

## Major Changes on the Federal Courts Proclamation

### Description

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The Federal Courts Proclamation No 1234/2021 (hereafter the Proclamation) is out repealing former Federal Court Proclamations and its amendments namely Proclamations 25/96, 138/98, 254/2001, 321/2003 and 454/2005, effective from January 21,2021. Here are some of the major changes.

- Federal Courts are endowed with the common jurisdiction of **interpreting** and **observing** the FDRE Constitution.
- Basic or fundamental error of law has not been defined. But now with this Proclamation it is defined. It is defined as judgment, ruling, decision, order or decree a) in violation of the constitution; b) by misinterpreting a legal provision or by applying an irrelevant law to the case; c) by not framing the appropriate issue or by framing an issue irrelevant to the litigation; d) by denying to award judgment to a justiciable matter; e) by giving an order in execution proceedings unwarranted by the main decision; f) in the absence of jurisdiction over the subject matter; g) an administrative act or decision rendered in contradiction with the law; and h) in contravention to binding decision of the Federal Supreme Court Cassation Division.
- On Criminal Jurisdiction of the Federal Courts, crimes connected with conflicts between various nations, nationalities, ethnic, religious or political groups are included. Also rather than making it an exhaustive list of criminal matters, the Proclamation adds up cases specified by other laws also to make jurisdiction of the Federal Courts on criminal matters.
- On Civil Jurisdiction of the Federal Courts the following are two matters are added. One, issues in relation to bankruptcy fall under civil jurisdiction of Federal Courts. Two, civil cases arising out of Addis Ababa (AA) and Dire Dawa (DD) are the Federal Court jurisdiction other than those given by the City Charters to City Courts namely change of name, guardianship, marital status certificates, possession or ownership of claims of City administered houses, Edir(associations) cases, and **cases of money, contracts, loans involving up to ETB 500,000**. And three cases specified by other laws shall also fall under the civil jurisdiction of the Federal Courts.
- First Instance jurisdiction of the Federal Supreme Court (FSC) shrinks to change of venue issues. This seems to open the door for appeal right unlike the previous Proclamation no 25/96 where offences by federal government officials, ambassadors or consuls or representatives of international organizations were subject to first instance jurisdiction of the FSC. However, the Proclamation maintains cases specified by other laws may be included as first instance jurisdiction.
- FSC Cassation Division (FSCCD) is clearly empowered to see cases decided by Regional Supreme Court Cassation Divisions i.e cassation over cassation. However such cassation over cassation is limited to basic or fundamental error of law indicated on Article 2(4)(a) violations of the Constitution and (h) in contravention to binding decision of the FSCCD. Moreover basic or fundamental error of law on Article 2(4)(b) i.e. misinterpreting a legal provision or by applying an irrelevant law to the case, can make a Regional cassation decision be seen by FSCCD where **such a case have public interest and national importance**.
- FSCCD is empowered to see final decisions rendered by organs vested with judicial power. Also

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without prejudice to provisions of appropriate law, FSCCD can receive and see final decision rendered by **Alternative Dispute Resolution** mechanisms regarding cases that may be filed in Federal Courts.

- Binding precedence of the decisions of the Cassation Division shall start from **the date the decision is rendered** and not when published.
- Federal High Court (FHC) first instance jurisdiction on civil matters is increased from the previous ETB 500,000 to now an amount exceeding over ETB 10 million.
- FHC civil jurisdiction has new addition. Any person, it states, who has vested interest or sufficient reason can institute a case before the FHC to protect the rights of his own or others, using the Civil Code Procedure on Article 176-179. Thus FHC may render decision, judgment or order to protect justifiable human rights specified under Chapter 3 of the FDRE Constitution.
- On the previous Proclamation, appellate jurisdiction of the FHC was from Federal First Instance Court (FFIC) only. But now cases specified by other laws giving FHC the appellate power are also included here.
- FFIC appellate jurisdiction was absent previously. Now appellate jurisdiction of the FFIC is added. FFIC shall have an appellate jurisdiction on matters bestowed on it by other laws.
- The President of the FSC in the previous Proclamation used to have the power to assign judges of the Federal Courts, representative judges of assigned divisions, presiding judges, employ personnel with CONSULTATION with the FHC and FFIC Presidents. Now such **consultation** is deleted and a full power is assigned to the President of the FSC.
- The President of the FSC has additional powers in this Proclamation namely ensuring preparation, issuance and implementation of regulations and directives and providing support to Federal Sharia Courts.
- The Proclamation **introduced** power and duties of Representative Judges of an Assigned Division. The practice of having a representative for each division was there. But now the representative judge is legally recognized and given specific power and duties.
- More so the duties of Presiding Judges of the Federal Courts are stated now. Presiding judges were there in executing their duties known in practice but now their duties are clearly provided by law.
- Divisions of the FSC previously were Civil, Criminal and Labour. And now in the Proclamation, a new division format is introduced namely First Instance, Appellate and Cassation.
- A Cassation Division (CD) comprising of 7 judges can be created by petition filed by litigating parties or by the court's own initiation. There should be clear and sufficient reason where changing the previous legal interpretation is so necessary. The unique point here is interpretation of law rendered by CD presided by not less than 7 judges may review the same issue by not less than 7 judges.
- The CD by 5 judges follow the procedure of written reply and counter reply and the case is decided, unless the CD thinks it is necessary to hear the parties. Such procedure is different for FHC or FFIC where there will be mandatory hearing procedure and no counter reply.
- FHC and FFIC shall be presided by one judge except for two reasons. One a panel of 3 judges will sit where criminal charge punishable with more than 15 years rigorous imprisonment is the case and second the FSC may order by Directive for certain cases that the cases be seen by a panel of 3 judges.
- A sign language expert for concerned disabled persons is now included in addition to language interpreter, in which the court has to organize.
- Time frame is included for a decision requesting a judge to be removed. The decision to remove

- a judge has to be decided within 15 days from the date of application reached the new division.
- Penalty for declined request for removal of a judge is increased. The penalty for application without good cause is increased from ETB 500 to a fine between ETB 1000-3000. Where the application to remove a judge is made with the intention to defame or damage the judge's honor or delaying the proceeding, the fine can reach from ETB 3000-7000.
  - **Budgetary Administration Autonomy** is clearly stated under Article 36 of the Proclamation.
  - As well as Article 39(1) of the Proclamation provide that Federal Courts shall have **independence to recruit, hire, and administer** their own non-judicial personnel.
  - Calendar of courts became clear. Federal Courts shall be closed from Nehasse 1 to Meskerem 30. This means the commonly known Yekatit month 15 days closure or opening of the court after closure on Meskerem 18 were disregarded.
  - Members of the PLENUM is expanded to include two judges- one woman and one man, from the FHC and FFIC.
  - The Proclamation included court annexed MEDIATION. Where parties fail to resolve their dispute by mediation, the court proceeding shall continue. Where the parties reach an agreement under the mediation, the mediator shall prepare a settlement agreement, make the parties sign and present it to the judge for endorsement, if it is not legally or morally contrary to law. The endorsed settlement agreement shall be executed like any decision of a court. If the case ends with the mediation procedure, then the court fee shall be returned having deducted costs for the mediation.
  - Parties to a dispute shall have the obligation to conduct their litigation by using information technology the court has introduced. Such clear legal provisions will be an answer for court officials faced with challenges by parties or their lawyers who says there is no law for me to provide for example CD's containing my written claim or response.
  - An important judicial principle is included in the Proclamation. Decisions of the Federal Courts SHOULD be executed throughout Ethiopia, it says. Any government body, institution or non-governmental organization or person in any region shall have the obligation to execute or cause to execute such order or decision. Failing to obey a court order or decision, hinders the execution thereof or to cooperate or give assistance when so requested can make that individual subject to simple imprisonment not exceeding 2 years or with fine not exceeding ETB 5000.
  - The FSC is vested with the power to establish External Advisory Council.
  - The House of Peoples' Representative may issue REGULATION for implementation of this Proclamation.
  - The new jurisdiction of the FHC and FFIC shall come to force 6 month after the effective date of the Proclamation i.e. 21 January 2021. So the new jurisdiction for the FHC and FFIC shall commence on 22 July 2021.

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