Chapter V
Judicial/Quasi-judicial Power of Administrative Agencies

- **At the end of this unit, the students are expected to:**
  - Understand the nature, meaning, and forms of adjudication
  - Discuss the basic principles and system of administrative decision/action
  - Assess administrative action under the administrative procedure proclamation no.1183/2012
  - Identify tribunals: meaning, nature, and jurisdiction
  - Analyze the structure and organization of tribunals in Other countries and in Ethiopia
  - Qualification, appointment, and dismissal of judges
  - Inquiries in Ethiopia

5.1 Nature, meaning, and forms of adjudication

a) Introduction

- An administrative agency may be conferred with tripartite powers (*executive, legislative, and adjudicative*) of various nature and scope
- The important question here is what is "***an Administrative Decision***"?
  - Not everything agencies do is a decision
  - There are administrative activities and rule-making actions
  - Thus, identifying whether a certain agency's action is a

b)What is an Administrative Decision? General Overview

- Hence, what is the meaning of administrative decision in various countries?
- In Ethiopia, ***an administrative decision-making procedure*** is given in section three and four of the FAPP
- Administrative decision is defined under Article 2(3) of the FAPP as follows:

> **"Administrative Decision"** ***means a decision issued by an administrative agency on relating to persons rights or interest in its day-to-day function, excluding issuance of Directives;***

A Note on Nomenclature

- Administrative decision-making process denotes a process
- Section four of the FAPP is the '***statutory procedure***' i.e., the procedure laid down by law to govern that process
- The result of administrative decision-making is 'a decision'
- ***Administrative decision-making procedures; quasi-judicial, or adjudication*** *describe the same thing (the procedure to reach an administrative decision)*
- Again, the agency's power may be called as:
  - ***decision-making power, or quasi-judicial power; or adjudicative power;*** all represent the same idea
- Similarly, the ***nomenclature and scope*** of Administrative decisions vary from country to country; for instance:
  - ***Administrative decision, or Order, or Administrative action, or Agency action, or***
  - ***Act, or government action, or quasi-judicial decision;*** all

- The FAPP of Ethiopia uses “Administrative decision” or simply “decision” to describe the output of administrative adjudication

- The nomenclature for ‘***Administrative Decisions’ in foreign countries:***
  - ✓***Administrative act*** **–** in Germany
  - ✓***Order***- in the U.S, and
  - ✓***Administrative decision***- in Australia

- All these nomenclatures are not exactly the same; there are variations both in nomenclature and in scope; though, all these terms denote ‘judicial power’ in nature

❑ FAPP'S Definition of Administrative Decision

- Article 2(3) of the FAPP defines administrative decision like this:

> *"**Administrative Decision**" means decision issued by an administrative agency on relating to persons rights or interest in its day-to-day function, excluding issuance of Directives;*

- Let us analyze each word in this definition:

o **Decision**:

- ➢ This proclamation starts with the word '*decision*' to define the term administrative decision
- ➢ Unfortunately, the term '*decision*' is not defined in the FAPP
- ➢ Nevertheless, it is clear that 'decision' includes any action or inaction of a judicial nature
- ➢ The term '*judicial*' on the other hand denotes the application of law to

Administrative Agency

- ✓ 'Administrative Agency'-has already defined under Art.2(1) of the FAPP

  "Administrative Agency" means an Executive Organ of the Federal Democratic Republic of Ethiopia duly established by law and includes the Executive Organs of City Administrations accountable to the Federal Government.

Right or Interest

- ✓The term '***right***' – a recognized proprietary or personal right (can be challenged action affects a recognized proprietary or personal rights
- ✓The term '***Interest***' includes instances where the individual would not be regarded by law as having any substantive entitlement or right
  - This is for rules of 'standing' which determine who can challenge administrative decisions in court

Day-to-day Function

- ✓Public administration is the totality of the working day's activities of all the world's bureaucrats
- ✓Whether these works are done legally or illegally
- ✓Government employees do things that affect the daily lives of fellow citizens
- ✓Hence, administrative decision is parts of these day-to-day functions of the agency/government officials/employees

❑Points to be taken into consideration to understand "Administrative decision" under the FAPP:

a)It is particular:

- ✓A decision is targeted against an individual; it is not general like a directive
- ✓In some cases, a decision may affect more than one individual; for instance, for a group or a certain group of a society that shares common characteristics; the agency may not pass a decision but rather enact a directive /a rule that governs them

b) It is final:

- ✓A decision-making process may pass through various steps; such as consultation, discussion, information gathering, and recommendation by a group of experts within the internal structure of the agency
- ✓Decision represents the final stage of this process
- ✓It signifies no other conditions or further action is required to make the decision effective

c) It is binding

- ✓ A decision produces a binding legal effect
- ✓ It diminishes, creates, or destroys an existing right or legitimate interest

d) It includes inaction

- ✓ A decision includes not only an action to do something but also an action or refusal to do something
- ✓ Therefore, refusal to issue a license is a decision- the same as a decision to revoke an existing license

Levels of Administrative Decision-Making under the FAPP

- A decision-making process's levels starting down at the agency until it reaches a tribunal at the top
- We can divide these levels into three major stages; namely:
  - ✓ Initial Decision
  - ✓ Internal Level
  - ✓ Merit Review

Level 1: Initial Decision (Primary Adjudication)

- This is the initial stage where the first decision is reached
- The decision-maker may be an officer, team leader, head of the agency, or any servant within the agency
- A vast number of decisions are made at this level
- The initial decision may be either given by the agency on its own initiative or upon the party's request

- For instance, the decision to take administrative measures for noncompliance, suspending, revoking, imposing a condition or restriction, making a decision, demand or requirement, or the like starts within the agency that is specifically authorized to make that decision

- In most cases, the decision at the party's request is related to the following:
  - ✓ entitlements, licensing, registration, provision of service, and the like

Level 2: Internal Review

- At this level initial decisions will be reconsidered in response to complaints made against initial decisions
- This internal review will be conducted by a group of civil servants and/or appointed agency officials
- It may be ad hoc or as a permanent grievance hearing

- Since all members of this internal review are officials of the agency itself, and the purpose of the review is a reconsideration of the initial decision, it falls within the second level of decision-making

Level 3: Appeal To Tribunal (Merit Review)

- This is a stage where the initial and review decisions will be scrutinized for any error of law, facts, and policy
- At this stage, compliance with the adjudication procedure (the decision-making procedures of FAPP) becomes critical because parties before the tribunal expect procedural fairness during the proceedings
- A tribunal unlike an internal review, is established by law, independent from the agency that made the initial decision
- It is more or less similar to a court, and it exercises a judicial function
- The decision-makers sitting on a tribunal are usually referred to

❑ Levels of Decision-making Under FAPP

- The FAPP governs two of the three levels of decision-making process
  - ➢ Section 3, Article 20-22 of the Proclamation govern the ***initial level***
  - ➢ Whereas, Sub-section 5, Article 43-45 apply to the ***internal review*** procedure
- Decision-making by ***the administrative tribunal*** is governed by specific statutes establishing the respective tribunal

❑ FAPP No. 1183/2020: levels of decision-making

20. Initiation of Administrative Decision

1/An application for an administrative decision be made by an interested person or his agent.

2/An administrative decision process may be initiated by the relevant administrative agency.

21. Manner of Administrative Decision Application

1/An application for administrative decision shall be made in writing and may be submitted in person, a registered postal address or by electronic means.

2/A written application of administrative decision shall include:

a) Date, name of the applicant or his agent, signature and address;

b) Name of the administrative agency to whom the petition

d) Act that the administrative authority has to do.

e) Facts and evidence relevant for the decision.

3/ An agency may prepare forms through which an application may be made.

22. Record of Applications

1/Upon receiving an application for administrative decision, the agency shall immediately furnish.

2/A written confirmation of application, shall contain details of receiving relevant documents attached there.

5.2 Decision-Making (Adjudication): Principles &Procedure

- The following are the basic issues related to ***procedural rules of adjudication*** or ***procedural fairness*** in any legal system
  - *Procedural fairness* is necessary in any legal system of the world
  - It is also necessary to determine the *contents of procedural fairness* for any legal system
- Nevertheless, the aspects of ***procedural fairness*** vary in terms of degree and scope in each country
- For instance:
  - **In the UK- t**he courts determine the scope and applicability of procedural fairness, in their application of the principles of Natural Justice
  - **In U.S-** the procedural fairness is provided in the APA of 1976 the due process requirements of the constitution

A/ Why Procedural Fairness?

- A fair hearing increases the chance of a fair outcome
- Giving a person a fair hearing shows respect for the individual
- People value fair procedure for its own sake and are more prepared to accept adverse decisions if they have been treated fairly
- There are *two rationales* for procedural justice:

  a) Instrumental rationale, and

  b) Intrinsic rationale

  ➢ ***Instrumental rationale***:

  ✓ emphasis on the connection between the provision of hearing rights and the outcome's correctness on the case's substance

  ➢ ***Intrinsic rationale***

B/ Elements of Procedural Rules and Principles

- Fundamentally, there are two elements of fair procedure in decision-making
- In England they are collectively known as **THE PRINCIPLE OF NATURAL JUSTICE**
  - The first element is called ***fair hearing***
    - ✓ It is usually described in Latin as ***" audi alteram partem"***
    - ✓ Hear the other side
    - ✓ It claims that the person must know the case being made against him or her and be given the opportunity to answer it before a decision is made against him/her
  - The second Element is called ***impartiality***
    - ✓ It is commonly known as the rule against bias, or ***"nemo iudex in causa sua"***
    - ✓ This in short means, no one should be a judge in his/her own cause

D/Sources of Fair Procedural Fairness Requirement in Ethiopia

a)FDRE Constitution; Article 37

- In many countries statutory law is the source of rules and principles of procedural fairness
- The legislature enacts procedural laws for the basic decision-making process
- When there is no law or insufficient to ensure a fair hearing; courts resort to the principles of ***Natural Justice***
- ***In the U.S,*** the constitutional ***Principles of Due Process of Law*** serve to fill in the gaps of the Administrative Procedural Act (APA)
- **What About Ethiopia?**
  - ✓Is there any constitutional principles of fair hearing that agencies must comply with in the absence of express provisions of the law?
  - ✓***Article 37,*** of the FDRE Constitution, which ensures access to justice for citizens, is interpreted by the Cassation Bench and even by the House of Federation as a basic principle of fair hearing in the administrative adjudication
  - ✓Hence, the right to have fair procedure can be inferred from ***Article***

b) FAPP [Procl. No. 1183/2020]

- The FAPP is now the basic source for administrative adjudication in Ethiopia
- It is also a source for fair hearing procedures in Ethiopia
- The procedural requirements are mandatory and non-compliance entails invalidation of the decision
- The recognition of judicial review is the most effective tool in implementing procedural requirements

c) Specific Primary Legislations

- A great deal of enabling acts contain procedures to be complied with by an agency in the decision-making process
- But the scope of this rule is limited to that specific agency

c) Regulations and Directives

- Subordinate legislations are also an important source for administrative decision-making
- We have many regulations and directives that provide for

E/ Forms of Administrative Adjudication

- The decision may be preceded by:
  - ***full-blown formal hearings*** that are similar to court trials; or
  - ***an informal process***, which is just like a summary proceeding where the participation of the parties is very minimal
- Normally, the adjudication process begins:
  - either with a complaint filed against a private person, a business, or even another agency,
  - The party charged in the complaint is the ***defendant*** (called the ***respondent***)
  - The respondent has the right to file an answer to the complaint
  - In principle, respondents are entitled to a hearing before the agency adjudicating the case
  - However, ***the depth of the hearing*** may vary from circumstance to circumstance

a) Informal Adjudication

- The vast majority of administrative adjudications involve informal actions
- The informal mode of adjudication, although it may vary from country to country and from case to case in terms of content, tries to provide ***minimal statutory safeguards*** for the protection of the fundamental rights of individuals
- **For instance**:
  - ***The APA in U.S*** requires the most basic elements of due process, that is, notice and hearing
    - ✓ Regarding ***notice,*** APA provides that —persons entitled to notice of an agency hearing shall be ***timely*** informed of the ***time, place, and nature of the hearing***; ***the legal authority and jurisdiction*** under which the hearing is to be held; and ***the matter of fact and law*** asserted
    - ✓ As to the hearing, the agency is required to give all interested

- ***Courts in the common law tradition (Like the UK)***
  - ✓have developed general principles that are expected to ensure fairness in agency adjudication
  - ✓These principles are known as the rules of natural justice and fairness (as discussed previously)

b) Formal Adjudication

- ➢Informal administrative adjudication offers only the minimal statutory safeguards of ***notice and hearing***;
- ➢Formal adjudication involves an almost full-blown trial-type hearing
- ➢Having regard to the magnitude of the individual interest at stake, the enabling legislation (parent act) or other statutes may dictate the concerned administrative agencies to hold a formal hearing before passing decisions

- ***Formal adjudication***, among other things, may provide the following procedural safeguard to the respondent:
  - ✓Notification of charges;
  - ✓Notification of hearing;
  - ✓Representation by an attorney;
  - ✓An impartial tribunal/administrative law judge;
  - ✓Presentation of evidence;
  - ✓Cross examination of the witness of the agency;
  - ✓A decision based on the regulation

F/Decision-making Procedure under the FAPP

- The decision-making procedure includes all the processes of the proceedings until the decision-maker reaches a final resolution with the effect of disposing of the case
- Key elements of decision-making procedures are:
  - Notice (Summon)
  - Presentation of case and evidence
  - Oral Hearing
  - Cross-examination, and Right to Counsel
- The main provision governing the ***decision-making procedure*** is found under Article 37 of the FAPP
  - Read the Article hereunder:

Article 37- Conditions of Hearing

1/ The parties to case has the right to appear in person and have the right:

a) To give testimony ;

b) To produce evidences ;

c) To access and examine evidences presented to the Authority

2/ The Agency may use all legal methods to get documents of investigation and other any evidences from the party participated in the argument, witnesses and professional persons.

Article 30-Reasoned Decision

The person rendering administrative decisions should provide adequate reason for the decision he makes.

Article 39- Giving the Decision to the Client

An Agency shall notify the concerned person of its decision

Article 40- Administrative Decision

All administrative decision shall be made in writing and contain:

1/ Date and Number of Decision;

2/ Name of the Authority;

3/ Parties to the case and their address;

4/ Issues of claim;

5/ Discretion of Evidences;

6/ Description of Fact and Law;

Thanks!