

Justice Delay Leads to Justice Denial: Ethiopian Criminal Justice System Perspective

Sefiew Ayenew Demle

Department of Crime Intelligence, Ethiopian Police University, Sendafa, Ethiopia

Email address:

safeay2009@yahoo.com

To cite this article:

Sefiew Ayenew Demle. Justice Delay Leads to Justice Denial: Ethiopian Criminal Justice System Perspective. *International Journal of Law and Society*. Vol. 5, No. 2, 2022, pp. 211-216. doi: 10.11648/j.ijls.20220502.19

Received: May 5, 2022; **Accepted:** May 31, 2022; **Published:** June 9, 2022

Abstract: The implications of the Speedy Trial Act of 1974's time limits on the running of the Federal justice system have sparked heated controversy. Many people praise the Act as a necessary step toward ending court delays, congestion, and backlogs, as well as the Act's goals of lowering crime and the risk of recidivism. Others say that unless appropriate funding is provided for expanded court services to achieve the quick trial targets, they would exacerbate existing court difficulties. The discussions regarding state provisions for quick trials are similar. There are no simple solutions to complex situations, as is often the case. The proverbial saying "justice delayed is justice denied" is often quoted by lawyers not only in the Ethiopian's but also in other countries to demand speedy disposition of criminal cases. The negative repercussion of this saying, however, is that some individuals give priority premium to speed rather than justice. Some use the saying to justify the pace of the trial that contravenes the notion of fairness. On the other hand, some individuals equate speed with undue haste offends the due process rights of accused persons. One thing is for sure; the word "speedy" should never be divorced from the word justice. For Speedy justice means that justice must be rendered efficiently. The following points have been discovered through the use of qualitative and doctrinal research methods in this study. Despite the fact that law enforcement personnel, defense attorneys, prosecutors, and judges at all levels of the criminal justice system have discussed the problem of quick trials, no consensus has emerged. The study has explored, a literature review primarily based on law journals, books, and periodic publications and followed by referring constitutional and statutory provisions as well as court rules and decisions pertaining to quick trials. For the purpose of clarity, some controversial cases are examined. The case was happening in 2002, "Siye Abreha" Vs Public Prosecutor" in this legal proceedings, the defendant was charged in corruption crime and received five years sentences from the legitimate court whereas he was actually served six years imprisonment whilst he was under the trail. Had it not been delay of justice, he would not have been spent two years and eight months beyond the actual sentences rendered by federal Courts and its parole.

Keywords: Speedy, Delay, Denial, Trail, Justice and Controversies

1. Introduction

The criminal law scholars regularly maintain that American prisons are overcrowded and that defendants in custody waiting long periods of time before having their cases brought to trial [1]. Delay in process and delay in speedy of trail is mainly affected by individual rights against liberty. Accused persons have the right to a public trial by an ordinary court of law within a reasonable time after having been charged [2]. Once the suspects are verdict the question of the presumption of innocent are automatically seized [3]. A similar refrain is made of the penal process in India –the world's largest democracy as an ally of the established the

system of proper implementation [3].

Ethiopia is one of the United Nation member countries that ratified international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) that respect human rights standards [4]. A Human being is entitled to life, liberty, and property [5]. When the liberty is restrained from movement, the productivity of individuals remains idle. In the case of Ethiopia, the suspects are taking a long process in crime investigation and in the trail of courts. They usually remain in custody or, in some situations are released on bail. In some cases, the length of the trail process is greater than the sentence that they receive in court at the end [4].

Delays in the process are common since the day the investigation process began in police, who are one of the criminal justice systems' actors. The key here is that for the delay mainly arises from the police investigation officers being unskilled and ineffective in their performances. This study is therefore to critically examine and experience of the factors that impeded the speedy investigation of offences in the police investigation departments. The study will be critical to the overall trial process in general, as well as the expediting of the trial processes of public prosecutors and judges in their respective professions. As a result, the study will concentrate on the actors in the criminal justice system [5].

2. The Right to a Speedy Trial

2.1. Speedy Trial Source and Rational

The right to a rapid trial may be drawn from a Magna Carta provision, and Coke viewed it that way. The Virginia Declaration of Rights of 1776 contained similar language, which was later adopted into the Sixth Amendment. Unlike other articles of the Amendment, this promise can be attributed to grounds relating to the rights of defendants and the imposition of harm on society. The clause is "a vital precaution to prevent disproportionate and oppressive confinement prior to trial, to decrease worry and concern associated with public accusation, and to limit the likelihood that a long delay will impair an accused's ability to defend himself," according to the provision [6].

The passage of time alone may result in the death or other reasons for the loss of witnesses, as well as the blurring of available witnesses' memories. "There is a public interest in ensuring a swift trial that exists independent from and at times in opposition to the interests of the accused," says the author. People in prison must be sustained at great public expense, and their relatives are frequently helped as well. Persons who are free in the community may commit other crimes, be enticed to "jump" bail over time, and may be able to leverage the backlog of cases to engage in plea bargaining for charges or punishments that do not provide society with justice. Delay frequently makes the deterrence less effective [6].

2.2. Application and Scope

The guarantee of a speedy trial "is one of the most basic rights preserved by the FDRE Constitution," It is one of those "fundamental" liberties embodied in the Bill of Rights, which the due process clause of the rights of persons arrested [7]. The protection afforded by this guarantee is activated only when a criminal prosecution has begun and extends only to those persons who have been 'accused' in the course of that prosecution. Invoking the right does not require an indictment, information, or other formal charge, but rather begins with the actual restraints imposed by arrest if those restraints occur prior to the formal preferring of charges. Possible prejudice that may result from delays between the times a governments discovers

sufficient evidence to proceed against a suspect and the time of instituting those proceedings is guarded against by statutes of limitation, which represent a legislative judgment with regard to permissible periods of delay [8].

3. The Extent of Criminal Cases That Can Be Delayed

The following factors have to be considered as criminal cases are delayed.

3.1. Length of Delay

In the US Constitution, there is no hard and fast rule defining how long is too long for a delay. However, eight months is a good rule of thumb. Courts will normally assume that a delay of this length has satisfied a defendant's contention that their right to a speedy trial has been violated [8].

3.2. Reason for Delay

The court will always investigate why a trial was postponed. Overcrowding in the courtroom, witness unavailability, and laboratory testing delays are all major causes of trial delays. Both sides will consider the benefits and drawbacks of a delay. The court will also consider any continuances granted, as well as when they occurred and who requested them. Another element to consider is if either party objected to the continuations [8].

3.3. Assertion of the Right

When did the defendant file a motion for a speedy trial? This is significant because a defendant who waits two years to exercise their right to a speedy trial will be in a poorer position to do so than someone who expresses their right after eight months. It should also be noted that a defendant who asks for a dismissal of their case ahead of a speedily-held trial is not asserting their right in this case. If that happens, they are attempting to avoid criminal liability [8].

3.4. Prejudice

In this case, the court will also consider prejudice. In other words, was the defendant injured by the prosecution's delay? Did a witness, for example, pass away or relocate before being called to testify? Was there a fading of memory as a result of the delay, making witnesses untrustworthy? All of this could be proof of bias against the defendant as a result of the delay [8].

3.5. The Recognizance Law

A comparison of different criminal justice systems around the world reveals that each system has its own set of concerns and flaws. This acknowledges that no legal system is without flaws. Individuals still face delays in hearing and resolving their cases, notwithstanding the constitutional obligation and statutory limitations. In criminal trials, the deleterious effects of delay are clearly visible. Every time a

case is postponed in a criminal case, whether for a good reason or not, an accused is kept for another instant in overcrowded holding facilities. Both Congress and the Supreme Court have devised procedures to give life to the rights of the accused in order to reinforce the constitutional mandate [9].

3.6. Good Conduct Time Allowance Law

With the tsunami of change that has swept the criminal justice system around the world, the emphasis is now on reform rather than punishment. As a result, various parts of the Revised Penal Code dealing with good conduct time allowances were changed by Congress. The statute, Republic Act No. 10592, doubled the number of days credited to defendants for good behavior and functioning as mentors, teachers, or students. As a result, any delay suffered by the accused can be turned into something positive, such as a decrease in the length of the sentence or the accused's personal development [9].

4. Statutory Speedy Trial

4.1. U.S. Experience

U.S. Penal Code section 1382 “provides that, in a felony case, the court shall dismiss the action when a defendant is not brought to trial within 60 days of his or her arraignment on an indictment or information, unless (1) the defendant enters a general waiver of the 60-day trial requirement, (2) the defendant requests or consents (expressly or impliedly) to the setting of a trial date beyond the 60-day period (in which case the defendant shall be brought to trial on the date set for trial or within 10 days thereafter), or (3) ‘good cause’ is shown.” (People v. Sutton (2010), 48 Cal. 4th 533, 545.)[10].

4.2. Ethiopian Experience

4.2.1. The Procedural Process

The Ethiopian Experience showed that the delay of Justice can be classified in to three phases; these are in the investigation Phase, in the public prosecutor phase, and in the trial phase.

(a) Delay in the process of investigation

The normal state of the law indicates that an arrested person is being investigated, and the police officer must request remand to the court. The Ethiopian Criminal Procedure allows a maximum period of 14 days at a time. The provision can be read as:

”Art. 59 Detention

(1) *The court before which the arrested person is brought (Art. 29) determines whether the arrested person is to be held in custody or released on bail.*

(2) *If the police investigation is not completed, the investigating officer may apply for a remand for a period of time sufficient to complete the investigation.*

(3) *A remand may be granted in writing. No remand shall be granted for more than fourteen days on each occasion [11].”*

In Special crimes that prescribed by anti-terrorism

proclamation allows a maximum period of time 28 days at a time. The provision can be read as:

“Art. 20 of PROCLAMATION NO. 652/2009 stated that Detention and Remand Order

1/ the court, before which an arrested person is presented in accordance with Article 19 of this Proclamation, may give an order to remand the suspect for investigation or trial. 2/ If the investigation is not completed, the investigating police officer may request the court for sufficient period to complete the investigation

3/ each period given to remand the suspect for investigation shall be a minimum of 28 days; provided however, that the total time shall not exceed a period of four months [12].”

The revised anti-terrorism proclamation has also stated that the investigator officer will get authorization from the court for up to 90 days with the possible extension of 30 days for the purpose of special investigation. This implies that the maximum period of investigation before prosecution is four months. The amended proclamation is as follows:

“Art. 42 (7) Proclamations No. 1176/2020 Prevention and Suppression of Terrorism Crimes for the special investigation authorization granted by the court in accordance with this Article shall not exceed 90 days. Where the police officer petitions the court for an extension of the time, the court may for good cause extend its authorization of using special investigation techniques. The court may give an extension by investigating the performance of the police and evaluating the significance of using special investigation techniques for not more than 30 days [13].”

As it has been envisaged that in the Ethiopian Legal system, the process of delay started in police investigation, the 1961 criminal procedure law of Ethiopia gave a the power to the Court, the maximum of 14 days remand for each occasion, but how much 14 days has not been determined. On the other hand, the anti-terrorism proclamation determined a maximum period of four months. These are the peculiar features of remand in the context of an anti-terrorism proclamation. In general, how long times will it take the crime investigation to will be completed and the delay of justice to remains an issue in the Ethiopian criminal justice system perspective.

(b) In the public prosecutor process

Theoretically, prosecutors must be impartial throughout the criminal trial. In this regard, the aim of the prosecution in Ethiopia is not clear whether it is to seek the truth rather than merely seek a conviction. From the practice of prosecutors, some seek the truth while others aim at winning per cases. Still, others feel like they are representing the law, or while others put themselves as in the position of representing the victims. Thus, the very question of what guides prosecutorial tasks is unclear [14].

In this process, the shortest time was given by law to the public prosecutor as indicated below:

“Art. 109. Framing, filing and service of the charge. (1) The public prosecutor shall within fifteen days of the receipt of the police report (Art. 31) or the record of a

preliminary inquiry (Art. 91) frame such charge as he thinks fit, having regard to the police investigation or preliminary inquiry, and shall file it in the court having jurisdiction. (2) If, before the trial by the High Court, the prosecutor is of opinion upon the record of the preliminary inquiry received by him that the case is one which is to be tried by a subordinate court, he shall, notwithstanding the decision of the committing court, frame such charge as he thinks fit and shall file it in the subordinate court having jurisdiction. (3) Where the preliminary inquiry discloses offences some of which are to be tried by the High Court and some by a subordinate court, the prosecutor shall frame such charges as he thinks fit and shall file them in

the High Court which shall have jurisdiction to try all offences thus charged. (4) A copy of every charge shall be given to the accused free of cost [11]."

(c) In the trial process

Once the public prosecutor has framed the charge, in the next step, the case will be ended by the court. Nevertheless, how long it will be taking time in such steps is not determined. Perhaps it will have the longest period of time in the Ethiopian Legal System. Due to these reasons, the cases were solved *mutatis mutandis*. The trial process has been lengthy, from first instance court to cassation in the Federal Courts. It can be possible to see some selected cases from the years 2020/ 2021.

Table 1. Remand in Terms of Various Levels of Federal Courts.

Annual Crime report 2020/2021	First instance court	High Court	Supreme Court	All files
Received files from last year	7,756	6,919	491	15,166
Opened New files	29,735	11,801	2,695	44,231
Resumed files	2,845	2,963	39	5,847
Decided files	34,994	14,438	2438	51,870
Files on Remand	5,342	7,245	787	13,374
Total file received	80,672	43,366	6,450	130,488

Source: Federal Courts, Annual Report, 2020/21.

As shown in table 1, ten percent of the annual files were on remand, while forty percent of the cases received final decisions in 2020 and 2021. On the other hand, nearly half of all criminal cases were postponed for decision in the coming years. In this regard, the speedy of trial is not realized as the legal expectations [15].

Table 2. The number of all cases in Ethiopian Federal Courts in the year of 2020/21.

Bench of Courts	Received files from last year	Opened New files	Resumed files	Total received	Decided Files	Files on Remand
Crime-Bench	491	2,695	39	3,225	2,438	787
Civil-Bench	2,691	13,234	130	16,055	11,184	4,871
Labor-Bench	162	1,428	5	1,595	1,214	381
Total Files	3,344	17,357	174	20,875	14,836	6,039

Source: Federal Courts, Annual Report, 2020/21.

The above table shows that the numbers of crimes is fifteen percent of the total cases in the Federal Courts of Ethiopia. The Criminal cases are more sensitive to human personal rights rather than pecuniary effects of Civil-Bench cases [15].

4.2.2. Case Study 1: Controversy and Imprisonment

Siye was arrested in July 2002, accused of abusing his position by assisting his accomplices in unfairly obtaining bank loans and purchasing State owned truck with two specific acts: Pressuring Ethiopia's State-Owned Commercial Bank to provide Loans to his brother, Mehiretab Abraha, and assisting Mehiretab in obtaining a 19 percent discount for 15 trucks he purchased from AMCE, a truck-assembly plant in which the Ethiopian government owns a 30% stake. Siye was released after a hearing by Federal Judge Birtukan Mideksa due to a lack of evidence, but he was apprehended by the government the moment he left the building and imprisoned for six years [16].

On June 11, 2007, Ethiopia's Federal Supreme Court dismissed the claim that he pressed the bank to offer his brother loans, but found him guilty of assisting his brother Mihretab in obtaining discounts on seven of the 15 vehicles. Mihretab, along

with a number of their friends and family who heard their punishments at the same time, was sentenced to five years in prison and a 1,000 Birr fine. They were, however, released because the majority of them had been imprisoned [16].

In Ethiopian Legal System, there was no compensation mechanism when the case was delayed due to the process of the court's decision. For reason, Ato Siye Abreha had actually served six years in prison before he was sentenced for five years. The parole calculation of five years sentences would become two-third of sixty months, which amounts to three years and four months. That means the rest would be one year and eight months, reduced from five years. As a result of this, the defendant was punished additionally two years and eight months beyond the real imprisonment would take place due to delay of justice; had it not been delay of justice, he would not have been imprisoned for excessive time [17].

The Criminal code of FDRE stipulated that conditional releases due to

"(1) Where a prisoner has served two-thirds of a sentence of imprisonment or twenty years in the case of life imprisonment, the Court may, on the recommendation of the

management of the institution or on the petition of the criminal, order conditional release:

(a) *if, during the required period of carrying out the penalty or measure entailing loss of liberty, the criminal demonstrated tangible evidence of his improvement through his work and conduct; and*

(b) *if he has repaired, to the best of his ability, the damage found by the Court or agreed upon with the aggrieved party; and*

(c) *if the character and behavior of the criminal warrant the assumption that he will be of good conduct when released and that the measure will be effective.*

(2) *Notwithstanding the foregoing provisions, conditional release shall not be granted to persistent recidivists."*

This was happened the controversial bail rights case whether the anti-corruption procedure can be considered as non-retrospective effect for the practical scenario of on Ato Siye Abreha suspected on the crime of corruption in 2002. On 12th June, 2001, The Anti-Corruption Special Procedure stipulated that in the "Art. 51 of Proclamation No. 239/2001, Investigation and Bail 1) Any application for arrest, search, remand, restraining order, or other similar application or issue related to the investigation of corruption offences shall be heard by the court with jurisdiction over corruption cases. 2) A person arrested on suspicion of committing a corruption offense is not eligible for bail [18]."

Anti-Corruption Special Procedure and Rules of Evidences in proclamation number stated as:

"Art. 51 of Proclamation No. 236/2001 stipulates that Evidence Proclamation Applicable Laws, the Criminal Procedure Code, the Civil Procedure Code, the Penal Code, and any other relevant laws shall be applicable in so far as they are consistent with this Proclamation [19]."

The same provision was amended in 2015, and corruption crimes are only non-bail able when crimes of corruption are punishable for more than ten years.

Article 3 (1) of proclamation No. 882/2015 stipulated that, any arrested person for a corruption offence may apply to a court to be released on bail. However, an arrested person charged or suspected of a corruption offense punishable by more than ten years in prison shall not be released on bail. Where there are concurrent crimes punishable with by more than 4 years but less than ten years and the punishment of the two crimes is more than ten years, the arrested person shall not be released on bail [20].

Bearing in mind the above provisions of the proclamations, the 2004 FDRE criminal law in its legal principle [21]; and the 1995 FDRE Constitution confirmed that the retroactivity of criminal laws is prohibited [22].

The real debate was seen when Ato Siye Abreha was arrested on a corruption crime. The defendant's lawyer argued that during the crime committed, there was no special procedure that applied to the denial of bail specified by law, but the Federal Supreme Court five judges unanimously dismissed the request of bail right's by stating that bail right is procedural right but not substance law. The federal Supreme Court ruled out that unlike criminal law, criminal

procedures could not be considered as the concept of non-retrospective. Therefore, anti-corruption law procedure was applied retrospectively that the person who is arrested on suspicion of having committed a corruption offence shall not be released on bail.

This was one of the essences of the delay of justice against Ato Siye Abreha, the former defense minister of the Federal Democratic Republic of Ethiopia; he was put in a prison cell for six years before the actual sentence was rendered by the Federal Court.

5. Reasons of Delay in Criminal Justice

There are a variety of reasons or causes for this anxiety regarding the criminal justice system's delays. By postponing the sanction and putting off the punishment of the guilty and the vindication of the innocent, delay affects the effectiveness of the system, particularly the effectiveness of the punishment. Delay reactions can have an impact on both individual and overall deterrent effects. Justice delayed could be justice denied, according to the principle of "positive general deterrence," which aims to promote the attitudes of law-abiding citizens. Delay jeopardizes not only the system's effectiveness, but also, and more importantly, its reliability and reputation. The prosecution's power is weakened by delays because victims and witnesses are burdened by the length of the hearings and/or the need to travel [16].

6. Conclusion

The main two controversial legal issues have been discoursed in this study. These are: the rights of bail had been totally denial at the emerging of anti-corruption special procedures and rules of evidences that were promulgated in the first time in Ethiopia. In this regard, the Ethiopian Federal Supreme Court interpreted the principle of legality, the so-called non retroactive of criminal law that applied only substantive law but not be extended to its procedural law.

Furthermore, the defendant who spent excess times in the prison cells upon remand had not had compensation mechanism in Ethiopian Criminal justice systems. In fact, liberty can not be reversed by its nature; however, the pecuniary features of compensation could be recommended to apply.

The approach to solve the problem of delay is multi-faceted. It necessitates the involvement of all system stakeholders. The judiciary can not do it alone, certainly. Everyone in the justice system has to do their part. At the end of the day, everyone benefits from a more efficient system. The problems of justice delayed is justice denied" will be solved.

The best solutions of the problems are avoided to justice delay against any suspected person in jail for a long period of time before the actual sentences rendered. Certainly, the judiciary will not be able to accomplish this on its own. Every member of the legal system must play a role. The hope is that the proverb "justice delayed is justice denied" will become a thing of the past.

References

- [1] Atty. Severino H. Gana, Jr, Justice Delayed Is Justice Denied: Ensuring Efficient and Speedy Criminal Trials in the Philippines: <http://www.jgu.edu.in/sites/default/files/Jayanthkrishaana> access 8/28/2017 5.05 pm
- [2] Article 20 (1) of the FDRE, Constitution 1995.
- [3] Article 20 (3) of the FDRE, Constitution 1995.
- [4] Art. 14 of International Convention on Civil and Political Rights (ICCPR).
- [5] Art. 6, 10, 17 of International Convention on Civil and Political Rights (ICCPR).
- [6] <http://Law.justia.com/constitution/US/Amendment-06/access> 4/26/2022 at 8:37a.m.
- [7] Article 19 (4) of the FDRE, Constitution 1995.
- [8] How Long Can A Criminal Case Be Delayed? (gddl.com), access 4/29/2022 at 12:18 p.m.
- [9] https://unafei.or.jp/publications/pdf/RS_No95/No95VE_Gana2.pdf access 4/29/2022 at 15:38 p.m.
- [10] Jonathan Grossman (2014), Speedy Trial and the Statute of Limitations.
- [11] Imperial Ethiopian Government Proclamation No. 185 OF 1961 Criminal Procedure Code of Ethiopia Published by authority of the Ministry of Pen Addis Ababa.
- [12] Proclamation No. 652/2009 Anti-Terrorism Proclamation.
- [13] Proclamation No. 1176/2020 Prevention and Suppression of Terrorism Crimes Proclamation.
- [14] THOMAS (1989), Feltes Causes for Delays In The Criminal Justice System.
- [15] Federal Courts, Annual Report, 2020/21.
- [16] SIYE ABRAHA - Encyclopedia Information (webot.org).
- [17] Art. 202 of Proclamation No. 414/2004, the Criminal Code of the Federal Democratic Republic Of Ethiopia.
- [18] Proclamation No. 239/2001, Anti-Corruption Special Procedure and Rules of Evidence (Amendment).
- [19] Proclamation No. 236/2001 a Proclamation to Provide for Special Procedure and Rules of Evidence on Anti-Corruption.
- [20] Proclamation No. 882/2015, the Revised Anti-Corruption Special Procedure and Rules of Evidence (Amendment).
- [21] Art. 5 of Proclamation No. 414/2004, the Criminal Code of the Federal Democratic Republic Of Ethiopia.
- [22] Article 22 of the FDRE, Constitution 1995.