

Office of the investigator general essay sample

[Law](#), [Court](#)



Introduction

Until the early 1970s, Zambia did not have the office of the Ombudsman or Investigator General. In 1972 when cases of corruption and abuse of power were becoming more rampant, Dr Kenneth Kaunda the republican president then expressed a wish and desire to set up an institution to fight these vices. Thus this marked the birth of the Office of the Investigator General which is also known as the Commission of Investigations or the Ombudsman. This office, among other things, was mandated to supervise the work of the executive by checking on its maladministration. Sad though, the Office of the Investigator General can be said to be very little heard about its activities and achievements and yet this is a very important institution in Zambia. Although it is a government wing which passionately wants to fight corruption in the country it has been neglected. Suffice to mention, the essay aims, therefore, to discuss the importance of this Office in the control of administrative action, in an attempt to foster protection of the individual's rights in the state-individual relations with reference to the statutes and other relevant authorities.

Importance of the Office of the Investigator General in the control of administrative action

There are three ways in administrative law that deal with maladministration, namely through commencement of Judicial Review Proceedings under Order 53 of the Rules of the Supreme Court, the Tribunal under Inquiries Act and finally laying a complaint to the Investigator General. The latter is very important in the attainment of administrative justice. This office is

established by the Constitution of Zambia. Article 90(1) of the Constitution of Zambia Act stipulates that:

“ There shall be an Investigator General of the Republic who shall be appointed by the President in consultation with the Judicial Service Commission and shall be the Chairman of the Commission for Investigations.”

Its mandate is founded under Cap 39 of the Commission for Investigations Act. In a democracy such as Zambia, administrative law is the most important vehicle for administrative justice. It is for this reason that the creation of the Office of Investigator General is important to ensure that justice is carried out when individual's rights have been infringed. The importance of this office is that it is cheap and there are no formalities required. For instance, there is no need for a complainant to engage a lawyer to handle his case. Most importantly, the establishment of this wing is justified:

- as an instrument of human rights;
- as a unique mechanism of democratic control over bureaucracy;
- as a formal avenue for redress of grievance against administrative wrongdoing; and
- as an instrument of tackling bureaucratic pathologies.

The Commission contributes significantly to the administrative accountability. Through accessible and simple complaint heading procedures, the Investigator General serves as the people's protector

against errors or abuse by public officials at minimum cost and delay as earlier alluded to. Although there are no powers to enforce the Commission's recommendation and elsewhere, it has nonetheless persuasive authority to move the executive to take action being a respectable institution in the country. The impact of the Office of the Investigator General was summed up by Professor Geoffrey Salver when he observed:

“ A good Ombudsman will reduce complacency, verging towards arrogance, which is a characteristic vice of bureaucracies and he will also remove many of the chips on shoulders which tend to display in their dealing with government.”

Under Part III of the Commission for Investigations Act, Cap 39 Section 8, the Commission has powers and duties to investigate persons in the public service, members in the service of a local authority, members and persons in the service of any institution or organisation, whether established by or under the Act of Parliament or otherwise, in which the Government holds a majority of shares or exercises financial or administrative control save the President. With the directive of the President, the Commission may investigate the conduct of any person to whom the Act, applies in the exercise of his office or authority or the abuse of such authority.

Besides, the Commission may on their motion investigate anyone, where it considers that an allegation of maladministration or abuse of office or authority ought to be investigated. The complainant may be an individual, a body of persons corporate or incorporate, which complaint may be oral or in writing and should be authenticated. The Commission has absolute

discretion to override any limitation regarding a complaint that it must be made within two years from the date on which facts giving rise to any such complaint or allegation arose.

The Commission may hear the complaint if resorting to other means has induced fear or may cause undue hardship, expense or delay. The Commission may refuse to conduct an investigation if the complaint is trivial, frivolous, vexatious or not made in good faith or if the injury would be unnecessary, improper or fruitless. Should that be the case, the complainant is informed of the discontinuance of the investigations in writing but it is not bound to give reasons.

The jurisdiction and powers conferred on the Commission may be exercised notwithstanding any provision in any written to the effect that an act or omission shall be final or that no appeal shall lie against such an act or omission or that no proceeding or decision shall be challenged, reviewed, quashed or called in question. When conducting investigations, the Commission is empowered to issue directions, orders and writs, which it considers to be facilitative to the process. It may summon witnesses and issue warrant for their arrest if summons are destroyed. The Commission can order production of documents relevant to the investigation and no obligation to maintain secrecy or other restriction upon the disclosure of information can be entertained. This is against the backdrop that the President may certify that the disclosure of document may harm national security or injuries to cabinet secrets and public interest. Most importantly

investigations are conducted in camera and legal representation or to be heard is not a right. This is provided in the Act, which reads:

“ No person shall as of right be entitled to be represented by a legal practitioner or to be heard...”

From the foregoing it can be concluded that the acts of the Commission are final save for lack of jurisdiction. An investigation, proceeding process or report could not be held bad for any error or irregularity of form or be challenged, reviewed, quashed or called in question in any court. The members and staff of the Commission have absolute immunity for anything done in good faith in the course of exercise of their functions. They could not even be summoned to go and enter in evidence anything that came to their knowledge in the exercise of their functions.

Additionally, this is a very important office for the control of executive power in that it investigates any public body or corporation. The functions and powers of the Investigator General are spelt out in the commission for Investigations Act. The Office of Investigator General helps achieve administrative justice for any aggrieved by an act of a public body or corporation in that it investigates such an abuse of power and recommends to the President on the action to be taken against such body or corporation in the event that an abuse of office or power has been established.

This is the most important right linked to administrative justice.

(i) Article 18(1) of the Constitution of Zambia states that :

“ A person... shall be afforded a fair hearing within reasonable time by an independent and impartial court established by law.”

The right to be heard is one of the main natural rights that man is endowed with. If a person has been, for example, fired by a public body without being given a fair hearing or being not heard at all, administrative law brings in the right to be heard. In the celebrated English case of *Ridge v Baldwin* the Chief Constable was suspended on some charges. He was called before a disciplinary body but was not called before another body that eventually dismissed him from the force. It was held by the House of Lords that his dismissal was null and void as he had not been given the opportunity to be heard.

Further, in the case of *Cooper v Wandsworth Rural Council* it was held that the decision to demolish the houses notwithstanding that, it was a right one was nevertheless void as the council had not given the applicant the right to be heard. In the Zambian case of *Kangombe v Attorney General* the right to be heard was also discussed. In the case, the headmaster applicant had been suspended by the Teaching Service Commission on grounds of being partisan. He went to appear before the Commission, it was resolved that he be re-instated but the then Secretary General of Government, Aaron Milner put in the report to be submitted to the President some allegations which had not personally been brought to the attention of the applicant. The applicant was accordingly dismissed by the President. The court had the opportunity to look at the right to be heard when it stated that his dismissal

was null and void as the applicant had not been given the right to be heard on the allegations sent to the President which led to his dismissal.

(ii) A person not to be a judge in his own case

Another right connected to Administrative justice is for a person not to be a judge in his own cause. This is expressed in Latin as “ Nemo det in Causa Sua”. There will, eventually be conflict of interest if such a case arises and administrative justice cannot be attained. In the case of *Dines v Guard Junction Canal* Lord Cottenham had shares in the canal. When a dispute arose between the canal and the applicant, the case came before the General Lord.

He properly disclosed his interest but nevertheless, proceeded to hear the case and gave a sound decision. On appeal, the House of Lords stressed the fact that even if the decision given by Lord was unbiased, there were facts that he had adjudicated in the matter made him an interested party and hence substantiating this as a ground for appeal.

In the *Zambian case of Patel and Another v Yoram Mumba and Others* the notion of being a judge in one's cause was rejected. However, the Supreme Court, in deciding in the above case which involved in the lower court a conversation by the trial judge and the respondents lawyer as to a funeral for the judge's niece whom Counsel knew and where the duo planned to go together before the judge gave a ruling, the appellants claimed that the judge by personally knowing the respondent's counsel had become impartial leading to him granting the respondents an injunction on frivolous grounds.

The Supreme Court, however, noted that in Zambia, the legal profession is a small and young profession and the notion of judges and counsel knowing each other personally could not be ruled out especially that some of these judges and lawyers were either classmates at University or some were students of others.

The above are the most important right connected to administrative justice which the Office of the Investigator General is involved.

CONCLUSION

In conclusion, it can be accepted that administrative law is the most important vehicle for administrative justice in a democracy like Zambia. Important to note is that some of the main agents of administrative law in the country such as the Courts and the Investigator General are authoritatively enshrined in the constitution. Also to be noted is that the rights linked to administrative law such as the right to be heard in particular is not only stipulated by Article 18 of the Constitution but has been adjudicated upon the courts.

BIBLIOGRAPHY

Linda, R. F. (1977). The International Ombudsman Yearbook Vol. 1 11A

Salverm G. (1968). Ombudsman. (2nd ed.). Melbourne: Melbourne University Press

STATUTES

The Constitution of Zambia Act, Cap 1 of the Laws of Zambia

The Commission for Investigations Act, Cap 39 of the Laws of Zambia

CASES

Cooper v Wandsworth Rural Council [1952] 2 QB 86

Dines v Guard Junction Canal [1868] 2 HC 392

Kangombe v Attorney General [1972] Z. R

Patel and Another v Yoram Mumba and Ors SCZ No. 13 of 2003

Ridge v Baldwin [1948] 2 AC 548

ELECTRONIC SOURCE

<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=2565788> <http://maravi.blogspot.com/2008/06/investigator-general.html> <http://www.scribd.com/doc/19393630/Administrative-Law->