Judicial Review and Competence of Administrative Tribunals to give Final Decision in Ethiopia: a Comparative Study with South Africa and the UK

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Abstract

Judicial review of the legality of administrative action plays a crucial role in restraining government authorities within their legal remit and protecting individuals' rights from abuse. However, even though the Ethiopian constitution confers judicial power on courts and requires them to protect individuals' rights, the different ousting laws enacted by the legislator have excluded various administrative decisions from the review power of courts. This has undermined the inherent judicial power and role of courts in protecting the constitution and the fundamental rights of individuals. Beside this, the impartiality of administrative tribunals and the constitutional base of finality of their decision are argumentative. Hence, in this paper I comparatively analyse judicial power of Ethiopian courts to review the legality of administrative action, and the constitutional base and institutional competence of administrative tribunals to exercise judicial power and render final decision. I show that administrative tribunals have neither constitutional base nor institutional competence to exercise judicial power and render final decision.

Introduction

Ensuring accountability of the government and protecting fundamental freedoms of citizens from exercise arbitrary power requires dividing government power among the legislative, executive and judicial branches.[1]In addition, some level of check and balance on the power exercise of one branch by others helps to restrain the branches within their legal limit.[2]As one aspect of this constitutional mechanism, the Courts play a crucial role in preventing arbitrary power exercise and keeping public authorities within their remit; by reviewing the legality of administrative actions.[3]But this is true only when courts have constitutional power to review administrative action or the review is conducted by an independent, impartial and competent body.

The Federal Democratic Republic of Ethiopia's Constitution states that "judicial power both at the federal and state level are vested in the court and everyone has the right to bring a justiciable matter to and to obtain a decision or judgment by, a court of law or any other competent body with judicial power".[4]Even though it could be said that the provision dictates the inherent judicial power of courts, it does not tell us in what circumstances other bodies assume judicial power and their hierarchical relationship with ordinary courts. However, on the basis of this provision, some administrative agencies establishing proclamations have established administrative tribunals, to decide on controversies arising in relation to the power and responsibilities of the agency.[5] And, such legislation in some cases states that determination by administrative tribunals is final and non-reviewable by ordinary courts.[6]

[1]Michel Rosenfeld and AndrasSajo edit., *The Oxford Handbook of Comparative Constitutional Law* (Oxford: oxford university press,2012),550
[2] ibid
[3] C.T. Emery and B. Smite, *Judicial review* (London: Sweet and Maxwell,1986), 23
[4] The Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta, 1st year No.1, 21st August 1995, Art. 37(1) and 79(1)
[5] See, Proclamation No. 286/2002, Federal Negarit Gazeta 8th year 8th, No.34, Art.115 (1), Proclamation No.721/2011, Federal Negarit Gazeta 18th year, No. 4, Art. 29 and Proclamation No. 714/2011, Federal Negarit Gazette 17th year, No.78, Art.56 (3)
[6] Ibid

The federal Supreme Court Cassation division has also confirmed the finality of such decisions by stating that the legislator has the power to determine which cases fall under the jurisdiction of courts, and in cases where the legislator opts to make the decision of tribunals final, ordinary courts have no power of review.[7]

As the power to determine constitutionality of legislation is exclusively given to House of Federation, ordinary courts have no power to interpret the constitution and prevent the application of such ousting laws.[8] However, with the increase in the number of ousting laws which curtail judicial review of administrative action, from time to time, the scope of the issues that fall under the final decision making power of administrative tribunals is increasing.[9] Now it seems to remove the constitutional mandate of courts to protect individuals from arbitrary power exercise and put in jeopardy their judicial power.

On the other hand, the Ethiopian constitution talks about the possibility of taking justiciable matter "to other competent bodies with judicial power".[10]But the determination of what makes a competent body to discharge such responsibility, and what kind of structure and composition it should have to render an independent and impartial decision is left to the discretion of the legislator. However, as we can see from the institutional structure, composition and procedure of administrative tribunals so far established by the legislator, most of them are not competent enough to exercise judicial power and render final decision.

Even though the constitutional power of courts to review the legality of administrative action and the competence of administrative tribunals to render final decision is creating serious

[7] Federal Democratic Republic of Ethiopia Supreme Court Cassation Division files No.18342
[8] Supra note 3, Art. 62(1)
[9]YemaneKassa, The Judiciary and its interpretative power in Ethiopia: A case study of the Ethiopian revenue and custom authority, 72 (November 2011) (Unpublished LLM thesis, school of law Addis Ababa University)
[10] Ibid Art.37(1)

confusion in the area, except the work of Tigist Assefa[11]and Yemane Kassa,[12]there is no thorough academic work dealing with the issue. Tigist Assefa comparatively discusses the historical development of judicial review of administrative action in Ethiopia in general with other major legal systems, but her analysis focuses on judicial review of constitutionality of administrative action.[13] While, Yemane Kassa, analyses the constitutional basis of court stripping laws with special emphasis on the regulations of Ethiopian revenue and custom authority.[14] However, neither works specifically deal with the competence of administrative tribunals to exercise judicial power and render final decision. Thus, this paper will build on the work of these writers and make further development.

Hence, in this thesis, I will analyse the constitutional base of Ethiopian courts and administrative tribunals to review the legality of administrative action and render final decision. In addition, I will comparatively evaluate the structural autonomy, composition and procedure of administrative tribunals to determine their competence to exercise judicial power and render final decision. I will also try to recommend better solutions for the above mentioned problems from the experience of South Africa and the UK. South Africa and the UK are selected on the basis of their jurisprudence in judicial review of administrative action and the manner they solved similar problems. Like in Ethiopia, in both jurisdictions, the task of judicial review of administrative action is divided between ordinary courts and administrative tribunals, and even though the constitutional justification is different, some administrative tribunals are empowered to render final decision. In addition, the structure of administrative tribunals and their hierarchical relation with ordinary courts was a point of controversy in their history of judicial review of administrative action. Thus, the power of

[11]TigstAssefa, Judicial review of administrative action: a comparative analysis, 1-2 (January 2010) (Unpublished LLM thesis, school of law Addis Ababa University)
[12]Kassa, supra note 9
[13]Assefa, supra note 11
[14]Kassa, supra note 9

courts to review the decision of administrative tribunals, the structure of administrative tribunals rendering final decisions and the manner in which the two jurisdictions solved related problems will help to comparatively analyse the major question to be raised in this paper and to take positive lessons.

The study is predominantly qualitative research. Hence, I will analyse the provisions of the Federal Democratic Republic of Ethiopia's constitution, federal courts establishing proclamations, the findings of Council of Constitutional Inquiry on the power of the legislator to decide on judicial power, different administrative agencies and administrative tribunals establishing proclamations, and decisions of the federal Supreme Court and administrative tribunals. For the sake of creating a general framework of study and proper comparison with the selected jurisdictions, related literatures and relevant laws of the selected countries will be reviewed.

As the power to interpret the constitution and review constitutionality of both legislations and administrative actions is exclusively given to the House of Federation,[15] the scope of the study is limited to the appraisal of review of the legality of administrative action.

The thesis is organized into three chapters. The first chapter discusses the notion of judicial review and judicial review of administrative action and establishes the theoretical framework for future discussion. The second chapter comparatively analyses models of review of administrative action. Among others, this chapter assesses the roles of courts and administrative tribunals to review administrative action in the three jurisdictions. The last chapter comparatively discusses finality of administrative tribunal decision and evaluates the competence of the Ethiopian administrative tribunals to exercise judicial power and render final decision.

[15]Supra note 4, Art. 62(1)

Chapter One: General overview of judicial review of administrative action

Introduction

This chapter is aimed at explaining the concept of judicial review of administrative action and establishing the theoretical framework for further discussion on the role of courts and administrative tribunals. Thus, a separate discussion will be made on the notion of judicial review and judicial review of administrative action, and the arguments in favour and against the concept. In addition, I will briefly discuss the different grounds of judicial review of administrative action and remedies granted by a court in different jurisdictions.

1.1 Judicial review

Like most legal terms, because of the different understanding of the concept in different legal systems, it is difficult to give a short and conclusive definition to the concept of judicial review.[16]Depending on the legal system, it may represent "judicial review of legislative action, judicial review of executive or administrative action and judicial review of judicial action.''[17] Nevertheless, a given court can have all or part of the three review powers.

Judicial review of legislative action is the power of courts to interpret the constitution and decide on the constitutionality of legislative action. This form of judicial review is common in countries with a written Constitution empowering ordinary courts or special constitutional courts to interpret the constitution and determine the conformity of legislative acts with the values of the constitution. While judicial review of administrative action represents the power of courts to review the constitutionality or legality of administrative action in different countries. In those legal systems where ordinary courts have the power to interpret the

[16]Assefa, supra note 11, p. 1-2

[17]Mads Andenas, Edt., *Judicial review in international perspective* (Netherlands: Kluwar law international, 200), 384-385

constitution, courts review both the constitutionality and legality of administrative actions. But in countries where courts do not have the power to interpret the constitution, like the UK, Ethiopia and other countries with centralized constitutional review, courts review only the conformity of administrative action with the power and responsibility of government officials granted by the establishing statute. Under general law, judicial review may also refer to the revision of inferior court decisions by the higher courts.[18]

Even though the concept of judicial review is mostly associated with the jurisprudence of the United States constitutional system and courts, some writers believe that judicial review existed long before the US Supreme Court's decision on *Marbury v. Madinson.*[19]Rather, they argue that the origin of the concept can be traced to the ancient Greco-Roman civilization,[20] where laws enacted by extraordinary and complex procedure were considered superior to ordinary laws. Similarly in the medieval period "there was a period of natural justice, when the acts of crown and parliament alike were said to be subject to a higher, unwritten law", or written statute.[21]In all this period courts were bound to apply only those laws that do not contradict with the higher values in natural justice or higher laws.

However, the modern understanding of judicial review of legislative acts emerged in the 19th century United States Supreme Court landmark decision *Marbury V. Madison*. In the decision, chief justice Marshal tried to show the fact that judicial review of legislative acts originate from the nature of the constitution and court need judicial review power in order to protect the supremacy of the constitution.[22]He stated that,

> The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the

[18]Ibid
[19] Mauro Cappelletti, "Judicial Review in Comparative Perspective," *California Law Review* 55 (1970):1020
[20]Ibid
[21] Id, p. 1032
[22] Michel Troper, "The logic of the justification of judicial review," *International Journal of Constitutional Law* 1 (2003):103

> legislature shall please to alter it. If the former part of the alternative is true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitution are absurd attempts on the part of the people, to limit a power in its own nature illimitable.[23]

Even though Marshal's idea started to influence the jurisprudence of the US courts many years after this decision, the need to subject legislative acts to constitutional values under the review of courts or another third body easily expanded to different jurisdictions later on. Now most countries in the world have made legislative acts subject to judicial review for their conformity to the constitution.

However, due to different historical and philosophical reasons, judicial review of legislation is conducted by different bodies, and the manner and effect of review is also different from country to country.[24]Some countries prefer to have decentralized judicial review where ordinary courts review the constitutionality of legislations. On the other hand, other countries confer the power to single judicial or Quasi-judicial organs.[25]

Even though most democratic states have established either the centralized or decentralized form of judicial review, still different scholars argue over the nature and impact of judicial review. Depending on the structure of government and the effect of review, different points on its advantages and disadvantages are raised by different writers. For better understanding of the nature of the concept and in order to facilitate further analysis, I will summarize the arguments in favour and against judicial review.

Argument in favour of judicial review

Judicial review protects the supremacy of the constitution and compliments the division of government power between the three branches. It establishes a check on the power exercise

[23]Marbury v. Madinson,5U.S.(1 Cranch)137(1803)

[24]Cappelletti, supra note 19, p. 1034

[25] Centralized judicial review is mostly conducted by centralized constitutional courts. However, in some cases like the French constitutional council, the structure and composition of the council resemble Quasi-judicial body.

of the legislative and executive branches and helps to confine them within their constitutional power boundary.[26]It avoids concentration of power and prevents tyranny. It also makes the government authorities conduct their action within the legal frame work and ensures consistency in the action of the different branches. This avoids arbitrary power exercise and preserves the rule of law.[27]

The other major advantage of judicial review which is related to the above two arguments is its advantage in the protection of human rights. In order to give better protection, most democratic constitutions contain a large bulk of human right provisions.[28] As most human right provisions have vertical effect and protect individuals from government intervention, judicial review plays substantial role in enforcing these rights and safeguarding individual rights from undue government interference.

Arguments against judicial review

Depending on the nature and scope of judicial review, the arguments against judicial review may differ from one legal system to another. The arguments against judicial review of legislative action are partly different from the arguments against judicial review of the legality of administrative action. But all the arguments are based on the nature of the judiciary and the effect of its review on the power of the other branches and the constitutional system. They specifically argue that first, judicial review does not protect the supremacy of the Constitution; rather it protects the "supremacy of constitutional norms produced by the authority of review."[29]We cannot be certain that constitutional courts protect only the values of the constitution, and there is no guarantee to believe that courts implement only those values enshrined under the constitution.

[26]Assefa, supra note 11, p. 8
[27] Id, p. 9
[28] Id, p. 14
[29]Troper, supra note 22, p. 107

Secondly, allowing unelected judges to invalidate the acts of elected representatives of the people is contrary to representative democracy. It allow courts to take part in the "final formulation of legislations"[30] and enables unelected judges to impose their policy preference or personal interest in the name of judicial review on the popular will expressed by the representatives of the sovereign.[31]Due to some historic reasons, this argument has made some countries distrust ordinary courts, and made them establish special centralized constitutional courts to conduct judicial review of legislation.[32]

Thirdly, authorising courts to invalidate legislative or executive acts amounts to allowing them to pass their boundary and interfere in the power of the other branches.[33]If they are allowed to decide on the power boundary and fate of the acts of other branches, they will be able to undermine the role of the other branches and prevent them from exercising their constitutional mandate. This contradicts the principle of separation of power and affects the efficiency of the constitutional system.

Fourth, allowing courts to arbitrarily impose their view against the decision of a democratically elected body establishes the supremacy of the judiciary and leads to the rule of man rather than the rule of law.[34]It concentrates power in the hands of the judiciary and leads to another form of tyranny.

Despite all the above disagreements among scholars on the justifications of judicial review, the concept survived all the critics and now most democratic states have some form of judicial review, as a check on the power exercised by the legislative and executive branches.

[30] Id, p. 108
[31]Andenas, supra note 17, p. 10
[32]As we can understand from France and some post-communist countries constitutional history, the framers of the constitutions preferred special constitutional courts for judicial review due to their belief that ordinary court judges were involved in the previous regimes and they may not work in line with the values of the new constitution.

[33]Assefa, supra note 11, p.16
[34] Id, p. 15

1.2 Judicial review of administrative action

Judicial review of administrative action is the jurisdiction of ordinary courts to review the act of government officials and keep them within their legal competence.[35]In discharging their day to day administrative duty, government officials make administrative decisions. But because of uncertainties on the extent of their power or other reasons, their decision may violate the constitution, go beyond their legal mandate or they may improperly exercise their discretion. In such cases, neither the parliament nor the government can easily make correction; rather courts can interpret the statute and decide on the constitutionality or legality of the action.[36]Thus, judicial review as a constitutional mechanism enables courts to ensure that public authorities discharge their duty in accordance with the law.

In countries where ordinary courts have the power to interpret the constitution and decide on constitutional controversies, like the US, courts can review both the constitutionality and legality of administrative actions. However, in countries where ordinary courts do not have such power, like the UK and Ethiopia, they review only the legality of administrative action. In such cases Courts interpret the statute conferring power on the government official and determine whether the action is made within the authority's legal competence and in accordance with the law.

This helps to establish a balance between the need to give public authorities administrative discretion to implement laws and discharge their responsibility, on the one hand, and the need to prevent them from overstepping their mandate or failing to discharge their duty, on the other.[37]In doing this, courts review not only what the authorities' do but also how they do it.[38]This guarantee procedural fairness, avoids inconsistency of decision, establishes

[35]Smite, supra note 3, p.23
[36]Id, p. 18
[37]Id, p. 19
[38]Id, p. 23

legitimate predictability in the administrative procedure and ultimately preserves rule of law in public administration.

1.3 Grounds of Judicial Review of Administrative Action and Remedies

As discussed above, the concept of judicial review has different meanings in different jurisdictions. Depending on the jurisdiction of the courts, it could represent judicial review of the constitutionality of legislation or administrative actions, judicial review of the legality of administrative action, or judicial review of judicial decisions. Similarly, the grounds of review are different depending on the nature of review. In countries where courts have the power to decide on constitutional controversies, they review and decide on the constitutionality of administrative actions. As the constitution is the supreme law of the land in most legal systems, every administrative decision which contradicts the constitution is void. Thus, based on this supremacy of the constitution, courts review and decide on the constitutionality of administrative actions.

However, in countries like the UK and Ethiopia where courts do not have power to decide on constitutional controversy, or where the administrative action is challenged before courts on grounds other than constitutionality, courts review administrative action on the basis of grounds of judicial review defined in public law. As a result of this, the grounds of review of administrative action are different from jurisdiction to jurisdiction.

On the other hand, courts provide either public law or private law remedies after a successful judicial review of administrative action. Public law remedies are those remedies granted by the courts to protect public interest and ensure the proper functioning of the government.[39] While private law remedies are those remedies granted in cases involving individuals and tries to protect individual interest.[40] However, even though the weight could be different,

[39] Assefa, supra note 11, p. 26
[40] Ibid

there is individual right consideration in both public law and private law remedies. And similar to grounds of judicial review, the kinds of public law or private law remedies granted by courts may also differ from one jurisdiction to another.

For the sake of proper understanding of the grounds of judicial review of administrative action and the remedies, in the next part of the paper I will present some of the grounds and remedies that are common in the UK and other countries.

1.3.1 Grounds of Judicial review of administrative action

A. Illegality

Public authorities are created with limited power to discharge certain responsibilities. And any decision or act committed outside its power, or failure to act while it is required to act, makes their action illegal. They are required to make their decision within the scope of their power and in accordance with the established procedure.[41]On the basis of this, the following specific acts of public authorities are illegal. First, acts committed in excess of the power conferred on the authority (*ultra virus acts)* are illegal. If the decision is made in excess of the power conferred on the authority or on an issue which falls outside the jurisdiction of the authority;[42] due to wrong interpretation of the law or fact, the act will be ultra-virus and illegal.

Secondly, even though the decision is made within the scope of the power conferred on the authority, if the authority made an error of law in interpreting the statute, the decision will be considered illegal.[43]However, unlike other grounds, the error of law may not automatically make the decision *ultra virus*, but if it appears on the record of the decision that the authority has made a wrong interpretation of law and it has affected the decision, courts may review

[41] Cora Hoexter, *Administrative law in South Africa* (South Africa: Juta publishing, 2007), p. 116 and 228
[42] Id, p.251
[43] Id, p.252

the decision on the ground of error of law. Thirdly, in addition to the above positive actions, in cases where authorities are established to render service to individuals, failure to discharge this duty is illegal. Courts can review the failure of the authority on the grounds of illegality and order corrective measures to be taken in favour of the individual applicants.

B. Irrationality or unreasonableness

Irrationality and unreasonableness are other grounds of judicial review, but there is no similar understanding among writers and different jurisdictions on the meaning of these grounds. Some jurisdictions consider irrationality as one ground of unreasonableness, while others considers them as separate grounds of review.[44] But the basic ground of review in both understandings is that if the authority exercised its discretion in a manifestly unreasonable and irrational manner that no reasonable or rational person could find proper, the court should interfere and review the decision. The law maker grant discretionary power to public authorities in order to enable them to flexibly implement laws or make administrative decisions putting in to consideration circumstances unforeseeable to the law maker and other detailed technicalities. However, when the authorities exercise this discretionary power, their decision or choice of means should not be manifestly irrational or unreasonable that any reasonable or rational person may not make.

In the UK, in *Wednesbury*, Lord Greene MR explained how authorities entrusted with discretion should exercise their power and at what point it amounts to unreasonable decision,

> A person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd, that no sensible person could ever dream that it lay within the power of the authority.[45]

[44] Id, p.274-278
[45] Associated province picture House v. Wednesburt corporation (1948) 1 KB 223 p.220

C. Procedural impropriety

Even if the decision is made within the scope of the power conferred on the authority, if it is made in violation of procedural requirements, the decision will be illegal.[46]Procedural guidelines are established by the law maker to direct public authorities and protect individuals from arbitrary interference. Thus, if the authority failed to follow this procedure and the failure affects its decision, the decision will be invalidated for procedural impropriety.

D. Proportionality

The principle of proportionality requires administrative authorities to make their administrative measures proportional to the need of the desired result.[47] If there is "no balance of weight" between the actual level of interference on individual right and the level of interference needed for the desired result, courts may review the measure taken by the authority, and order corrective measures.[48]

In addition to the above grounds, failure to discharge duties on the basis of good faith,[49] and failure to consider relevant facts or considering irrelevant fact for the decision is considered as independent grounds for review.[50]

[46]Smite, Supra note 3, p. 206-210
[47]Hoexter, supra note 41, p. 309
[48] Id,p.310
[49] Id, p.280
[50] Id, p.190-192

1.3.2 Remedies of judicial review of administrative action

Remedies of judicial review of administrative action are those reliefs that the court awards to the applicant following successful application. Generally the remedies of judicial review of administrative action are dictated by the request of the applicant in their application. However, the remedies that can be granted by the court can broadly be categorized in to public law remedy and private law remedy.[51] Public law remedies, also known as prerogative orders include certiorari, prohibition, mandamus and habeas corpus, whereas, injunction, declaration and damages are some of the common private forms of remedies. In the next part of the paper I will present in detail the division and nature of remedies in the two categories.

A. Public law remedies

Public law remedies are those remedies which are granted to protect public interest and ensure the proper operation of the government within its legal limit.[52] If courts find the authority acting outside its legal remit, it will order public law remedies to return it back to its legal track and avoid similar mistakes in the future. Among such remedies the first is certiorari. If the reviewing court finds the action of the authority outside its legal limit, it will quash the decision as *ultra virus* and the decision will not have legal effect.[53] The second kind of public law remedy is prohibition. This remedy is ordered as the name implies, to prevent the authority from committing similar illegal acts in the future.[54] It focuses on the conduct of the authority in the future rather than on the specific act complained about. The third remedy is mandamus. A mandamus order is granted to make public authorities perform their duties.[55] If some public authority established to perform certain duties in favour of some individual fail to discharge its duties, courts can grant mandamus to make the authority

[51]Assefa, supra note 11, p.26
[52] Ibid
[53]Rechard Gordon Q.C., *Judicial review: law and procedure* (London: sweet and Maxwell, 1996), 57
[54] Id, p.60
[55]Id, p.63

discharge the duty. The last public law remedy is habeas corpus. This is an order to release an illegally detained person, up on the application of the individual. If the court finds the detention illegal, it will order immediate release. Currently, most legal systems have adopted this remedy as a means of safeguarding individual liberty.[56]

Private law remedy

Unlike public law remedies, private law remedies are mainly concerned with protecting individual rights from unlawful actions of public authorities. Previously these types of remedies were granted by courts in private law cases, but now they are adopted by courts as another category of remedies of judicial review of administrative action. The common types of private law remedies granted by courts are injunction, declaration and compensation. An injunction order is granted to make public authorities refrain from executing a certain decision or doing some illegal acts against the interest of individuals.[57]Mostly it is granted to avoid irreversible damage to the interest of individuals. Whereas declaration is a remedy where courts interpret the law and declare the right of individuals.[58]This clears the uncertainty over the existence and nature of the individual rights and avoids the possible interference by the authority. Lastly, if both injunction and declaration are not helpful due to the fact that the authority has already caused damage to individual interest, the courts can order payment of damages.[59] Thus, compensation helps to cure the already happened and irreversible damage to individual interest.

[56] Id, p.30

[57] Ibid

[58]Hoexter, supra note 41, p.493

[59] Id , p. 503

Chapter two: Comparative Analyses of Models of Review of Administrative Action

Introduction

In the preceding chapter we have seen that depending on the jurisdiction, judicial review could mean judicial review of constitutionality of legislative act and administrative decision, or judicial review of the legality of administrative action. Different legal systems give the task of judicial review of administrative action to different bodies. Some legal systems give the entire task to administrative tribunals, while others divide it between ordinary courts and administrative tribunals. This difference partly resulted from the tendency of legal systems on establishing balance on the tension between "individual interest and social objective" of administrative rules.[60] Those legal systems which favour review of administrative action by tribunals tend to establish balance and solve the tension in favour of social objective.[61] While the other legal systems which favour review of administrative action by courts tend to solve the tension in favour of individual interest.[62]

As the main concern of this paper is review of the legality of administrative actions, the next chapter is devoted to comparatively discussing models of judicial review of administrative action and assessing the practice in the three jurisdictions. Thus, a separate comparative discussion will be made on review of administrative action by courts and review of administrative action by tribunals; with the role of courts and administrative tribunals in the three jurisdictions.

2.1. Review of administrative action by Courts

Courts as a third branch of the government are established to interpret laws and decide on legal controversies. Their constitutional structure, composition, accountability and manner of

[60] Peter Cane, Administrative Tribunals and Adjudication (United States: Hart Publishing, 2009), p.40
[61] Ibid
[62] Ibid

operation are specifically designed to protect them from undue interference and pressure from the other branches. They conduct their tasks in line with predetermined impartial, open and faire procedure. This independence enables judges to render fair and impartial decision in line with pre-established rules, and preserve rule of law.

This institutional and personal independence of courts has led many writers and countries to consider ordinary courts as the ideal body to review and decide on the legality of administrative actions. Courts are believed to be in a better position to interpret and identify the true meaning of laws, and decide on controversies. This helps to restrain government officials within their legal remit, protect individual right from undue interference and preserve administrative justice.[63]

However, the role of courts in reviewing administrative action substantially differs from one country to another. Even among countries preferring review of administrative action by courts, the nature of review and the scope of court's power may differ from one country to another. In order to properly appreciate the role of courts in review of administrative action and compare with the other model of review, in the next part of the paper, I will examine the UK, South African and Ethiopian courts on the basis of their jurisdiction, grounds of review and the nature of remedies.

A. The role of courts in review of administrative action in the United kingdom

Review of administrative action has passed through different stages of development in the UK. In all the history of the concept in the country, the most controversial issue was whether to have centralized and independent administrative tribunals not subject to review by ordinary courts or maintaining embedded and decentralized administrative tribunals with review of

[63]Smite, Supra note 3

their decision by ordinary courts.[64]Before the 17th century a strong centralized administrative tribunal like in present day France was established for some period.[65] But since then the power to decide on the legality of administrative action has returned to ordinary courts.[66]Special committees established to study the options at different times and different writers have analysed the merit of both models in line with the special realities of the legal system.[67] But none of the studies led to major change in the review of administrative action.

Now, even though embedded and extra-departmental administrative tribunals with different levels are established in different sectors of administration, and some issues are excluded from judicial review by ousting laws, the power to review the legality of administrative action is mainly entrusted to ordinary courts. More specifically courts directly review the decision of administrative bodies which is not made subject to review by special embedded or extra-departmental administrative tribunals.[68]In addition, Administrative division of high court of appeal and the Supreme Court review the decision of appellate tribunals on question of law.

In different times, by using its sovereign power the parliament has enacted ousting laws making some administrative decisions final and non-reviewable by courts. But the House of Lords in the case *Anisimic v foreign compensation commission* narrowly interpreted such ousting clauses and established precedence for strict interpretation of ousting clauses.[69]This expanded the jurisdiction of the court to areas which was excluded by ousting laws. Now,

[64] Cane, supra note 60, p. 30-48
[65]Assefa, supra note 11, P.34
[66]Ibid
[67] In 1929 and 1959, two different committees named after their chairs Donoughmore and Silver Oliver Franks were established to study the issue of administrative adjudication.
[68] Cane, supra note 60, p. 43
[69]Id, p. 45

unless there is clear provision excluding judicial review, courts does not refuse to review administrative action.[70]

Even though the *ultra virus* has been the only ground of review for a long period of time, due to the different developments made to the area by different case laws, now courts can review the legality of administrative actions on the grounds of "illegality", "irrationality" and "procedural impropriety."[71]Ground of illegality among other things include acting without or in excess of power; refusing to act; misuse of discretion; taking irrelevant factors into account.[72]As explained by Lord Diplock in the case of *Associated Provincial Picture House Ltd v. Wednesbury Corporation* courts can review the merit of the decision for irrationality and reverse it if it is so unreasonable. Failure to follow mandatory procedure to reach the decision is also the other ground of review for procedural impropriety. In addition to these general grounds, error of law,[73] proportionality and legitimate expectation are the other grounds of review developed through case laws.

After a successful judicial review Courts grant either public or private law remedies. The common pubic law remedies include "quashing order", "prohibiting order" and "mandatory order". While the common private law remedies are "injunction", "declaration" and "damages". Even though applicants can specifically ask for one of the above remedies, courts have the discretion to select and grant the most suitable remedy.[74]

[70]Ibid
[71]The three grounds developed from the following three major cases: Ansiminic Ltd v. foreign compensation commission- mistake of law, Associated provincial picture house Ltd v. Wednesbury, council of civil service v. Minister for the civil service
[72] "Guide to judicial review", accessed February, 2013, p.1 available at http://www.publiclawproject.org.uk/downloads/GuideToJRProc.pdf
[73]Tribunals, Courts and Enforcement Act 2007, Art. 14
[74]Supra note 72, p. 3

B. The role of courts in review of administrative action in South Africa

The legal base of judicial review of administrative action by courts in South Africa is section 168 and 169 of the constitution. It states that the ‘‘high court may decide on any matter not assigned to another court by the act of parliament’’ and ‘’the Supreme Court can review the decision of all review courts, except in respect of Labour and competition matters as may be determined by the act of parliament.’’[75]Thus, all administrative actions which are not made subject to review by administrative tribunals are reviewable by the high court, and in cases where the legislator made the issue subject to review by administrative tribunals; the Supreme Court has the power to decide on the legality of the decision, except in labour and competition cases.

Due to the absence of parliamentary sovereignty, unlike the UK, in South Africa courts are empowered to interpret the constitution and decide on the constitutionality of laws and administrative decision.[76]However, the decision of courts on the constitutionality of law and administrative action needs the approval of the constitutional court.[77]But still their declaration of invalidity has at least the effect of suspending the implementation of the decision, until the final decision of the constitutional court.[78]In addition, the parliament does not have power to limit the jurisdiction of courts through ousting laws. And the power of the Supreme Court to decide on appeals and constitutionality of laws further protects jurisdiction of courts from ousting laws. Because of this, the exclusion of administrative decisions on labour and competition issues from the jurisdiction of the Supreme Court has required the February 2013 constitutional amendment on the power of the Supreme Court. But still administrative

[75] Republic of South Africa Constitution, Amend. 17thArt. 168 and 169
[76]Id, Art. 168 and 172
[77]Ibid
[78]Ibid

decisions on labour and competition issue are not absolutely free from review by courts. The constitutional court can review such decisions as a matter of ‘‘general public importance.’’[79]

As per the Promotion of Administrative Justice Act, like UK courts, South Africa a Courts can review the legality of administrative action in wide grounds of review. Among others they can review on grounds of “illegality”, “unreasonableness”, “procedural impropriety”, “error of law”, “taking irrelevant consideration” or “failure to take relevant considerations” and “bad faith”.[80]In addition, the inherent power of courts ‘‘to protect and regulate their own process and to develop common law”[81]help them to flexibly extend the grounds and review more administrative actions.

Similarly, courts can grant a wide variety of remedies after a successful application for judicial review. Public law remedies like “directing”, “prohibiting” and “setting aside orders”, and private law remedies like “declaration”, “injunction” and “damage” are among the common remedies granted by the courts. In addition similar to the ground of review courts may use their constitutional power to grant other possible, remedies taking in to account the interest of justice.[82]Furthermore, the Promotion of administrative procedure act also empowers courts to grant remedies they consider necessary in the interest of justice, when application is made on grounds of unreasonable delay.[83]

C. **The role of courts in review of administrative action in Ethiopia**

There is no comprehensive administrative code regulating administrative issues in Ethiopia. The power of courts to review administrative action is governed by the constitution, the civil code and different legislations enacted by the parliament to establish administrative agencies.

[79]http://www.mondaq.com/x/209980/Antitrust+Competition/The+Tax+Administration+Act+Takes+Effect
[80]Hoexter, supra note 41, p. 223-434,
[81] Supra note 75, Art 173 of constitution
[82] Ibid
[83]Hoexter, supra note 41, p. 466

Nonetheless, as the power to interpret the constitution and decide on constitutional controversies is entrusted to the House of Federation,[84] the power to review the constitutionality of administrative action is outside the jurisdiction of ordinary courts and their review is restricted to the legality of administrative actions.

However, Article 79(1) and 37(1) of the constitution state that ''judicial power is vested in courts'' and ''everyone has the right to bring justiciable matter and to obtain a decision or judgement by a court..."respectively.[85] This provision establishes the inherent judicial power of courts and affirms their function as a watchdog of individual rights. In addition, article 401 and 402 of the Civil Code state that acts performed in excess of legal power will not have effect and any interested party can claim its nullity.[86]This provision seems to confer wide power on courts to review the legality of administrative decision.

However, as the jurisdiction of the court is subject to determination by the legislator and there is no comprehensive administrative law, different administrative agencies establishing proclamations have limited the power of courts to review the legality of administrative action. The number of laws containing finality clause excluding review of administrative tribunal decision by ordinary courts is increasing over time. Similarly, the ground of review and the nature of remedies that courts can grant to a successful applicant have also diminished the role of courts in review of administrative action. I will make a separate discussion on the constitutional base and effect of the ouster clauses in the next chapter. But for now, in order to create clear pictures of the power of Ethiopian courts in review of administrative action

[84] As per article 62(1) and 83(1) of the Federal Democratic constitution of Ethiopia, House of Federation is the upper house of the bicameral parliament. It is composed of representatives of the different ethnic groups which make up the federation. Among other things it has power to interpret the constitution and solve constitutional controversies.

[85]The Constitution of the Federal Democratic Republic of Ethiopia constitution 1995, Proclamation No.1, Federal NegaritGazeta year , No. 1, Art. 79(1) and 37(1) (Here in after referred as FDRE Constitution)

[86]Civil Code of the Empire of Ethiopia 1960, Art. 401 and 402

and comparatively analyse it with the UK and South Africa, I will present the review power of courts in some sectors of the administration.

i. Tax administration

According to the income tax and other tax proclamations, any party dissatisfied with the authority's assessment of tax can appeal to the tax appeal commission.[87] And if he is still dissatisfied with the decision of the commission and believes that the decision is reached on the basis of erroneous interpretation of law, he can appeal to an ordinary court.[88] The court determines the question of law and returns the case to the commission to decide on the merit of the case, on the basis of its interpretation.[89]Thus, the power of ordinary court to review the authority's administrative decision is limited only to error of law on the assessment of taxes.[90]All other discretionary decisions of the authority are not reviewable by courts. And tax payers cannot challenge the legality of tax directives before courts.[91]

ii. Land administration

As per the urban land lease holding proclamation, any party aggrieved by the decision of the appropriate body dealing with urban land administration has a right to appeal to the urban land clearing and compensation cases appellate tribunal. The tribunal has the power to confirm, vary or reverse the decision of the authority.[92]However, except on issues of compensation, the decision of the tribunal is final and the applicant cannot appeal to courts on both question of law and question of fact.[93]This finality clause totally exonerates a wide

[87]Proclamation No. 286/2002, Federal Negarit Gazeta 8th year 8th, No.34, Art.112 (1), (2)
[88] Ibid
[89] Ibid
[90]Taddese Lencho, "The Ethiopian Tax System: Excesses and Gaps," *Michigan State International Law Review* 20 (2012):377
[91] Ibid

[92]Proclamation No.721/2011, Federal Negarit Gazeta 18th year, No.4 , Art.30(2)
[93] Id, Art. 29(3)

range of discretionary decisions of the authority from court review and restricts courts power only on areas related to questions of law on the assessment of compensation.[94]

iii. Social Security Administration

Social security is the other sector of administration where courts have extremely narrow review power. As per the public servants pension proclamation, any beneficiary aggrieved by the decision of the authority is entitled to appeal to the social security appeal tribunal.[95]The tribunal has the power to confirm, vary or reverse the decision.[96]However, if the applicant is not satisfied by the decision of the appeal tribunal he can appeal to the Supreme Court on ground of "fundamental error of law."[97]Unlike the case in tax and land administration, here the beneficiary has to show not only error of law but also he has to prove that it is fundamental. Nonetheless, what makes an error fundamental error is so argumentative and subject to case by case determination. This stringent requirement and ambiguity on the precondition for judicial review discourage applicants, excludes many cases from review and severely restricts the role of courts.

In addition, even though the proclamation generally states that the appeal should be lodged to the Supreme Court, the unusual referral of appeal from administrative tribunals to Supreme Court and the precondition of "Fundamental error of law" seem to refer to the cassation division of the Supreme Court. If this is the intention of the law, since cassation division of the Supreme Court does not conduct oral hearing, the role of the court will be further restricted to examining the records of judgment only.

As we can see from the above discussion, the civil code confers general power on courts to review the legality of administrative action. However, the laws enacted to establish

[94]Ibid
[95]Proclamation No. 714/2011, Federal Negarit Gazeta 17th year, No.78, Art.56 (1)
[96]Id, Art.56(3)
[97] Id, Art. 56(4)

administrative agencies and regulate some sectors of administration have substantially limited the role of courts in review of administrative action. The absence of comprehensive administrative law and developed jurisprudence has also contributed to the uncertainty on the grounds of review. As the country is civil law country, the decision of courts except the decision of the cassation court has no precedence effect. Thus, courts are not able to clear the uncertainty and establish their jurisdiction case law. Now, there is no clear legal basis enabling courts to review administrative actions on ground of ‘‘unreasonableness’’, ‘‘irrationality’’ or ‘‘procedural impropriety’’.

When we come to the remedies granted by courts, as per the civil code, upon successful application the court can declare the nullity of the action and direct the authority not to commit similar acts in excess of its power. In addition, it can order private law remedies like declaration, injunction and payment of damage. But in areas where the parliament established administrative tribunals, similar to the ground of review, the varieties of remedy is also limited. Most of the time courts correct error of law committed by the authority and returns the case to the administrative tribunal. They have no power to grant private aw remedies and public law remedies, prohibiting the authority and setting aside its decision.

Generally, even though like the courts in UK and South Africa Ethiopian courts are constitutionally empowered to review administrative action and protect individual interest, in many sectors of administration where the parliament enacted new law the actual role of courts in review of administrative action is limited. Both their material jurisdiction and remedies they grant are limited. This reduces the role of courts in review of administrative action and prevents them from fulfilling their constitutional duty.

2.2. Review of administrative action by administrative tribunals

Administrative tribunals which are also known as "tribunals" or "administrative courts" in some jurisdictions are court like bodies established outside the structure of ordinary courts, to review the decision of administrative bodies and solve disputes between individuals and government. [98]In different legal systems they can be found embedded in public authorities or outside the authority. Embedded administrative tribunals are part of the specific administrative authority, and serve as internal checks on the power exercise of the different branches of the authority. However, their decision is subject to approval of the head of the authority and they do not enjoy institutional and decisional independence. While external administrative tribunals, which is the main concern of this paper, are mostly established by act of parliament as a personally and structurally independent body to entertain disputes between individual and government authorities. Even though their decision can be reviewed by higher tribunals or courts, unlike embedded administrative tribunals, it does not need the consent of the head of public authorities to have effect. However, unlike courts, both embedded and extra-departmental administrative tribunals review not only the legality of administrative action but also the merit of the case. This is one of the major advantages of tribunal review over court review.

Depending on the nature of the legal system, the countries may have tribunals with special or general jurisdiction.[99] Special jurisdiction administrative tribunals are established to deal with issues coming from a specific sector of administration and they are composed of experts in the specific sector, while, general jurisdiction administrative tribunals are found in countries with centralized administrative tribunal. They are composed of experts of general administrative law and entertain cases from different sectors of administration.[100]Countries

[98] Wade H.W.R. &Forsyth C.F. *Administrative Law,* (oxford: Clarendon press, 2004): p. 907-908.
[99]Cane, supra note 60, p. 91-93
[100]Ibid

may also opt to have one, or more than one level of administrative tribunals. In the latter case which is common in countries with centralized administrative tribunal system, the decision of the lower level of tribunal is reviewable by the higher tribunal in the hierarchical relation. This helps to ensure the quality of the decision and preserve administrative justice.

Administrative tribunals are neither court nor administrative body; rather they combine the advantages of both courts and administrative body in a way that best fits the specific needs of review of administrative action. Like ordinary courts they interpret law, conduct judicial proceedings and decide on controversies.[101] And like administrative bodies they are established by the executive on the basis of parliamentary act and are mostly composed of experts rather than lawyers.[102]Countries prefer review of administrative action by administrative tribunals than courts for two major reasons: First, administrative adjudication requires striking a proper balance between social objective and individual interest involved in the controversy.[103]And in order to do these adjudicators need to have expertise in the specific field of administration. Thus, as tribunals are mostly composed of legal and non-legal experts, they are in a better position to strike the ideal balance between social objective and individual interest. Secondly, the structure, composition and procedure informality of administrative tribunals make them more accessible, speedy, flexible, expert, cheaper and friendly than courts.[104] This help to solve administrative disputes more efficiently and reduce court burden.

In the next part of the paper I will comparatively analyse the role of administrative tribunals in the three jurisdictions, on the basis of their jurisdiction, ground of review and remedies

A. The role of administrative tribunals in United Kingdom

[101]http://www.scribd.com/doc/39458125/Administrative-Tribunal
[102]Ibid
[103]Cane, supra note 60, p. 40
[104]http://terryandco.hubpages.com/hub/Advantages-and-Disadvantages-of-Administration-Tribunals

In UK administrative tribunals play a crucial role in review of administrative action and solving disputes between individuals and the government. Now all administrative tribunals except the patent office tribunals and investigatory power tribunal are organized in a two level unified hierarchy of tribunals.[105]The lower tribunal is called First-tire tribunal and it is composed of diverse tribunals adjudicating cases coming from the different sectors of administration. It reviews administrative actions on the basis of the power conferred on it by the respective administrative agency or tribunals establishing parliamentary act, and the 2007 tribunals, courts and enforcement act. Similar to first instance courts, it conducts fact finding and entertains direct application from persons affected by administrative decision.[106]

The higher tribunal, which is called ‘‘Upper Tribunal’’, is an appellate body entertaining appeals on question of law from the First-tier tribunals.[107]Nonetheless, it also has first instance jurisdiction on tax and finance matters.[108] If it finds error of law on the decision of the lower tribunal it may either remit the case to the lower tribunal with direction or it may remake the decision. Any party dissatisfied by the decision of the tribunal has the right to appeal to the high court.[109]However, in some sector of administration the decision of the tribunal is final and non-reviewable by ordinary courts.[110]

Tribunals review the legality of administrative action on grounds of illegality, irrationality and procedural impropriety. And up on successful application, depending on the case, they grant appropriate remedies. Public law remedies like ‘‘quashing order’’, ‘‘mandatory order’’

[105]Supra note 73, Art. 3
[106]http://www.lawteacher.net/english-legal-system/lecture-notes/admin-tribunals.php(,accessed on February) 2013
[107] Supra note 73, Art. 11
[108]http://www.lawteacher.net/english-legal-system/lecture-notes/admin-tribunals.php, (accessed on February 2013)
[109]Supra note 73, Art 13
[110] Ibid

and ‘‘prohibiting order’’ or private law remedies like ‘‘declaration’’, ‘‘injunction’’ and payment of damages are commonly granted by the tribunals.[111]

B. The role of administrative tribunals in South Africa

Article 33 of the South African constitution states everyone’s right to ‘‘lawful, reasonable and procedurally fair’’ administrative action and requires the establishment of a court or, ‘‘where appropriate, an independent and impartial tribunal’’[112]Based on this constitutional direction, similar to UK, diverse administrative tribunals are established in different sectors of administration. They are mostly established by legislations regulating specific sectors of administration. For example, land claim court by the Restitution of land right act; competition appeal court by the competition act; commissioner of patent by the patent act; special tax court by the income tax act; electoral court by electoral commission act.[113]

However, even though the Promotion of Administrative Justice Act invited ministry of justice to establish administrative tribunal with general jurisdiction over all sectors of administration, still unlike the UK, there is no unified and centralized tribunal system. As discussed under section 2.1. B of this paper, the decision of tribunals established under the different sectors of administration, except the patent and competition appeal tribunal, is appeal able to the High Court and the Supreme Court.

Similar to the UK tribunals, tribunals in South Africa review the legality of administrative action on a wide variety of grounds. As per article 6 of the Promotion of Administrative Procedure Act, tribunals are required to review administrative action on the same grounds of review and grant similar remedies with courts.[114] Mainly they review the lawfulness,

[111] Id, Art. 15
[112]Republic of South Africa Constitution, Art. 33 (1),(3)
[113]Hoexter, supra note 41, p. 4
[114]Promotion of Administrative Justice Act, 2000, section 6

reasonableness and procedural conformity of administrative action. And grant both public and private law remedies.

C. The role of administrative tribunals in Ethiopia

Like the UK and South Africa, there are both embedded and extra-departmental administrative tribunals in Ethiopia. Embedded administrative tribunals are known by a different name in different sectors of administration, some of them are called committee, commission and board. They make internal review to the decision of authorities. But their decision is subject to the consent of the head of the authority and they do not have decisional independence.[115] However, extra-departmental administrative tribunals are rare, but some of them are Social security appeal tribunal, tax appeal commission, civil service commission and urban land clearing and compensation cases appellate tribunal are some of them.

By contrast to the UK and South Africa, in Ethiopia, there is neither unified administrative tribunal system like the UK, nor comprehensive administrative law regulating grounds of review and remedies like South Africa. Tribunals review the legality of administrative action on the basis of the power conferred on them by the respective administrative authority establishment proclamation. They review appeals from the decision of embedded administrative tribunals on question of both fact and law. And they have the power to confirm, vary and reverse the decision of the authorities.[116] Even in some cases their decision is final and non-reviewable by courts. However, most of the provisions governing the power of administrative tribunals limit their material jurisdiction to a specific area. They have no power to review the legality of directives and other decisions except specifically provided by the enabling legislations.

[115] Supra note 87, Art. 105(3)
[116] See, Proclamation No. 286/2002, Federal Negarit Gazeta 8th year 8th, No.34, Art.115 (1), Proclamation No.721/2011, Federal Negarit Gazeta 18th year, No.4, Art. 29 and Proclamation No. 714/2011, Federal Negarit Gazeta 17th year, No.78, Art.56 (3)

Chapter three: Comparative Analysis of Finality of Administrative Tribunal Decision and Competences of Administrative Tribunals

Introduction

In the preceding chapters I have discussed the general overview of judicial review of administrative action and the different models of review. In the next chapter, I comparatively discuss finality of administrative tribunal's decision and its constitutional base. In addition, in order to examine the competence of administrative tribunals to exercise judicial power, and render final decision, I comparatively analyse the institutional structure, qualification and accountability of tribunal judges, and the procedural rule of administrative tribunals.

3.1. Finality of administrative tribunal decision

In principle, the power to interpret what the law says and decide on controversies is the inherent power of courts.[117]Courts as one of the three branches of government are established to interpret the meaning of laws and ensure proper implementation. However, the scope and extent of judicial power of courts depend on multiple factors. Outright stipulation of the constitution, or the power of the other branches to determine the power of courts, may limit judicial power of courts on some issues. One such scenario is when the decision of administrative tribunals is made final and non-reviewable by ordinary courts. But finality of administrative tribunal decision originates and are justified by different reasons, in different countries.

In the UK the issue of "ousting laws" excluding review of administrative action by courts and finality of administrative tribunal decision have been points of controversy between courts and the parliament.[118]The Parliament has enacted different laws partially or fully excluding review of administrative decision by courts. And the constitutionality of such ousting laws

[117]Kassa, supra note 9, p. 52
[118]Andenas, supra note 17, p. 286

was justified by sovereign power of the parliament to decide on the structure of the government, and power and responsibility of the other branches. However, courts have refused the full implementation of such law arguing that "statutory restrictions of judicial review lead to uncontrollable power".[119]Thus, even though parliamentary sovereignty prevents courts from deciding on the constitutionality of ousting laws, they limited the scope and application of such laws invoking different reasons in different cases. For example, in *R. v. Medical Appeal Tribunal ex p. Gilmore* the court stated that laws stating that the decision of the tribunal is final does not exclude judicial review of the decision by the court, and unless the law exclude judicial review with clear words, finality of the decision exclude only appeal to ordinary courts.[120]Similarly in *Anisminic Ltd V Foreign Compensation Commission* the court stated that the finality clause would not prevent courts from reviewing the decision in the case where the decision is rendered on the basis of error of law affecting the jurisdiction of the authority.[121]Thus, now even though some administrative decisions are excluded from review of courts the scope of the area is restricted.

In South Africa, since there is no parliamentary sovereignty, the source of judicial power is the constitution and the parliament cannot limit the judicial power of courts. The constitution specifically states that "judicial authority of the republic is vested on the court" and the Supreme Court has the power to decide appeal on any matter "except in respect of labour and competition matters".[122]Before the February 2013 amendment of the Constitution, labour and competition issues were also part of the Supreme Court review jurisdiction. But since excluding this constitutional power of the Supreme Court by parliamentary law amounts to violating the constitution, the exclusion was made through constitutional amendment. Now,

[119]Ibid
[120] R v Medical Appeal Tribunal, ex parte Gilmore [1957] 1 QB 574
[121]Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147
[122]Supra note 75, Art. 165(1)and 168(3)

the decision of administrative tribunals on labour and competition issues is final and excluded from the jurisdiction of courts.

However, unlike the UK and South Africa, even in the absence of parliamentary sovereignty and specific stipulation of the constitution, parliaments may enact ousting laws excluding judicial review power of courts and establishing finality of administrative tribunal decision, either partially or absolutely.[123]It may enact law with a specific provision stating that the decision of administrative tribunal is final and non-reviewable by a court, or it will be final if appeal is not made within a short period of time.[124]

If we see the current administrative tribunals establishing proclamations of Ethiopia, most of them either partially or absolutely exclude judicial review power of courts. In order to properly understand the status of ousting laws and facilitate the discussion on their constitutional base, I will briefly present some of the administrative tribunal establishing proclamations either partially or absolutely excluding judicial review power of courts.

Most administrative tribunals establishing proclamations that do not exclude review of administrative tribunal decision by court contain a shorter period of appeal than the normal period of appeal under the civil procedure code. If we see some of them, public servants pension proclamation, establishing social security appeal tribunal; the income tax proclamation, establishing the tax appeal commission; and urban land lease holding proclamation, establishing urban land clearing and compensation cases appellate tribunal state that a party dissatisfied by the decision of the tribunals can appeal to appellate court

[123]Andenas, supra note 17, p. 272
[124]Ibid

within thirty days.[125]This period is half of the normal sixty day appeal period provided by the civil procedure code.[126]

On the other hand, some administrative tribunals establishing proclamation state that the decision of the tribunals in all or part of the issues that fall under their jurisdiction is not reviewable by courts. Among these, the decision of urban land clearing and compensation cases appellate tribunal, on both question of fact and question of law except on amount of compensation and the decision of social security appeal tribunal are final.[127]However the constitutional basis of finality of administrative tribunal decision is controversial.

The constitution under its article 79(1) states that judicial power is vested in courts. But under article 37(1) it also states that "everyone has the right to bring a justiciable matter to and to obtain a decision or judgment by, a court or any other competent body with judicial power". From the cumulative reading of the two provisions we can understand that even though in principle judicial power is vested in courts, it is also possible to confer judicial power on other competent bodies, and administrative tribunals can be one of such body. But at this point the major issues that should be raised in the above provisions in relation to the finality of administrative tribunal decision are, first what would be the relationship between ordinary courts who have inherent judicial power and other bodies exercising judicial power? And secondly, what makes bodies other than courts competent to exercise judicial power? I will discuss the first question herein and the second question will be comparatively discussed in the next chapter.

[125]See Proclamation No. 286/2002, Federal Negarit Gazeta 8th year 8th, No.34, Art.112 (1), Proclamation No.721/2011, Federal Negarit Gazeta 18th year, No. 4, Art. 29 and Proclamation No. 714/2011, Federal Negarit Gazeta 17th year, No.78, Art.56 (4)
[126]The Civil procedure code of the empire of Ethiopia 1965, Art. 323(2)
[127] See Proclamation No.721/2011, Federal Negarit Gazeta 18th year, No. 4, Art. 29 and Proclamation No. 714/2011, Federal Negarit Gazeta 17th year, No.78, Art.56 (4)

The hierarchical relationship between bodies exercising judicial power and ordinary court can be determined on the basis of the power of the legislator to determine judicial power of courts, and nature and scope of the constitutional judicial power of courts. As discussed above, unlike the UK, the Ethiopian parliament is not a sovereign power holder. Thus, its power is restricted to the power conferred on it by the supreme constitution. The constitution provides that the legislator is "the highest authority of the federal government" and it has the power to make laws in all matters assigned to the federal government.[128]More specifically it has the power to establish First instance and High Courts nationwide.[129]Thus, if a body with judicial power other than courts is to be established by law, the legislator as the ultimate law maker and the holder of the highest federal government power is the right body to establish such a body.

On the other hand, the constitution states that it has established an independent judiciary and the highest judicial power is vested in courts.[130]And the federal Supreme Court is established with the highest judicial power of the federal government. Among others it has "a power of cassation over any final court decision containing a basic error of law".[131]This helps to avoid inconsistent interpretation of law and establishes another level of protection for individuals' right. From these provisions of the constitution, we can understand that the inherent judicial power of courts and the cassation power of the federal Supreme Court originate from the constitution and are not subject to the will of the other branches.

When we cumulatively see the nature of the two powers, the power of the legislator to establish bodies with judicial power seems to contradict the establishment of independent judiciary and inherent judicial power of courts. However, even though the constitution

[128] Supra note 4, Art. 55(3) and 55(1)
[129]Id, Art. 78(2)
[130]Id, Art. 78(1) and 79(1)
[131]Id, Art. 80(1)

indicates the possibility of establishing other bodies with judicial power, it does not exclude the judicial power of courts. And the mere fact that other bodies exercise judicial power in some issue does not imply the exclusion of judicial review power of courts on the issue. As we have seen in the discussion on the UK and South Africa, other bodies exercise judicial power without excluding judicial power of courts to review the decision of such bodies. In addition, if the federal Supreme Court has the "highest judicial power of the federal government" and it is empowered to review the decision of any courts containing fundamental error of law, there is no logical reason to argue that the decision of other competent bodies with judicial power escape from such constitutional power of review.[132]Hence, the power of the legislator to establish other bodies with judicial power cannot by itself justify exclusion of constitutional judicial power of courts to review the decision of such bodies.

In many cases entertained by the cassation division of the supreme court on the finality of administrative tribunal decision, unlike the UK courts which protected their judicial power from the sovereign act of the parliament, the court stated that ordinary courts do not have power to review the decision of the administrative tribunal on issue that the legislator made decision of tribunals final.[133]Thus, courts can have power to review the decision of administrative tribunals only when legislation has not excluded the power of courts. However, this interpretation of the cassation court amounts to recognizing unrestricted discretion of the legislator over the judiciary and compromises the constitutional base of judicial power.[134] The separate existence of the three branches of government and the

[132]Ibid

[133] See Federal Democratic Republic of Ethiopia Supreme Court Cassation Division files No.18342 and file No.23608

[134]Kassa, supra note 9, p.82

objective of the constitution in establishing an independent judiciary with highest judicial power will be meaningless.

3.2. Competence of administrative tribunals

As discussed in the preceding part of the paper, the FDRE constitution indicates that competent bodies other than courts can exercise judicial power. However, it is does not make clear what kind of institutional structure and composition it should have to be competent and exercise judicial power. Thus, in this part of the paper, in order to examine the competence of administrative tribunals so far established, I comparatively the analyse institutional structure and autonomy of tribunals, qualification and accountability of judges, and procedure of administrative tribunals.

3.2.1. Institutional structure and autonomy of administrative tribunals

Independent institutional structure and autonomy from the other branches of government are among the major factors determining the competence of administrative tribunals to independently exercise judicial power and review the legality of administrative actions. Even though their special nature justifies some level of informality, in order to exercise judicial power and render impartial decision, tribunals need be structurally independent from the control of at least the specific authority whose decision they review. Thus, the judges, management and funding of tribunals should be free from the control of the authority whose decision they review.[135]And official should be prevented from simultaneously serving in a tribunal and authorities that fall under the review jurisdiction of the tribunal.[136]

In UK administrative tribunals are independently established in a unified two level hierarchy with First-tier Tribunal and Upper tribunal.[137]They are managed by the Senior President of

[135]Cane, supra note 60, p.105-108
[136]Ibid
[137]Supra note 73,Art. 3

tribunals and the Lord of Chancellor who is accountable directly to the parliament.[138]In addition, Administrative Justice and Tribunal Council supervise the working of tribunals. While in South Africa tribunals does not have unified structure like the UK. Even though the Promotion of Administrative Justice Act empowered minister of justice to establish unified and independent administrative tribunal, the minister has not established such tribunal so far.[139]However, administrative tribunals established in different sector of administration enjoy administrative and financial autonomy. They are administrated their own president and their budget is separately allocated by the parliament.[140]

In Ethiopia, even though like South Africa administrative tribunals are established as an independent body in different sector of administration, unlike both the UK and South Africa, they lack proper managerial and financial autonomy from the other branch of government.[141]Most of the laws regulating administrative tribunals either lack clarity on the management and source of finance of administrative tribunals, or confer the whole power of determining such issue to the executive branch.[142]This exposes tribunals to strong control of the executive branch, substantially affects their independence and prevents them from freely reviewing the decision of government officials.

3.2.2. Qualification and accountability of administrative tribunal judges

The other major point affecting the competence of administrative tribunals is the quality and personal independence of tribunal judges. The legal and professional knowledge of tribunal judges to interpret laws and review administrative decisions in line with the prescription of the law determine the quality of their decision. Similarly, the procedure of appointment, term

[138]Id, Art.39 and 43
[139]Supra note 114, Art.10
[140]Competition act 89 of 1998, Art. 38 and 40
[141]Supra note 5
[142] Ibid

of office and removal of judges influence decisional independence and impartiality of tribunal judges and impact on the quality of their judgment

3.2.2.1. Qualification of tribunal judges

The qualification of administrative tribunal judges depend on the nature of the tribunal. If the tribunal is special jurisdiction administrative tribunal most of the time it will be composed of professional and lawyers having thorough knowledge on the area. However, if the tribunal is of general jurisdiction, the judges will be required to have knowledge of general administrative law and administration. However, irrespective of the nature tribunals, tribunal judged can be classified in to three major groups: legal professional, experts of related profession other than law and others appointed on the basis of other considerations.[143]The legal expert and the other expert help to interpret the law and consider professional issues. While the third lay judge help to keep the informality and friendliness of the tribunal. (ibid)

In UK every administrative tribunals are composed of qualified and experienced legal expert and other non-legal experts.[144]Both are required to fulfil predetermined criteria set by the Tribunal, Courts and Enforcement Act and Order of lord of chancellor.[145]Similarly, in South Africa, even though there is no comprehensive law regulating qualification of tribunal judges, like the UK tribunal are composed of judges with legal knowledge and experts of other professionals.[146]While in Ethiopia there is no comprehensive law governing the qualification of tribunal judges. Even the respective administrative tribunals establishing proclamations either does not properly regulate the issue or does not say anything at all. Consequently, the required qualification to be tribunal judge is different from one administrative tribunal to the other. If we see the requirements in some administrative tribunal establishing proclamations, the urban land clearing and compensation case appellate tribunal and the social security

[143]Cane, supra note 60, p. 91-95
[144]Supra note 73, Art 4-5
[145]Ibid schedule 2
[146] Supra note 140 Art. 36

appeal tribunals establishing proclamation leave the entire issue to the determination of the executive.[147]Similarly the tax appeal commission establishing proclamation empower ministry of justice to establish detail criteria of qualification but establish general guideline requiring the members to have good behaviour, professional knowledge and general knowledge, and represent the business community. However, so far there is no regulation or directive issued by the government regulating the qualification of judges in the above three tribunals.[148]This has created lack of transparency and affected the quality of tribunal judges.

3.2.2.2. Appointment, term of office and removal of tribunal judge

The process of appointment, term of office and removal are the other issues determining the decisional independence of administrative tribunal judges. In order to impartially review the legality of administrative action, judges should be protected from the retaliatory action of public authorities. They should be able to decide cases without worrying about the consequence of their decision on their personal interest.[149]Thus, in order to do this they should have security of tenure, and their reappointment and removal should be protected from the influence of authorities under their jurisdiction of review. Thus who appoint and remove judges from office, by what procedure and on what conditions is substantially influence on the decisional independence of judges.[150]

In UK all members of the First-tier Tribunal and the non-legal expert judge in the Upper Tribunal are appointed by the Lord Chancellor.[151]However, judge of the Upper tribunal who is legal expert is appointed by the Queen on the advice of the Lord Chancellor like judges of

[147]Proclamation No.721/2011, Federal NegaritGazeta 18th year, No. 4, Art. 30 and Proclamation No. 714/2011, Federal Negarit Gazette 17th year, No.78, Art.57
[148]Lencho, supra note 90, p.374
[149]John Ferejohn, "Independent Judges, Dependent Judiciary: Explaining Judicial Independence", *Southern California Law Review* 72(1998): p.354
[150]Cane, supra note 60, p. 98
[151]Id, p. 99

ordinary courts.[152]Independent Judicial Appointment Commission conducts the selection of judges to be appointed in both tiers of tribunals according to clear criteria on competitive basis.[153]Both members of the First-tier and Upper Tribunal are appointed for fixed term of office and they can be removed before the expiry of their term for misbehaviour and inability up on the concurrence of Lord Chancellor and Chief Justice.[154]

While in Ethiopia like the qualification requirements there is no consistent practice in the appointment, term of office and removal procedure of the different tribunal judges. Judges of the tax appeal commission are appointed by minister of justice for two year.[155]While judges of urban land clearing and compensation cases appellate tribunal and the social security appellate tribunal establishing proclamations confer the power of determining the manner of appointment, term of office and ground of removal to the respective government authorities.[156] However, so far there is no regulation or directive enacted by these authorities concerning these issues.

Thus, unlike the UK the procedure of appointment and removal of tribunal judges is not free from the influence of administrative authorities whose decision the tribunals review. Especially in case of the urban land clearing and compensation case tribunal and social security tribunal, the absence of clear law and transparent system on regulating the process pave the way for the authorities to manipulate the process and interfere on the decisional independence of judges under threat of removal.

3.2.3. Administrative tribunals Procedure

In most modern democratic countries' constitution, government actions affecting the life, liberty and property of individuals is required to be in line with procedural due process

[152]Ibid
[153]Ibid
[154]Id, p.101
[155]Proclamation No. 286/2002, Federal NegaritGazeta 8th year 8th, No.34, Art.114
[156]Supra note 147

guarantee.[157]It prevents arbitrary interference on individuals' rights and preserves the rule of law. Because of this, both administrative authorities and adjudicatory bodies are supposed to work in line with guarantees. It includes among other rights, the right to get notice, opportunity to be heard and reasoned decision. And failure to act in line with the predetermined procedure amounts to denial of procedural due process of law and violation of fundamental rights.[158]

As I have discussed in chapter two of this paper, some of the major advantages of administrative tribunal adjudication over ordinary courts adjudication are flexibility and informality. Unlike ordinary courts, tribunals are not required to strictly follow ordinary procedural laws. This enables them to be friendlier, more effective and facilitate administrative efficiency.[159]However, their procedural informality and flexibility should have a limit. Unrestricted procedural informality may expose procedural due process guarantees of individuals' rights to arbitrary power exercise. Even though they deviate from ordinary procedural laws, as long as their decision affects individuals' rights, tribunals procedure should be within the constitutional procedural guarantee of individual right.

When we see the procedure of administrative tribunals in the three jurisdictions, in the UK the Tribunals, Courts and Enforcement Act of 2007 establish and empower a "Tribunal procedure committee" to enact "Tribunal Procedure Rule" governing the proceeding of the First-tier tribunal and the Upper tribunal.[160]The committee is required to exercise its power

[157] Erwin Chemrinsky, "Procedural due process claims," *Touro Law Review* 16(2011): 871
[158] (http://law2.umkc.edu/faculty/projects/ftrials/conlaw/proceduraldueprocess.html)

[159]Chemrinsky, supra note 19, p.889
[160] Supra note 73, Art. 22 and 44

with a view of securing justice and fairness, and making tribunals accessible, efficient and quick.[161]And the rules are required to be simple and expressed. [162]

While in South Africa the Promotion of Administrative Justice Act requires the Rules Board for Court of Law to make and implement rules of procedure for judicial review by courts and administrative tribunals.[163]However, before the promulgation of the rule it needs to be approved by the parliament.[164]In addition, the ministry of justice is empowered to establish an advisory council on improvement to compliant procedure in internal administrative appeal and judicial review by courts and tribunals.[165]

As we can see from the above two jurisdictions, in the UK the law empowers the Tribunal Procedure committee to enact tribunal procedure rules but establishes general guidelines within which the committee enacts the rule. And in South Africa even though there is no guideline established to be followed by the rule board for court of law, the law subjects the rules to the approval of the parliament, before having a force of law. Thus, in both cases the parliament has some level of control on the nature of procedural rules to be enacted by the other bodies.

However, unlike the above two jurisdictions, there is no generally applicable law regulating the procedural rule of administrative tribunals in Ethiopia. Mostly, administrative tribunals establishing proclamations neither establish guidelines for the enactment of procedural rule nor subject procedural rule of administrative tribunals to the consent of the parliament. Rather it either simply empowers administrative tribunals to make their own procedural rule or leave the issue unregulated.

[161]Ibid
[162]Ibid
[163] Supra note 114, Art. 7(3)

[164] Id, Art. 7(5)
[165] Id, Art. 10(2)

If we see some of the provisions of administrative tribunals establishing proclamations, first, the social security appeal tribunal establishing proclamation empowers the tribunal to enact its rules of procedure. However, it does not establish guidelines about the nature of the rules to be enacted. This enables the tribunal to have ultimate say on the nature of its rule of procedure.[166]Secondly, the tax appeal commission establishing proclamation contains some provisions on the right to be informed of the reply of the authority, burden of proof, *exparte* proceeding, what the decision of the appeal commission should contain and the right to appeal. However, it neither empowers other bodies to make procedural rule nor discusses in detail how the proceeding of the tribunal should be conducted.[167]Thirdly, urban land clearing and compensation cases appellate tribunal establishing proclamation states that the commission shall not be governed by the ordinary civil procedural law and empower regional states or city administration to enact procedural rules for the expedient determination of cases.[168]The only guidelines the law establish for the enactment of the rule is ensuring expediency, but the other procedural issues are not regulated.

Generally, the absence of administrative tribunal procedure rule or empowering administrative tribunals to enact their own procedural rule in the absence of guidelines by the legislator expose fundamental procedural guarantees of individual right to arbitrary violation. It also substantially affects the competence of administrative tribunals to exercise judicial power. At this point it is worth mentioning the argument of Yemane Kassa on the effects of the absence of tribunal procedure rule on the constitutionality of administrative tribunals.[169]He argues that according to Art. 78(4) of the constitution, "institutions or bodies other than ordinary courts that do not follow legally prescribed procedure cannot be established to exercise judicial function." Thus, he states that administrative tribunals established to exercise judicial power in the absence of legally

[166] Proclamation No. 714/2011, Federal Negarit Gazeta 17th year, No.78, Art.57 (5)
[167] Supra note 155, Art.110 and 111
[168]Proclamation No.721/2011, Federal Negarit Gazeta 18th year, No. 4, Art. 30(8)
[169]Kassa, supra note 9, p.78

prescribed procedure are unconstitutional.[170]Therefore, absence of administrative tribunal procedure rule affects not only the competence of the tribunal and the quality of justice they render, but also their constitutional base.

[170]Ibid

Conclusion

Judicial review of administrative action plays a crucial role in restricting public authorities within their remit and protecting individual rights from arbitrary power exercise. Nevertheless, this is true only when the review is conducted by a court or other independent and competent body. However, as I discussed in this paper, even though the Ethiopian constitution states that judicial power is vested in the courts, the legislator has excluded the inherent judicial power of the courts and diminished their role in review of administrative action; by establishing administrative tribunals rendering final decision non-reviewable by courts.

However, since the source of both legislative and judicial power is the supreme constitution, the legislator has no power to exclude the constitutional judicial power of courts. And the mere indication in the constitution about the possibility of exercise of judicial power by other bodies does not imply finality of such body's decision and exclusion of judicial power of the courts. Thus, legislations establishing finality of administrative tribunal decision and excluding judicial power of courts are contrary to the constitution.

In addition, even though the constitution indicates the possibility of the exercise of judicial power by competent bodies other than the courts, as we can see from the institutional structure, composition and procedure of administrative tribunals, they are not institutionally independent and do not follow legally established procedure as required by the constitution. And unlike South Africa and the UK, the process of selection, appointment, promotion and removal of tribunal judges lack transparency and is subject to the will of the executive branch. This substantially affects the competence of the tribunals to exercise judicial power and puts in question their constitutionality.

In order to eliminate the uncertainty and inconsistence on the judicial power of administrative tribunals and their hierarchical relation with ordinary courts, the legislator should either establish a centralized appellate administrative tribunal with appellate jurisdiction over all administrative tribunals, or enact a comprehensive law governing the operation of administrative tribunals and their relation with the courts. It should also either enact comprehensive tribunal procedure rule governing litigations in all administrative tribunals or establish guidelines under which administrative tribunals determine the content of their procedural rule. In addition, in order to strengthen the independence of tribunal judges, the process of selection, appointment, promotion and removal of tribunal judges should be transparently administered by the federal judicial administrative council or other independent body.

Bibliography

Books

1. Andenas Mads, Duncan Fairgrieve, Ed., *Judicial review in international perspective*, The Heague: Kluwer Law International, 2000

2. Cane Peter, *Administrative tribunals and adjudication*, Oxford: Hart publisher, 2009

3. C.T Emery, B. Smythe, *Judicial review: legal limits of official power*, London: Sweet and Maxwell, 1986

4. Hallliday Simon, *Judicial review and Compliance with administrative law*, Oxford: Hart, 2004

5. Hoexter Cora, *Administrative law in South Africa*, Cape Town: Juta, 2007

6. Fordham Michael, *Judicial review Handbook*, Oxford: Hart, 2004

7. Forsyth Christopher, Ed, Judicial review and the constitution, Oxford: Hart Publishing, 2000

8. J. Thomas Higgins, *Judicial review unmasked*, West Hanover, Mass: Christopher Publishing House, 1981

9. Nahom Fasil, *Constitution for the nation of nations: the Ethiopian prospect*, Lawrenceville, NJ: Red Sea Press, 1997

10. R.J.F. Gordon, *Judicial review: law and procedure*, London: Sweet and Maxwell, 1996

11. Rosenfeld Michel, Sajo Andras, *The Oxford Handbook of Comparative Constitutional Law*, Oxford: Oxford University press, 2012

12. Schyff Van Der, Gerhard, *Judicial review of legislation: a comparative study of the United Kingdom, the Netherlands and South Africa*, Dordrecht: Springer, 2011

Journals

1. Erwin Chemrinsky, "Procedural due process claims," *Touro Law Review* 16(2011): 871-894

2. Gordon S. Wood, "The Origins of Judicial Review Revisited, or How the Marshall Court Made Courts More out of less", *Washington and Lee Law Review* 56(1999):786-809

3. John Ferejohn, "Independent Judges, Dependent Judiciary: Explaining Judicial Independence", *Southern California Law Review* 72(1998): p.353-384

4. Mauro Cappelletti, "Judicial Review in Comparative Perspective," *California Law Review* 55 (1970):1017-1053

5. Michel Troper, "The logic of the justification of judicial review," *International Journal of Constitutional Law* 1 (2003):99-121

6. Taddese Lencho, "The Ethiopian Tax System: Excesses and Gaps," *Michigan State International Law Review* 20 (2012):327-380

Unpublished materials

1. Gillian C. Armstrong, Administrative Justice and Tribunals in South Africa: A Commonwealth Comparison, (2011), (Unpublished LLM thesis, University of Stellenbosch

2. Tigst Assefa, Judicial review of administrative action: a comparative analysis, (January 2010) (Unpublished LLM thesis, school of law Addis Ababa University)

3. Yemane Kassa, The Judiciary and its interpretative power in Ethiopia: A case study of the Ethiopian revenue and custom authority, (November 2011) (Unpublished LLM thesis, school of law Addis Ababa University

Laws

1. The Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta, 1st year No.1, 21st August 1995

2. The Constitution of Republic of South Africa, 1996

3. Income tax proclamation, Proclamation No. 286/2002, Federal Negarit Gazeta 8th year 8th, No.34

4. Proclamation to provide lease holding of urban land, Proclamation No.721/2011, Federal Negarit Gazeta 18th year, No. 4

5. Public servant pension proclamation, Proclamation No. 714/2011, Federal Negarit Gazette 17th year, No.78

6. Promotion of Administrative Justice Act, 2000

7. Tribunals, Courts and Enforcement Act, 2007

Cases

1. Associated province picture House v. Wednesburt corporation (1948) 1 KB 223

2. Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147

3. The Ethiopian Privatization and Public Enterprises Supervising Agency V. heirs of Ato NurBeza Terga, Federal Supreme Court Cassation Bench, file No. 23608, decided on November 12, 2010

4. Maheberawi Wastina Balesiltan V. Ato Berhanu Hiruy and Kebede G/Mariam, Federal Supreme Court Cassation Bench, File No.18342, decided on December, 2005

5. Marbury v. Madinson, 5U.S.(1 Cranch)137(1803)

6. R v Medical Appeal Tribunal, ex parte Gilmore [1957] 1 QB 574

Websites

1. http://www.publiclawproject.org.uk/downloads/GuideToJRProc.pdf (accessed on February 2013)

2.http://www.mondaq.com/x/209980/Antitrust+Competition/The+Tax+Administration+Act+Takes+Effect (accessed on march 2013)

3. http://www.scribd.com/doc/39458125/Administrative-Tribunal (accessed on February 2013)

4. http://terryandco.hubpages.com/hub/Advantages-and-Disadvantages-of-Administration-Tribunals (accessed on February 2013)

5. http://www.lawteacher.net/english-legal-system/lecture-notes/admin-tribunals.php , (accessed on February 2013)

6. http://www.lawteacher.net/english-legal-system/lecture-notes/admin-tribunals.php (accessed on February 2013)