

Proclamation No. /2019

A Proclamation to Provide for Federal Administrative Procedure

Whereas, the Federal Democratic Republic of Ethiopia Constitution provides that the working procedure of the government is to be transparent, and that any public official is held accountable for failure in his duties,

WHEREAS it is necessary to guarantee administrative justice by promoting culture of transparency and accountability through legally establishing a system of judicial review for persons who might be aggrieved by acts of administrative agencies, in their rule-making and decision-making capacities,

NOW THEREFORE, in accordance with Article 55 (1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows

Section one

General Provisions

1. Short Title

This Proclamation may be cited as “Federal Administrative Procedure Proclamation no. /2019.”

2. Definition

In this proclamation, unless the context requires otherwise:

- 1/ “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.
- 2/ “Directive” means a legislative document that is issued by an administrative agency based on delegation of power bestowed up on it by the legislator which affects people’s rights and interests. The term also includes the amendment, or repeal of an already existing directive.
- 3/ “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.
- 4/ Person means any natural or juridical person.

5/ Any expression in the masculine gender includes the feminine

3. Scope of Application

- 1/ This proclamation is applicable in all administrative agencies except prosecutor and police when they perform duties administered by the criminal procedure law and military and security institutions.
- 2/ Notwithstanding what is provided under sub-article 1 of this article, issuance of directives and decisions making relating to regulatory and service provision functions of these institutions shall be subject to the requirements of this proclamation.
- 3/ without prejudice to article 11 of this proclamation, National bank is not duty bound to implement obligations provided under article 7-10 of this proclamation when it enacts directives concerning exchange rate⁷ interest rate of the country and other similar secret issues.

Section Two

Directives

Sub Section One

Issuance of Directive

4. Adopting directives

- 1/ Any administrative agency can adopt directives on the basis of power delegated to it by law.
- 2/ An agency may issue directives only through the procedures provided by this proclamation.
- 3/ Regarding matters affecting his interest, any person has the right to request an administrative decision even though an administrative agency has not adopted a directive,
- 4/ Failure on the part of an agency to issue directives it is legally empowered to adopt shall not be a reason to deny services or rendering an administrative decision.

5. Timely adoption of directives

An administrative agency shall adopt a directive it needs to adopt within a reasonable period of time.

6. Petition for adoption of directives

- 1/ When an administrative agency has failed to adopt a directive it was mandated to, in a reasonable amount of time, any person may, through a written application, petition the agency to adopt a directive.
- 2/ An agency which receives a petition for adoption of a directive shall commence the process of adopting a rule within 30 days or deny the petition, stating its reasons

Section Two

Procedures before adoption of a directive

7. Keeping an agency record about directives

- 1/ At the time of adopting a directive, an administrative agency shall keep a record/file containing the following:
 - a) The subject matter of the directive being considered and time line of major steps
 - b) An information regarding the status of the draft directive in the process of adoption
 - c) Notices published in relation the adoption of the draft directive
 - d) A period of time with in which the public may comment on the draft
 - e) Comments received in accordance with articles 8 and 9 of this proclamation and positions taken regarding the comments.
- 2/ Any person may inspect or get a copy of the records organized in accordance with sub Article (1) of this Article, against payment of expenses.

8. Notice

An agency shall publish a notice containing the following information on a newspaper with wide circulation, its website and other media, prior to the adoption of a directive,

- 1/ The legal basis for to draft the law and the subject matters to be covered by the draft.

- 2/ Indicating that persons may get a copy of the draft and where they may access it.
- 3/ Where, when and how persons may give comments on the draft.
- 4/ Where, when and how persons may get access to the records kept in accordance with Article 7 of this proclamation.

9. Soliciting comments on the draft

- 1/ An administrative agency shall solicit comments from relevant administrative agencies and other stakeholders by sending the draft it publicized in accordance with Article 8 of this proclamation.
- 2/ Agencies and stakeholders who may have comments on the draft should submit such comments in writing within a time prescribed by the agency. The period for comments to be prescribed by the agency shall not be less than 15 working days.

10. Oral hearing

- 1/ After the expiry of the date for receiving written comments, the agency shall organize a public forum open for all interested persons and gather inputs.
- 2/ Persons who have not had the chance to give comments in accordance with Article 9, may submit written comments at the hearing.
- 3/ The agency shall ensure enough time is allotted for different views to be aired.

11. Exemption from Procedures

- 1/ An agency may be exempted from the requirement provided under articles 7 to 10 where conditions listed hereunder are fulfilled
 - a) Where there are emergencies and time does not allow to go through the requirements.
 - b) Where the issuance of advance notice may be contrary to public interest.
 - c) Where the issuance of notice may undermine the implementation of the directive.

- 2/ An agency issuing directives relying on sub Article 1 of this Article shall prepare a record explaining the reasons justifying the exemption.

Sub-Section Three

Adoption and effectiveness of directives

12. Time and manner of adopting directive

- 1/ An agency may not adopt a directive before the period for oral hearings and written submissions prescribed under articles 9 and 10 expires.
- 2/ An agency shall consider comments submitted on the draft before adopting a directive.
- 3/ In fulfilling the obligation to consider indicated under sub Article (2) of this Article, the agency may amend the draft in line with the comments or prepare a written justification for rejecting the comments.
- 4/ Prior to adoption of a directive, the agency shall send the draft to the FDRE attorney general for its opinion.
- 5/ The Attorney General shall submit its opinion within 15 working days. Where the attorney general fails to submit its opinion within the time prescribed here, it shall be considered as though it does not have opinion on the draft and the agency may proceed to adoption.

13. Variance between the draft and adopted directive

- 1/ An agency may not adopt a directive that is substantially different from the draft publicized through notice. However the agency may not be barred from terminating the process at hand and commence a new one, where an agency intends to adopt a directive with substantial difference.
- 2/ A final draft directive shall be considered to be substantially different from the one publicized where:
 - a) The scope of application of the draft directive has markedly changed
 - b) The draft directive introduces new obligations

14. Explanatory statement

At the time of adopting a directive, an agency shall prepare a directive explanatory Note containing the following :

- 1/ The objective and legal basis for adoption of the directive.
- 2/ Where there are differences of content from the draft circulated through notice and the directive adopted, a note explaining the changes and the rationale thereof.
- 3/ A summary of comments on the draft and measures taken in accordance

15. Content and form of directives

- 1/ In addition to the substantive body, a directive adopted by an agency shall be prepared in English and Amharic language and contain:
 - a) Serial number of the directive
 - b) a reference to a specific law on the basis of which the directive is adopted
 - c) A short title of the directive
 - d) Definition, scope of application, main provisions,
 - e) A rule referring to directives amended ; repealed,transitory provisions or suspended if any,
 - f) Notwithstanding the date specified in Article 18, the effective dateof the directive,
- 2/ Directives must be written in a precise and clear language
- 3/ An agency may incorporate, by reference in its rules, all or part of directives or code of conduct that has been adopted by another agency/body where these matters fall within its scope of power.
- 4/ The agency shall publicize rules it has incorporated pursuant to sub Article 3 of this Article and submit copies to the Federal Attorney General to be registered in accordance with Article 16 of this Proclamation.

16. Filing of directive

- 1/ Up on adoption, an agency shall immediately file the directives by sending the copiesand accompanying explanatory statement to the attorney general.
- 2/ The Federal Attorney General shall provide a serial identification number and record directives submitted to it in accordance with sub-Article one of

this Article. It shall also immediately notify the agency about the status of registration.

- 3/ The attorney general shall ensure access to directives it had registered along with explanatory notes.
- 4/ All agencies shall file directives they have adopted prior to the coming in to force of this proclamation within 90 days after the coming in to force of this proclamation by sending copies to the federal attorney general

17. Accessibility of directives

- 1/ The federal attorney general shall post directives on its own website that has filed in accordance with Article 16 of this proclamation.
- 2/ An agency shall:
 - a) Print and disseminate to governmental and other stakeholders, and
 - b) Post it on its website
- 3/ Any person may get a copy of the directive subject to payment of expenses.

18. Conditions of Enforcement

- 1/ A directive that has not been filed pursuant Article 16 or posted on the website of the agency pursuant to Article 17 (2) (b) may not be enforced
- 2/ A directive that has lost its validity in accordance with sub Article (1) of this Article may be adopted following the procedures provided under this proclamation

19. Periodic Review of directives

An agency shall from time to time review the implementation of directives it has adopted and take necessary measures.

Section Three
Administrative Decisions

Sub Section one
Initiation of administrative decisions

20. Initiation

- 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 application

- 1/ An application for administrative decision shall be made in writing and may be submitted in person, a registered postal address or electronic means.
- 2/ A written application shall include:
 - a) Date, name of the applicant or his agent, signature and address.
 - b) Name of the administrative agency to whom the petition is made.
 - c) The specific administrative decision being sought.
 - 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

Upon receiving an application for administrative decision, the agency shall immediately furnish a written confirmation of application, record the application and present same to the relevant department or personnel for decision.

Sub Section Two

Principles of Administrative Decision Making

23. Decision Maker

An administrative decision may only be rendered by the head or authorized official/manager or staff of an agency.

24. Respecting scope of authority

A person rendering an administrative decision shall respect the scope of authority of the agency established by law.

25. Balancing of public and individual interest

A person rendering an administrative decision shall balance the individual interest of the person regarding whom an administrative decision is being considered with that of the public interest identified in the objectives of the agency.

26. Avoiding irrelevant matters and interests

A person rendering an administrative decision should avoid influence from irrelevant facts or interests.

27. Professionalism

A person rendering an administrative decision, shall abide by the ethical standards, show due diligence and care that is required by the relevant task or profession.

28. Hearing

The person rendering administrative decisions in accordance with articles 23 of this proclamation shall provide adequate opportunity of hearing to arguments and evidence presented by the person regarding whom decision is being made, and as the case may be to third parties as well as the public.

29. Good faith

A person rendering administrative decisions should made the decision in good faith.

30. Reasoned decision

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

31. Conflict of interest

Where a person rendering administrative decisions has blood, affinity or any other kind of relation that may cause a conflict of interest, he shall recuse himself from case.

32. Equality

A person rendering administrative decisions shall not discriminate between persons based on race, color, ethnicity, sex, language, religion, political view, social background, class, or any other ground.

33. Timely decision

- 1/ The person rendering administrative decision shall give a decision without delay in a reasonable period of time and ensure that interests associated with the decision are not negatively affected as a result of delay.
- 2/ Failure to render decision within an appropriate period of time shall be considered as denial of the petition.

34. Predictability

In matters involving similar facts, the person rendering an administrative decision shall decide in the same manner.

35. Transparency

A person rendering administrative decisions shall ensure the transparency of the decision making process.

Sub section three

Hearing the issue

36. Hearing of the case

- 1/ Before rendering any administrative decisions shall provide adequate opportunity of hearing.
- 2/ Notwithstanding to sub article 1 of this article decision may render without hearing:-
 - a) If there is no arguments of the facts of the case;
 - b) If it is special privilege or if the administrative agency has alternative decision power. Or
 - c) The issue is urgent.

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.

38. Recusal

- 1/ A person may be recused from the decision making on one of the grounds listed here under:-
 - a) He has a direct or indirect interest on the matter
 - b) The matter at hand affects a person that has a relation with a decision maker in consanguinity or Affinity, close friend.
 - c) If he has represented the person regarding whom the decision is being considered, as an agent, attorney or in any other professional capacity
 - d) He has made a decision on the matter in another capacity
- 2/ In case where one of the grounds listed under sub article 1 are present, the person may be recused from decision making process on his own accord, or the petition of the an interested person.
- 3/ If recusal is requested, until the head of administrative decision rendering final decision the person raised matter of recusal shall remain suspended from entertaining the case.
- 4/ The head accepted the recusal request initiated by the interested person or others shall render decision within five working days to stay or recused

Sub-Section four
Administrative Decision

39. Giving the decision to the client

An agency shall notify the concerned person of its decision with its reason in writing.

40. Administrative decision

All administrative shall be made in writing and contain:-

- 1/ Name of the authority;
- 2/ Parties to the case and their address;
- 3/ Issues of claim;
- 4/ Discretion of evidences;
- 5/ Description of fact and law;
- 6/ decision.

41. Suspension

- 1/ the party whose who may incur irreparable damage by immediate enforcement of the decision can apply for the suspension of the decision to the authority rendering decision.
- 2/ An administrative agency receiving a petition as per sub article 1 of this article may order the case to be seen again or to suspend any part of the decision.

42. Person to enforce administrative decisions

An administrative decision shall be enforced by the person or body who has made the decision.

Sub Section five

Complaint Against administrative decision

43. Right to lodge complaint

Any person against whom and administrative decision is made has the right to lodge a complaint to the agency.

44. Establishment of complaint handling body

All administrative agencies shall establish a complaint handling division and notify such establishment to clients.

45. Stay of enforcement

Enforcement of any decision of an administrative agency against which a complaint is lodged will be stayed until the complaint is processed and a final decision made. However, the head of the agency may order the enforcement of the decision where delay in enforcement may cause an irreversible damage to public interest.

46. Considering the complaint

- 1/ The complaint handling body shall properly examine the complaint it has received and present its recommendation to the head of the agency or an officer duly authorized by the head.

- 2/ The decision of the head of the agency or an officer duly authorized by the head of the agency, after considering the recommendation of the complaint handling body shall be considered as the final decision of the agency.

47. Notification of decisions

An agency shall notify the petitioner, in writing, the decision made pursuant to Article 46 of this proclamation:-

Section Four

Judicial review of directives and administrative decisions

Sub-Section one

Initiation of review

48. Filing of petition for review

Without prejudice to the provisions under Article 46 of this proclamation :

- 1/ Any interested person may file a petition requesting a judicial review of a directive.
- 2/ Anyone whose interest is affected by an administrative decision may file a petition requesting judicial review.

49. Power of review

- 1/ A petition to review directives or administrative decisions shall be submitted to the federal high court.
- 2/ Notwithstanding the stipulation under sub- article one on this provision, a decision to review a directive may be appealed to the Federal Supreme Court.
- 3/ The federal high court shall establish special benches dedicated to handle petitions for judicial review of administrative acts.

Sub-Section two

Principles of review

50. Grounds of review

- 1/ A directive will be revoked by the court where

- a) It is proved to have failed to comply with the procedural rules provided in chapter two of this proclamation.
 - b) it is ultravires.
 - c) it is contrary to other laws placed higher in the hierarchy of laws.
- 2/ An administrative decision may be revoked if it is made in violation of the principles provided under chapter three of this proclamation.

51. Finality of decisions

A judicial review may only be sought against a final decision of an agency.

52. Exhaustion of remedies

- 1/ Unless otherwise provided by law, a petitioner for judicial review is required to exhaust all remedies available within the agency before petitioning the court for judicial review.
- 2/ Notwithstanding the rule under sub Article (1) of this Article, where there is an undue delay on the part of the agency to provide remedies, the obligation to exhaust remedies will not apply.

Sub-Section three

Procedure of Judicial review

53. Period of limitation on petition for judicial review

- 1/ A petition under Article 50 sub Article 1 (a) to review a directive shall be submitted within 90 days after the adoption of the directive.
- 2/ A petition under Article 50 sub Article 1 (b) or (c) to review a directive can be submitted any time.
- 3/ a petition to review an administrative decision shall be made within 30 days after the petitioner was notified of the decision

54. Written response

Where the court finds that the petition for review has merit, it court shall give an agency against whom a petition of review had been filed an opportunity to submit a written response with 15 days.

55. Submission of records,

The court may order and agency against whom a review petition is being considered to submit records relating to the directive or administrative decision under consideration.

Sub-Section four

Decision of Judicial Review and Execution

56. Judgment of Judicial Review

- 1/ The Court shall investigate the petition of review and render its decision within the shortest possible period of time.
- 2/ The Court may confirm; or partially or fully reverse the administrative decision or directive submitted for review .
- 3/ Where the court renders a decision which partially or fully invalidates the administrative decision or directive, it may also order the administrative agency to revise or reenact the directive or reconsider its administrative decision by rectifying the shortcomings identified through the court's decision.

57. Execution of the Decision

- 1/ The decision of the court to uphold or invalidate a directive or and administrative decision shall be executed immediately.
- 2/ Where the court renders a decision for the revision of an administrative decision or directive, the administrative institution shall do the same in an appropriate time, by giving due consideration to the provisions provided under chapters two and three of this proclamation.
- 3/ The judgment of the court fully or partially invalidating a directive or administrative decision, or an order of amendment shall, either fully or partially, revoke the legality of such directive or decision.
- 4/ Notwithstanding the rule under Sub Article three of this Article, decisions of an administrative agency made on the basis of a revoked directive prior to the ruling of the court shall stay valid.

section five

Miscellaneous provisions

58. Applicability of the Civil Procedure Code

On procedural matters not covered by Chapter four of this proclamation, the relevant provisions of the Civil procedure Code shall apply.

59. Compensation

A person who has incurred damage as a result of a fault committed through issuance of directives or an administrative decision is entitled to seek compensation from the administrative authority that is responsible, in accordance with the relevant laws.

60. Duty to provide information

Where any administrative agency is requested to provide information relevant in the issuance of directives or rendering of administrative decisions by legal organ, such agency shall provide the information.

61. Power to issue regulation

The Council of Ministers may issue regulations that might be necessary for the proper implementation of this proclamation.

62. Effective date

This proclamation shall come in to force on the date of its publication on the Federal Negarit Gazette.

Addis Ababa/2019.

SAHLE-WRK ZEWEDE
PRESIDENT OF THE FEDERAL DEMOCRATIC
EPUBLIC OF ETHIOPIA