

Eritrea: Human Rights In 1955

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The Constitution of Eritrea, drafted by a United Nations Commissioner, adopted by the Eritrean Constituent Assembly in July, 1952, and ratified in August by His Imperial Majesty the Emperor of Ethiopia as Sovereign of the Federation, became effective with the withdrawal of the British administration in September of that year. Its basis is the separation of powers, subject to a limited, power in the executive to control the legislature and appoint to the judiciary, and to a power in the judiciary to declare unconstitutional an executive order or a legislative act.

The Constitution contains a list of fundamental human rights prescribed by the United Nations in its resolution of December, 1950, on the disposal of Eritrea some of which (for instance the "right to exercise any profession") are "subject to the requirements of the law." The list prescribed by the United Nations ends with the general provision that :

"The respect for the rights and freedoms of others and the requirements of public order and the general welfare alone will justify any limitations to the above rights?; the Constitution adds: "The employment of human rights and fundamental freedoms may be regulated by law provided that such regulation does not impede their normal enjoyment." existing laws were continued in force by the Constitution, but in the event of a conflict between such laws and regulations and this Constitution, the Constitution shall prevail.

The idea of the citizen having any rights against the authorities being a startling innovation in Eritrea, resort to the Supreme Court in defense of constitutional rights has been rare, but five cases have arisen in the first two and a half years of self-government. The earliest case, decided in August 1953, concerned the right to freedom of opinion and expression.

A newspaper having been suppressed by the withdrawal of its license to print just before the persons concerned had been acquitted of a criminal charge of seditious libel. Under an Italian law no one could print without a license, and the court held that this provision was constitutional as a means of raising revenue and of keeping the authorities informed of the existence and locality of printing presses; but that it was unconstitutional as a means of controlling the press, and that the withdrawal of the license for this purpose was therefore unlawful.

The next case arose in October 1953, out of the "right to life, liberty and security of person": certain persons detained under extraordinary powers conferred on the executive by a British Proclamation (ordinance) issued when banditry was at its height in 1950, applied for the order in the nature of habeas corpus. These applications, however, were abortive, for the applicants were released before judgment was delivered.

In June 1954, judgment was delivered in a case on the "right to freedom of peaceful assembly and

association." By an Italian colonial law of 1939, it was criminal offence to hold a public meeting without seventy two hours' notice to the police, after which notice (although it was not directly in question) the police could forbid it for reasons of "public order, morality or health." A meeting had been held, without giving such notice, so peacefully that the police had heard nothing about it until some time later, when a prosecution was instituted. It was plain that the prima facie the Italian law was in conflict with the Constitution, and the question was whether it was saved by the general permission to regulate the fundamental freedoms.

The president (a Scot whose judicial experience had been in India) held that it was not, but the other two members of the bench (respectively Italian and Eritrean) held that it was. They said that it must not be assumed that powers would be abused, and that laws giving the powers are therefore not unconstitutional merely because of the possibility of abuse.

It must be remembered that Italian courts dealing with administrative orders insist on their being speaking orders, stating the reasons in full - a mere recitation that "for reasons of public order I forbid" will not do. If the order does not speak, or if the reasons recited do not bring it within the powers under which it purports to be issued, then not only will it be quashed (which would be of little use to those whose meeting had already been prevented) but disobedience to it is no crime.

In the same month of June was challenged a collective fine imposed by the executive under the same Italian law on a village whose inhabitants had persistently and anonymously victimized the tenant of an Italian landowner.

The supreme court found that the law authorizing such a fine did not conflict with any of the fundamental rights, and might be imposed by the executive to recoup the expense of stationing an extra police, but could not be imposed by the executive as a punishment, since by the constitution "judicial power shall be exercised by" the judiciary.

The latest decision arose out of a law passed by the Eritrean Assembly in 1953, regulating the forensic profession. This law absolutely disqualified any person who had ever "been convicted of any delict by any court in Eritrea" and a declaration of unconstitutionality was sought by a practitioner licensed by the British administration after he had been convicted of and fined for a petty offence which was nevertheless classified by the Penal Code as a delict.

Judgment was delivered in February 1955, that the provision did not offend against the right that "retroactivity of penal code shall be excluded," which must be construed as referring only to laws imposing punishment in the strict sense. It did not course prima facie infringe the "right to exercise any profession" - indeed the whole Act was a prima facie infringement of the requirements of that right - but the right is expressly "subject to the requirements of the law."

It was held that the "requirements of the law" must themselves, to be constitutional, conform to the general conditions which "alone will justify any limitations to the above rights"; and accordingly, although the regulation of the forensic profession is prima facie justified as eminently in the public interest "the criterion to which the law in question," and the Italian judge's leading judgment, "has resorted to obtain a particular standard of morality among those admitted to the profession is excessive in relation to the end to be attained....The provision attacked...since

it makes no distinction (as it should) between a delict deserving serious moral obloquy...and a delict which is the result only of unintentional negligent conduct, constitutes an unlawful limitation of a fundamental freedom."

The resolution of the United Nations was greeted with considerable derision in learned quarters (fn. 1951 I.L.Q. 221,222) when its contents became known; but it has proved in the hands of an independent judiciary to be not a useless weapon in the defence of liberty.

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