

Major Points in Making Directives: Procedure to Adopt, Binding Nature and Accessing Them

Description

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Introduction

The Federal Administrative Procedure Proclamation No 1183/2020 (hereafter FAPP) paved the way in stating the procedure in adopting directives by administrative organs. Directives are laws that create rights and duties. It has been impossible to access directives. Some directives will go beyond their parent legislation introducing new forms of rules not intended by the higher laws. Directives change frequently. Administrative services were denied awaiting the enactment of a new directive. However FAPP done on 7 th April 2020 to be effective on the day it is published on the Federal Negarit Gazette has changed the game. The major landmarks in FAPP with regard to directives will be briefly discussed beginning with the preamble till the the last part which is judicial review.

General Provisions

The preamble of the FAPP provide that directive making should follow proper law making procedure, should be transparent and accountable. The scope of application of FAPP covers all federal and federal administered cities' administrative agencies except police and prosecutors. The administrative organs enact directives only when delegated by a higher law to adopt directives. It is unlawful to deny service because a directive has not yet issued. Obligation is laid on administrative organs to timely adopt directives.

Procedure to follow before adoption of a directive

The administrative agency should keep record about the directive for any interested person to inspect. The Agency should publish notices on a newspaper or website or other media as to where, when, and how to get access to draft directive and give comment. The administrative organ should solicit directly for comment from relevant stakeholders and it should organize a public forum.

There are exceptions to all of the above procedures. For example National Bank of Ethiopia will not be required to be follow the above procedure by regarding issuing exchange rate, interest rate and other similar matters. Such procedure can be skipped in case of emergencies, when following the procedure affects public interest or undermines implementation of the directive.

Ratification and Effectiveness

Prior to ratification, Federal Attorney General (FAG) should be asked for FAG's opinion. FAG should respond within 15 working days and if FAG do not respond, it will be assumed as FAG does not have

an opinion. The administrative organ cannot ratify a directive that is substantially different from the draft publicized through its notice. The final ratified Directive shall have an additional explanatory statement. The final ratified directive shall be prepared in Amharic and English.

The administrative organ shall send a copy of the ratified directive with the explanatory note to FAG to be registered and published. All administrative organs shall send within 90 days after the effective date of this proclamation all prior directives they have adopted to FAG. FAG shall make all directives accessible. The concerned administrative agency shall print and disseminate to governmental and other stakeholders and post it on its website.

Any person who is interested can come in person and read at the administrative agency the directives or may get a copy of the directive subject to payment of expenses. A directive that has not been filed to FAG or the website of the administrative agency are unenforceable.

Judicial Review of Directives

Any interested person can file a petition requesting a judicial review of a directive. However the judicial review shall be sought against a final decision of the administrative agency. A petition for a judicial review should exhaust all remedies available within the Agency before petitioning the court for judicial review. However, the obligation to exhaust remedy shall not apply if the concerned Agency unduly delay decision.

The Federal High Court(FHC) shall have the jurisdiction for judicial review. The decision of the FHC could be appealed to the Federal Supreme Court. The FHC shall establish special benches to handle petitions of judicial review

Principles of Review

A directive will be revoked by a court where it failed to honor the procedures stipulated in FAPP or if it is ultravirous or it is contrary to other higher laws.

Procedure of Judicial Review

A petition for judicial review on ultravirous or contrary to higher law can be filed any time, whereas a judicial review on not honoring the procedure for enactment under FAPP should be filed within 90 days of its enactment into law.

If the court finds the petition to review to have merit, the court shall give the concerned administrative organ to give its written response within 15 days. The court has the power to order records to be brought to court pertaining to the directive.

Decision of Judicial Review and Execution

The court should render its decision within a short time possible. The court may confirm, partially or fully reverse the directive submitted for review. When the Court partially or fully invalidate the directive, it may order the administrative agency to revise or reenact the directive. The decision of the court should be executed immediately.

The legality of the directive that is partially or fully invalidated will be revoked. However, administrative

agency's decisions done prior to the date the court made a ruling shall stay valid

On procedural matters not covered by FAPP, the Civil Procedure Code shall apply. A person who incurred damage as a result of fault committed through issuance of directive is entitled to seek compensation from the administrative authority that is responsible in accordance with the relevant law.

Conclusions

Therefore, the manner in which a directive becomes a binding law has been cleared out. Accessing directives has become easier. This is a huge step for lawyers, judges, law professors and students and the general public. Judicial review procedure, principles and execution, against directives opens up the previously closed doors and empowers judicial activism.

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