

The House of Federation: Interpretation of the Constitution

Description

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The House of Federation (HoF) of the FDRE is one of the legislative organs of the government of Ethiopia. One of the major powers of the HoF is to decide on constitutional interpretation and constitutional disputes. New developments and gaps in the power to interpret the constitution by the HoF shall be the focus of this article.

General

The HoF is composed of representatives of Nations, Nationalities and Peoples. Each Nation, Nationality and People shall be represented in the HoF by at least one member. For each additional one million of its population, one additional representative shall be selected for each Nation and Nationality. Members of the HoF will be elected by State Councils. Article 62(1) of the FDRE Constitution provides the powers and functions of the HoF. One of the powers and functions of HoF is the power to interpret the constitution. Proclamation No 251/2001 was the governing law detailing the powers and functions of the HoF for the past 20 years till this Proclamation was repealed and replaced by a Proclamation to Define the Powers and Functions of the House of Federation Proclamation No 1261/2021.

Interpret the Constitution

The HoF has the constitutional power to interpret the constitution. All constitutional disputes shall be decided by the HoF and not courts. To help in the interpretation of the constitution, the HoF is constitutionally granted power to organize the Council of Constitutional Inquiry(CCI). Hence CCI is established as a constitutional organ under Article 82(1) of the FDRE Constitution. The CCI has 11 members. The President and Vice President of the Federal Supreme Court serve as President and Vice-President to the CCI. CCI shall carry on the investigation of constitutional disputes and submit its recommendation to the HoF.

Recommendation and Appeal

Article 7 of Proclamation No 1261/2021 states that the HoF shall render a final decision on recommendations by CCI that a certain matter requires constitutional interpretation. The HoF may establish a committee drawn from its members to investigate the draft proposal of the CCI. In the case where the CCI rejects a particular matter saying the matter does not deserve constitutional interpretation, such a decision is appealable to the HoF. The HoF committee may be mandated to decide whether an appeal made against a decision of the CCI should be presented to the general meeting of the HoF or not. The HoF by itself or using a committee will render a final decision on the appeal. Such an appeal has to be brought to the HoF within 180 working days. Cases concerning crimes against humanity, cases concerning rights of Nations, Nationalities and Peoples or issues relating to division of power cannot be barred by period of limitation.

Decision Making Time Limit

The FDRE Constitution on Article 83(2) provides the time limit the HoF has to decide on constitutional disputes presented to it. The HoF is required to decide on constitutional dispute cases within 30(thirty) days from the date of receipt of recommendation by the CCI. Similar time limit has been incorporated in the repealed Proclamation No 25/2001. However, the latest Proclamation No 1261/2021 is silent. The latest proclamation indicates the fact that the HoF shall decide constitutional disputes in a short time without mentioning the 30 day time limit.

Stay of Execution

Stay of execution order is included in the latest proclamation. Stay of execution order was not incorporated in the repealed proclamation. When the HoF believes that there will be irreparable damage to an applicant requesting constitutional interpretation, a stay of execution could be ordered. The authority to order a stay of execution is the Speaker of the HoF and not the President of the CCI as it customarily requested.

Rules on Decision Making

The repealed proclamation requires unanimous vote for passing a decision on constitutional interpretation cases. The latest proclamation however is silent on the subject. The FDRE Constitution on Article 64(1) states the fact that all decisions of the HoF require the approval of a majority of members present and voting. Thus it is fair to assume that constitutional interpretation cases will be decided not by unanimous decision but by majority vote of members present and voting.

Execution of Decision

The decision of the HoF on constitutional interpretation comes into effect as of the date of passing of the decision except when the decision itself states otherwise. However, when a given law is termed unconstitutional, the party that issues the law is given three month to amend, change or repeal the law in question. The time period used to be six month in Proclamation No 251/2001, which now is reduced to 3 months. The latest proclamation included a follow up procedure in that the concerned government body to amend, change or repeal the law has a duty to communicate the HoF in writing that it amends, changes or repeals the law in question. The House shall follow up the execution of its decision. For that matter Article 22(1) of Proclamation 1261/2021 states that the final decision of the HoF on constitutional interpretation shall be obligatory.

Binding Effect

The repealed Proclamation No 251/2001 on Article 11 provides that the House's constitutional interpretation shall have the general effect which therefore shall have applicability on similar constitutional matters that may arise in the future. Such a binding nature of the interpretation is broad enough to oblige not only courts but also the House itself. Nonetheless, the latest proclamation that repealed Proclamation 251/2001 is silent on the subject matter. There is no clear mention that an interpretation on a constitutional matter will have applicability to similar constitutional matters that may arise in the future.

Publication

Pending cases before the HoF are required not to be publicized. Press release or publication of such pending cases by any media including social media is prohibited unless it is for research or study purposes. However when it comes to final decision, Proclamation No 1261/2021 includes the need for publication in a journal and release in media outlets of the decision of the HoF on constitutional interpretation. The publication shall be done in languages of the Federal government, Regional states and English.

Conclusion

The enactment of Proclamation No 1261/2021 is to fill implementation gaps and incorporate new developments. The HoF experience in tackling constitutional interpretation issues has brought to its attention the need to include additional procedures like stay of execution and follow up of its decisions in amending, changing or repealing laws in different government organs. Interpretation of constitutional matters affecting the supreme law of the land has to be given weight and dissemination of information on changes made necessary to reach all Nations, Nationalities and Peoples of Ethiopia.

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