



AMAN ASSEFA & ASSOCIATES

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BRIEF NOTE ON THE RECENT
ADMINISTRATIVE PROCEDURE
PROCLAMATION NO. 1183/2020



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The Federal Administrative Procedure Proclamation No. 1183/2020 (hereinafter referred to as the “Administrative Procedure Proclamation” or “Proclamation”) was enacted on April 7, 2020 in order to fill a gap which existed for a long time in the body of Ethiopian laws. Previously, aside from a few constitutional principles requiring the Government to be transparent and public officials to be held accountable for their actions, there was never any predictable, coherently organized and clear legislative regime governing the actions of the executive in the performance of its day to day activities (i.e. dispensing decisions and issuing rules that affect the rights and interests of citizens). Likewise, there was never in place any clear law on judicial review of directives and administrative decisions. We believe that it is a common knowledge among many, and one at which many decry, that this country severely and very visibly suffered from the lack of legal means to ensure that its administrators act predictably, consistently, lawfully and fairly.

The Administrative Procedure Proclamation is designed to fill this gap; and it clearly states that it was enacted with the objective of protecting individual’s rights and interests from violation by administrative agencies. This has in reality been an important area of concern in Ethiopia, where, in particular, courts have been witnessed to have been very reluctant to check and control executive actions and excesses. Neither has the Federal Supreme Court, which is the nation’s highest ranking court with the power to issue binding decisions, been so decisively pro-judicial review, even though it is a known fact that there have been few and sporadic attempts by some courts to check and control administrative actions.

Essentially, the new Proclamation is intended to regulate the manner by which administrative agencies give decisions on matters they are required to decide on and exercise their rule-making powers delegated to them by law. The Proclamation’s scope is limited to the executive organs of the Federal Government including executive organs of the city administration accountable to the Federal Government. The Proclamation however excludes the regular and usual activities of defense and security establishments such as the Federal Police and the Federal Military as well as the prosecutorial activities of the Attorney General’s Office. It also excludes the National Bank when it enacts directives concerning exchange rate, interest rate and other similar secret issues.

Further, regional executive organs are also excluded from the application of this Proclamation as the power to issue such laws is within the realm of the regional legislatures to issue similar laws. Understandably too, the exercise of the Council of Ministers' powers in enacting Regulations does not come within the scope of the Proclamation.

The Proclamation outlines a number of procedures administrative agencies must follow as they exercise their lawmaking powers. Any legislative document issued by an administrative agency in the exercise of its delegated powers that has the potential to affect an individual's rights is deemed a directive subject to the regulation of the Proclamation. Based on the Proclamation, administrative agencies are required to notify stakeholders to solicit comments and hold public hearings before they issue directives. Requirement to provide notice of directives before its adoption extends to publishing the relevant information about the directive intended to be adopted on a newspaper of wide circulation, the relevant administrative agency's website and other media outlets. Administrative agencies are also required to keep records of information about the directives they adopt. Exceptionally, administrative agencies may be exempted from these procedural requirements where there are emergencies, where issuance of advance notice may be contrary to public interest, or where issuance of advance notice may undermine the implementation of the directive. In these instances, the administrative agencies have to keep records of their justification for exemption.

Before ratification of directives, an administrative agency is required to fairly consider comments submitted on the draft. The Administrative agency may then amend the draft accordingly or provide a justification for rejecting comments. Further, also before ratification, the administrative agency is required to send a draft of the directive to the Federal Attorney General to get its opinion, which is required to be given within fifteen (15) days. In outlining these procedural requirements, the Proclamation provides an important safeguard as it forbids administrative agencies from adopting directives which are substantially different from their drafts publicized through notice.

Directives adopted by administrative agencies are required to be prepared in a clear and precise manner and be issued both in English and Amharic language. As a way of insuring accessibility, directives should be posted on the relevant administrative agency's website and filed to the Federal Attorney General, which is also required to post the directive on its own website.

In addition to providing these extensive procedural requirements, the Proclamation requires timely issuance of directives whenever required by law. The Proclamation, in addition to allowing individuals to lodge petition for adoption of directives, grants individuals the right to obtain administrative decisions even in cases where administrative agencies have not adopted a relevant directive.

The Proclamation, in line with its objectives, also regulates administrative decisions by administrative agencies. According to the Proclamation, administrative decisions are decisions issued by administrative agencies in relation to the rights and interests of individuals in their daily functions. As a matter of principle, the Proclamation



grants individuals the right to request an administrative decision with regard to matters which affect their rights or interests. The Proclamation outlines a number of principles which administrative agencies must follow in making administrative decisions. These enumerated principles include balancing public and individual interests, making reasoned decisions, making timely and predictable decisions, and making decisions in good faith. Administrative agencies are also required to establish a complaint handling body which hears complaints against administrative decisions.

As a judicial check on executive acts, the Proclamation asserts that individuals are allowed to apply to the Federal High Court for judicial review of directives and administrative decisions. The Proclamation further supports individuals' right to judicial review by mandating the Federal High Court to establish special benches which review administrative acts. Courts may revoke directives by administrative agencies where procedural rules were not followed during issuance, directives amount to ultra-viruses, or where directives are contrary to higher hierarchy laws. On the other hand, administrative decisions, are revoked by courts where principles under the Proclamation have not been followed during their dispensation. Naturally, remedies within the administrative agencies are required to be exhausted before judicial review of administrative acts. During judicial review, courts are required to render decisions in the shortest possible amount of time and execute these decisions immediately. Moreover, individuals who have incurred damage due to fault in issuance of directives or administrative decisions are entitled seek compensation from the relevant administrative agencies.

To conclude, the Administrative Procedure Proclamation, which was issued recently, has been a result of the ongoing reforms in Ethiopia. These requirements imposed on administrative agencies by the Proclamation are very significant in ensuring they enact laws and make decisions in a fair and timely manner. Administrative agencies are mainly charged with serving the public and how administrative agencies serve the public is just as important as the results they obtain in serving the public. While matters related practical application of this law remain to be seen, the Proclamation goes a long way towards addressing the legislative lacuna which existed regarding the regulation of administrative acts. The Proclamation is truly an important step towards safeguarding the constitutional rights and interests of individuals.



AMAN ASSEFA & ASSOCIATES

Aman Assefa & Associates Law Office

6th Floor

Dire Dawa Building

Ethio-China St. PO 13166

Addis Ababa, Ethiopia

www.aaclo.com

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