CONTROLLING MECHANISAMS OF GOVERNMENTAL POWERS

Intro

- the concern of administrative law is regulating the powers of administrative agencies –
- agency powers pose an inevitable threat on individual freedom and liberty -- *an exercise of public power is only appropriate where it can be justified to citizens in terms of rationality and fairness -- Arbitrary decisions and rules are seen as illegitimate.*
- Identifying the mechanisms of control of administrative agency powers
- Control by the legislative, executive, the ordinary courts (JR) and independent agencies, media, ombudsman

Controlling Mechanisms

- Most of these controlling mechanisms are introduced through legislation
- designed to improve the quality of administrative decision-making by providing effective alternative checking mechanisms
- Internal administrative review by superior officials: formal by law or informal
- External control
    - Parliamentary control;
    - Political control;
    - External administrative review by tribunals;
    - External scrutiny and recommendations by Ombudsmen and other watchdog institutions and
    - Judicial control
- the perceived inadequacies of each mechanism to check the ever increasing involvement of the government in matters that affect the interest of the citizens
- Benefits
    - Improves the quality, efficiency and effectiveness of government decision-making generally;
    - Enables people to test the legality and merits of decisions that affect them;
    - Provides mechanisms for ensuring that the government acts within its lawful powers;
    - Provides mechanisms for achieving justice in individual cases and
    - Contributes to the accountability system for government decision-making.

External Control

- Parliamentary control-
  - the highest authority of the Federal Government
  - have the power of legislation in all matters assigned by this Constitution to Federal jurisdiction
  - Parliaments power to oversee the the government –hearings and question time—50, 55(17-18) standing committees visit
    - to call and to question the PM and other Federal officials and to investigate the Executive's conduct and discharge of its responsibilities.
    - discuss any matter pertaining to the powers of the executive- to take decisions or measures it deems necessary.
    - periodic reports on work accomplished by the Executive as well as on its plans and proposals (74/11)
  - Through budgeting and appointment processes or even abolishing the agency by another law
  - Lack of formal procedure for controlling administrative rule-making

External Control-cont’d

- Executive control
- Council of Ministers “shall decide on the organizational structure of ministries and other organs of government responsible to it; it shall coordinate their activities and provide leadership.” 77 also through hire and fire
- **Control by Administrative Tribunals review of administrative acts- on points of law and fact**
- **Judicial Control-** Individuals aggrieved by agency decisions may seek court intervention in appropriate cases. **Through appeal or JR**
- **Control by independent agencies: HRC and Ombudsman, Auditor General -**as alternative forums for controlling administrative agencies, especially on administrative matters that are not suitable for parliamentary deliberation and adjudication.
- Proclamations No. 210/2000 & 211/2000
- **HRC:** To ensure that laws, regulations and directives as well as government decisions and orders do not contravene the human rights of citizens guaranteed by the Constitution
- To undertake investigation, upon complaint or its own initiation, in respect of human rights violation
- the Commission’s recommendations are not binding , formally and informally via different mediums of communications , it can also investigate violations of said rights on its own motion. it can also investigate violations of said rights on its own motion.
- **Control by the media-as one of** the most effective informal controlling mechanisms --to the attention of the public, the media may also exert moral and political pressure --mobilizing public opinions