

Chapter 5

Judicial power of Ad.
Agencies,

Nomenclature

- ❑ Judicial power of Ad. Agencies,
- ❑ Adjudicatory power,
- ❑ Administrative decision making

Definition and Nature

- ❑ Ad. agencies are Conferred with tripartite powers
- ❑ The definition is needed to distinguish Ad. Agencies adjudicatory power from their legislative and executive powers
- ❖ Accordingly, we have some tests:
- ❑ **How, the FAPP defines administrative decision making?**

Contd...

- **Conclusive and binding** [without any need for confirmation by any other organ]
- Availability of some sort of *procedural attributes* (follow pre-set procedures either formal or informal, the tribunal should hear opinions, arguments and evidences) **administrative decisions are fruits of certain procedures**)
- The **presence or absence of interpretation and application of legal rules**. (the decision passed is **based on pre-existing legal rules or other prescribed standards**, the issue involved could be factual or legal)

Nature

- ❑ Delegated
- ❑ Conclusive and binding subject to judicial review

Forms of Administrative Adjudication

❖ Depending on the **level of rigidity of the procedures** administrative adjudication has **two forms**

1. **Formal:**

- ☐ follows **full blown trial type**
- ☐ More or **less similar procedures like courts**

However,

➤ More formalization goes against the objective of delegation

2. Informal:

- ☐ **not full blown trial type**
- ☐ **flexible** subject to **compliance with minimum due process**

However,

➤ More informal: High possibility for arbitrariness.

❖ **Does fair hearing necessarily involve oral hearing?**

Tribunals and the Tribunal System

- ❑ **Forums** where administrative *disputes are being formally resolved*
- ❑ Different jurisdictions use *different terminologies* having regard to the social set up of their own systems.
 - USA-*Administrative law judges*
 - France: *three tier Ad. Court*
("conseil.d'Eitat", administrative d'Appel", Tribunaux administratif"
 - Other jurisdictions use the term *tribunal*

Contd...

- Despite the difference in terminologies and organization, they refers to **a forum where justiciable disputes that involve government agencies, in one or another form, are being adjudicated** by a panel of impartial decision makers.

Common features of tribunals

- As suggested **by Garner and Jones** tribunals have the following five hallmarks:
 1. **Independence** from administration;
 2. **Capacity** to reach a ***binding decision***;
 3. Decision taken by a ***panel of members*** as opposed to a single judge
 4. A ***simpler procedure*** than that of a court; and
 5. A **permanent existence**.

Delegation of Judicial power in Ethiopia

- ❑ FDRE Constitution **expressly vested judicial power**, both at the Federal and State levels in courts.
- ❑ This goes in line with **the principle of separation of state powers**.
- ❑ However, it does not necessarily imply that only regular courts shall exercise judicial power.
- ❑ **judicial power may be delegated** to other bodies falling outside the structure of ordinary courts.
- ❑ Articles 37(1) and 80(4 & 5) of the Constitution
- ❑ What are **the advantages and disadvantages of delegating judicial power** to administrative agencies?

Advantages

- ❑ **Expediency**: administrative agencies are better than ordinary courts in disposing cases timely.
- ❑ Administrative adjudication is **cheaper than court adjudication**
- ❑ Administrative adjudication is **more convenient and accessible to individuals** compared to ordinary courts.
- ❑ The process of adjudication in administrative **agencies is flexible and informal** compared to the rigid, stringent and much elaborated ordinary court procedures.
- ❑ **Special expertise knowledge** administrative tribunals manifest as compared to ordinary court judges.

Disadvantages

- **Lack of legal expertise:** many of the members of the panel are selected from different walks of life with no or little legal background.
- **Partiality:** as many or all of the members of the administrative tribunals are at the same time **employees of the various offices or agencies**, they might not be free from bias and partiality towards the agency.
- **Violation of the principle of separation of powers and rule of law:** transferring this power to administrative agencies is argued by some authorities to be a violation to this principle.