constitution to be interpreted in conformity with the rules and principles of the international human right instruments which Ethiopia has ratified. However the right to bail of arrested/accused person on corruption offence is not in practice being interpreted according to the principles and rules of the constitution and international human right instruments.

Besides, article 5 (2) of the Revised Anti-Corruption Special Procedure and Rules of Evidence provide where an appeal is taken objecting the decision granting bail or the amount of bail, the decision of the lower court shall stay from being executed without order of the appellate court. This can be taken as one limitation on the right to bail of the arrested/ accused on corruption offence since the time for how long the execution of the decision stay is not clearly specified under the proclamation. In addition, sup article 2 of this provision is also a ground for the occurrence of delay. The provision recognizes the right to appeal of a Prosecutor or an Investigator is set in a general manner that where the prosecutor or the investigator of the commission is objecting the decision of granting bail, the decision of the lower court stay from being executed and this gives a wide discretionary power to the public prosecutors and investigators of the commission.

As it has been stated above, the right to speedy trial is adopted under various international human right instruments and recognized by our constitution. However, as one can understand from the practical case, the speed on which the appellate courts are considering and treated the appeal bail case similar to the substantive case. But, in case of non-corruption offences the Criminal Procedure Code envisages that the bail decision shall be made within forty-eight hours.

Article 6 of Proclamation No.434/2005 provided that where the suspect is released on bail, the Court may Restrict the movement of the suspect in a limited region or place; prohibit the suspect from reaching places where he might tamper with evidence; oblige the suspected to report to the relevant authority in specific time intervals. This restriction affects the right of the accused to be presumed innocent until proved guilty in accordance with the law; and the accused before being proved guilty, be deemed to be guilty and punishable by restriction of rights such as freedom of movement.

Furthermore, article 7(4) of proclamation No.434/2005 provides matters related to jurisdiction of conducting arrest, search, remand, bail, restraint order or any other related matter with investigation of corruption offence shall made to the court which has jurisdiction to hear cases of corruption offences. As to this provision, a person arrested /accused of corruption offence applies for bail to a court that has jurisdiction to hear a case of corruption. In case, a person who is employed in Afar, Somali, Banshangul-Gumuz, Gambela and SNNPR regions and

arrested/accused on corruption offence falling under the Federal matter, then the arrested/accused person is expected to lodge application of bail to the Federal Courts. Subsequently, Federal Courts are not permanently established in these regions, the applicants were arrested more than a month before their case was brought to the pertinent court. But had the case been treated according to the Criminal Procedure Code, any nearest Court would have been released the applicant within forty-eight hours.

5.2 Conclusion

This research focused on operations of bail in Federal Courts criminal justice system with special emphases to the Federal Anti-corruption Commission, purpose of bail, conditions for granting bail, weaknesses in operation of bail and the consequences of the denial of bail and certain observations related to bail matters.

As it has been noted in the discussion, the right to bail of an accused/arrested person is one of the fundamental rights recognized under the FDRE Constitution and International Human Right Instruments to which Ethiopia is a party. The FDRE Constitution and all International Human Right instruments prohibit arbitrary arrest and detention. In addition they provide that a person will be arrested only in conditions prescribed by law.

The circumstances whereby a person may be arrested are provided in the Revised Federal Ethics and Anti-Corruption Commission Establishment Proclamation No.433/2005. When Corruption crime has been committed the suspected person may be arrested by the Federal Ethics and Anti-corruption commission to prevent his flight from the jurisdiction of the court and to investigate the matter. To prevent arbitrary arrest and detention different safeguards are provided in the Establishment Proclamation No.433/2005 and under the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No.434/2005. Requirements of reasonable suspicion before arrest, requirements of arrest warrant, release on bail by the police and by the court.

The right to be released on bail is provided both under the FDRE Constitution and under the Revised Anti-corruption Special Procedure and Rules of Evidence proclamation No.434/2005 as a general principle. It is only in exceptional cases that an arrested/accused person on corruption offence may be denied the right to be released on bail. Accordingly article 4 of the Revised Anti-

Corruption Special Procedure and Rules of Evidence, an arrested/accused person on suspecting on corruption offence may not be released on bail in the following conditions: where he/she is likely to abscond, where he/she is likely to tamper with evidence or commit other offences and where he/she is charged with a corruption offence punishable for more than ten years.

In all other cases any arrested/accused person offence who has filed an application to be released on bail must be released. Pre-trial detention of an arrested/accused person suspected of corruption offence is allowed only in exceptional circumstances where the interest of justice so requires. The interest of the justice requires the pre-trial detention of the arrested/accused of corruption offence basically to prevent him from absconding the prosecution evidence and repetition of corruption offence.

Article 19(6) of the FDRE Constitution as to protect the right to bail of the arrested/accused person as long as the interest of the society will not be affected due to his/her release. In no way it can be interpreted so as to justify arbitrary pre-trial detention. Arbitrary detention is prohibited by the FDRE Constitution, Universal Declaration of Human Rights and International Covenant on Civil and Political Rights.

Accordingly article 19(6) which says in “exceptional circumstances prescribed by law the court may deny bail,” must not be interpreted to justify arbitrary detention. The Constitution guarantees the right to be released on bail as a general principle. The exceptional circumstances whereby the arrested/accused person of corruption offence may be denied bail are those situations which justify pre-trial detention. These situations are threat of absconding the prosecution evidence and repetition of corruption offence. In the absence of these justifying situations an arrested/accused person on corruption offence must not be denied the right to be released on bail.

However, article 4(1) of the Revised Anti-Corruption Special Procedure and Rules of Evidence proclamation No.434/2005 is highly restricted right to be released on bail of the arrested/accused person of corruption offence. The discretion of the court to grant or deny bail has been extremely restricted. This is contrary to article 19(6) of the FDRE Constitution which says, “The court may deny bail...” In light of this Constitution the courts has the discretion to grant or deny bail based on a case by case. However, article 4(1) of the Revised Proclamation No.434/2005 provides that arrested/accused person charged with a corruption offence punishable for more than ten years

may not be released on bail. This is extremely restricted right to bail of the arrested/accused person who is charged with corruption offence.

According to this provision the court has no discretion to grant bail for person charged with a corruption offence punishable for more than ten years. In fact there is no justifying condition whether pre-trial release has relevance or not. The most important thing is lodging a charge against the accused on corruption offence punishable for more than ten years. The seriousness of corruption, the nature of the evidence and the character of the suspected are disregarded. Whatever the case may be, a person arrested/accused charged with a corruption offence punishable for more than ten years shall not be released on bail. As a result of this restriction the right to bail of the arrested/accused person on corruption offence is made ineffective.

Article 13(2) of the FDRE Constitution explicitly stated that the fundamental right and freedoms recognized under the Constitution to be interpreted in conformity with the rules and principles of the international human right instruments; which Ethiopia has ratified. Therefore, the exception to the right to bail of arrested/accused person on corruption offence provided under article 4(1) of the Revised Anti-corruption Special Procedure and Rules of Evidence will be interpreted according to the principles and rules of international human right instruments.

Article 5 (3) of the same Proclamation provide, where an appeal is taken objecting the decision granting bail or the amount of bail, the decision of the lower court shall stay from being executed without the order of the appellate court. This can be taken as one limitation on the right to bail of the arrested/ accused on corruption offence since the time for how long the execution of the decision stay is not clearly specified under the proclamation. In addition to this, sub article 2 of this provision recognizes the power right to appeal of prosecutor and investigator are set in a general manner that where the prosecutor or the investigator of the commission objecting the decision granting bail, the decision of the lower court stay from being executed, this gives a wide discretionary power to the prosecutors and investigators of the commission. This hampers the enforcement of a decision rendered by lower courts, which results a person granted bail to remain under custody.

Article 6 of Proclamation No.434/2005 provided that where the suspected is released on bail, the court may restrict the movement of the suspected in a limited region or place; Prohibit the

suspect from reaching places where he might tamper with evidence; obliges the suspect to report to the relevant authority. This restriction affect the right to be presumed innocent and the accused before making guilty he deemed to be guilty and punishable by restricted his right to freedom of movement. So, it contradicted with article 32 of the constitution guaranteed accused persons have the right to be presumed innocent until proved guilty

As it has been stated in the discussion, the right to speedy trial is adopted under various international human right instruments and recognized by FDRE constitution. Delay has a serious consequence. It has an impact upon the economy of the accused and the society at large. Delay results in the violation of certain fundamental human rights provisions recognized by FDRE constitution. The Constitution as a supreme law of the land guarantees the accused to speedy disposition of cases instituted against him. However, as it is tried to make clear in the discussion, in case of corruption offence instead of enforcing this constitutional and fundamental human right, Federal Courts were found out in violating this right.

Due to all this the extreme restriction by the Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation No.434/2005 violates right to bail of arrested/accused person of corruption offence and at the same time becomes incompatible with the FDRE Constitution.

Bibliography

1.1 Table of Books and Articles

- American Bar Association Project on Minimum Standards for Criminal Justice Standards Relating to Fair Trial, New York, (1996)*
- American Law Institute, Code of Criminal Procedure*
- Awan, Ali, Ahmed, Law of Bails Bonds, (Lahore: law Times Published Nowise Print. Press),(1970)*
- Belachew Mekuria Corruption and Human Rights, Theoretical overview on their relationships, (Addis Ababa University), (2001)*
- Bokker. Geldenhugs. Joubert. Swanepoel. Terblanch. Vander Me, Criminal Procedure Hand Book, (9th ed.).*
- Disabling a Political Rival under the cover of fighting Corruption in Ethiopia, (Addis Ababa) (2004)*
- Dorothy C. Tompkins, Bail in United States, University of California Berkeley (1964)*
- Dowling and Edward, American Constitutional Law, (1954).*
- Ethiopian Bar Review, Litigating Constitutional Human Rights in Ethiopia Vol.4, No.2, (2012)*
- Ethiopian Human Rights Law series, Human Rights in Criminal Proceedings Normative and practical Aspects, Vol. 3, (2010)*
- G.R. Sullivan, Reforming the corruption Laws-The law commission proposals, Criminal Law Review (1997),*
- Heiden Heimer, Political Corruption Readings on comparative Analysis. Harvard Law Review. Vol.79. (1966)*
- J. Paul, Criminal Justice, Law Freedom and Mass Communication.*
- Journal of Ethiopian Law, The Right to Bail in Ethiopia. Respective Roles of the Court and the Legislature, Articles, vol. 23 No. 2, (2009)*
- K.I. Vibhute, Criminal Justice, (2004)*
- Lofaver R. Wayne Jeral H. Israel, Criminal Procedure (2nd ed.), West publishing Co.1992.*
- Loyd L. Winers, Criminal Process, 15th Ed, New York. (1993)*
- P.M.Bokker Criminal Procedure Text Book ,(9th Edition), (South Africa University) Published in Cape Town, (2009),*
- Rhona K.M. Smith, Textbook on International Human rights, Published In the United States by Oxford University press Inc. New York 2003.*
- Seleshi Zeyohannes; An overview of the Prevention of corruption, (Addis Ababa University), (1999).*
- Simeneh Kiros Normative, institutional and practical challenges in the Administration of criminal Justice in Ethiopia Ethiopian human rights Law series volume 3, (2010).*
- Stanley Z. Fisher, Ethiopian Criminal Procedure, (School of Law, Addis Ababa University) (1969)*
- Stephen Livingstone, Towards a Procedural Regime for the International Criminal Court, (2002)*

Thayer, James, The Presumption of Innocence in Criminal Cases. Yale Law Journal, Vol.6 (1968).

Thomas Buergenthal, International Human Rights in a Nut shell ,(2nd ed.), West's publishing co. 1995,

Tsegaye Bekele. The Law and Practice of Bail in Ethiopia, (Addis Ababa University), (1979)

United Nations Hand Book on Practical Anti-corruption Measures for Prosecutors and Investigators. June 2005, V.05-89574,

Wondwossen Demissie; Ethiopian Criminal Procedure Text Book, (2012) (School of Law, Addis Ababa University)

Wuletaw Mengesha, The Constitutionality of the Anti-corruption with regard to bail, (School of Law, Addis Ababa University), (2002)

Zerihum Desalegn, The Procedure of Preparatory Hearing Under the Anti- corruption Special Procedure and Rules of Evidence, (Addis Ababa University), (2003)

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2. Table of Laws

2.1. Ethiopian

The Anti-Corruption. Special Procedure and Rules of Evidence (Amendment), proc. No. 239/2001, F. Neg. Gaz., 7th year.

The Anti-Corruption Special Procedure and Rules of Evidence, proc. No. 236/2001, Fed Nag. Gaz., 7th year

The Constitution of the Federal Democratic Republic of Ethiopia. Proc .No. 1/1995., Neg. Gaz,1st Year.

The Court Procedure Rule, 1943, Leg, Note, No. 33, Neg. Gaz., 3rd year.

The Criminal Procedure Code of the Empire of Ethiopia, proc. No. 185/1961, Neg, Gaz. Extra Issue.

The Federal Ethics and Anti-Corruption Commission Establishment, Proc. No. 235/2001., Fed.Neg.Gaz., 7th year.

The Federal Ethic and Anti-Corruption Commission Establishment, Proc. No. 235/2001 Fed. Neg. Gaz., 7th year.

The Federal High Court Establishment, Proc. No. 322/2003, Fed Neg. Gaz., 9th year.

The proclamation for the Independence of Judicial Administration, 1992, Proc. No.23 Neg. Gaz, Year 51.

The Revised Anti-corruption Special Procedure and Rules of Evidence, Proc. No. 434/2005. Fed.Neg.Gaz., 11 year.

The Revised Federal Ethic and Anti-Corruption Establishment, Proc. No. 433/2005; Fed.Neg. Gaz.11th year No. 18.

The Revised Special Penal Code Proclamation No.214/1981. Neg. Gaz. No.2 November 5, 1981.

3.1 International Instruments

African charter on Human and Peoples Right, (1981)

African Union Anti-corruption Convention, (2005)

International Covenant on Civil and Political Rights, (1966)

The United Nation Convention against Corruption, (2003)

The United Nations General Assembly Resolution No. 40/32/1985

United Nations Declaration against Corruption, (1997)

Universal Declaration of Human Rights, (1948)

Interview Check list for key Informants

Interview guidelines for Judges, Prosecutors and Investigators of the Federal Anti-corruption commission, Legal advisers and Victims' of the commission.

This interview is prepared only for academic purpose. It is aimed to collect relevant information and opinions about the right to bail of arrested/accused persons on corruption offence in light of proclamation No. 434/2005. You are the kindly requested to give your genuine responses for each of the following questions.

Educational level_____

Institution_____

Position_____

1. What is the general practice and law that governs the right to bail in Corruption offence proceeding in Federal Courts?
2. How do you assess the role of the Prosecutor and Investigator in upholding the right to bail of accused person on corruption offence?
3. What is the role of the Court in relation to the right to bail of arrested person on corruption offence? Are Courts independent to freely decide on this issue? Please explain whether your answer is yes or no?
4. Do you think that article 4(1) of proclamation No. 434/2005 is compatible with article 19(6) of the FDRE Constitution? If yes why? If you no why not?
5. Do you think that the power of the right to appeal recognized to the Prosecutor and Investigator of the Federal Anti-corruption Commission under article 5(3) of the proclamation No. 434/2005 hampered the decision of the lower court?
6. Does article 6 of the Proclamation No. 434/2005 affect freedom of movement of arrested person of corruption offence?
7. How do you evaluate article 7(4) of proclamation No. 434/2005 in relation with access to justice of arrested person of corruption offence?

8. What are the law and the practices in relation to corruption offence? Do you think article 5(2,3) of proclamation No.4343/2005 affect the right to speedy trial of the arrested/accused person on corruption offence? If yes in what way? If you no why?
9. Do you think article 4(1) of the proclamation No.434/2005 and article 5 and 6 of the Criminal Code are contradictory? How do you interpret it in corruption case proceedings? Does it have an impact on the implementation of the rights to bail?
10. What is your view in general on the implementation of right to bail of arrested/accused person on corruption offence?

Focus Group Discussion, on righty to bail of arrested/accused person on corruption

The researcher would like to have general discussion on effectiveness of right to bail of arrested/accused person on corruption offence in the Federal Courts and show gaps in the legal frame work of proc. No. 434/2005. There is no right or wrong answer in the discussion and for hence please shares your opinions and feelings with the group. This discussion is confidential, so please feel free to be straight forward.

Thank you

1. What is the general practice and law that governs the right to bail in corruption offence proceeding in Federal Courts?
2. What is the role of the Court in relation to the right to bail? Are Courts independent to freely decide on this issue? Please explain whether your answer is yes or no?
3. Do you think the appeal right given to the Prosecutor and Investigator of the Anti-corruption commission against release on bail in corruption offence is contradictory to decisional independence of courts?
4. Do you think a prohibition in the right to bail related to corruption offence affects the right of access to justice and principles of presumption of innocence? If yes please explain, if no whey?
5. What are the practical challenges that impact the realization of the right to bail of the person suspected/accused of corruption offence?

6. Do you think article 4(1) of the Revised Anti-corruption Special Procedure and Rules of Evidence proclamation No.434/2005 and article 19 (6) FDRE constitution are contradictory? How do you interpret it in corruption case proceedings with reared right to bail?
7. Do you think article 5(3) of proclamation No.4343/2005 affect the right to speedy trial of the arrested person on corruption offence? If yes in what way? If no why?
8. How do you evaluate article 7(4) of proclamation No. 434/2005 in relation with access to justice of arrested person of corruption offence in different region with corruption matters? Do you think contradict with FDRE constitution article 37(1)?

Table of Arrested Persons beyond the decision of the court

No	Name of the defendant	Criminal File No.	Date of arrested by the police	Date of decision by the court	Punished by the decision of court			Acquit	Arrested beyond the decision of the court.
					Year	Months	Fine		
1	Temint Abraha	9086	May, 2001	July, 2003	-	-	-	Acquit	1 year & 7 months of Imprisonment.
2	Asnake Mokonnen	03146		2 years	1				1 year Imprisonment
3	Alazar Desse	14373	August, 2001	May, 2001	5	6	2000		1 year & 6 months of Imprisonment.
4	Alachew Admasu	14373	August, 2001	May, 2008	3	6	1500		3 years of Imprisonment.
5	Tilahun Taye	14374	June, 2001	May, 2008	2	-	1000		4 years & 6 Months Imprisonment
6	Mulugeta G/Mdhin	14372	August, 2001	May, 2008	5	-	200		1 year & 6 months of Imprisonment
7	Hailemical Abraham	14375	August, 2001	May, 2008	5	-	200		1 year & 6 months of Imprisonment
8	Girma Negash	14375	June, 2001,	May, 2008,	5	-	200		1 year & 6 months of Imprisonment
9	Solomon Asfaw	14375	August, 2001	May, 2008	3	6	1000		3years of Imprisonment
10	Yeshimebet Demsa	14375	July, 2001	May, 2008	3	6			3 years of Imprisonment

11	Kelemework Birhane	14374	August, 2001	May, 2008	2	-	1000		4 years & 6 Months of Imprisonment
12	Gemal Mussa	14374	June, 2001	May, 2008	2	-	1000		4 years & 6 Months of Imprisonment
13	Zalashwinshet Asifaw	14374	August, 2001	May, 2008	2	-	1000		4 years & 6 Months of Imprisonment
14	Belay Gebremarim	14374	May, 2001	May, 2008	2	-	1000		4 years & 6 Months of Imprisonment
15	Girma Areda	14372	August, 2001	May, 2008	2	-	1000		4 years & 6 Months of Imprisonment
16	Asrat Belachew	14372	August, 2001	May, 2008	2	-	1000		4 years & 6 Months of Imprisonment

Table of Interviewed Persons

No.	Name of interviewed	Position	Educational level
1	Ato Amare Amagn	Judge of Federal supreme court cassation bench	LLB
2	Ato Mokonene G/gewet	Judge of Federal supreme court cassation bench	LLB,LLM
3	Ato Teklit Ymesel	Judge of Federal supreme court cassation bench	LLB,LLM
4	Ato Habta Fichala	Vice president of Federal High court	LLB,LLM
5	Ato Yohans	Judge of Federal High court	LLB,LLM
6	Ato Hafaz Aba-Gemal	Judge of Federal High court	LLB,LLM
7	Ato Gebru Gebeyehu	Director of prosecution and Investigation department in Federal Anti-corruption commission.	LLB
8	Ato Mulugate Wel-degewergis	Group Leader in Prosecution and Investigation department in Federal Anti-corruption commission.	LLB
9	Ato Alebachew Girma	Higher public prosecutor in Federal Anti-corruption Commission	LLB
10	Ato Belayneh Abusa	Higher Investigator in Federal Anti-Corruption Commission	LLB
11	Ato Taye Mokonen	Group Leader in prosecution and Investigation department in Federal Anti-Corruption commission	LLB
12	Ato Turgam Binabe	Higher Public prosecutor in Federal Anti-corruption commission	LLB
13	Gugass Ketema	Private advocator	LLB
14	Ato Minratab Abraha	Private business	BA
15	Ato Asmelash Abraha	Private business	Diploma

Table of Cases

In general the paper of case can be accessed from the Federal First Instant Court, Federal High Court, Federal Supreme Court and Federal Anti-Corruption Commission. They may also found annexed to the paper.

1. Federal Police Investigator vs. Asefa Abraha and others, Federal First Instant Court Criminal File No. 5126/93, May, 2001, (Addis Ababa)
2. Federal Ethics and Anti-corruption Commission Prosecutor vs. Seye Abraha and others, Federal Supreme Court Criminal File No. 9086, July, 2001, (Addis Ababa)
3. Federal Ethics and Anti-corruption Commission Prosecutor vs. Asefa Abraha and others, Federal Supreme Court Criminal File No. 7366, October, 2001, (Addis Ababa)
4. Federal Ethics and Anti-corruption Commission Prosecutor vs. Moges Mulugets and others, Federal High Court Criminal File No. 01316, (Diretawa),
5. Federal Ethics and Anti-corruption Commission Prosecutor vs. Asnak Mekonen and others, Federal High Court Criminal File No. 93146, 2001, (Addis Ababa)
6. Federal Ethics and Anti-corruption Commission Prosecutor vs. Okok Julu and others, Federal High Court Criminal File No. 23628, June, 2006, (Addis Ababa)
7. Federal Ethics and Anti-corruption Commission Prosecutor vs. Getachew Gebregewergis and others, Federal High Court Criminal File No. 92020, January, 2011, (Addis Ababa)
8. Federal Ethics and Anti-corruption Commission Prosecutor vs. Haimanot Hadgu and others, Federal High Court Criminal File No. 40054, July, 2005, (Addis Ababa)
9. Federal Ethics and Anti-corruption Commission Investigator vs. Soliyana Kidane and others, Federal High Court Criminal File No. , 2012, (Addis Ababa)
10. Federal Ethics and Anti-corruption Commission Investigator vs. Soliyana Kidane and others, Federal Supreme Court Criminal File No.84487, Nove. 2012, (Addis Ababa)

11. Federal Ethics and Anti-corruption Commission Prosecutor vs. Mohamed Juhar and others, Federal High Court Criminal File No.33140, July, 2005, (Addis Ababa)
12. Federal Ethics and Anti-corruption Commission Prosecutor vs. Mohamed Juhar and others, Federal Supreme Court Criminal File No.20654, August, 2005, (Addis Ababa)
13. Federal Ethics and Anti-corruption Commission Prosecutor vs. Mohamed Juhar and others, Federal Supreme Court Cassation Criminal File No.21800, November 2006, (Addis Ababa)
14. Federal Ethics and Anti-corruption Commission Prosecutor vs. Amshaw Mengasha and others, Federal High Court Criminal File No.112328, Nove. 2011, (Addis Ababa)
15. Federal Ethics and Anti-corruption Commission Prosecutor vs. Tarekegn Tesema and others, Federal High Court Criminal File No.40054, July. 2005, (Addis Ababa)
16. Federal Ethics and Anti-corruption Commission Prosecutor vs. Tarekegn Tesema and others, Federal High Supreme Court Criminal File No.20888, July. 2005, (Addis Ababa)
17. Federal Ethics and Anti-corruption Commission Prosecutor vs. Tilahun Abay and others, Federal High Court Criminal File No.14371, 14372, 14373, 14374, December, 2005 , (Addis Ababa)
18. Federal Ethics and Anti-corruption Commission Prosecutor vs. Adamu Abay and others, Federal High Court Criminal File No.23628, May, 2005, (Addis Ababa)

Annex

Practical cases rendered by the federal courts

1. Case of FEACC-Prosecutor vs. Haimanot Hadgu
2. Case of FEACC-Prosecutor vs. Tilahun Abay
3. Case of FEACC-Prosecutor vs. Soliana Kidane
4. Case of FEACC-Prosecutor vs. Mohamed Juhar

Federal Ethics and Anti-corruption Commission Proclamations

1. Proclamation No. 434/2005