

2126 of the Civil Code, and would thus enable the ordinary courts to grant relief where appropriate. But Art. 62 also provides a "right of action" against those bringing malicious "or unfounded" suits against the administration; this may deter even genuine claimants from bringing borderline cases.¹² Incidentally, any appeals for relief should first be brought to higher authority within the Administration itself (administrative remedies should normally be exhausted before going to court).¹³ This need cause no hardship where administrative appeals follow precisely regulated patterns (*cf.* note 13). To what degrees such patterns are followed is unknown to this writer. Another premise for effective remedies is psychological: how far are administrators considered as servants, rather than masters, of the administered?

CONCLUSION

An approximate picture of the hierarchy of laws in Ethiopia results from an elementary analysis of the relevant Constitutional (and Civil Code) articles against a minimum background of Comparative Law. Theoretically, the Constitution is supreme, as in the United States. Practically there is, since the end of Federation, a remote analogy with those foreign systems where ordinary legislation is supreme (Great Britain), or at least free from judicial control (pre-1958 France). The following remarks on the pre-1958 French system may indeed bear some relevancy to our own situation: "It is the failure of the French courts to assert a review power over the constitutionality of acts of the legislature that . . . has in effect placed the French legislature in a position of practical supremacy not unlike that enjoyed by the British."¹⁴ "The French courts . . . do not stand up against the legislator."¹⁵ Neither do the

12. Said provision has no other effect. Legally, it is meaningless:

- a) Even without this provision, the Administration can, as any defendant can, claim damages if the court finds that the suit was malicious in terms of Article 2032 Civil Code (Intent to injure).
- b) Even with this provision the Administration should not, it is submitted, as no defendant should, be awarded damages (apart from cost-awards) on the sole ground that the suit turned out to be "unfounded". Indeed, no legal "remedies or penalties" to such effect have been enacted here or elsewhere, and none could be so enacted without affecting everybody's right to have a legal dispute determined in court.

13. This principle is reflected, for instance, in Sec. 54—62 of Income Tax Decree No. 19 of 1956. Appeals from the tax assessments made by the income tax authorities go first to the administrative Commission of Tax Appeal. The latter's decisions, in turn, are appealable (on points of law) before the High Court.

14. B. Schwartz, *French Administrative Law and the Common Law World*, New York 1954, p. 95.

15. *Id.* at 300. At present day, this statement remains true only regarding ordinary courts. Since 1958 France has a peculiar Constitutional court, whose primary task is preservation of the Prime Minister's constitutional powers of legislation (which are residual) from parliamentary interference. See M. Pr  lot, *Institutions politiques et droit constitutionnel*, Paris 1962, No. 484, 592 and 593.

Ethiopian courts so stand up. Nor would it be very painful for them to do it in our wise system where the supreme co-legislator (the Emperor) is *also* the supreme judge. Because of this peculiar constitutional context, our Art. 122, though much more pungent in form, is much less significant in fact than its counterpart (Art. VI p. 2) in the United States Constitution, which throws no light on our problem.

As to *Administrative* acts, they can be, in France, " . . . subject both of an action to annul and of an action for damages. . . . In the action to annul, the challenged act is set aside if the court determines that it is *ultra vires*. In the action for damages against the State, the determination of the illegality of the act causing the injury leads to a judgment against the State on the basis of the fault it has committed in not making sure that its officers respect the principle of legality while performing their function—a fault that involves its tort liability."¹⁶ This second type of action can be entertained by the Ethiopian courts on the basis of Art. 62 (*cum* Civil Code Arts. 2035 and 2126). For the first type of action, no such specific legal basis can be found. Indeed, apart from the Emperor, in whom, conformably to a sensible tradition, is vested supreme authority in all fields (Art. 26), there seems to exist, in Ethiopia, no judicial instance generally empowered to annul governmental enactments on ground of illegality. This assumption seems indirectly supported by the fact that, after enactment of the 1955 Constitution, special legislation was still deemed necessary, *e. g.*, to vest in the High and the Supreme Court a power to review the legality of particular tax assessments.¹⁷ *A fortiori*, general governmental enactments seem immune from judicial nullification *erga omnes* in either general, or precedent-setting terms (as distinct from ordinary case-decision terms *inter partes*), notwithstanding Article 122 of the Constitution, which is largely programmatic; this, unless Article 122 can be indirectly bolstered by applying a United States patterned *stare decisis* doctrine to Supreme Court case-disposals,¹⁸ in other words by putting in force Art. 16 of the suspended Courts Proclamation of 1962;¹⁹ or unless some special Court with powers generally to cancel²⁰ illegal or unconstitutional enactments²¹ is created (Continental pattern), always bearing in mind that the whole problem may be a little unreal in our wise system where one person (the Emperor) is head of *both* the Administration and the Judiciary, and, the Federal duality of institutions is at end.

16. *Id* at 278. All such actions are brought, in France, before special administrative courts, including the supreme "Conseil d'Etat."

17. See Income Tax Decree No. 19 of 1956.

18. In so far as not reversed by the Imperial *Celot*.

19. *Stare decisis*, however, may bring a premature rigidity into the legal system as a whole.

20. Subject to reversal by the Imperial *Celot*.

21. Such court could also give advisory opinions at drafting stage.

Due to lack of case-reports, this terse analysis is purely tentative. Future cases (or more reflection) may impose its modification. Our chief aim is to provoke thought on the issues involved, further discussion of which should be in practical detail. This paper's theoretical method may indeed be somewhat out of place in traditional society for which a living hierarchy of persons was always more significant than an abstract one of laws. A "flawless" hierarchy of laws is not an ideal of universal validity. I hope to have demonstrated that it may be incompatible – at top level – with a beneficial system of undivided supreme powers. At other levels, the obstacle may be merely lack of awareness and implementing devices.