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Administrative Law Principles in Afghanistan's Administrative Law: A Step toward Good Public Administration



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ABSTRACT

Administrative law principles are the important regulations in administrative law, under those principles human rights, human dignity, and freedom is respected and avoid misuse of Authorities in administration. These principles are like tools that define citizens' rights in the country. On the other hand, by these principles, Administrative authority can take the correct decision and could solve administrative problems. Truly, these principles make Administrative authority responsible for their decisions. The question is this: what are Administrative principles in Afghanistan administrative law? This paper has answered the question that mentioned, by qualitative methodology. The methods which are used are content analysis Afghanistan Administrative laws, regulations, and credible administrative law books. The findings of this research reveal an understanding of administrative principles is needed for good public administration and respecting citizen's rights.

INTRODUCTION

The Administrative entities work for two aims, first doing public services and second keeping public orders. Public services are one of the administrative law concepts. Also, public services are activities that are done by public entities or private entities under the supervision of public entities for the fulfillment of public needs (Rasili, 2019). In reality, the administrative general principles are norms we can find in a legal context and judicial review, these principles govern administration and citizens' relations. Unfortunately, Afghanistan does not have administrative court we do not have a unified code of administrative law (Faiez, 2017: 38). Administrative law doctrines are concerned about the violation of citizens' rights. Therefore; researching administrative law principles is needed to support citizens' rights and good public administration. The administrative law principles are principle of legality or rule of law, the principle of neutrality, the principle of accountability, principle of stability and continuity of public services, the principle of doing meritocracy, the principle of transparency in executions, the principle of logical decisions, the principle of legitimate expectations, observance of hierarchy, actions evaluation, observance of proportionality and respecting citizens' basic rights (Hadvand, *et al*, 2012:78). Besides the aforementioned principles, there are some ethical principles in administrative law like honesty, trusteeship, observance of administrative ethics, observance of justice or equity, and avoidance of inattentions' officers. This article will not talk about the ethical principles and mostly focused on administrative principles which are mentioned in Afghanistan Procedural Law (2018) and some credible administrative law books.

In 2018 Afghanistan regulated Afghanistan procedural law for the first time; it can be a step forward to codifying administrative law in Afghanistan.

MATERIALS AND METHODS

According to Rahimi H. (2020), legal research is different from other scientific research, in here we can use Legal documents and interviews as the primary source and Administrative law books as a secondary resource, According to research methodology content analysis is a good method for legal research and this research is mostly content analysis of legal documents in Afghanistan law and regulation.

Problem Statement:

In Afghanistan there is not a unified code for Administrative affairs, we have deferent statutes and regulations as a source of administrative law, and in 2018 Afghanistan regulated Afghanistan Procedural Law for the first time, in chapter one section two of this law mentioned some administrative principle, interpretation of this principle is not written in Afghanistan administrative law books, besides this problem we do not have administrative court in our judicial system to clarifies administrative customs and principle. Therefore; it is needed to have more explanations about administrative principles based on Afghanistan legal documents.

Research Objective:

- To clarifies the administrative law principle in Afghanistan Administrative law.
- To explain the aim of the administrative law principle.
- To help Afghanistan public administration to serve faithfully for the citizens.

Research Questions:

1. What are Administrative principles in Afghanistan administrative law?
2. What can be inferred from the administrative law principle in Afghanistan Administrative Procedural Law?

RESULTS

Principle of Rule of law or principle of legality:

The foundation of any democratic legitimation consists of two elements: (1) the people elect representatives, and (2) the people control those representatives (Thomas & Maximilian, 2009:11).

The administration is obliged to obey the law and regulations (Azizi, *et al*, 2012: 60). It means all citizens have the same rights and obligations in the law, the principle of legality states that no one is above the law, all citizens are equal, administrative authorities must do their performances following the law (Havand, *it al*, 2012:60). Every kind of outrage or law

violation damage the rule of law, this principle is the fundamental principle of public law, based on that the government must do its duties' in a legal framework (Mottmani, 2014:439). And, the administrations are responsible to the people and the elected representatives of the people control them. In administrative law, the law is the base of every act and decisions, therefore; administrative authorities must do their performance according to the law. (Rasoli, 2019)

The law defined their authorities, powers, and, they are not a dictator, and they must respect the law and ensure the citizens' rights. The rule of law avoids individual government; even the president must follow the law.

According to the article (52) Paragraph (2) Afghanistan Constitution (2004) has stated: Government offices are bound to carry their work with full neutrality and in compliance with the provisions of law. Based on article (63) Afghanistan Constitution (2004), the president obliged to obey the law, article (63) Afghanistan Constitution (2004) said: The President-elect, before the resumption of his/her duties, performs the following oath of allegiance in the presence of members of the National Assembly and the chief justice: "In the name Allah, the Merciful, the Compassionate, In the name God Almighty, in the presence of you representatives of the nation of Afghanistan, I swear to obey and safeguard the provisions of the sacred religion of Islam, to observe the Constitution and other laws of Afghanistan and supervise their implementation...

According to article (76) Afghanistan Constitution (2004) paragraph (1) to implement the main policies of the country and regulation of its duties, the government shall devise and approve regulations. Paragraph (2) these regulations should not be contradictory to the text and spirit of any law.

In 2018 Afghanistan made a law by the name of Administrative procedural law for the first time in chapter first section two has regulated administrative principle, article (6) Afghanistan procedural law (2018) stated: Public Administration is required, in the enforcement of the provisions of the Constitution and other provisions legal documents.

The public authorities are obliged to do their executions on limits of competence that legislative documents have been delegated to them.

When we see the legal text and analyze the legal documents, Afghanistan has an excellent legal document to implement the rule of law but, in practice, we have a lot of problems that can be an obstacle on legal principle and rule of law like insecurity, illiteracy, warlords, corruptions and other countries interference.

Principle of equality:

Observance of equality is important in administrative principles' and it is also necessary for respecting human fundamental rights. The Principle of equality is a very important principle we can see this principle in all countries' law (Azizi, *et al*, 2012: 63). Afghanistan Constitution (2004) in article (22) paragraph (2) has stated: The citizens of Afghanistan -- whether man or woman -- have equal rights and duties before the law. Also, the Afghanistan Constitution (2004) in the article (50) has stated: The administration shall perform its duties with complete neutrality and in compliance with the provisions of the laws. The purpose of this principle is that administrative authorities should have the same behavior to all clienteles or citizens. The administration should avoid all kinds of discrimination (Danish, 2015: 262). Sometimes the law accepts some positive discrimination and this kind of discrimination should have logical reasons. Besides constitution article (3) Civil Service code of conduct (2006) stated: Civil Service Employees' treats rationally and appropriately to all citizens without any discrimination (Azizi, *et al*, 2012: 65). The principle of equality also mentioned in Afghanistan procedural law (2018) article (7) paragraph (1) citizens have equal rights and obligations under the law. Paragraph (2) The public authority is obliged to treat the relevant persons equally. Paragraph (3) shed lights, any discriminatory administrative action in the office is prohibited. Paragraph (4) mentioned the Public Administration is obliged to avoid any tendencies of family, ethnic, religious, partisan, gender, and linguistic in the implementation of administrative acts.

Considering the principle of equality in administrative affairs can cause to respect other rights and freedoms, for this reason, equality is the foundation of liberty. There are three kinds of equalities to citizens: first equality in the use of public services, second equality on administrative authorities' behavior on citizens and the third one is equality on paying expenses. (Rasoli, 2019).

Equality in use of public services is the rights of all citizens, and the administrative officer could not consider discrimination to citizens, and the obligation of public authorities is to deliver equal and same public services to all citizens (Azizi, *et al*, 2012:69).

Principle of Neutrality:

One of the important and common administrative principles is the principle of neutrality. It means public authorities must do their duties' with impartiality. Afghanistan Constitution (2004) in article (50) paragraph (3) talked about neutrality like this: Government offices are bound to carry their work with full neutrality and in compliance with the provisions of law. The government officers do their work in a way that no harm or benefits to political parties, ethnic, social, regional, or religious groups, and should avoid any specific kinds of affiliations to gender, sects, race, language, and region.

If the public officer does not care impartiality in his or her job, he or she can cause negative results to administrative prestige.

Article (6) of Civil Service Code of conduct (2006) also mentioned about the neutrality in administrative work: The main principle that manage administrative work is being expert, better public service, legitimacy, neutrality ... (Azizi, *et al*, 2012:68).

Article 8 Afghanistan Procedural Law (2018) has regulated observance neutrality in administrative affairs: The Public Administration is obliged to observe its duties and competencies in the face of complete neutrality and to prevent the granting of privileges and interests contrary to the law to a particular person or group.

The principle of neutrality wants all citizens must ensure that all decisions have been taken based on justice and law, not based on personal interests (Azizi, *et al*, 2012: P. 68).

Principle of Accountability:

One of the administrative law principles is the observance of accountability; it means the fact of being responsible for your decisions or actions and expected to explain to them when you are asked. It is a very important tool to grantee the citizens' rights and the public officers should obey the law to be accountable (Rasoli, 2019).

Article (13) Afghanistan Procedural Law (2018) talked about the responsibility and accountability and clearly stated: Public administration is responsible for the actions caused harm by the negligence or fault of the public official, the public administration is responsible and accountable for causing danger or damage to the people.

Every person expected from an administration that his or her work should be done fast, early, and without any delay, and the administration hears his or her complaints in a great manner. The public authorities are responsible for all delays, neglects, indifferent, nonchalant to citizens for their good accountability (Rasoli, 2019). Besides this every lower level is responsible for the upper level, the administration hierarchy wants this kind of accountability (Khalli Nezhad, 2015: 26). Therefore; accountability is accepting responsibility to the expected result, accepting fulfillment responsibility, accepting statistic responsibility, and accepting decision results.

Principle of stability and continuity:

Public services have stability and continuity, it means any public authorities have not the rights to dismiss public administrations, and the public authorities are responsible for delivering public services in formal days' work with a great manner (Qazi, 2016: 19) According to Regulation on Personal Affairs Civil Service Law of Afghanistan (2009) article (16) general resignation is not allowed.

If an employee could not come to work, the administration authorities are responsible to manage the situations, and keep open the administration and deliver services, it means the authorities are not allowed to close or dismiss the administration without any legal documents, but there are some formal holiday which is clear in the law or force major situations that human cannot manage that or the Ministry of Labor will announce those holydays.

Observance of meritocracy:

Meritocracy in its broadest concepts, "meritocracy" defines a social order in which individuals are ranked according to some individual worth or merit. In contrast to group-based egalitarian models, meritocratic models assume that ability can be quantified, separated from the social context, and attributed to the individual. When operating within this framework, one can describe merit in different ways (DeSario, 2003).

It is a very important principle in administrative law, this principle can ensure social justice in a society, the aim of meritocracy is distributing of social locations, positions and advantages in an equal manner in the society. To have great meritocracy transparent exams are needed, every person who is elite or talented persons can achieve a high position, and the Afghanistan Constitution (2004) in article (50) paragraph (5) mentioned meritocracy. The citizens of Afghanistan are employed for state services based on qualifications without any kind of discrimination and following law.

Principle of transparency in executions:

The law dictionary defined transparency like this: A lack of any hidden agendas with all information being available. Transparency is on-time delivering accurate information from administration affairs to citizens, Transparency as a concept figures in many different spheres of public life ranging from architecture, the arts, media, markets, democracy, regulation, and public administration. According to Rasoli (2019), the administration in charge informed the citizen of government policies, plans, and procedures at a specific time. When the administration in charge shares the information to the citizen, the action increase the public trusts also this action reveals illegal action which is done by administration authorities, then the prosecutors can start investigations, one of the scholars said: “sharing information is the enemy of corruption”. It is mentionable that, every staff of the administration obliged to keep administration secrets. It does not mean all the administrative affairs are not sharable.

Article (7) paragraph (3) Regulation of conduct Civil Service (2006) mentioned: Civil service employees deliver information accurately to all citizens. Civil service employees are not allowed to reveal secrets affairs of administration, also are not allowed to have an interview with others without prior permission, the interview should be according reality. Sharing information to the citizens has special regulation and laws.

Afghanistan Constitution (2004) in article (50) paragraph (3) said: The citizens of Afghanistan have the right of access to the information from the government offices by the provisions of law.

Transparency is not stated in the Afghanistan Constitution (2004) directly but, we can infer it from article (50) Afghanistan Constitution (2004) indirectly.

Principle of adductive and document:

The administrative authorities are obliged to take adductive decisions, the decision should be based on legal documents, and the administrative authorities must state the reasons for their decisions. Every reason and document is not needed, and not necessary (Rasoli, 2019). It is important that the authorities have special competency to make a decision and should impart to the person that the decision has taken against him or her (Hadvand, *et al*, 2012:70).

The principle of legitimate expectation:

The legitimate expectation is legal waiting rational wanting in the relation between person and administration. The legitimate expectation has accepted as a general principle of administrative law.

The principle of supporting legitimate expectations is the title of the article (10) Afghanistan Procedural law (2018) which is defined the legitimate expectation: Legitimate expectations are expectations that result from announcements, rulings, resolutions, practices, behaviors, or promises made by the public administration to people that citizens can rely on it to organize their affairs and demand its continuation. This article in the next paragraph stated: The administration cannot unexpectedly deviate from its policies, rules, or practices that harm legitimate expectations. In case of change, the administration is obliged to announce the matter in advance and determine a transition period until regulating new policies and regulations.

Whenever the public administration takes measures to create a new responsibility for persons with legitimate expectations those measures do not affect the past.

In reality, the legitimate expectation is the citizens' legitimate wanting from authorities in decision making and policymaking. The observation of justice and equity imply that the administrative authorities must observe legitimate expectations.

Staffs' Activity evaluation:

One of the administrative principles is employees' activity evaluation, the administration makes a system that evaluates and observe all staffs properly when they have done their job excellent the authorities encourage them when they have not done their work properly and neglects in administrative affairs they are responsible and must answer for their neglects and

faults. Administrative authorities must consider the staff's activities in their growth and getting a high rank. This principle encourages employees to have legal competition.

Observing the Proportionality Principle:

One of the administrative principles is considering proportionality in decision making, it means there should be logical coordination and relations between administration aims and administration decisions. The decision which does not achieve the specific goals of the administration and out of necessity is not allowed. Article (11) Afghanistan Procedural Law regulated the principle of proportionality as follow:

The public administration is obliged to observe the principle of proportionality in its executions, according to this principle; the administration is obliged to ensure the realization of the following goals:

1. The legitimacy of the administration's goal
2. The appropriateness of the action taken to achieve the goal.
3. Select the option that imposes the least loss or bad impact on the person affected by the administration decision.
4. Observance of proportionality between conflicting private and public rights and legitimate interests in administrative practice.
5. No more harmful effects from administrative action, compared to beneficial effects or benefits. (Hadvand, *et al*, 2012:70)

Securing of social interest is needed if the decision harms private right these harms should be decreased at a minimum level. The core aim of observing proportionality in administration supporting citizen rights against government entities and administration should take the decision that harms individual freedom. In observing proportionality principle we must observe the following things:

- There should be a logical, fair, and equitable balance between public interest and citizens' rights.
- The decision should have logical relations with the aims of lawmakers.

-The decision should be following imperative rules.

-Precautionary steps have taken should not be strict.

Respecting the citizens' rights:

Effective support for legitimate interests is the title for article (9) Afghanistan Procedural Law (2018) which is said: The public administration is obliged to respect the legitimate rights and interests of the citizens in administrative actions.

Observing and respecting of citizens' rights is the basic right of individuals which have written in constitutions, also they are mentioned in some convention that Afghanistan has acceded on that, chapter two of Afghan constitution (2004) regulate the citizen's rights as follow:

- ✓ Right of equality.
- ✓ Prohibition of discrimination
- ✓ Right of freedom.
- ✓ Right of acquittal.
- ✓ Observing human dignity.
- ✓ The legality of punishment and crime.
- ✓ Prohibition of torture.
- ✓ Right to defense.
- ✓ Immunity of communications
- ✓ Freedom of speech.
- ✓ Right to the demonstration.
- ✓ Right to establish entities and association.
- ✓ The right to establish a party.



- ✓ Right to be a member of a party.
- ✓ Right to have a domicile.
- ✓ Right to have trip in or out of the country.
- ✓ The right to have property.
- ✓ Right of educations.
- ✓ Right have secret domicile and immune domicile.
- ✓ Right of health.
- ✓ Right of labor.
- ✓ Right to have redress.
- ✓ Right of access information.
- ✓ Social security rights.
- ✓ And freedom of speech.



Observing the principle of administrative hierarchy:

One of the important points in administrative law is observing administrative hierarchy. In every administration, there is an organizational chart that clarifies the authorities in the top, middle and low management. It is like a pyramid that makes the organization and the president, and ministers are on the top of the pyramid (Khalli Nezhad, 2015:26). In Afghanistan, performing orders are deferent between military section and civil service administration (Rasoli, 2019).

In the military section, when the commander orders to subordinate, the subordinate must perform without any delay and reason. In the civil servant administration when the authorities order to subordinate, the subordinate should consider the legality of the commandment, if it was not against the law he or she should perform it if it was an illegal command the subordinate must inform the authorities politely and must take second written direction than he or she should perform the direction. The administrative hierarchy necessitates the lower

level of management administration feels responsible for upper levels. They must report from their work to upper levels. In Afghanistan administrations the ministers are top managers, ministers have authorities to take the decision and all staff is obliged to imitate from their minister's order. The administrations are responsible for the house of Representatives and the president just from the political aspect (Qazi, 2003:527 & Constitution, 2004).

CONCLUSION

The administrative law has a special principle, observing of those principles are very important in administrative executions. The correctness of administrative executions has related to observing administrative principles. If an organization does not care about administrative principles that organizations violate citizens' rights.

Powerful leadership and management in administration support rule of law, faithfully and loyal execution of affairs from administration staffs, facilitate the situation of observing administrative principles and avoiding corruption, discriminations, and sabotage. The administrative law principle like: Principles of fairness, transparency, accountability of decision making, legal certainty, and protection of legitimate expectations, equity, and reasonableness guarantee a certain level of control over governmental actions by the people; and therefore, they indirectly legitimate governmental actions.

REFERENCES

1. Administrative procedure Law (2018). Title 1298 Afghanistan.
2. Aziz, et al. (2012). Max Plank Manual on Administrative Law in Afghanistan, Kabul. Max Plank Institute P. 60, 63,
3. Constitution of Afghanistan (2004). Title 818 of Afghanistan.
4. Danish, S. (2015). Afghanistan Administrative Law, Kabul, Ibni Sena University press, P.262
5. DeSario, N.J.(2003). Conceptualizing Meritocracy: The Decline of Disparate Impact Discrimination Law, *38 Harv. C.R.-C.L. L. Rev.* 479.
6. DeCoste .F.C. (2001). Redeeming the Rule of Law: Constitutional Justice: A Liberal Theory of the Rule of Law, T.R.S. Allan, (Oxford: Oxford University Press), *39 Alberta L. Rev.* 1004.
7. Faiez, N. (2017). Judicial Review in Afghanistan. Kabul, Faculty of law, P. 38.
8. Hadavand, M. et al (2012). Administrative Procedure in Administrative law: Comparative study. Tehran, Khursandi, P.70, 71, 76.
9. Khalil Nezhad, R. (2015). Administrative Law. Tehran. Majd. P.21.
10. Kalen S. (2016). The Death of Administrative Common Law or the Rise of the Administrative Procedure Act, *68 Rutgers L. Rev.* 605.
11. Qazee, A. S. (2003). Constitution Law & Political Institutions, Tehran University press. P 571.
12. Qazi, G. (2016). Administrative Law, Kabul, Saied. P.19.
13. Rasoli, A. (2019) Administrative law General Principles. Kabul, *Journal of Ministry of Justice*, 202.
14. Rahimi, H. (2020) Research Methodology lecture, Kabul, Safi Landmark LISPA Winter Legal education course

15. Rubenstein, K. & Schultz J. (1996). BRINGING LAW AND ORDER TO INTERNATIONAL TRADE: ADMINISTRATIVE LAW PRINCIPLES AND THE GATT/WTO, 11 St. John's J.L. Comm. 271
16. Regulation on Civil Service. (2009). Title 992 Afghanistan.
17. Thomas D & Maximilian C, USING AN EVALUATIVE COMPARATIVE LAW ANALYSIS TO DEVELOP GLOBAL ADMINISTRATIVE LAW PRINCIPLES, 17 Mich. St. J. Int'l L. 567

