

Administrative Law In South Africa

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Chapter 1 – Introduction to Administrative Law

1.1 THE NATURE AND SCOPE OF ADMINISTRATIVE LAW (BACKGROUND)

Administrative law regulates the legal relations of public authorities or bodies exercising public powers or public functions. It has come about as a result of separation of powers where the judiciary regulates the exercise of public power by the other branches of government [*Pharmaceutical Manufacturers Association*]. The question is thus what constitutes a public function.

(a) Public powers and functions

In South African, as in English law, the focus is more on the nature of the power being exercised than on the entity which does the exercising. The two judgments which deal with this issue are *AAA Investments* and *Calibre Clinical Consultants*. In England, USA and Canada the idea of public powers have been associated with governmental activities. However in SA the 'governmental' inquiry has not always been regarded as necessary [AAA]. In *CCC* Nugent JA insisted that the governmental inquiry was relevant. State involvement, or lack of autonomy, may imply a public power. Public funding could also be a significant factor. The governmental test must not be applied too literally or narrowly as the idea of 'public' as a wider meaning. There are many other characteristics which may contribute to something being public such as it being in public interest which may go beyond governmental interest. The source of the power is also relevant and how that power is exercised with regards to its effect on the public. It is a broad and flexible approach, not formalistic and mechanical. There is no one single test of universal application [CCC].

(b) The focus of administrative law

1

ADMINISTRATIVE LAW IN SOUTH AFRICA IS A VITAL ASPECT OF THE COUNTRY'S LEGAL FRAMEWORK, ENSURING THAT PUBLIC ADMINISTRATION REMAINS ACCOUNTABLE AND OPERATES WITHIN THE LAW. THIS BRANCH OF LAW GOVERNS THE ACTIVITIES OF ADMINISTRATIVE AGENCIES OF GOVERNMENT, ALLOWING INDIVIDUALS TO CHALLENGE DECISIONS MADE BY PUBLIC AUTHORITIES. THE EVOLUTION OF ADMINISTRATIVE LAW IN SOUTH AFRICA REFLECTS THE NATION'S HISTORICAL CONTEXT, THE TRANSITION TO DEMOCRACY, AND THE ONGOING EFFORTS TO UPHOLD THE RULE OF LAW AND PROTECT CITIZENS' RIGHTS.

HISTORICAL CONTEXT

THE ROOTS OF ADMINISTRATIVE LAW IN SOUTH AFRICA CAN BE TRACED BACK TO THE COLONIAL AND APARTHEID ERAS. THE LEGAL SYSTEM WAS LARGELY INFLUENCED BY BRITISH COMMON LAW, WHICH ESTABLISHED A RIGID STRUCTURE FOR ADMINISTRATIVE ACTIONS. DURING APARTHEID, ADMINISTRATIVE DECISIONS OFTEN REFLECTED RACIAL DISCRIMINATION, WITH LIMITED AVENUES FOR REDRESS AVAILABLE TO AFFECTED INDIVIDUALS.

WITH THE ADVENT OF DEMOCRACY IN 1994, SOUTH AFRICA UNDERWENT A SIGNIFICANT TRANSFORMATION IN ITS LEGAL

LANDSCAPE. THE NEW CONSTITUTION OF 1996 INTRODUCED FUNDAMENTAL RIGHTS AND PRINCIPLES THAT RESHAPED ADMINISTRATIVE LAW, MAKING IT MORE ACCESSIBLE AND JUST.

THE CONSTITUTION AND ADMINISTRATIVE LAW

THE SOUTH AFRICAN CONSTITUTION PLAYS A PIVOTAL ROLE IN SHAPING ADMINISTRATIVE LAW. KEY FEATURES INCLUDE:

1. **RIGHT TO ADMINISTRATIVE ACTION:** SECTION 33 OF THE CONSTITUTION GUARANTEES THE RIGHT TO LAWFUL, REASONABLE, AND PROCEDURALLY FAIR ADMINISTRATIVE ACTION. THIS MEANS THAT INDIVIDUALS HAVE THE RIGHT TO BE INFORMED OF THE REASONS FOR ADMINISTRATIVE DECISIONS AFFECTING THEM.
2. **ACCESS TO INFORMATION:** THE PROMOTION OF ACCESS TO INFORMATION ACT (PAIA) OF 2000 SUPPORTS THE CONSTITUTIONAL RIGHT TO ACCESS INFORMATION HELD BY THE STATE, FACILITATING TRANSPARENCY AND ACCOUNTABILITY.
3. **JUDICIAL REVIEW:** SECTION 34 OF THE CONSTITUTION ENSURES THE RIGHT TO HAVE ANY LEGAL DISPUTE RESOLVED BY A COURT OR INDEPENDENT TRIBUNAL, WHICH INCLUDES THE REVIEW OF ADMINISTRATIVE ACTIONS.

PRINCIPLES OF ADMINISTRATIVE LAW

ADMINISTRATIVE LAW IN SOUTH AFRICA IS FOUNDED ON SEVERAL KEY PRINCIPLES DESIGNED TO PROMOTE FAIRNESS, LEGALITY, AND ACCOUNTABILITY:

LEGALITY

ADMINISTRATIVE BODIES MUST OPERATE WITHIN THE BOUNDS OF THE LAW. ACTIONS TAKEN MUST BE AUTHORIZED BY LEGISLATION, ENSURING THAT OFFICIALS DO NOT EXCEED THEIR POWERS. THIS PRINCIPLE IS VITAL FOR MAINTAINING THE RULE OF LAW AND PREVENTING ARBITRARY DECISION-MAKING.

REASONABLENESS

DECISIONS MADE BY ADMINISTRATIVE BODIES MUST BE REASONABLE. THIS MEANS THAT THE DECISION-MAKER MUST CONSIDER ALL RELEVANT FACTORS AND REACH A CONCLUSION THAT A REASONABLE PERSON WOULD ARRIVE AT UNDER SIMILAR CIRCUMSTANCES.

PROCEDURAL FAIRNESS

PROCEDURAL FAIRNESS REQUIRES THAT INDIVIDUALS AFFECTED BY ADMINISTRATIVE DECISIONS ARE GIVEN A FAIR OPPORTUNITY TO PRESENT THEIR CASE. THIS INCLUDES:

- **RIGHT TO BE HEARD:** INDIVIDUALS MUST BE ABLE TO PROVIDE INPUT BEFORE A DECISION IS MADE.
- **IMPARTIAL DECISION-MAKING:** THE DECISION-MAKER MUST BE UNBIASED AND FREE FROM CONFLICTS OF INTEREST.
- **NOTIFICATION:** AFFECTED PARTIES SHOULD BE INFORMED OF THE DECISION AND THE REASONS FOR IT.

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

JUDICIAL REVIEW IS A FUNDAMENTAL MECHANISM WITHIN ADMINISTRATIVE LAW THAT ALLOWS COURTS TO ASSESS THE

LEGALITY AND VALIDITY OF ADMINISTRATIVE DECISIONS. IN SOUTH AFRICA, JUDICIAL REVIEW IS GOVERNED BY THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT (PAJA) OF 2000. KEY FEATURES INCLUDE:

1. GROUNDS FOR REVIEW: THE ACT OUTLINES SPECIFIC GROUNDS ON WHICH A DECISION CAN BE CHALLENGED, INCLUDING:
 - ILLEGALITY (LACK OF AUTHORITY)
 - PROCEDURAL UNFAIRNESS
 - IRRATIONALITY (UNREASONABLENESS)
 - FAILURE TO TAKE RELEVANT CONSIDERATIONS INTO ACCOUNT
2. TIMEFRAMES: PAJA ESTABLISHES STRICT TIME LIMITS FOR BRINGING A REVIEW APPLICATION, TYPICALLY WITHIN 180 DAYS OF THE DECISION BEING MADE.
3. REMEDIES: COURTS MAY GRANT VARIOUS REMEDIES, INCLUDING SETTING ASIDE THE DECISION, ORDERING THAT A DECISION BE MADE AFRESH, OR EVEN PROVIDING COMPENSATION TO THE AFFECTED PARTY.

KEY INSTITUTIONS AND MECHANISMS

IN SOUTH AFRICA, SEVERAL INSTITUTIONS PLAY A ROLE IN THE FUNCTIONING OF ADMINISTRATIVE LAW:

THE PUBLIC PROTECTOR

THE OFFICE OF THE PUBLIC PROTECTOR IS AN INDEPENDENT INSTITUTION ESTABLISHED UNDER CHAPTER 9 OF THE CONSTITUTION. IT INVESTIGATES COMPLAINTS AGAINST GOVERNMENT AGENCIES AND PUBLIC OFFICIALS, PROMOTING ACCOUNTABILITY AND GOOD GOVERNANCE.

THE CONSTITUTIONAL COURT

AS THE HIGHEST COURT IN THE LAND, THE CONSTITUTIONAL COURT ENSURES THAT ADMINISTRATIVE ACTIONS COMPLY WITH CONSTITUTIONAL PROVISIONS. IT SERVES AS A GUARDIAN OF RIGHTS AND FREEDOMS, PROVIDING A VITAL CHECK ON ADMINISTRATIVE POWERS.

OMBUDSMAN

VARIOUS OMBUDSMAN OFFICES EXIST AT DIFFERENT LEVELS OF GOVERNMENT, PROVIDING CITIZENS WITH AVENUES TO LODGE COMPLAINTS REGARDING MALADMINISTRATION AND POOR SERVICE DELIVERY.

CHALLENGES IN ADMINISTRATIVE LAW

DESPITE THE ROBUST FRAMEWORK OF ADMINISTRATIVE LAW IN SOUTH AFRICA, SEVERAL CHALLENGES PERSIST:

1. ACCESS TO JUSTICE: MANY INDIVIDUALS MAY FIND IT DIFFICULT TO NAVIGATE THE LEGAL SYSTEM, LEADING TO UNDERUTILIZATION OF AVAILABLE REMEDIES.
2. CAPACITY ISSUES: ADMINISTRATIVE BODIES OFTEN LACK THE NECESSARY RESOURCES AND EXPERTISE TO IMPLEMENT DECISIONS EFFECTIVELY, LEADING TO DELAYS AND INEFFICIENCIES.
3. CORRUPTION AND MALADMINISTRATION: CORRUPTION REMAINS A SIGNIFICANT ISSUE, UNDERMINING TRUST IN PUBLIC INSTITUTIONS AND THE EFFECTIVENESS OF ADMINISTRATIVE LAW.

4. PUBLIC AWARENESS: A LACK OF AWARENESS REGARDING RIGHTS AND AVAILABLE REMEDIES MAY PREVENT INDIVIDUALS FROM SEEKING REDRESS FOR UNLAWFUL ADMINISTRATIVE ACTIONS.

FUTURE OF ADMINISTRATIVE LAW IN SOUTH AFRICA

LOOKING AHEAD, THE FUTURE OF ADMINISTRATIVE LAW IN SOUTH AFRICA WILL LIKELY BE SHAPED BY ONGOING REFORMS AND SOCIETAL NEEDS. KEY AREAS FOR DEVELOPMENT INCLUDE:

- **STRENGTHENING ACCOUNTABILITY:** CONTINUED EFFORTS TO ENHANCE THE ACCOUNTABILITY OF PUBLIC OFFICIALS AND ADMINISTRATIVE BODIES ARE PARAMOUNT. THIS INCLUDES PROMOTING TRANSPARENCY AND COMBATING CORRUPTION.
- **IMPROVING ACCESS TO JUSTICE:** INITIATIVES AIMED AT EDUCATING THE PUBLIC ABOUT THEIR RIGHTS AND SIMPLIFYING PROCESSES FOR CHALLENGING ADMINISTRATIVE ACTIONS CAN HELP IMPROVE ACCESS TO JUSTICE.
- **EMPHASIZING HUMAN RIGHTS:** ADMINISTRATIVE LAW MUST CONTINUE TO PRIORITIZE THE PROTECTION OF HUMAN RIGHTS IN ALL ADMINISTRATIVE ACTIONS, ENSURING THAT THE LEGACY OF APARTHEID DOES NOT PERSIST IN PUBLIC GOVERNANCE.
- **ADAPTING TO CHANGE:** AS SOUTH AFRICA FACES NEW CHALLENGES, INCLUDING TECHNOLOGICAL ADVANCEMENTS AND ENVIRONMENTAL ISSUES, ADMINISTRATIVE LAW WILL NEED TO ADAPT TO ADDRESS THESE EVOLVING CONTEXTS.

IN CONCLUSION, ADMINISTRATIVE LAW IN SOUTH AFRICA IS A DYNAMIC AND ESSENTIAL COMPONENT OF THE LEGAL SYSTEM. IT REFLECTS THE COUNTRY'S COMMITMENT TO DEMOCRACY, ACCOUNTABILITY, AND THE PROTECTION OF INDIVIDUAL RIGHTS. BY UPHOLDING THE PRINCIPLES OF LEGALITY, REASONABLENESS, AND PROCEDURAL FAIRNESS, ADMINISTRATIVE LAW ENSURES THAT PUBLIC ADMINISTRATION OPERATES WITHIN THE CONFINES OF THE LAW, SERVING AS A CRUCIAL SAFEGUARD FOR ALL CITIZENS. AS THE NATION CONTINUES TO EVOLVE, SO TOO WILL THE MECHANISMS AND PRINCIPLES OF ADMINISTRATIVE LAW, STRIVING TO MEET THE NEEDS AND RIGHTS OF ITS PEOPLE.

FREQUENTLY ASKED QUESTIONS

WHAT IS THE PRIMARY PURPOSE OF ADMINISTRATIVE LAW IN SOUTH AFRICA?

THE PRIMARY PURPOSE OF ADMINISTRATIVE LAW IN SOUTH AFRICA IS TO REGULATE THE ACTIONS AND DECISIONS OF PUBLIC AUTHORITIES AND ENSURE THAT THEY ACT LAWFULLY, FAIRLY, AND JUSTLY IN THE EXERCISE OF THEIR POWERS.

HOW DOES THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT (PAJA) IMPACT ADMINISTRATIVE LAW?

THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT (PAJA) PROVIDES A FRAMEWORK FOR THE LAWFUL EXERCISE OF ADMINISTRATIVE POWER, ENSURING THAT INDIVIDUALS HAVE THE RIGHT TO FAIR ADMINISTRATIVE ACTION AND THE ABILITY TO CHALLENGE DECISIONS THAT AFFECT THEM.

WHAT ROLE DOES THE CONSTITUTION OF SOUTH AFRICA PLAY IN ADMINISTRATIVE LAW?

THE CONSTITUTION OF SOUTH AFRICA PROVIDES THE FOUNDATIONAL PRINCIPLES FOR ADMINISTRATIVE LAW, INCLUDING THE RIGHTS TO JUST ADMINISTRATIVE ACTION AND THE RIGHT TO SEEK JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS.

WHAT ARE THE GROUNDS FOR JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS IN SOUTH AFRICA?

GROUNDS FOR JUDICIAL REVIEW INCLUDE LEGALITY, REASONABLENESS, PROCEDURAL FAIRNESS, AND THE VIOLATION OF CONSTITUTIONAL RIGHTS, ALLOWING COURTS TO INVALIDATE DECISIONS THAT DO NOT COMPLY WITH THESE STANDARDS.

WHAT IS THE SIGNIFICANCE OF 'PROCEDURAL FAIRNESS' IN ADMINISTRATIVE LAW?

PROCEDURAL FAIRNESS REQUIRES THAT INDIVIDUALS AFFECTED BY ADMINISTRATIVE DECISIONS BE GIVEN A FAIR OPPORTUNITY TO PRESENT THEIR CASE AND BE HEARD, THUS PROMOTING TRANSPARENCY AND ACCOUNTABILITY IN THE DECISION-MAKING PROCESS.

HOW DOES THE CONCEPT OF 'LEGITIMATE EXPECTATION' APPLY IN SOUTH AFRICAN ADMINISTRATIVE LAW?

THE CONCEPT OF 'LEGITIMATE EXPECTATION' PROTECTS INDIVIDUALS WHO HAVE A REASONABLE EXPECTATION OF A CERTAIN OUTCOME BASED ON PREVIOUS CONDUCT OR PROMISES MADE BY AN AUTHORITY, ENSURING THAT THEY ARE NOT UNFAIRLY DEPRIVED OF THAT EXPECTATION WITHOUT GOOD REASON.

WHAT REMEDIES ARE AVAILABLE FOR INDIVIDUALS AFFECTED BY UNLAWFUL ADMINISTRATIVE ACTIONS?

INDIVIDUALS CAN SEEK VARIOUS REMEDIES, INCLUDING JUDICIAL REVIEW TO ANNUL THE DECISION, MANDAMUS TO COMPEL ACTION, OR DAMAGES IF THEY HAVE SUFFERED LOSSES DUE TO UNLAWFUL ADMINISTRATIVE CONDUCT.

WHAT IS THE ROLE OF THE PUBLIC PROTECTOR IN RELATION TO ADMINISTRATIVE LAW IN SOUTH AFRICA?

THE PUBLIC PROTECTOR INVESTIGATES COMPLAINTS AGAINST PUBLIC AUTHORITIES AND ACTS TO ENSURE THAT ADMINISTRATIVE ACTIONS ARE LAWFUL, FAIR, AND REASONABLE, THEREBY ENHANCING ACCOUNTABILITY AND PROTECTING CITIZENS' RIGHTS.

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