NATIONAL OPEN UNIVERSITY OF NIGERIA

MPA 844

Public Administrative Law

Module 3

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Unit 1 Rule of Law, Origin of the Doctrine of the Rule of Law, Necessary Conditions for the Rule of Law to Thrive in any Society

1.0 Introduction

In this unit you are going to learn about the concept of public authorities in litigation, the origin of the doctrine of the rule of law and constitutional remedies to redress administrative wrongs. As is well known, officials in charge of public administration have rights, duties and privileges in the course of executing their job schedules. They also commit administrative wrongs in the course of their duties. Do the beneficiaries of the services of administrative personnel have any remedies to redress the wrongs of their officials? At the end of this unit you should be able to discuss the origin of the concept of the rule of law and right of action against the state.

2.0 Objectives

At the end of this unit, you should be able to:

- discuss the rule of law
- analyse the origin of the doctrine of the rule of law
- explain the necessary conditions for the rule of law to thrive in any society.

3.0 Main Content

3.1 Rule of Law

Philosophers and sages in history have always espoused that the constitution of the land is supreme and superior to the sometimes arbitrary actions of rulers and government officials. This means that the laws of the land take precedence over the powers of public officials in government administration. Power and privileges therefore ought to be exercised within the boundaries prescribed by the constitution of the land. Any action of a public official which does not conform to the law and privileges to his/her position as enshrined in the constitution, is an action for which an affected citizen may seek redress i.e. the right of the citizen to bring an action against the state.

Socrates and Aristotle in ancient Greece engaged in philosophical dialogue with the Greeks of their time. They speculated that the universe was governed by intelligible laws from which it was possible to derive rational laws which are a positively governing human conduct to individuals in the society. From natural laws, the society adopted laws for the good order of the society, which may be referred to as the constitution evolved by the people to guide the relationship between man and society. An application of any other action which does not conform with what has been publicly acclaimed as acceptable to the people is arbitrary and must be appealed against.

In modern times, every nation has a well-articulated constitution known to guide government administrators' actions and conduct of citizens in the respective countries. So,

government administrative actions that do not conform to the provisions of the constitution are arbitrary. The citizens to whom such actions refer have the right to appeal against such actions following the doctrine of the rule of law. The ancient philosophers emphasised the importance of regular law as superior to the arbitrary power of rulers and administrators which do not conform to regular law.

The 1999 Constitution made it abundantly clear in chapter I section 1(1) that:

"…this constitution is supreme and its provisions shall have binding force on all authorities of persons throughout the Federal Republic of Nigeria".

Section 1(3) emphasised further the supremacy of the constitution:

"…if any law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void."

It is clear therefore that the concept of the rule of law is based on compliance with the regular laws of the land. Any action therefore of any administrative functionary that is in conflict with the regular law of the land to that extent is void and arbitrary. Any citizen who suffers from such administrative action has a legal right to seek redress in Nigeria's legal system.

3.2 Origin of the Doctrine of the Rule of Law

Although many philosophers and sages commented on the rule of law and advised the citizenry to seek redress in cases where public officials have acted arbitrarily as opposed to the constitutional laws of the land, it was Albert Dicey, a Professor at Oxford University of England who brought the doctrine of the rule of law to the fore. In 1885, Dicey, commenting on the rule of law observed as follows:

"….It means the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary powers and excludes the existence of arbitrariness, of prerogative or even wide discretionary authority on the part of the government. English men are ruled by the law, and by the law alone; a man may with us be punished for a breach of the law, but he can be punished for nothing else." (See p. 202).

It is clear from the above quotation that government administrative actions are subject to constitutional law and that citizens or public beneficiaries of the exercise of government officials will not or ought not to be exposed to the arbitrariness of the powers of public officials. Therefore, any action of a public official which is not incongruence with the constitutional law regarding that action is arbitrary and an affected citizen may seek redress in law. The law therefore will restore him to the position he was before the arbitrary action of the government official.

In *Stroud v. Bradbury*, an English local authority entered the premises of a landlady with a view to effect repairs to her faulty drainage system under the public health act, 1936. A sanitary inspector with his men entered the premises and the husband of the landlady obstructed the sanitary inspectors from carrying out the repairs. An action was brought against him for obstructing the sanitary inspector from performing his lawful duty. While the lower court held in favour of the sanitary inspector, the appeal court set aside the decision of the lower court because the letter from the sanitary inspector to the landlady did not comply with the 24 hours' notice of the planned entry as stipulated in the public health act of 1936. The sanitary inspector's act was therefore arbitrary and the appeal of the plaintiff, which constitutes an action against the state, was upheld.

In *FCDA v. Sule*, the FCDA terminated the appointment of Sule. Sule went to court because the letter of termination did not communicate that it was approved by the minister as it was required by law. Sule challenged the authenticity of the letter because as he believed, the process of termination did not follow the laid down procedure specified by law that the decision to terminate a public officer's appointment would be taken by the minister. Sule had no evidence that the minister authorised his termination. He believed therefore that the action to terminate his appointment was arbitrary. He went to court and the Supreme Court held in support of the lower court that Sule's purported termination disregarded the principles of natural justice. The termination was held to be illegal, null and void and of no effect. Sule was therefore reinstated to his former position and his salary and full benefits and privileges were fully restored.

From the foregoing, it is evident that the regular laws of a country are superior to acts of administrators. Those that are not congruent with it and beneficiaries who suffer from the arbitrary action of administrative officials under the rule of law have civil grounds to bring an action against the state. The courts, which are the best interpreters of the law usually, examine the merits and demerits of alleged actions or arbitrariness. Evidence abound that the courts in this regard has always exercised their judicial powers fairly and fearlessly.

From the above, it can be said that the concept of the rule of law exists to check the excesses of public administrators and government officials particularly those who inadvertently, in the discharge of their duties, tend to be arbitrary and oppressive in negation of the laws of the land as enshrined in the constitution which ought to govern their operations. The sufferers of the actions of despotic government officials have a right under the rule of law to seek redress; the courts have been very fair and objective in ruling in such cases.

3.3 Necessary Conditions for the Rule of Law to Thrive in any Society

A discussion on the rule of law naturally leads to a discussion on human rights. The rule of law exists to protect human beings in the society against arbitrariness of actions by public administrators or officials of government, against citizens whose rights and privileges are supposed to be protected and also served. Human rights are privileges which protect human beings by virtue of his nationality. This means that every human being at birth acquires some rights. Human rights are rights, obligations and responsibilities which characterise the existence of all human beings all over the world. According to Malemi (2008),

"they are the basic requirements of meaningful life every civilised state is expected to ensure for its citizens" (p. 107).

The 1999 Constitution devoted the whole of chapter 4 to the treatment of fundamental rights. Section 33 to section 43 of the 1999 Constitution specifically treats right to life, right to dignity of the human person, right to personal liberty, right to fair hearing, right to family and private life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination, right to acquire and own immovable property anywhere in Nigeria, compulsory acquisition of property, restriction and derogation from fundamental rights, special jurisdiction of high court and legal aid.

Most constitutions of the world embody provisions on fundamental rights. These provisions are binding on government and local authorities and members of society. The courts, which are custodians and protectors of human rights, are adept in constitution interpretation of human rights. However, in any society, certain conditions must be present in order for the rule of law to thrive. These conditions are ably described by Male (1999) as follows.

1. A written and democratic constitution, setting out the powers and functions of government and the rights and duties of individuals
2. A constitutional and democratic system of government
3. A disciplined, selfless, patriotic, progressive and visionary leadership
4. Good, responsible, accountable and open government at all tiers of government
5. Mass education and enlightenment of the people
6. Sustainable economic growth of the country and prosperity of the people
7. A culture of fairness by the people and a shared value of mutual respect for individual rights
8. A culture of love for one's neighbour and being a protector and keeper of one's neighbour, instead of a culture of selfishness and love of oneself.
9. The right to fair hearing or due process of law and the public hearing in open court of legal proceedings whether civil or criminal
10. Existence of the right of appeal up to the Supreme Court in all legal matters
11. Curtailment, proper and adequate supervision of delegation of powers and delegated legislation
12. The existence of peace and public order
13. The stipulation of human rights in a statutory form, such as a bill of rights or a fundamental rights chapter as in the Nigerian constitution.
14. The practice of separation of powers in government
15. Acceptance that governance should be according to civil or regular law instead of decrees, emergency, martial or other arbitrary laws.
16. An independent and upright judiciary and public confidence in it.
17. Early access to court for persons to get justice
18. An expanded or a comprehensive public legal aid scheme to assist indigent persons to assert or defend their rights.
19. An expensive interpretation and application of the doctrine of *locus standi*, especially with respect to public interest litigation, with a view to defend the constitution, people and the public interest" (p. 112).

In view of the importance of the rule of law to the orderliness in the society, it is mandatory for any legitimate government to ensure that the factors that promote the rule of law are existent in the political set up of the country. It must be emphasised that peace and public order must be present in any political system of a country to provide the platform for the take-off of conditions that promote the rule of law. It is praise-worthy that the 1999 Constitution of the Federal Republic of Nigeria recognises in section 33 to 43, the sanctity of fundamental human rights.

4.0 Conclusion

The rule of law is based on the need to protect the rights and freedom of the individual in the society from arbitrary actions of government and public officials. The courts in any country are custodians of rights because it is their duty to interpret the constitution and to determine whether the rights of individuals have been infringed. There are necessary conditions that must be present before the rule of law can thrive in any society. It is the responsibility of a government in power to ensure that those conditions are present in order to sustain the rule of law.

5.0 Summary

The rule of law is a political state in the affairs of any country where both government functionaries and citizens know their rights and obligations and are committed to respecting them. While the citizens know their rights and are prepared to defend them when they are infringed, government officials know their rights and obligations and execute their functions within the limits of the law of the land. Necessary conditions that must be present before the rule of law could be said to be effective must include a constitution which is the "mother of all laws of the land". It must be in place and must be respected and recognised by all and sundry.

6.0 Self-Assessment Exercise

Define the concept of the rule of law and state conditions necessary for the rule of law to thrive.

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Unit 2 Sovereign Immunity and Right of Action Against the State

1.0 Introduction

Sovereignty as a word belongs to the domain of constitutional law. The word relates to a state of being independent. It reflects a situation of independence and ability to exercise independent power to govern a territory which itself is politically independent. In other words, a sovereign state is referred to as a country which is independent, having the ability to make its laws, execute those laws and administer the territory where the sovereign resides. The word refers to the political independence of a ruler, king, queen or an executive president of a country. Under international law, a sovereign is a ruler, king or queen or president. The number one citizen of a state where he presides has the rights and privileges which include immunity from prosecution while in power and the right to appoint ambassadors and representatives to other sovereign states in the world.

2.0 Objectives

At the end of this unit, you should be able to:

- define sovereign immunity
- identify the right of action against the state
- analyse the powers and duties of the Public Complaints Commission
- state the offences and penalties of the Public Complain Commission
- identify the achievement of the commission.

3.0 Main Content

3.1 Sovereign Immunity

The sovereign may be a traditional ruler of a defined territory under him in the case of traditional life or a president who personifies sovereign authority in a country. The term is most relevant in political situations where there is an absolute monarch who has power and authority in a defined territory e.g. Oba of Lagos, is the traditional sovereign of Lagos. The president, who is the Commander-in-Chief of the Nigerian armed forces personifies the sovereign leader within the Federal Republic of Nigeria. The queen of England, Queen Elizabeth II is the sovereign in the United Kingdom. Therefore, a sovereign is a person who has the highest level of power and authority in a given territory.

A difference must be made between an absolute monarch and a constitutional monarch. An absolute monarch is the chief executive officer of the state where he presides. In modern times however, few absolute monarchs exist. Most sovereign nations now share power constitutionally with monarchs. The remaining constitutional monarchs share power as it were with a prime minister, legislative and judicial organs of government. This is the example in the United Kingdom where her majesty the queen is the constitutional monarch while the prime minister and the House of Lords and House of Commons respectively

wield different levels of power. Nigeria is not ruled by a monarch. The country operates a presidential form of government with separation of powers between the executive branch, legislative branch and the judicial branch. However, sovereign kings and obas exist in the system and they command the highest respect in traditional life and government.

In Nigeria, sovereignty belongs to the people. In other words, supreme powers in Nigeria are conferred by the Nigerian constitution on the people. The president, the commander-in-chief of the Nigerian armed forces, is the chief executive of Nigeria and wields enormous powers on behalf of the good citizens of Nigeria. As enshrined in section 14(2) of the 1999 Constitution

"Sovereignty belongs to the people of Nigeria from whom government, through this constitution derives all its powers and authority."

Sovereignty, as has been seen, belongs to the people of Nigeria who exercise sovereignty through their elected leaders. This view suggests that the highest authority in Nigeria is vested in the people and the president of the Federal Republic of Nigeria, the legislature, and the judiciary derive their authority from the sovereign power of the people.

Just as the African culture regards the king or oba as supreme embodiment of traditional law and by that fact is exempt from prosecution, so the constitution protects the president, governors and other designated officials from prosecution in respect of their actions and decisions while in power. These functionaries therefore benefit from the concept of sovereign immunity. They may however be prosecuted in a law court at the expiry of their tenure as government officials. In African tradition, the king or oba does no wrong and no action can be brought to his court against him as the presiding officer of that court. In the political setting, government functionaries cannot be sued or be held liable for their wrongful acts while in office like a private person. Public functionaries have the gap of immunity for their actions in office.

According to Iluyomade, and Eka, (1989),

"In Nigeria, there is no doubt that the doctrine of sovereign immunity applies in practice since the state cannot generally be sued in damages for the wrongful acts of its agents unless it has consented. Examples of such consent may be seen in some statutory provisions such as the petition of right act, cap 149, the law reform (torts) act, 1961 etc. The doctrine of sovereign immunity may not cover independent statutory bodies such as the Nigerian railways corporation, the federal radio corporation, national electric power authority, etc. In such case, the relevant act of parliament, which established the body concerned, needs to be examined in order to find out whether the liability has been excluded."

3.2 Right of Action against the State

As you have noted, the doctrine of sovereign immunity protects a state, government and their officials from being sued in courts in their individual capacities for wrongful acts while in government. However, in recent times and considering the increase in the volume of government business, there has been an increase in the administrative wrongs committed by government functionaries against people. Government was therefore saddled with the need to grant some relief for wrongful actions of its functionaries. They inherited the English common law enactment of the petition of rights act. The merits and demerits of petition

for wrongful actions of government officials were considered and approved. The petition of rights act has now been nullified by the 1979 constitution because the act obstructed aggrieved citizens from going to court to seek redress for wrongs done by the state or government against their freedom.

The 1979 constitution made it possible for any aggrieved person to seek redress in court for wrongs done against him by the state or government officials. The state, government or public officials may now be sued notwithstanding general defenses available to the state under the law.

As we have discussed, the 1979 Constitution of the Federal Republic of Nigeria abolished the petition of rights act. The inherited petition of rights act violated section 33(1), section 42(1) and section 6(6) (b) of the 1979 Constitution. All Nigerian constitutions since then maintained the abolition of the petition of rights act in Nigeria.

Section 36(1) of the 1999 Constitution for example states:

"In the determination of his civil rights and obligations, including any questions or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality" (p. LL37).

Section 46(1) also states that:

"Any person who alleges that any of the provisions of this chapter has been or is likely to be contravened in any state in relation to him may apply to a high court in that state for redress."

Section 6(B) of the 1999 Constitution sums it up and states as follows:

"The judicial powers vested in accordance with the foregoing provisions of this section; shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person." (p. LL20)

From the foregoing, and particularly section 46(1) of the 1999 Constitution empowers every Nigerian with a right to action against the state in circumstances where the aggrieved citizen feels that any of his rights have either been infringed by state or government or in extreme cases completely trampled upon.

3.3 Public Complaints Commission

The popular Udoji Reform of the civil service commission submitted its report to government in 1974. Government accepted a majority of the recommendations of the commission. One of such recommendations was the establishment of Ombudsman in Nigeria. The Ombudsman, which is a synonym for public complaints commission, was established in Nigeria on 16th October 1975 vide decree 31 of the then federal military government of Nigeria. The commission comprised a chief commissioner and 12 other commissioners appointed by the president and responsible to the then supreme military council. The public complaints commission is an independent and objective body that receives and investigates complaints sent to it by members of the public seeking to obtain remedy for perceived wrongs done to them by alleged wrong doers. Their aim is to peacefully resolve the crisis and obtain remedy for the complainant. It is an irony that it was set up in Nigeria under the military regime which naturally does not respect the rights of individual citizens to make complaints against its style of administration.

The commission employs the age-long system of arbitration where solution is reached by dialogue with the persons involved in the complaint. They are meant to reconcile their differences and forge a solution. However, if the commission fails to forge a solution by reconciling the differences of persons in a given crisis, the complainant is at liberty to seek further redress in a court of law. State governments set up similar bodies for identical purposes under their respective ministries of justice.

In all cases, the aims are the same – to find solutions to complaints through negotiation and dialogue with persons involved in a complaint. They could be administrative authorities, corporate bodies or persons. The main weapon of the commission is exploration of an alternative dispute resolution. They employ the skills of arbitration, mediation and conciliation in finding solutions to problems.

3.4 Powers and Duties of the Public Complaints Commission

Before stating the powers and duties of the Public Complaints Commission, it is pertinent to state the reasons for establishing the commission. These include the followings.

- The need to provide an avenue for aggrieved citizens who are aggrieved by the conduct of administrative officials, institutions or corporations to seek redress in a nonjudicial means.
- To curtail abuse of power by public authorities and private bodies by exposing their weaknesses and wrongs and award remedies to the complainants.
- The need to reduce the volume of cases in litigation and the need to reduce the cost spent on litigation by average persons in an attempt to seek redress in courts.
- The need to guarantee full protection on civil rights and liberty guaranteed by the |constitution to the people.
- To reduce the insolence and haughtiness of public administrators who often make nonsense of the complaints of members of the public and who do not attach necessary weight to them.

According to D.C. Rowat of the Ombudsman of New Zealand:

"too close-fisted approach towards minor claims and a disposition to apply predetermined rules of practice rather than exercise their discretion on the merit of each case" (Malemi: p. 142).

The powers and duties of the public complaints commission are as spelt out in the public complaints commission decree of 1975. Specifically, section 10(3) of the decree states:

"for the avoidance of doubt, the powers granted to a commissioner under this decree may be exercised by him notwithstanding the provisions of other laws which declare the finality of any administrative act."

A catalogue of the duties and powers of the commission is set out in the public complaints commission decree of 1975. Section 4(2) of the decree states that:

"a commissioner shall have power to investigate either on his own initiative or following complaints lodged before him by any other person, any administrative actions taken by

- Any department or ministry of the federal or any state government
- Any department or any local government authority (howsoever designated) set up in any state in the federation.

- Any statutory corporation or public institution set by any government in Nigeria;
- Any company incorporated under or pursuant to the companies decree 1968 whether owned by any government aforesaid or by private individuals in Nigeria or otherwise howsoever; or
- Any officer or servant of any of the aforementioned bodies". (see Iluyomade & Eka p. 457)

3.5 Offences and Penalties

The provisions of section 7 of the public complaints commission decree 1975 sate offences and penalties as follows.

- Any complaint lodged before the commission shall not be made public by any person except a commissioner. And any person who contravenes the provisions of this subsection shall be guilty of an offence and shall be liable on conviction to a fine of N500 or imprisonment for six months or to both such fine and imprisonment.
- If any person who is required to furnish information under this decree fails to do so or in purported compliance with such requirement to furnish information knowingly or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and liable on conviction to a fine of N500 or imprisonment for six months or to both such fine and imprisonment.
- Any person who willfully obstructs, interferes with, assaults or resists any commissioner or any other officer or servant of the commission in the execution of his duty under this decree or who aids, invites, induces or abets any other person to obstruct, interfere with, assault or resist any such commissioner, officer or servant shall be guilty of an offence and liable on conviction to a fine of N500 or imprisonment for six months or to both such fine and imprisonment." (Iluyomade and Eka, p. 458).

From the foregoing, it is clear that the decree spells out penalties of fines for any person who either makes public a complaint that has been lodged with the commission or anyone who willfully obstructs the work of the commission or refuses to volunteer needed information when called upon, has committed an offence and appropriate fine of N500 in each case stipulated for payment.

Section 7 spells out offences and penalties; section 5(1) appears to limit the powers of the commission as follows:

"a commissioner shall not investigate any matter

- that is clearly outside his terms of reference
- that is pending before the supreme military council of states or the federal executive council
- that is pending before any court of law in Nigeria
- relating to anything done or purported to be done in respect of any member of the armed forces in Nigeria or the Nigeria police force under the Nigerian army act, 1960, the nay act, 1964, the air force act, 1964, or the police act, as the case may be.
- in which the complainant has not, in the opinion of the Commissioner, exhausted all available legal or administrative procedures.

- relating to any act or thing done before 29th July 1975, or in respect of which the complaint is lodged later than twelve months after the date of the act or thing done from which the complaint arose.
- in which the complainant has no personal interest". (Iluyomade and Eka, p. 458).

3.6 Achievements of the Commission

As observed by Iloyomade and Eka (2007), within a few years of the establishment of the Public Complaints Commission, the commission received the following complaints from members of the public and attempted to investigate and seek remedies in cases where the complaints were correct as presented.

- Non-payment of gratuities and pensions
- Compulsory acquisition of lands and houses without adequate or delayed compensations
- Illegal termination of appointments both by public and private employers
- Unpaid and delayed wages
- Delay of action by the police and alleged collusion and contributory negligence on the part of the police
- Illegal demolition of buildings
- Delay in the approval of building plans by the town planning authorities
- Delay of examination results and late delivery of certificates by WAEC
- Loss of registered parcels through the P & T
- Chieftaincy matters
- Non-payment of insurance claims
- Refusal to pay debts owed for services rendered
- Delayed payment of professional fees
- Denial of retirement benefits
- Rents on private properties
- Threat to individual lives
- Refusal to grant study leave with or without pay
- Refusal to grant transfer of service" (See p. 459).

Most complainants lodged complaints against corporate bodies, some of which were Nigerian Railway Corporation, National Electric Power Authority (now Power Holding Company of Nigeria), Government Ministries, West African Examinations Council, Corporations, Parastatals, State Governments, School Boards, Police and the National Assembly, to mention a few.

A cursory look at the activities of the public complaints commission indicates that the commission made success of many complaints especially in cases that had to do with illegal termination of appointment, dismissal, refusal to follow appropriate disciplinary procedures, deprivation of leave bonus payable to workers etc.

Given the limitations in which the commission operated in the 1990s and given the fact that it was a novel commission which work was not clearly understood by citizens, it is fair to say that the public complaints commission 1975 has recorded a lot of successes in Nigeria and was able to sanitise Nigerians. The commission orientates the public towards non-violent ways of seeking redress for wrongs done to them by institutions and state governments in Nigeria. The commission has remained the last hope of aggrieved persons in Nigeria.

4.0 Conclusion

It is curious to observe that it was a military government that set up the Public Complaints Commission. The commission was given an onerous duty by the provisions of the decree that set it up to investigate complaints brought to it by aggrieved Nigerians. Most of the complaints entertained bordered on issues of refusal, neglect, inaction, oppression and injustice meted by public officials, state governments or parastatals against citizens. The commission sought redress for complaints and convinced Nigerians that it was independent and committed to investigating objectively and thoroughly all complaints brought to it. The federal military government that promulgated the public complaints commission decree of 1975 had a strategic approach to creating a better society for anyone oppressed and better still creating an avenue for Nigerians to seek redress legitimately. The public complaints commission has become the hope of aggrieved persons and a check on the arbitrariness of public administrators and all persons in authority.

5.0 Summary

In this unit, the issues of sovereign immunity were discussed and the rights of individuals to bring action against the state were explained. The powers and duties of the Public Complaints Commission set up by a military decree in 1975 were espoused. The Commission has become the hope of aggrieved persons and the bane of those who trample on other people's rights in the exercise of their powers and authority.

6.0 Self-Assessment

1. Where does the Public Complaints Commission derives its powers from?
2. State the powers and duties of the Public Complaints Commission.

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Unit 3 Remedies for Administrative Acts

1.0 Introduction

In the discharge of their duties, government officials and public administrators often commit unconstitutional acts. When such officials commit unconstitutional acts or wrongs against citizens or persons, the aggrieved persons have rights under the constitution to seek redress for the wrongs done against them. The remedies they seek can be categorised into nonjudicial remedies and judicial remedies.

Nonjudicial remedies include:

- petition from aggrieved persons,
- appeals
- dialogue
- peaceful protest, and
- alternative dispute methods of persuasion, mediation and conciliation

Judicial remedies, on the other hand, refer to powers of the courts to examine, in legal processes, the rights that have been violated and adjudicate for such violations.

2.0 Objectives

At the end of this unit, you should be able to:

- recognise the non-judicial remedies for administrative acts
- write a petition
- distinguish between appeal and dialogue
- identify the alternate dispute resolution
- explain what the judicial remedies for administrative acts is
- state the limitations of the judicial remedies.

3.0 Main Content

3.1 Nonjudicial Remedies for Administrative Acts

Public officers are liable for actions done in the course of performing their duties without legal justification. To that extent it is possible for an injured party to seek redress and seek judicial or nonjudicial remedies. Nonjudicial remedies are remedies that an injured party seeks outside the court process. They do not arise from court rulings. they include petition, appeals for a rethink and remedy, dialogue, peaceful rally and peaceful protest, public opinion poll, media coverage, lobbying, referendum, alternative dispute resolution, pressure, civil disobedience and strike, boycott and picketing. However, the following concepts would be discussed in order to shed light on the topic.

3.2 Petition

Ordinarily, a petition is a written request by an aggrieved person with the belief that his rights had been infringed by an official in a position of authority and seeking redress for the wrong committed. A petitioner who has made complaints must be ready to substantiate his claims when called upon. He should be able to also explain his personal interest in the complaint showing to the appropriate authority how his rights have been infringed. The petition under reference may be sent to the authority in charge of the function which the alleged wrong doer was executing.

In modern times, a petition may also be sent to an independent commission like the Public Complaints Commission, Code of Conduct Bureau, Economic and Financial Crimes Commission, Independent Corrupt Practices and other Related Offences Commission, the police, governor, president, national assembly etc. The important point to note is that the petitioner has the right to seek redress for an administrative wrong done to him and he could do this by directing attention to the wrong through a written complaint sent to any of the above institutions or government organisations.

When the relevant authorities receive a complainant's petition, they are expected to institute processes for determining the veracity of the petition. They could follow internal administrative laid down procedures. This type of petition may be distinguished from election petitions, divorce petition or petition to corporate affairs commission for the purpose of winding up a company. The difference here relates to the fact that the later form of petition mentioned invariably leads to judicial action as the case may be as opposed to the petition sent by an aggrieved person seeking redress for wrong done to him which may not necessarily lead to judicial action.

3.3 Appeals and Dialogue

The *Longman Dictionary of Contemporary English* defines the word 'appeal' as "an urgent request for something important" (p. 58).

An appeal is therefore a request to persons in authority or relevant administrative authority complaining on a wrong done and seeking apology or redress for the wrong. The subject matter of an appeal may vary from reconsideration for a position made or request for leniency in case of administrative acts or request to restore a given situation to the status quo as the case may be. The important thing to note here is that when an aggrieved person writes a petition seeking redress, he is exercising his right to make known the wrong done to him with a view to asking a higher authority to make amends to the situation. It is a nonjudicial way of pressing for redress.

In human relations, a dialogue relates to a conversation or communication between two or more persons in which one party makes a formal complaint against an action or something that has infringed upon his right with a view to seeking apology or redress from the listening party.

A dialogue may take the form of a face to face complaint or a written complaint in which both parties exchange mails on the issue under reference. It could take the form of an organised discussion either in a conference format or in an informal format. Dialogue may also take the form of negotiation in which both parties shift away from their original positions and make concessions in order to reach an amicable settlement. This is the

approach employed by disputing countries in the case of boundary adjustments and a veritable means of settling conflicts. For example, it is on record that Nelson Mandela of South Africa and former President Frederick De Clerk of South Africa engaged in dialogue to enthrone modalities of achieving black majority rule in South Africa in 1995. In Nigeria, there is a current method through dialogue by small parties to merge under agreed modalities to form a mega party that will present serious opposition to the ruling People's Democratic Party. The consensus which the small parties will achieve in their bid will be through dialogue.

3.4 Alternate Dispute Resolution

Another nonjudicial remedy for unconstitutional acts is the use of alternative dispute resolution. This is a nonjudicial process where complaints or disputes are registered, seeking redress from an institution or establishment following laid down processes where persons of integrity intervene with the parties in dispute, following the processes of arbitration, mediation and conciliation.

In arbitration, the arbitrator follows the principle of fair hearing, equity and objectivity in settling the dispute under reference. The arbitrator, after consideration of the submission of disputing parties, makes an award or suggests remedies to be adopted and signed by both parties. Where the arbitrator fails to settle the dispute, the dispute process goes to the next phase called mediation. Mediation is a process of settling disputes between two or more persons or groups by a person of high standing, respected and acknowledged by the disputing parties. This is a major tool used in settlement in international relations in the case of disputes between countries. The United Nations Organisation uses this form in dispute settlement throughout the world.

Conciliation comes handy in the settlement of disputes between trade unions and employers. In conciliation, a neutral party that is well respected and acceptable to the disputing parties' attempts to bring the disputing parties to a communication table with a view to resolving amicably in a nonjudicial process, the issue at stake. While the outcome of conciliation is an agreed proposal for settlement, it is not a court judgment or an award that is binding on the parties who are signatories to the outcome of conciliation.

Nonjudicial remedies for administrative acts do not carry the force of law but they are media for settling disputes and seeking redress for wrongful acts committed against individuals and establishments. The methods are peaceful and civil and the outcome of such methods is binding on all those who subscribe to them.

3.5 Judicial Remedies for Administrative Acts

As in nonjudicial remedies for administrative acts, where other forms of remedies are listed, judicial remedies for administrative acts are also many and varied. These include legislative, executive, and judiciary, public complaints commission, powered by the public complaints commission act of 1975.

The need for judicial remedies for administrative acts arose from the fact that it is slow and winding, and to depend on nonjudicial means seeking for a redress. An aggrieved party who seeks remedy for administrative wrong which he suffered through nonjudicial means i.e. by

petition or complaints stands the risk of being overturned by the minister or political head who makes the decision regarding the wrong done to him. This is why most citizens prefer judicial remedies to nonjudicial remedies. The result is that when the citizens seek redress in courts of law, the courts are empowered to review administrative wrongs on grounds of unconstitutionality, illegality of action or for arbitrariness in the execution of assignments. In cases where the administrative action is perceived to be unconstitutional, the court will declare it constitutional and therefore properly done. In cases where the said administrative wrong is committed unconstitutionally or illegally, the court may award a remedy that fits the circumstances for the administrative wrong. This is because section 46(1) of the 1999 Constitution makes it abundantly clear that an aggrieved person may seek redress in a higher court in the state where the wrong was done. Section 46(2) confers original jurisdiction to hear and determine any petition made to it in pursuance of the position of the section.

In exercising the judicial remedies, the court is mindful of their power under section 46(2) of the 1999 Constitution which grants original jurisdiction to the high court of a state to entertain request for a remedy. In that process, the courts undertake a judicial review of the wrong. Judicial review is the power of the courts to examine the power of government, public administrative authorities and procedural rules governing actions of government, ministers, public officials etc with a view to determining that the arm of government involved in an administrative wrong has acted legally or constitutionally. In other words, the purpose of judicial review is for the courts to ascertain that administrative authorities have not acted beyond their scope or limits on statutory powers which they exercise.

According to Malemi (2008),

"….the courts in controlling or reviewing the conduct of public authorities may grant any or more of the following remedies to an aggrieved party.

- Declaration of rights or declaratory judgment
- Order of mandamus
- Order of certiorari
- Order of prohibition
- Order of injunction
- Writ of habeas corpus
- Award of damages
- Offer of apology, and it may set aside, reduce or sustain any penalty that was imposed or as it may deem necessary in the circumstances."

Let us consider the first two of the judicial reviews above in order to throw light on the concept as shown below.

Declaration of Rights or Declaratory Judgment

As the title reflects, declaration of rights or declaratory judgment is a declaration by a competent court of law after applying the law to the facts available to it, that one party is right and the other party is wrong. That means that one party has a right and the other party owes an obligation. Following the principle of fair hearing, the court would have entertained arguments from parties involved in a dispute before making its declaration. It is

not certain that an aggrieved party, who brings an action to court, will have the declaration of the court in his or her favour because he might have brought the action in ignorance or the party alleged to have committed an administrative wrong might have exercised the due power of his office legally.

In a court of law in some cases, it is the plaintiff or applicant who asks the court for declaratory right. This is done because it is when the court affirms the right of the applicant that the door opens for him to seek remedy. When a declaratory settlement is made by the court affirming or stating that an administrative wrong has been committed against the plaintiff, he then asks for a remedy. Government obeys declaratory judgments of court. It does that in order to set a good example that the judgments of courts must be respected in the interest of peace and good governance. It also obeys declaratory judgments in order to show that government obeys the rule of law and those public authorities or institutions and private individuals must be regulated by the rule of law and obedience to the constitution. The remedies awarded by the court vary and they are usually in line with the nature of the wrong that has been committed.

For example, in *Shugaba v. Minister of Internal Affairs & Ors* (1981)2 *NCLR 459*, Shugaba, the plaintiff applicant, a member of the Great Nigeria Peoples Party and majority leader in the Borno State house of assembly in the second republic, was forcefully deported from Nigeria to Niger Republic by the then minister of internal affairs in the belief that the said applicant (Shugaba) was an illegal alien. Shugaba believed that a wrong had been done to him. He sought a judicial remedy and a declaration of his right as a Nigerian citizen who had been illegally deported. In its judgment, the court held that the deportation of the plaintiff applicant was unconstitutional and illegal. The deportation was set aside because a Nigerian citizen cannot be deported from his country. Section 25(1) of the 1999 Constitution confers citizenship on:

"….every person born in Nigeria before the date of independence either of whose parents or any of whose grandparents belong or belonged to a community indigenous to Nigeria."

Shugaba was born in Nigeria before independence and so is a Nigerian citizen by birth and the action of the minister of internal affairs was an administrative wrong committed against Shugaba.

Similarly, in *Adeniyi v. Governing Council, Yaba College of Technology (1993) 6 NWLR Pt. 300, 426 SC*. Mr. Adeniyi was the plaintiff applicant. He brought an action seeking a declaration of right because he perceived that the Yaba College of Technology committed an administrative wrong against him by illegally retiring him from service. The governing council of Yaba College of Technology retired Mr. Adeniyi as a result of some allegations made against him and he was not allowed to defend himself, thus violating the principle of fair hearing. The Supreme Court held that the action of Yaba College of Technology was contrary to the rules of natural justice and it lacked fair hearing. Accordingly, the Supreme Court declared that the said retirement of Mr. Adeniyi was null and void and of no effect whatsoever. Mr. Adeniyi was reinstated to service.

Order of Mandamus

The word 'Mandamus' is a Latin word which means 'we command'. In Nigeria legal system, when a plaintiff applicant seeks the order of mandamus, he is praying the court to issue an order commanding the performance of a public duty which an official or authority is supposed to perform. In using the order of mandamus the court is declaring that a person

or an authority must perform a public duty which is his place to perform. In other words, the person or authority is bound to perform a duty which he has not performed. The court, by such declaration compels the performance of the public duty which has not been performed.

An example is that of the *Director, SSS v Agbakoba (1999)3 NWLR Pt 595* p 314 SC. In this case the State Security Service (SSS) impounded the international passport of Mr. Agbakoba. He sought a judicial action because he felt that his fundamental human rights as enshrined in section 41 of the 1999 Constitution which gave him right to freedom of movement had been infringed upon. He therefore sought an order of mandamus for the return of his international passport, a document which enables him to enjoy his right to freedom of movement. The Supreme Court of Nigeria held that the seizure of Mr. Agbakoba's international passport was null and void. The Supreme Court issued an order of mandamus for the appellant (SSS) through its Director to release Mr. Agbakoba's international passport.

3.6 Limitation to Judicial Remedies

As has been explained in judicial review is the process whereby a competent court of law reviews the action of an arm of government, public authority or individuals with a view to determining if those actions constitute wrongful administrative acts against the plaintiff applicants as they claim. Although, every citizen is at liberty to institute an action in a court of law, the court sometimes is limited in the process of entertaining actions for wrongful administrative acts. Some of the limitations encountered by the court system in ascertaining that wrongful acts have been committed and it include the followings.

- Failure to first try available administrative remedies
- Lack of locus standi
- Non- justice ability of the matter
- Absence or limitation of right of appeal etc.

Failure to first try available administrative remedies

An aggrieved party has a right to bring an action in a competent court of law. However, there are clear available internal processes of registering complaints and seeking remedies for wrongs committed. Such internal processes may be cheaper and faster administratively than the tortuous process of court proceedings. The court in such circumstances may counsel the aggrieved parties to seek first the internal processes of seeking remedies before recourse to court because it may turn out that going to court hurriedly may make the matter unripe for court to handle.

Lack of locus standi

The phrase 'locus standi' originates from the Latin language which literarily in English refers to the centre of something or place where something exists. In judicial matters, it refers particularly to the principle that a party, who brings a case to court, must establish that the issue that he complains against directly affects him or violates his right. When such a plaintiff cannot establish his claim with the issue he has brought and show how that issue denigrates him or his right, he is said to have no locus standi. In seeking judicial remedies, a party who applies for a relief and cannot justify that an administrative act has been wrongfully committed against him, will fail in his endeavour because he has no locus standi.

Non- justice ability of the matter

In order to grant remedy for wrongful administrative act, the court will first seek to know whether the matter is justifiable. In other words, the court will attempt to establish that the applicant is seeking a request for something that is fair, right, constitutional and deserving fair treatment. Furthermore, that the remedy being sought is deserved. In a situation where a matter or action brought to the court is not justifiable or not in alignment with the provisions of the Nigerian Constitution or any other relevant law, the court will not entertain the matter nor will the aggrieved person obtain any remedy. This has become a limitation on administrative remedies. In such circumstances, the aggrieved person may have to engage the nonjudicial process of lobbying the relevant authority for some considerations.

4.0 Conclusion

When a person believes that an administrative wrong has been committed against him, he is at liberty to seek redress in form of remedies; judicially or nonjudicially. If the aggrieved person decides to pursue judicial remedies, he will go through the route of petition, appeals, dialogue or alternative dispute resolution among others. An aggrieved person, who seeks judicial remedies, is prepared to engage the court system to examine the wrong that is done against him with a view to seeking a declaration that the wrong has indeed been committed followed by a judicial remedy. The courts are firm in Nigeria in awarding remedies in the cases of established wrongful acts by public authorities**.** *Shugaba v. Minister of Internal Affairs, Adeniyi v. Governing Council, Yaba College of Technology and the Director, SS v. Agbakob*a are some of those cases where the court affirmed that wrongful acts have been committed against plaintiff applicants.

5.0 Summary

The constitution is the sine qua non and mother of all laws in Nigeria. Citizens who feel that administrative wrongs have been committed against them are at liberty to employ judicial or nonjudicial means to settle the wrong of the wrongful party or making restitution. Cases abound in Nigeria legal system where the courts, which are the principle actors in declaring judicial remedies for wrongful administrative acts, have been firm where the wrongful acts clearly violate the provisions of the Nigerian Constitution and the rights of the plaintiff applicants. Examples of such declarations include *Shugaba v. Minister of Internal Affairs***,** *Adeniyi v. Governing Council, Yaba College of Technology and the Director***,** *SS v. Agbakoba***.**

6.0 Self-Assessment

1. Distinguish between nonjudicial remedies and judicial remedies for administrative acts.
2. Are there reasons aggrieved persons may prefer one to the other?

7.0 References/Further Reading

Iluyomade, B. O. & Eka, B. U. (1992). *Cases and Materials on Administrative Law in Nigeria.* (2nd ed.) Ile Ife: Obafemi Awolowo University Press.

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