inistry of Higher Education and Scientific Research.

- Muthanna University

ıw Collage

Series of lectures in

The Administrative law

For the Students of the collage of law

The second stage

by

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First Chapter: Administrative Law in General

Administrative law has identified as a branch of public law itself and it distinct and separate from constitutional law. That means a fit subject matter of independent study and investigation in its own Right. It has been distinguished from private law which deals with Rights and liberties of private individual in relation to one another such as contract law.

1-Definition :

It is difficult to evolve a scientific, precise, satisfactory and definition of administrative law many jurists have made attempts to define it, but non of the definitions has completely demarcated the mature, scope & content of Administrative law. The main object of Administrative Law is protecting individuals Rights.

There are various definitions by the certain jurists of the administrative law

I- Holland

Constitutional law describes the various organs of the sovereign powers while administrative law describes them as in motion[1].

e.g.: three organs – legislative, executive, and judiciary powers

[1] - [1] page 8-10 - Dr. M.P.Jain – Principles of administrative law –E 16, 2010

While Administrative law puts it in motion by Delegated Legislative, sub- Delegated Legislative. This Holland's view was not accepted by, Maitland.

II- Maitland

Holland merely deals with structure of constitutional law & gives functions of administrative law.

III- Keith

It is logically impossible to separate the constitution law & administrative law and all attempts are artificial.

Though we say there administrative law is distinct from constitutional law but it is base on constitutional law. Because of it deals with grievances which made by administrative law.

IV- Sir Lvor Jennings

Administrative law is the law relating to the administration. It determines the organization, power & duties of the administration. This is the most widely – accepted definition.

V- Wade,

Administrative law is law relating to the control of governmental power. According to him, primary object of administrative law is to keep of there government within their legal bounds so as to protect the citizens against their abuse.

VI- K.C.Davis

"Administrative law is there law concerning the powers & procedures of administrative law agencies including specially the law governing Judicial Review of administrative law actions"[2].

VII- Large Definition in the some Anglo-Saxon and Latin countries

[2]- [2] page 8-10 - Dr. M.P.Jain – Principles of administrative law –E 16, 2010

Administrative law is a set of legal rules which are it relating in the administrative activity and administrative bodies, which it's constituting, organizing, explaining of specialty, and the matters of practice for it activity and the manner of administrative activities, and also relation between individuals and administration, judicial and administrative control on the public administration acts.

VIII-France definition of administrative law

Administrative law means a legal rules which govern administrative activity, and it is different from rules of private law , which govern individual activity.

But the definition of administrative law is subject to three studies, as follow:-

لكن يخضع تعريف القانون الإداري لثلاث دراسات على النحو التالي: -

a- The first subject is devoted to the organic structure of public administration.

الموضوع الأول مخصص للهيكل العضوي للإدارة العامة.

b- The second subject is devoted to the operation of public administration.

الموضوع الثاني مكرس لتشغيل الإدارة العامة.

c- The third subject is concerned with the legal restraints to which administrative authorities are subject.

الموضوع الثالث يتعلق بالقيود القانونية التي تخضع لها السلطات الإدارية.

Administrative law can be defined as a branch of public law which deals with the composition, powers, duties, rights and liabilities of public authorities.

يمكن تعريف القانون الإداري على أنه فرع من القانون العام الذي يتعامل مع تكوين السلطات العامة وسلطاتها وواجباتها وحقوقها ومسؤولياتها.

Question / what is define of the administrative law?

Answer :

2- Relationship between administrative law and constitution law

a- It is submitted that constitutional law is the basis of administrative law. In general, it defines the organs of the state and determines the functions of each of them. But the detailed regulation of these functions is left to administrative law.

هو مقدم بأنّ القانون الدستوري هو قاعدةُ (أساس) للقانونِ الإداريِ. وهو عُموماً يُعرّفُ هيئات الدولة ويحدد وظائفَ كُلّ منهما، لكن التنظيم المفصل لهذه الوظائفِ تُتْرَكُ إلى القانونِ الإداريِ.

b- It is, however, to be noticed that administrative law doesn't deal with all acts of the executive. It deals only with the so-called administrative acts which relate to the daily execution of laws. It doesn't deal with what are called the Acts of State, such as the declaration of War and Peace, the making of treaties, and the recognition of foreign states. All these acts are within the purview of the constitutional law.

هي، على أية حال، لكي تلاحظَ بأنّ القانونِ الإداريِ لا يَتعاملُ مع كُلّ أَفْعال (الاعمال) التنفيذية. هو يَتعاملُ فقط بما يسمّى بالإجراءات الإدارية التي تَتعلّقُ بالانجاز اليوميِ للقوانينِ. هو لا يَتعاملُ مع الذي يَدْعو أَفْعالَ (تصرفات) الدولة، مثل إعلانِ الحرب والسلامِ، وعمل المعاهداتِ، واعتراف الدول الأجنبيةِ. كُلّ هذه الأَفْعالِ ضمن مدىِ بصر القانون الدستوري.

The question which may arise in this connection is whether the government, in a certain situation, exercises its governmental jurisdiction or its administrative jurisdiction. In the first case its acts must subject to the constitution, while in the second they fall within the administrative law.

السؤال الذي قَدْ يَظْهرُ في هذا الصدد ما أذا الحكومةُ، في بعض المواقف، تمارسُ سلطتها الحكوميةَ أَو سلطتها الإداريةَ. في حالةِ الأولى أَفْعالِها يَجِبُ أَنْ تخضع للدستورِ، بينما في الحالة الثانيةِ تقع ضمن القانونِ الإداريِ.

c- Constitutional law and administrative law are so interrelated that it is difficult to distinguish the limit of each. That makes such a distinction more difficult is that constitution themselves don't distinguish between the governmental and administrative executive.

القانون دستوري والقانون إداري مُتَرابَط جداً بِحيث صعبُ لتَمييز حدود كل منهما. ذلك يجعل مثل هذا الامتياز الأكثر صعوبةً بأنّ الدستورِ بأنفسه لا يُميّز بين التنفيذ حكومي والإداريِ.

Q/ What is the relationship between constitutional law and administrative law?

Answer:

d- The development of administrative law

The emergency and development of administrative law are closely associated with political, social and economic factors.

In France, where administrative law originated in the late eighteenth century, polities played a decisive role in this formulation. In modern times, it is the complex society with its diverse social and economic aspects that has motivated the adoption of administrative law of one type or an other.

A- In France

1- In the eighteenth century, the system of justice in France was slow and costly. The ordinary courts interfered with the activities of the administration. The parliaments of Ancient Regimes (old systems) impeded attempts at administrative reform.

2- The demand for this reform didn't only come from a suffering public but also from the advisers of the monarch. Encouraged and inspired by the doctrine the separation of powers and an elaborate system of checks and balances, the leaders of the such a reform.

3- When Napoleon as first Consul come to build a viable governmental machine, restrictions on the courts suited him. His desire was to create a strongly centralized autocracy, he also wanted to establish a strong, almost military, control over his administrations in provinces (territories) and in the branches of government. Therefore, the

administration was thought of as a separate machine independent of both legislature and the ordinary judiciary.

4- In his constitution of 1799, Napoleon established a Council of State (Counsel d'Etat), which marked the beginning of administrative law.

B- In Modern Times

1- It is submitted that the role of State has undergone a fundamental change. Under the **Laissez-faire ear** in the nineteenth century, the State was mainly concerned with the defense, the maintenance of law and order, and the protection of life and property of the subject.

2- Such a limited role of the State is not longer an accepted concept. To day, we are living in an era of a welfare State. This State has to promote the prosperity and well being of the people. Mean while, the society itself has become much more complex than ever before.

3- With this enlarged role of the State and complexity of society, a vast number of additional functions has been forced upon every government. Thus, the work of administration covers many aspects of life. Examples are : health, education, pension and social security, planning and housing.

4- These functions are carried out under rules of law which at once give powers and delimit their scope. These rules make up administrative law. To this law, it is usually ascribed topics of local government, police and public corporations.

5- In brief, the growth of administrative process has been a universal phenomenon (situation) of contemporary society. The speed and manner of this process have varied greatly from country to country.

e- **Function of a modern state**:

i- As a protector
ii- As a provider
iii- As a regulator
iv- As a enterpriser
v- As an arbiter

f- **Reasons for the Growth of Administrative law**

Reasons of administrative law growth in 20th century are there expansion of powers & functions of administrative law authority of the change in concept of state. In 19th century there was Laissez faire state.

I- Laissez Faire Era:- It manifested itself in the theories of individualism, individual enterprise.

II- State policy Era :- Primary duty of there state was –

i- To maintain law & order within there country.
ii- Collect some taxes or revenues.
iii- Defending there country from external aggression.
iv- Dispensing justice to its subjects.

III- Social welfare state Era:- Which lays emphasis on there role of there state as a vehicle of socio - economic regeneration & welfare of people.

Second Chapter: characteristics of administrative law

There principal characteristics particularize administrative law. The first is that it is a judge made law.

The second is that it is a flexible law.

The third is that it establishes a balance between private law and public law.

1- A judge made law:

A- Generally speaking, administrative law is essentially judge made law or case law. No doubt, there are some written laws and regulations in administrative law. But they aren't its most important parts or components. Usually, they govern a very specific matter. However, the fundamental principles of administrative law are not enacted.

B- These principles are derived from the decisions rendered by the administrative courts. In France, for example, the fundamental rules of administrative law are stated in leading cases by the Council of the State. This is inspire of the fact that certain particular subjects are regulated by enacted law or decrees.

2- A flexible law:

The first characteristic of administrative law leads to a second, namely, flexibility. As the rules of administrative law are not written, they have a flexibility which permits constant adaptation to changes in the administrative life. This flexibility makes it possible to dispense with enacted law. Thus the rules concerning the liability of the State have evolved in France from a position of non- liability to one far more binding than for individual citizens. But this evolution has happened without any action on the part of the legislature.

3- A law balancing between public interest and private rights.

A- prerogatives of public corporations:

1- It goes without saying that a strong administration requires extensive powers which aren't given to individual citizens. So administrative law gives public corporations special rights which may be described as privileges of the administration. Presumably, these are exercised in the public interest.

2- An example of these privileges is the power of the civil servants to enforce their decisions without having recourse to the courts.

The second example is the privilege which permits the State to be paid before all the other creditors.

The third is the rights of requisition and expropriation which empower public corporations to acquire property without the consent of the owner.

3- Such wide privileges make the administration appear as not only strong but also dictatorial. The State itself may then be regarded as a police State.

B- The defense of individual rights

1- Although the prerogative of public authorities are very extensive, they aren't absolute.

In order to defend private citizens against the public corporations, the administrative courts have established two principal limitations on their activities.

The first is that they must not act against the law.

The second is that they must pay damages when cause injuries.

2- Thus, while it confers extensive powers upon public corporations to enable them to perform their duties, administrative law protects individuals against the wrongs of these corporations. By this way, it strikes a balance between private right and public advantage.

Third Chapter: Liability and Legality of Administration

To secure justice for the individual in his dealings with administration, two central principles have evolved by administrative courts. The first is that of liability and the second is that of legality.

1- Administrative liability

This principle means that the administration will be liable to be indemnify the citizen whose rights are infringed though and unlawful act on its part. The liability of public authorities is generally accepted so that the citizen is able to sue them for damages in tort or contract annulment of the administrative act or decision.

A-**Tortuous liability**

Administrative torts are usually the result of the commission of wrongful(unjustly) acts and omission of duty. Wrongful acts are those acts which are committed by the servants or agents of a public authority in course of their employment. Their liability arises when negligently execute their duties. It also arises when they fail to perform their statutory duties.

It is clear that this liability is based, first and foremost, on fault, which consists of some defect or failure in the operation of a public service. It is a liability for fault.

However, liability may arise without fault. The administration may find itself liable even if it is guilty of no fault. The jurisprudential basis for liability without fault is that of the "risk theory".

According to this theory, the activities of the State, even when conducted without fault, may in certain circumstances crate a

risk. If the risk materializes, the State should indemnify the individual injured by these activities.

Another basis for liability without fault is the principles of the equality of the citizens in bearing burdens. According to this principle, what is done in the public interest, even if done lawfully, may still give rise to a right to compensation when the burden falls on one particular person.

B- **Contractual liability**

1- To render a public service, a public authority is usually entitled to enter into contracts. It may conclude contracts with private citizens or another authority. These contracts are called administrative contracts.

2- Certain legal systems make a distinction between administrative contracts and other contracts. The latter the remain the subject of the civil law, whereas the former are governed by administrative law.

3- The administrative law itself usually works out special principles which stem mainly from the idea of the need to recognize the predominance (prevalence) of the public interest. This interest must always prevail (dominate), even to the extent of over ruling the express of the contract.

4- Proceeding from the idea of public interest, certain administrative systems developed principles designed to serve this interest. Thus, in France, according to these principles, the public authority will not be coerced (force)

into performing its obligations. Mean while, the other party will not normally be entitled to repudiate the contract merely because performance has become very onerous (hard) through administrative action or unforeseen circumstances.

5- It is rightly said that an administrative contract is one concluded between essentially unequal parties. Public authorities have to many powers which ordinary citizens do not posses. This may cause harm to these citizens.

6- However, a public authority is created by law, and has only such powers as are conferred by law. So, a contract is void if the authority concerned has no power to make. Also, the authority has to contract only for the purposes authority by law.

7- Moreover, the courts have wide powers to supervise the exaction of public contracts. They may direct the payment of indemnities to private party. Such indemnities are due when it become uneconomical for this party to carry out his part. The contractor is also entitled to be released from his obligation in case of force majority.

2- Administrative legality

A- This principle means that the administration must act in accordance with the law. Otherwise, its acts run the risk of annulment(cancel- revocation) before the administrative judge. The principle assure that the administration obeys the Rule of Law. In technical terms if the administrative authority was

acting **inltra vires** (within its powers) the courts cannot interfere, if it was acting **ultra vires** (beyond of power) the courts may interfere.

B- When does the administration act illegally? There is a variety of grounds on which the administration will be held as acting illegally.

Among these are the following:

1) Absence of power.
2) Abuse of power, a power is abused.
   - If it is exercised for an unauthorized purpose.
   - If it is exercise is totally unreasonable.
   - If irrelevant considerations are taken into account.
3) Defect of form.
4) Disregard for a procedure to be followed in the exercise of power.
5) Sub-delegation of powers without authorization.

C- Legality and natural justice

Public authorities some time have a duty to act a judicial manner. This means that the rules of natural justice must be observed. A decision is if it made contrary to these rules, and the rights of particular individuals are adversely affected.

There are two main rules of natural justice.

1) The rule against bias, this is sometimes is expressed in the maxim "no one can be a judge in his own cause".

2) The rule that no one may be condemned unheard, this implies that each party must have reasonable notice of the case, he has to meet, he must also be given an opportunity of stating his case, and answering arguments against it.

ıe Public Principles Of Administrative Law, For The Students Of The ıw College - The Second Stage By The Lecturer: Basim Mohsin Nayyef – L.M, Master Of Administrative Law, Pune University

Fourth Chapter : Delegated Legislation

1- Introduction

Delegated or subordinate legislation is rules of law made under the authority of an act of a parliament by some person or body.

It is a principle of political democracy that only the elected representatives of the people should make laws.

Yet today this principle has been eroded(infirm, emaciated, weakness).

It is the administration that is the great producer of laws, most of the laws passed by parliament are conceived and drafted in the ministries and other departments.

2- What is the valid delegation?

i- Legislature cannot offense itself or about itself. Hence it cannot erase its own function.

ii- Legislature cannot delegate plenary or essential legislative functions.

iii- Even if there is delegation p control over the Administrative Law should be a living continuity as a constitutional necessity.

3- Factors which are responsible to the growth of Delegate Legislation

Hence the importance of Delegate Legislation comes herein again.

I- Lack of time and work load

Every time enacting laws is very much time consuming especially because of the workload of the legislature unlike laissez faire era.

That's why the legislature confides itself to laying down broad policies and principles in the legislation it enacts and leaves the task of shaping and formulating details to the concerned administrative agency. Hence, a method to economize legislative time is Delegate Legislation.

II-Technicality or Lack of expertise.

Sometimes, the subject- matter on which legislation is required is so technical in nature. So they need the assistance of expertise of that field. Members of the parliamentarians may be the best politicians but they are not experts to deal with highly-technical matters which are required to be handled by experts.

III- Experiment

The practice of Delegate Legislation enables the executive to experiment. This method permits rapid utilization of experience and

importation of necessary changes in application of the provisions in such experience.

IV- Emergency

E.g.

A) Break down of Law and Order, epidemic, floods.

B) External aggression, economic depression.

C) Internal disturbances

V-Flexibility

At the time of passing any legislative enactment, it is impossible to foresee all the contingencies, and some provision is required to be made for these unforeseen situations demanding exigent action.

A legislative amendment takes a long process and time. But by the advice of Delegated Legislation the executive can meet the situation expeditiously.

4- Criticism of the delegated legislation

Prof. **Dicey**: the growth of Administrative law gives power to Bureaucracy, because of they get discretionary power, it leads to despotism.

But there are some procedural safeguards. If followed them there would not be a misuse or despotism by Bureaucracy, because done by unelected persons or officers of government.

5- Dangers of system of delegated legislation

A-Matters of principle

These matters may be inadequately treated by parliament. As a result, they fall to be decided by delegated legislation. This prevents full discussion and allows more power and legislative initiative to the administration then is desirable in a democracy.

B- Inadequacy of control

Parliament lacks the time to examine the delegated legislation thoroughly. Remedy in the courts is retroactive effect (ex-post facto) and limited to the construction of statutory powers. The jurisdiction of the courts are sometimes expressly excluded.

C- Lack of publicity

Unlike a law passed by parliament, a delegated legislation is not always required to be published. The result is that the purport of a delegated legislation is not brought to the notice of the public, or of persons likely to be affected by it.

D- Loose definition of powers

The delegated powers may be loosely defined. This permits the administration to assume wide powers. An ill-defined (uncertain, unclear) delegated power may also encourage (help) the abuse of power.

6- Sub-delegation

The power of delegated legislation vested in one authority is itself sometime delegated to another authority. This sub-delegation may go on through several stages in a hierarchy of law-making authorities.

Sub-delegation is only lawful if expressly or impliedly authorized (empowered) by the enabling law. the general principle in this connection is that "a delegate cannot be Co-legate"

7- Control of delegated legislation

it is generally agreed that safeguards should be provide to secure the proper use of delegated legislation. These safeguards are the following:

A- Parliamentary control (legislative control)

Under certain legal system, delegated legislation must be controlled by parliament. The latter may debate (discussion) whether such power should be delegated at all, and if so, on what terms.

Enabling laws may require delegated legislation made under them to be laid before parliament. Here the delegated legislation may be annulled (invalid) by resolution (by decision) of parliament within a specific period. It may also be approved (confirmed) and so it is brought in to operation allowed to continue.

B- Judicial control

Delegated legislation can be challenged in the counter by an aggrieved (persecuted) person. The courts may hold the delegated legislation invalid for substantive or procedure **ulter vires**.

C- Other Techniques

I- Prior consultation

In certain countries, ministries or rule making authorities normally consult (reference) parties concerned (interested) before they formulate delegated legislation.

Consultation is but an administrative application of the democratic principle that the nation should be govern by consent. This is why consultation with persons or groups whose interests are affected by delegated legislation is made compulsory.

Thus, the validity of the delegated legislation made without prior consultation may be impugned (objected to).

II- Publication

We have already mentioned the importance of publishing delegated legislation. To avoid inconvenience (inappropriate) caused by lack of publicity, laws in some countries make it imperative to have delegated legislation published (declared).

In Britain, for example, the 1946 Act provide that all statutory instruments must be printed, numbered and put on sale immediately after they have been made. They must also show the date of operation.

Exceptions are instruments which are local or temporary in nature, bulky schedules and instruments which it would it be contrary to the public interest to publish.

1. Aggrieved (Persecuted)
2. Annulled (Invalid)
3. Approved (Confirmed)
4. Assume
5. Authorized - Empowered
6. Bulky
7. Compulsory (Imperative)
8. Concerned (Interested)
9. Connection
10. Consent
11. Consult (Reference)
12. Debate (Discussion)
13. Encourage
14. Expose Facts
15. Ex-Post Facto (Retroactive Effect)
16. Expressly
17. Ill-Defined
18. Impliedly
19. Impugned (Objected To)
20. Inconvenience (Inappropriate)
21. Permits
22. Procedure
23. Published (Declared)
24. Resolution (Decision)
25. Substantive

Fifth Chapter : Ombudsman Or (Parliamentary Investigator)

1- Historical background

Ombudsman means attorney or representative. He is a State official appointed by the legislature to keep a watchful eye on the behavior of the administration towards the citizens.

The institution originated in Sweden as early as 1809. It was created at a time when the power of the king was strong and unchecked. There ware no administrative courts as there are today.

Since 1809, the ombudsman office has been copied by many countries in Europe, America, Africa, Asia and Australia.

2- The duties

According to the Swedish Constitution of 1809, the duties of the ombudsman are:

A- To ensure that judges and civil servants observe the law and to prosecute in appropriate cases.

B- To submit an annual report to parliament.

C- To recommend changes in the law.

3- The powers

The powers of the ombudsman include:

A- Having access to all documents including secret ones.

B- Having the right to attend all deliberations at which decisions are made.

C- Having the right to require discovery of documents relating to a matter.

D- Having power of reproof of officials.

E- Obtaining of compensation for an injured citizen.

F- Having power to criticize the interpretation of the law, a specific decision and the judge.

4- **Limits of powers**

There are two significant limits to his powers.

A- He cannot critics policy.

B- He cannot reverse decisions.

5- Advantage

The main advantage of the ombudsman are:

A- Complaint by an aggrieved person is informal and inexpensive.

B- The ombudsman is impartial and independent.

C- The ombudsman may consider the whole field in which an issue arises, whereas a court is confined to the particular issue.

D- His thorough investigation earns public confidence.

E- The system allows flexibility in response procedure and decisions.

6- Disadvantages

The main disadvantages are:

A- The efficacy of the system depends on the personal investigation of complaints by an individual of character and ability.

This personalization of the office is possible in small countries, but it may be unfeasible in populous countries.

B- In a populous country, the system might generate complaints, the sheer volume of these complaints may make the system unworkable.

C- The system could reduce the role of ombudsman of parliament in airing the grievances of the people.

D- The system may prevent the elaboration of rule of administrative law.

1. Ability
2. Aggrieved
3. Attend
4. Compensation
5. Compensation
6. Complaints
7. Confidence
8. Confined
9. Deliberations
10. Disadvantages
11. Elaboration
12. Generate
13. Grievances
14. Impartial
15. Populous
16. Prosecute
17. Prosecute
18. Recommend
19. Recommend
20. Reduce
21. Reproof
22. Reverse
23. Secret
24. Sheer
25. Thorough
26. Unfeasible
27. Unworkable

Sixth Chapter : The French Conseil d'Etat

1- Development

We have already mentioned that the France Council of State was established by Napoleon in 1799. However, it is only since the beginning of the Third Republic (1870-1940) that the council has had head of State, but in the name of the France people.

By the close of the nineteenth century, the Council emerged as a court of first and last instance having a general jurisdiction to judge upon any complaint of suit against the administration.

With the advent of the twentieth century, a new era of planned economy and collectivized society was ushered in. through the Council of State, the ordinary French citizen could arraign and call to account the powerful and interfering State.

2- Composition

The Council is composed of five sections-four administrative and one judicial. Most of its members are recruited from the graduates of the National school of administration. The others are recruited from distinguished civil servants. The presidency of the Council is vested in the prime minister ,but he delegates this function to the minister of justice. The members of the Council are, theoretically, removable.

3- independence

Outwardly the Council is not an independent institution like a court. But in reality it is completely independent. This is because:

A- The members of the Council have the same security of tenure as the judges in the ordinary courts.

B- The members are promoted by precise rules which guaranties their independence.

C- The Minister of Justice does not interfere in the judicial activities of the Council.

D- Public opinion holds the Council in high esteem and so it would not allow the removal of a member merely on the grounds of his judicial activities in the Council.

4- Functions

The Council performs consultative and judicial functions.

A- Consultative Functions

1) All bills introduced in to parliament by government must have been submitted for the council's advice.
2) For the same purpose, the text of a decree issued by the government to legislate must be submitted to the council.
3) The Council must be consulted upon the text of delegated legislation falling in to the Category of regulation of public administration.
4) The Council acts as a general legal adviser to the government and to individual ministers.
5) The Council is to submit an annual report to the President of the Republic. In this report, it reviews its work over the year

and may suggest such administrative and legislative reforms as it deems necessary.

B- Judicial functions

1) The Council may quash some administrative act or decision on the ground of its illegality.
2) The Council may order compensation for the plaintiff against the administration on the ground that this has infringed some right of his.
3) The Council may be asked by the interested party to interpret some administrative act or decision.
4) In specific contraventions, the Council acts a criminal court. These offences relate to waterways, ports, harbors, etc. it may impose an fine on the individual citizen who has contravened a law concerning one of these matters.
5) The Council is a court of appeal for all other administrative tribunals. Thus, an individual citizen can appeal from a decision by any other administrative tribunal to the Council.

1. Advent
2. Annual
3. Appeal

4. Arraign
5. Category
6. Close
7. Compensation
8. Complaint
9. Composed
10. Composition
11. Contravention
12. Decree
13. Deems
14. Emerged
15. Esteem
16. Etc
17. Graduates
18. Guaranties
19. Harbors
20. Instance
21. Introduced
22. Offences
23. Offences
24. Outwardly
25. Plaintiff
26. Ports
27. Presidency
28. Promoted
29. Quash
30. Recruited
31. Submit
32. Tenure
33. Ushered
34. Waterways

Seventh Chapter : Iraqi Administrative Law

1- Historical background

Up to 1989, Iraqi judicial system did not know the duality of the civil law and the administrative law. Nor did it know the dual system of courts. It was based on a unified judiciary, which may be termed as "civil" or "ordinary" one.

Consequently, the civil courts had jurisdiction to decide upon all disputes arising between the citizens and the various governmental departments.

In addition, these courts had jurisdiction in administrative matters concerning nationality, administrative decisions and contracts, and associations. Thus, there were no separate administrative courts to deal with these matters.

The civil courts, however, used to borrow the general principles and theories of administrative law to apply them to cases involving administrative matters. They could do so because they are not always bound to apply the rules of private law to administrative disputes.

Thus, with the absence of distinct and independent administrative courts, it is impossible to say that there was administrative law in Iraq.

2- The Consultative Council of the State

In 1979, a law was issued establishing a new body called the Consultative Council of the State. Administratively, the Council is linked to the Ministry of justice. The Council consists of a head with two deputies and minimum number of twelve Advisers.

To these are added assistants whose number is not exceeding half of the Advisers.

Initially, the Council was assigned with tasks of codification of laws and of advising on legal questions concerning the State and the public sector.

Its organs were confined to a general assembly and an unspecified number of specialized organs. By the amendment of 1989, to these were added an organ of presidency, a plenary assembly, and the General Disciplinary Council.

by the same amendment, an entirely new court was created. It is the court of the administrative judicature. This is new part of the Consultative Council of the State. Thus, a new function, namely, administrative judicature, has been assigned to the Council.

3- The Administrative Court

A- Composition:

The court is composed of a president and two members. The president must be a judge of first grade or an adviser.

The members must be judges of at least second grade, or assistant advisers.

B- Jurisdiction:

The court's power is to consider the legality of administrative orders and decisions made by officials or organs of the State or the public sector.

The consideration is made upon on objection by a person who had an interest which is specific, immediate and possible.

C- Grounds for objection:

Administrative orders or decisions may be objected to:

1) If they are issued in a manner contravening law, regulations or instructions.
2) If they are issued in a manner inconsistent with the rules of jurisdictions
3) If they involve an error in the application or interpretation of law, regulations or instructions.
4) If they are defective in form.

D- Procedures:

1) Before approaching the administrative Court, the claimant must lodge his complaint with the administrative department concerned. The latter has to decide upon the complaint within (30) days from the date of its registration with it. If it fails to do so, the court will register the complaint.
2) The claimant must submit his complaint to court within (60) days from the expiry of the (30) days mentioned above otherwise his right of action will be extinguished by the passing of time.
3) The court shall decide upon the complaint. It may dismiss it, annul or amend the order or the decision concerned. Upon the claimant's demand, it may order the payment of indemnities to him.

4) The court's decision is appellate. Either party may appeal from the decision of the General Assembly of the Consultative Council of the State.
5) The decision of the Assembly and the decision of the court from which no appeal has laid are final and binding.

E- Conflicts of Jurisdiction:

A dual system of civil and administrative courts inevitably leads to conflicts of jurisdiction. As it has rightly been said, this is the price which a country pays for its separate system of administrative law. Anyhow, there will clearly be a need at times for a final arbiter.

Under the nascent administrative law in Iraq, the jurisdictional conflict between the administrative court and a civil court is settled by a six- members body. Three of these members are selected by the president of the court of Cassation from among its judges, and the other three are selected by the president of the Consultative Council from among members.

This body is headed by the president of the Court of Cassation, its ruling is final and binding, whether adopted concurrently or by a majority.

F- Limitations on the Court's jurisdiction:

The following acts are excluded from the administrative court's jurisdiction:-

1) Acts of sovereignty which include decrees and decisions issued by the president of the Republic.

2) Administrative decisions taken in pursuance of instructions issued by the president of the Republic in accordance with his constitutional powers.
3) Administrative decisions the way by which they can be arraigned has been specified by law.

1. Annul
2. Approaching
3. Arbiter
4. Arraigned
5. Assembly
6. Assigned
7. Claimant
8. Codification
9. Concerned
10. Concurrently
11. Consists
12. Contravening
13. Decrees
14. Demand
15. Disciplinary
16. Dismiss
17. Exceeding
18. Extinguished
19. Grade
20. Immediate
21. Inconsistent
22. Indemnities
23. Inevitably
24. Nascent
25. Pursuance
26. Sector
27. Settled