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## ADMINISTRATIVE TRIBUNALS IN ETHIOPIA: EXPLORING THE ACCESSIBILITY AND INDEPENDENCE OF THE FEDERAL CIVIL SERVANTS ADMINISTRATIVE TRIBUNAL

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### Abstract

*Administrative tribunals are established for many justifications. One of these tribunals in Ethiopia is the Federal Civil Servants Administrative Tribunal. The Tribunal is entrusted to render administrative justice for aggrieved civil servants. To meaningfully realize its mandate, the Tribunal has to be accessible to litigants and institutionally independent. This paper examines as to what extent the Tribunal is accessible and institutionally autonomous in rendering administrative justice. To this end, it consults relevant provisions from the FDRE Constitution, other relevant laws, some decided cases and relevant literature. In addition, interview was used to garner certain data. The findings indicate that the Tribunal is not autonomous and accessible to aggrieved civil servants. Having made detailed analysis on the issues, it is recommended that the Tribunal should be re-established as a separate institution which should be accountable to the Prime Minister. On top of that, more permanent chambers should be created in regional states to maintain accessibility.*

**Keywords:** *Administrative adjudication, administrative tribunals, FDRE Constitution, Federal Civil Servants Administrative Tribunal, Ethiopia.*

### I. INTRODUCTION

All schemes of government regulation and distribution of benefits may generate disputes between the government and private parties. Such disputes may relate to a rejected application for government benefits, a sanctioning decision such as a civil liability or dismissal from government offices or regulatory action that compels a private party to take some actions or to refrain from some actions.<sup>1</sup> As a result, administrative law must prescribe a system of administrative adjudication that resolves the disputes in a fair and efficient manner.

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<sup>1</sup> Michael Asimov, *Five Models of Administrative Adjudication*, 63 *AMERICAN JOURNAL OF COMPARATIVE LAW* 1, 29-32 (2015).

Administrative adjudication refers to the entire system to resolve disputes between civil servants and administrative agencies.<sup>2</sup> In the process of administrative adjudication, there is no doubt that administrative tribunals occupy significant place. Administrative tribunals are authorities outside the ordinary court system. They are neither courts nor executive bodies, but they are rather mixture of both. They are judicial in a sense that the tribunals are responsible to resolve administrative disputes, and they are administrative because the reasons for preferring them over the ordinary courts are administrative reasons.<sup>3</sup>

In Ethiopia, there are administrative tribunals that review appeals from the decisions of administrative agencies on question of law and fact. The Federal Civil Servants Administrative Tribunal, re-established by the amended Civil Servants Proclamation, is one of the administrative tribunals in the country.<sup>4</sup> The Tribunal reviews administrative measures taken by federal administrative agencies which are submitted to it in the form of appeal by civil servants.<sup>5</sup> This paper aims at investigating the law and the practice related to the Federal Civil Servants Administrative Tribunal with particular emphasis on its accessibility and institutional autonomy. To this effect, relevant laws and decided cases are analyzed. Besides, key informants interviews and consulting relevant literature have been made.

The remaining parts of this paper are organized under four sections. The second section discusses the definitions, basic features and principles of administrative tribunals. It also presents the justifications to have administrative tribunals in a country. The third section explores the constitutional and legal basis of the administrative tribunals in Ethiopia. Moreover, the fourth section examines the practice of the Federal Civil Servants Administrative Tribunal (the Tribunal) in terms of its accessibility and some aspects of institutional independence. Finally, section five provides conclusion and recommendations.

## II. ADMINISTRATIVE TRIBUNALS: GENERAL OVERVIEW

### A. Meaning and Features

Inevitably, a government organ in charge of executing laws could be involved in the process of exercising judicial or quasi-judicial powers for findings of facts, application of law to facts, and determination of rights and obligations of persons.<sup>6</sup> These processes may take the form of administrative disciplinary procedure, panel inquiry, administrative tribunal and special tribunals.<sup>7</sup> These processes are known as administrative adjudication which is the process by which an administrative agency issues an affirmative, negative, and injunctive or declaratory order.<sup>8</sup> The formal proceedings before an administrative agency adopt the process of either rule making or adjudication. In the former, policies are formulated by setting rules for the future

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<sup>2</sup> *Id.*

<sup>3</sup> RADHAKAT NAYAK, ADMINISTRATIVE JUSTICE IN INDIA 51-53 (India Pvt. Ltd. Publications, 3<sup>rd</sup> ed., 1989).

<sup>4</sup> *Federal Civil Servants Proclamation*, No.1064/2017, FED. NEGARIT GAZETTA, 24<sup>th</sup> Year, No.12, Addis Ababa, 15<sup>th</sup> December, 2017, (herein after, Federal Civil Servants Proclamation)

<sup>5</sup> *Id.* Article 81(1).

<sup>6</sup> ASIMOV, *supra* note 1, at 6.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 7.

conduct of persons governed by that agency.<sup>9</sup> In the later, on the other hand, the policies of the administrative agency are applied to the past actions of civil servants and are decided for or against that party. Both these processes are regulated by the law of administrative procedure.<sup>10</sup>

Getting specific to administrative tribunals, they are usually structured outside the ordinary courts to entertain administrative cases though their decisions are subject to judicial control.<sup>11</sup> They are mainly adjudicative in the sense that they render decisions on administrative disputes by applying administrative laws and procedures.<sup>12</sup> In fact, the term tribunal may be used in various senses. For the purpose of this paper, however, it suffices to define a tribunal as an adjudicatory body that is not a court. A tribunal may also be located within an administrative department or outside it.<sup>13</sup>

There exist certain salient features of a tribunal. First, a tribunal is created by the law maker which makes it an organic part of the machinery of the state.<sup>14</sup> Second, it is partly judicial in nature to decide over administrative disputes by applying administrative rules and procedures. Third, a tribunal has a specialized and limited jurisdiction expressly conferred on it by the law.<sup>15</sup> Fourth, administrative tribunals can make legally enforceable decisions although their decisions are reviewable by higher level of court on point of law.<sup>16</sup> Fifth, a tribunal enjoys independence from control of executive body of the government.<sup>17</sup> Lastly, the work of a tribunal is characterized by speed, low cost, specialized expertise, relaxed procedure and freedom from technicalities.<sup>18</sup>

## **B. Justifications for Establishment of Administrative Tribunals**

As already pointed out, administrative tribunals are bodies, other than courts, that are given the power to resolve administrative disputes. Generally, the establishments of such tribunals can be justified for the following briefly discussed reasons.

### **1. Cost and Speed**

One of the most pressing reasons for the creation of tribunals is cost.<sup>19</sup> Administrative tribunals are cheap and ensure speedy justice. It is known that the procedures in the ordinary courts are long and cumbersome as it involves payment of huge court fees and engagement of lawyers. Unlike this, most administrative tribunals do not require huge fees. Their procedures are simple and informal and can be easily understood by a lay man. As such, there is no need for the

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<sup>9</sup> PETER LEYLAND AND TERRY WOODS, TEXT BOOK ON ADMINISTRATIVE LAW 188-191 (Oxford University Press, 4<sup>th</sup> ed., 2004).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> PAUL CRAIG, ADMINISTRATIVE LAW 734-738 (Sweet and Maxwell, 7<sup>th</sup> ed., 2012).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*, at 740.

<sup>17</sup> *Id.*

<sup>18</sup> These features of administrative tribunals are thoroughly discussed in the next sub-section of the article.

<sup>19</sup> Harold H. Bruff, *Specialized Courts in Administrative Law*, 43 ADMINISTRATIVE LAW REVIEW 329, 356-366 (1991).

aggrieved party to employ a lawyer to fight a case since he can easily represent himself at the tribunal.<sup>20</sup>

In fact, the characteristics of speed and cost are interlinked and contribute to each other. Harlow and Rawlings also identify the positive qualities of administrative tribunals, namely cheapness, speed and accessibility, and how they interact. They say that these values generally contribute for effective resolution of administrative disputes than ordinary courts.<sup>21</sup> Indeed, it should be borne in mind that there will be costs in establishing a new tribunal system, which should, however, be weighed against the future benefit that tribunals could provide.<sup>22</sup>

## 2. *Specialization*

The desire to have specific issues dealt with by persons with an intimate knowledge and experience of the problems involved is one of the reasons for the establishment and growth of tribunals. Administrative tribunals are in a more appropriate position than courts to give effect to individual administrative law claims within a broader policy-based frame work. They possess greater technical knowledge/expertise (in fields such as law, medicine, taxation, business, industry, health, engineering, land, etc) than ordinary courts and, hence, they can effectively deal with technical and socio-economic problems arising out of administrative action.<sup>23</sup>

## 3. *Informality and Simplicity*

Informal process of tribunals and other administrative bodies remarkably distinguish them from the ordinary courts whose proceedings are grounded in decorum, technicalities of procedure, rules of evidence, and *stare decisis*,<sup>24</sup> thus making the proceedings to be formal, cumbersome, and fraught with mystifying technicalities. Even the uniforms of the judges and the lawyers before ordinary courts have their own great implication. They are so formal and foreign to the point of 'intimidation for the 'uninitiated' members of the public.<sup>25</sup>

On the other hand, tribunals can adopt more informal methods and procedures that are more in tune with the common law man's idea of dispensation of justice, as those appearing before tribunals are less likely to be intimidated by their proceedings.<sup>26</sup>

### III. PRINCIPLES OF ADMINISTRATIVE TRIBUNALS

Administrative tribunals, as already noted, are necessary institutions to resolve administrative disputes. To effectively do this, they should observe some fundamental principles and values in discharging their responsibilities. These principles and values are explored by

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<sup>20</sup> *Id.*

<sup>21</sup> CAROL HARLOW & RICHARD RAWLINGS, *LAW AND ADMINISTRATION* 491-493 (Cambridge University Press, 2<sup>nd</sup> ed., 1997).

<sup>22</sup> *Id.*

<sup>23</sup> Gillian Claire, *Administrative Justice and Tribunals in South Africa: A Common Wealth Comparison*, (LLM Thesis, University of Stellenbosch, 2011), at 67.

<sup>24</sup> *Id.*

<sup>25</sup> MICHAEL ALLEN AND BRIAN THOMSON, *CASES AND MATERIALS ON CONSTITUTIONAL AND ADMINISTRATIVE LAW* 756-760 (Oxford University Press, 11<sup>th</sup> ed., 2014).

<sup>26</sup> *Id.*

many writers. For example, Claire explains that administrative tribunals share three essential values, namely ‘openness, impartiality and fairness. He defines these values as follows:

In the field of tribunals, openness appears to us to require the publicity of proceedings and knowledge of the essential reasoning underlying the decision; fairness to require the adoption of a clear procedure which enables parties to know their rights, to present their case fully and to know the case which they have to meet; and impartiality to require the freedom of tribunals from the influence, real or apparent, of departments concerned with the subject-matter of their decisions.<sup>27</sup>

Besides, Kirsch and Stewart have identified some lists of principles of administrative tribunals. These comprise accountability, transparency, access to information, participation, the right of access to an independent adjudicator, due process rights, including the right to be heard and the right to reasoned decisions and reasonableness.<sup>28</sup>

As noted above, the principles discussed are quite significant in litigation of administrative cases. Consequently, administrative tribunals should observe these principles in the process of resolving administrative cases.

#### **IV. OVERVIEW OF CONSTITUTIONAL AND LEGAL BASIS FOR ADMINISTRATIVE ADJUDICATION IN ETHIOPIA: FOCUS ON THE FEDERAL CIVIL SERVANTS ADMINISTRATIVE TRIBUNAL**

The right to get justice before an impartial and independent tribunal is a fundamental right guaranteed in international human rights instruments. Of the most important treaties, the International Covenant on Civil and Political Rights (ICCPR), in its Article 14 (1), states that “all persons shall be equal before the courts and tribunals” and further states that ‘in the determination of any criminal charge against him, or his rights and obligations in a suit of law, every one shall be entitled to a fair and public hearing by a competent, impartial tribunal established by law.’ Moreover, Article 8 of UDHR provides the same rights.

When it comes to Ethiopia, it is clear that the FDRE Constitution under Article 79(1) provides that judicial power is vested in courts. Besides, according to Article 78(4), institutions other than ordinary courts that do not follow legally prescribed procedures cannot be established to exercise judicial functions.<sup>29</sup> More importantly, however, Article 37 (1) of the Constitution cements that everyone has the right to bring a justiciable matter to obtain a decision or judgment by a court of law or any other competent body with judicial power. It is on the basis of this constitutional rule that administrative tribunals are being entrusted to exercise a quasi-judicial jurisdiction over administrative disputes. In general, Article 37(1) of the Constitution, in line

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<sup>27</sup> Claire, *supra* note 23 at 63.

<sup>28</sup> Kingsbury Kirsch and Stewart, *The Emergence of Global Administrative Law*, 28 LAW AND CONTEMPORARY PROBLEMS 240, 252-253(2005).

<sup>29</sup> CONSTITUTION, Proclamation No. 1/1995, FED. NEGARIT GAZETA, 1<sup>st</sup> Year No. 1, 1995 (hereinafter, FDRE CONSTITUTION). Article 78(4) implies that due process of law must be observed when institutions exercise judicial functions involving individual rights.

with the UDHR and ICCPR pursuant to its Article 13(2), recognizes the right to fair hearing before competent, independent and impartial courts and tribunals.<sup>30</sup>

In Ethiopia, there are both embedded<sup>31</sup> and extra-departmental administrative tribunals.<sup>32</sup> Embedded administrative tribunals are known by different names in different sectors of the administration, some of them are called committee, commission, and board. They make internal review to the decision of authorities. However, their decisions are reviewed by the head of the concerned agencies.<sup>33</sup> However, extra-departmental administrative tribunals are rare.<sup>34</sup> The Social Security Appeal Tribunal, Tax Appeal Commission, Federal Civil Servants Administrative Tribunal are some of the extra-departmental administrative tribunals.<sup>35</sup> They review appeals from the decisions of embedded administrative tribunals on question of law and fact.

Be the above as it may, Ethiopia has yet not come up with uniform standards or guidelines that regulate administrative agencies' adjudication process. Both at the federal and the regional levels, there is no uniform legislative guidance that dictates administrative agencies concerning the procedural steps they must follow while adjudicating cases. If there are any, such procedures have to be searched in each of the pieces of the enabling legislations that create the respective agencies.<sup>36</sup> In fact, an attempt was made in 2001 to adopt a federal administrative procedure proclamation that was intended to regulate the process of rulemaking and adjudication by federal administrative agencies. For unknown reason, however, it has still remained as a draft.<sup>37</sup> Despite this, it can be said that the federal administrative agencies can refer to the draft like any other nonbinding legal literature at their discretion.

As has been introduced at the outset, the Civil Servants Administrative Tribunal is one of the administrative tribunals in Ethiopia. It exists since 1962 E.C which was created for the first

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<sup>30</sup> Leake Mekonnen, Independence and Accessibility of Administrative Tribunals in Ethiopia: The Case of Federal Tax Appeal Commission in a Comparative Perspective, (LLM Thesis, Ethiopian Civil Service University, 2014), at 4.

<sup>31</sup> These administrative tribunals are attached and formed with the specific administrative agencies, and serve as internal checks on the power exercise of different administrative agencies. It needs the consent of the head of the agencies to have effect.

<sup>32</sup> These are mostly established by an act of parliament to entertain disputes between civil servants and administrative agencies. Even though their decisions can be reviewed by higher courts, unlike embedded tribunals, it does not need the consent of the head of the administrative agencies to have effect.

<sup>33</sup> Tamirat Malefia, Judicial Review and Competence of Administrative Tribunals to give Final Decision in Ethiopia: A Comparative Study with South Africa and the UK, (LLM Thesis, Central European University, 2013), pp.27-28.

<sup>34</sup> *Id.*

<sup>35</sup> See Art. 11 of The Social Security Authority Establishment Proclamation, No.38/1996, Art. 6 of the Federal Tax Appeal Tribunal Establishment Proclamation, No. 233/2001 and Art. 81 of Federal Civil Servants Proclamation, No.1064 2017.

<sup>36</sup> Abrham Yohanes and Desta Gebremichael, Forms of Administrative Adjudication, Abyssinia Law, 2012, at <https://www.abysiniaw.com/studyon-line/item/312-forms-of-administrative-adjudication>. (Accessed on 9 November, 2018).

<sup>37</sup> Federal Administrative Procedure Proclamation, Initial Draft (June, 2001, Unpublished, Justice and Legal System Research Institute, Addis Ababa, Ethiopia).

time by Legal Notice No.269/1962.<sup>38</sup> This law provided the details of procedures of hearing, appeal to be lodged in 30 days, the possibility of the late appeal and that the tribunal could only present recommendations, *i.e.*, its decisions were not binding unless approved by the Commissioner of the Civil Service Commission.

Later on, the Tribunal was re-established by Federal Civil Servants Proclamation.<sup>39</sup> The proclamation lays down substantive rights and duties upon the civil service institutions and the civil servants in their employment relationship.<sup>40</sup> On top of that, to make the system more effective, the Civil Servants Disciplinary and Grievance Procedure Regulation,<sup>41</sup> which was to be observed by the Tribunal in the course of reviewing the decisions of administrative agencies, was issued to protect the procedural rights of aggrieved civil servants.

Furthermore, the Tribunal was also re-established by Federal Civil Servants Proclamation No.515/2007.<sup>42</sup> Article 75 of this proclamation imposed a number of duties and responsibilities on the tribunal. It was given the power to hear and decide on appeal relating to unlawful suspension or termination of service, an illegal attachment or deduction of salary or other payments.<sup>43</sup> Besides, it was mandated to hear cases related to rigorous disciplinary measures and others. Proclamation No.1064/2017<sup>44</sup>, the current law governing the Tribunal, provides similar provisions regarding the tribunal. Although the tribunal is empowered to review administrative cases by way of appeal, simple disciplinary penalties of oral and written warnings are precluded from appeal to the Tribunal.<sup>45</sup>

From the above discussions, it is discernible that the subject matter to be dealt by the Civil Service Administrative Tribunal relates to employment relation and corresponding disputes between the civil servant and administrative agencies. Thus, the Tribunal does not receive complaints brought by other citizens except civil servants.<sup>46</sup> It should also be noted that the decisions of the Tribunal is final on question of facts. However, it can be subject to review by ordinary courts on error of law.<sup>47</sup>

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<sup>38</sup> Public Service Regulations No.1, Legal Notice No.269/1962, NEGARIT GAZZETA, 22<sup>nd</sup> Year, No.6, Addis Ababa, 19<sup>th</sup> December, 1962. Arts.98-104.

<sup>39</sup> *Federal Civil Servants Proclamation*, No.262/2002, FED. NEGARIT GAZZETA, 8<sup>th</sup> Year, No.8, Addis Ababa, 3<sup>rd</sup> January, 2002.

<sup>40</sup> *Id.* Art. 71. These include position classification, salary scale and allowances, staffing like selection scale and recruitment, promotion and transfer, performance safety and health, obligation and ethics of the civil servant, termination and extinction of service, disciplinary measures and etc.

<sup>41</sup> *Federal Civil Servants Disciplinary and Grievance Procedure Regulations*, Regulation No.77/2002, FED. NEGARIT GAZZETA, 8<sup>th</sup> year, No.29, Addis Ababa, 3<sup>rd</sup> July 2002. Although this regulation was issued in accordance with the repealed laws, it is applicable so long as it confirms the provisions of the new law. See Federal Civil Servants Proclamation, Art 98(2).

<sup>42</sup> *Federal Civil Servants Proclamation*, No.515/2007, FED. NEGARIT GAZZETA, 13<sup>th</sup> Year, No.15, Addis Ababa, 19<sup>th</sup> February 2007.

<sup>43</sup> *Id.*

<sup>44</sup> Federal Civil Servants Proclamation, *supra* note 4.

<sup>45</sup> *Id.*, Art. 81.

<sup>46</sup> Abate Ayana, *The Law and Practice of Administrative Courts in Ethiopia: The Case of Addis Ababa City Administrative Tribunal*, 2 INTERNATIONAL JOURNAL OF ADVANCED LEGAL STUDIES AND GOVERNANCE.1, 9-11(2011).

<sup>47</sup> Federal Civil Servants Proclamation, *Supra* note 4, Art. 81(5).

Generally, as discussed above, the legal basis of the Tribunal rests in the FDRE Constitution, Proclamation No.1064/2017 and Regulation No.77/2002.<sup>48</sup> Consequently, it is amenable to conclude that the Federal Civil Servants Administrative Tribunal has a normative foundation in the law to adjudicate administrative cases brought to it by way of appeal against decisions rendered by different federal administrative agencies. Nevertheless, there can be questions regarding the accessibility, both physical and procedural, and autonomy of the Tribunal in rendering justice. The next section explores these and other similar issues.

## V. THE PRACTICE OF THE FEDERAL CIVIL SERVANTS ADMINISTRATIVE TRIBUNAL

As it can be noted from the previous discussions, administrative tribunals are created to review the actions of administrative agencies and solve administrative disputes. They are found to be advantageous in terms of expediency, efficacy and cost. This section evaluates the Federal Civil Servants Administrative Tribunal in terms of reviewing administrative cases through appeal. Specifically, it aims at examining whether the Tribunal is accessible and autonomous.

### A. Accessibility of the Tribunal

Administrative tribunals should, institutionally and procedurally, easily be accessible to the aggrieved civil servants. Procedurally, they should follow clear, though informal, procedural steps recognizing the principles of natural justice.<sup>49</sup> Institutionally, they should physically be nearer to the litigants. Institutional accessibility is related to the distance of administrative tribunals from where litigants live.<sup>50</sup>

From its nature, accessibility will be affected by the availability of resource from the government side. Accessibility, whether in the form of more and better facilities, more and better information for parties or more and better representation services, all require resources, and given the high volume of some tribunals, the resource implications may be quite substantial.<sup>51</sup> In addition to resources, access may also depend on how a tribunal accommodates the unequal power and resources between parties.<sup>52</sup>

#### 1. *Head Office, Organization of Chambers and Case flow from Regions*

The Federal Civil Servants Administrative Tribunal is established as one department under Federal Civil Service Commission<sup>53</sup>. Its head office is located in Addis Ababa. Despite the fact that Article 79(2) of Proclamation No.1064/2017 presupposes the establishment of administrative tribunal chambers throughout the nation, no effort has been made so far to create

<sup>48</sup> Federal Civil Servants Disciplinary and Grievance Procedure Regulation, *Supra* note 41.

<sup>49</sup> Leake Mekonnen, *supra* note 30. These include fair and public hearing, independence and impartiality, possibility of judicial remedy (appeal), effective remedy, enforcement of judgments and the like.

<sup>50</sup> Lorne Sossin, *From Neutrality to Compassion: The Place of Civil Service Values and Legal Norms in the Exercise of Administrative Discretion*, 55 UNIVERSITY OF TORONTO LAW JOURNAL 427, 440-447(2005).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> The former Ministry of Public Service and Human Resources has been re-arranged as Civil Service Commission. See *A Proclamation To Provide For The Definition of Powers and Duties of the Executive organs of the Federal Democratic Republic of Ethiopia*, Proclamation, No.1097/2018, FED. NEGARIT GAZZETA, 25<sup>th</sup> Year, No.8, Addis Ababa, 29<sup>th</sup> November 2018. Arts. 32(1) and 33(3)(b). ( Hereinafter the Civil Service Commission)

any chambers in the regional states.<sup>54</sup> At this juncture, it may be interesting to remember the position of the FDRE Constitution with regard to the power of federal courts. To reduce the problem of accessibility of federal courts, the FDRE Constitution delegates the regional Supreme and High court to entertain the power of Federal High and Federal First Instance Courts respectively.<sup>55</sup> Nevertheless, such type arrangement has not been made to regional civil service tribunals to assume the power of adjudication of federal administrative agencies in the regional states nor has it arranged mobile benches to regional states to curb the problem of inaccessibility.

From the experiences of the author as a director of legal affairs of a university in Ethiopia, handling many administrative cases at the tribunal for the last five years (2011-2016), it is still true that the tribunal has only one chamber consisting of three judges who sit for trial on Tuesday and Thursday afternoons. According to 2016 annual report, the Tribunal handled about 56 administrative cases. From these, 38 cases (67.8%) of the cases were filed by aggrieved civil servants from universities and other agencies of four regional states.<sup>56</sup> Similarly, the performance report of the Tribunal reveals that 28 appeal cases (58.33%) out of 48 cases came from distant regional states in the year 2017.<sup>57</sup> Consequently, physical access of the tribunal is not quite attainable to the appellants (aggrieved civil servants) who might come from the four distant places of the country.

## **2. Working Time , Procedures and Expediency of Decisions**

No doubt, the working time of the judges of the Tribunal obviously have direct link with the speed in its decisions which reflects the accessibility of the Tribunal. Art.79 (2)<sup>58</sup> of the Federal Civil Servants Proclamation states the possibility for more than one chamber. However, the Tribunal has only one chamber which consists of three judges one of whom is the presiding judge appointed by the Director of Civil Service Commission.<sup>59</sup> Though the judges are full time workers of the Tribunal, they sit to see cases only on afternoons of Tuesday and Thursday. On the rest of the working days, the judges are engaged in investigation of files.<sup>60</sup> This affects speedy trial before the Tribunal as the dates are limited as stated herein.

With respect to procedural aspect, the Federal Civil Servants Administrative Tribunal employs the Civil Servants Disciplinary and Grievances Procedure (Regulation No.77/2002)<sup>61</sup> to manage the review of administrative actions by way of appeal. This law incorporates detailed provisions as to how the aggrieved civil servant lodges an appeal to the Tribunal against the

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<sup>54</sup> Interview with Ato Mesfin Regassa, Presiding Judge, Federal Civil Servants Administrative Tribunal, (Addis Ababa , On 18<sup>th</sup> of September,2018)

<sup>55</sup> THE FDRE CONSTITUTION, *Supra* note 29, Art. 78(2).

<sup>56</sup> 2016 / 2017 Plan Performance Report of Federal Civil Servants Administrative Tribunal, File No.13/41, Federal Civil Service Commission, Addis Ababa.

<sup>57</sup> 2017/2018 Plan Performance Report of Federal Civil Servants Administrative Tribunal, File No.15/42, Federal Civil Service Commission, Addis Ababa.

<sup>58</sup> Federal Civil Servants Proclamation, *supra* note 4.

<sup>59</sup> *Id.*, Art. 79(3).

<sup>60</sup> Interview with Biniam Tefera, Former Judge, Federal Civil Service Tribunal,(Addis Ababa on 18<sup>th</sup> of May2019)

<sup>61</sup> Federal Civil Servants Disciplinary and Grievance Procedure Regulations, *supra* note 41.

decisions of administrative agencies.<sup>62</sup> According to Article 37(2) of the regulation, an aggrieved civil servant should lodge a memorandum of appeal against the decisions of administrative agencies to the Tribunal within 30 days from the date the decision are communicated to him in writing. This time limit is short for parties to prepare the memorandum of appeal and take it to the Tribunal for review especially for those who should come from distant areas of regional states.<sup>63</sup> This is because, as it is shown above, the Tribunal is not accessible to all aggrieved civil servants as it is located in Addis Ababa.

Despite the fact that the Federal Civil Servants Proclamation and the regulation do not provide the exact time limit within which the Tribunal decides on appeal cases, it is expected to dispose cases within reasonable period of time. However, case study of the decisions of the tribunal reveals that the Tribunal has not observed the principle of speedy justice. For instance, in Appellant *Gizachew Tirete vs Wollo University* case<sup>64</sup>, the Tribunal took four months to decide on the issue of unlawful termination of services. Similarly, in *Alebachew Merka vs Wollo University*<sup>65</sup>, the Tribunal rendered decisions on the case 90 days after memorandum of appeal was filed. These delays affected the aggrieved civil servants who lost their jobs and usually attended their cases going to the premise of the Tribunal from distant places.

The other point that has some relevance with the issue of accessibility is judgments of the Tribunal. The practices of the Tribunal indicate that judgments are written not by the hands of the judges themselves, rather by the office secretary and signed later by the judge as though they are the minutes of the discussions in meeting.<sup>66</sup> Due to this, a party cannot get the decisions of the tribunal on the date they are made. The party has to rather file an application to the presiding judge on the next day.<sup>67</sup> This would create problems on the parties who would be exposed for further costs in waiting for an additional day to get a copy of judgment.<sup>68</sup>

## B. Independence of the Tribunal

The institutional structure and autonomy of administrative tribunals from other branches of government is the major factor that determines their responsibilities of reviewing the legality of administrative actions.<sup>69</sup> Tribunals need to be structurally independent from the control of at least the specific authority whose decisions they review. Thus, the judges, management and funding of tribunals should be free from the control of such authority.<sup>70</sup> Bryden distinguishes four aspects of independence of administrative tribunals: adjudicative independence, institutional independence,

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<sup>62</sup> *Id.* Arts 35-50.

<sup>63</sup> Interview, *supra* note 60.

<sup>64</sup> *Gizachew Tirete Vs Wollo University*, Federal Civil Servants Administrative Tribunal, File No.048/06 (Decision of November 28, 2015).

<sup>65</sup> *Alebachew Merka Vs Wollo University*, Federal Civil Servants Administrative Tribunal, File No.036/03 (Decision of December 20, 2012).

<sup>66</sup> Interview with Ato Hussein Mekonnen, Judge, Federal Civil Servants Administrative Tribunal (Addis Ababa, on 18<sup>th</sup> of May 2019).

<sup>67</sup> Interview, *supra* note 54.

<sup>68</sup> *Id.*

<sup>69</sup> PETER CANE, *ADMINISTRATIVE TRIBUNALS AND ADJUDICATION* 40-41 (Hart Publishing, 2<sup>nd</sup> ed., 2010)

<sup>70</sup> *Id.*

administrative independence and policy independence.<sup>71</sup> By institutional independence, Bryden refers to the ‘structural guarantees designed to satisfy litigants that tribunal members are protected from improper influence in their decisions.’<sup>72</sup> These guarantees include those traditionally required for judicial independence, such as security of tenure, and security of remuneration, together with control over listing and allocation of cases to particular members and panels.<sup>73</sup> It also includes appointment, promotion, allowance, conditions, and suspension and removal of adjudicators from office.<sup>74</sup> Institutional independence is about arrangement to ensure that executive powers to appoint and remunerate members do not influence the outcome of the tribunal or impair the perception of impartiality.<sup>75</sup>

According to Bryden, judicial independence is concerned with the ability of tribunal members and panels to make decisions impartially, free from external interference or improper influence from any source, including the executive, the parties, other external persons, and even from the tribunal head and other members.<sup>76</sup> Administrative autonomy, on the other hand, is the ability of tribunals to secure and manage the resources that they need to perform their adjudicative functions, including control of their finances and staff. The fourth aspect, independent policy making, concerns independence from other tribunal members, from the courts and from executive directions.<sup>77</sup> From the above discussions, it can be observed that the independence of the administrative tribunals comprises many aspects in it. However, it is not the aim of this section to evaluate all aspects of the independence of the Federal Civil Servants Administrative Tribunal. Rather, it is limited to examine some aspects of institutional and administrative independence of the Tribunal.

### ***1. Organization , Appointment and Tenure of Judges***

As is said, the Federal Civil Servants Tribunal is organized and is accountable to the Federal Civil Service Commission.<sup>78</sup> Importantly, judges of the Tribunal should be designated by the Director of Civil Service Commission.<sup>79</sup> Despite this, the Commission does not have comprehensive directive to select and recruit judges. Judges of the Tribunal are employed using the selection committee and rules of the human resource department of the Commission.<sup>80</sup> Although Article 79 (4) of Proclamation No.1064/2017 empowers the Civil Service Commission to issue a directive to run the judicial functions of judges, their ethics and

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<sup>71</sup> PHILP BRYDEN, HOW TO ACHIEVE TRIBUNAL INDEPENDENCE: A CANADIAN PERSPECTIVE 62-63 (The Federation Press, 2<sup>nd</sup> ed., 2008).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*, at 63.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*, at 64.

<sup>78</sup> *A Proclamation to Provide for the Definition of Powers and Duties of the Executive organs of the Federal Democratic Republic of Ethiopia*, *Supra* note 53, Arts32 (1) and 33(3) (b), Federal Civil Service Proclamation, *Supra* note 4. Art.79(1).

<sup>79</sup> Federal Civil Servants Proclamation, *supra* note 4, Art. 79(3).

<sup>80</sup> Interview with W/o Emebet Moges, Judge, Federal Civil Servants Administrative Tribunal, (Addis Ababa, on 18<sup>th</sup> of May2019).

code of conduct and other issues, the Commission has not yet issued such a. Besides, there is no detailed directive issued by the Commission to guide the selection and appointment of its judges. In the absence of the directives, selection and recruitment of judges may be arbitrary which would affect the autonomy of the Tribunal. The human resource department of the Commission opens and posts vacancy announcement to employ judges of the Tribunal from law graduates who serves two years as a judge, prosecutor or as a legal expert in government or private institutions.<sup>81</sup>

Based on the reports of the selection committee, the Commission employs qualified applicants.<sup>82</sup> A judge who has the highest relevant service and better performance in his duties be appointed as presiding judge of the bench.<sup>83</sup> The presiding judge is accountable to the Director of the Commission and other two judges are accountable to the presiding judge.<sup>84</sup> The appalling issue here is that the Director of the Commission evaluates the performance of the presiding judge and the presiding judge evaluates the performance of the two judges.<sup>85</sup> In this case, the Director of the Commission controls the judges of the Tribunal through accountability of the presiding judge to him.<sup>86</sup>

With regard to the removal of judges, there has not been such practice in the tribunal yet. As a result, no judges have been removed from their posts. Indeed, there is no guideline in the Commission to address the removal of judges from their posts in the Tribunal.<sup>87</sup>

## **2. Budgeting and Necessary Staff**

In order to run its adjudicatory functions, the Tribunal needs budget to consume and support staffs. As it has been discussed earlier, the Tribunal is established as one department under the Civil Service Commission. Hence, the Tribunal has not budget of itself and it is helped by the Civil Service Commission even for the materials needed in its day- to-day activities such as stationeries and the like. In fact, the Commission considers the Tribunal's roles while it prepares its budget. Besides, the support staffs who are seven in number are employees of the Civil Service Commission assigned permanently for the Tribunal as it cannot employ by itself.<sup>88</sup> This situation affects the autonomy of the tribunal.

## **VI. CONCLUSION AND RECOMMENDATIONS**

To sum up, administrative tribunals are established to review the actions of administrative agencies and solve disputes between individuals and administrative agencies. In Ethiopia, they are recognized pursuant to Article 37 of the FDRE Constitution to assume quasi-judicial roles. Accordingly, the establishment of the Federal Civil Service Tribunal to render administrative justice for civil servants has a constitutional base. The major aim of this paper was to examine

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Interview, *Supra* note 54

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Interview, *Supra* note 60

<sup>88</sup> Interview, *Supra* note 66

the Tribunal in terms of its accessibility to its clients and its autonomy in deciding over cases brought to it.

The Tribunal has only one office in Addis Ababa. It does not establish benches in regional states. Moreover, it has never arranged mobile benches. However, this paper reveals that there are a number of cases from distant places. Despite this, the law allows short period of time for the aggrieved civil servants to lodge appeal in Addis Ababa. In respect of working time, it is the practice that the bench in Addis Ababa sits to entertain cases only on Tuesday and Thursday afternoons. Therefore, these factors are affecting the accessibility of the Tribunal.

Regarding the autonomy of the Tribunal, this paper has revealed certain problems. It is clear from the law that the Tribunal is not created as a separate government institution because it is organized as a department under Federal Civil Service Commission. Furthermore, the judges of the Tribunal are appointed and directly accountable to the Director of the Commission. There is also no directive that properly regulates selection and removal of judges of the Tribunal. Besides, it could not employ its administrative staff and administer its own budget. As a result, the institutional autonomy of the Tribunal is at stake.

In order to solve the problem of inaccessibility of the Tribunal, the Federal Civil Service Commission shall establish additional chambers in regional states. The Tribunal should also increase the working time of the bench from two to five working days. On top of that, the 30 days requirement to appeal to the Tribunal provided under Article 37(2) of Regulation No.77/2002 should be amended in a way that guarantees additional time to aggrieved civil servants. To maintain the autonomy, it would be better to re-establish the Tribunal as a separate institution which should be accountable to the Prime Minister. In addition, for the time being, the Commission should issue comprehensive guidelines to regulate the selection and appointment of judges.

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