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Sources of Administration Law

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Sources of Administration Law

Administrative law principles and rules are to be found in many sources. The followings are the main sources of administrative law in Ethiopia.

The Constitution

The F.D.R.E constitution contains some provisions dealing with the manner and principle of government administration and accountability of public bodies and officials. It mainly provides broad principles as to the conduct and accountability of government, the principle of direct democratic participation by citizens and the rule of law. It also embodies the principle of separation of powers by allocating lawmaking power to the house of people's representatives, executive power cumulatively to the Prime Minister and Council of Ministers, and finally the power to interpret the laws to the judiciary. Art, 77(2) talks about the power of Council of Ministers to determine the internal organizational structure of ministries and other organs of government, and also Art 77(3) envisages the possibility of delegation of legislative power are also relevant provisions for the study of the administrative law, (see also Articles 9(1), 12, 19(4), 25, 26,37,40, 50(9), 54(6)(7) 55(7), (14)(15), (17), (18),58,66(2),72-77,82,83,93,101-103 of F.D.R.E constitution).

Legislation

Laws adopted by parliament, which may have the effect of creating an administrative agency, or specify specific procedure to be complied by the specific authority in exercising its powers, can be considered a primary sources for the study of administrative law. The statute creating an agency known as enabling act or parent act, clearly determines the limit of power conferred on a certain agency. An administrative action exceeding such limit is an ultra virus, and in most countries the courts will be ready to intervene and invalidate such action. Moreover, parliament, when granting a certain power, is expected to formulate minimum procedure as to how that power can be exercised to ensure fairness in public administration. This can be done, on the one hand, by imposing a general procedural requirement in taking any administrative action mainly administrative rule making and administrative adjudication just like the American Administrative Procedure Act (APA). And on the other hand, parliament in every case may promulgate specific statutes applicable in different situations.

Delegated Legislation

Rules, directives and regulations issued by Council of Ministers and each administrative agencies are also the main focus of administrative law. Administrative law scholarship is concerned with delegated legislation to determine its constitutionality and legality or validity



and ensure that it hasn't encroached the fundamental rights of citizens. One aspect of such guarantee is subjecting the regulation and directive to comply with some minimum procedural requirements like consultation (public participation) and publication (openness in government administration). Arbitrary exercise of power leads to arbitrary administrative action, which in turn, leads to violation of citizen's rights and liberty. Hence, the substance and procedure of delegated legislation is an important source of administrative law.

Judicial Opinion

Much, but not most, of the doctrine that envelops and controls administrative power is found in judicial analysis of other sources. However, much of administrative law will not be found solely in judicial opinions. Furthermore, the opinions themselves must be carefully pursued to avoid generalizations about controls on agency behavior that may not be appropriate, as the outcome of many cases may turn on particular statutory language that may not necessarily reflect the nature of disputes in other agencies.

The American experience as to judicial opinion influencing administrative law is characterized by lack of generalization and fluctuating impacts. These may be due to two reasons. First, cases coming before the courts through judicial review are insignificant compared to the magnitude of government bureaucracy and the administrative process. Second, even as between two apparently similar cases, there is a possibility for points of departure.

In Ethiopia, judicial opinion is far from being considered even as the least source of administrative law. Only cases less than 1% go to court through judicial reviews. The subject is not known by judges, lawyers, the legal profession and administrative officials, let alone by the poor and laypersons who are expected to seek judicial remedy for unlawful administrative acts and abuse of power by public officials. However given the fact that presently the rule of precedent is applicable, judicial opinion, it is hoped, may have a limited role as one of the sources of administrative law in Ethiopia.

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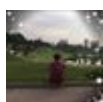
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