

THE ROLE OF THE COUNCIL OF MINISTERS IN THE LEGISLATIVE PROCESS

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It gives me a special pleasure to be here today and to deliver a short speech on "the role of the Council of Ministers in the legislative process." This is an opportune time for me, as a lawyer, to express my pleasure at the increasing number of lawyers that this growing Haile Sellassie I University Law School has produced within a short period of time.

It is not necessary to state the importance of the legal profession in a nation's development to you, lawyers and supporters of the profession. That our country has had a long history of jurisprudence and regard for justice is well known to you. And I believe that the commonly held view that there is a widely diffused knowledge of the law among the people has been well demonstrated by the alert-minded and able lawyers that have graduated from the University.

Before speaking about the Council of Ministers' role in the law-making process, it will be more appropriate to state what the word *law* includes.

I. Laws in Ethiopia

In the Ethiopian constitutional system the word *law* includes the following:

First, proclamations: A proclamation according to the Ethiopian Constitution is a law of the Empire enacted pursuant to the provisions of Articles 34, 71 and 88 through 91 after having been studied by the Council of Ministers, discussed and voted upon in Parliament and approved by the Emperor.

Second, decrees: A decree is a law that is enacted by the Emperor after having been studied by the Council of Ministers, in cases of emergency that arise when the Chambers are not sitting, pursuant to the provisions of Article 92 of the Constitution.

Third, orders: An order is a law enacted by the Emperor on the advice of the Council of Ministers pursuant to the powers and prerogatives conferred upon the Emperor in accordance with the provisions of Articles 26 through 36 and other pertinent provisions of the Constitution.

Fourth, regulations: A regulation (ministerial decree or order) is a law that a Minister or chartered organization enacts by virtue of an authority given to him or it under a proclamation, decree or order.

Before considering the role of the Council of Ministers in the making of these laws, let us first look at what some people think the Council of Ministers does

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with regard to this matter. Some may think that only Parliament can initiate and pass laws and that the Council of Ministers only executes the laws that have already been passed. Therefore a question may be raised: What role can the Council of Ministers play in the law-making process ?

A major device in political philosophy that has so far been in use is the separation of governmental powers into three parts. According to this philosophy the political powers of a country are divided into the three following branches: the legislative power, the executive power and the judiciary. This political theory is accepted and practised almost throughout the world. The Ethiopian Constitution is based on it. It should, however, be clear at the outset that this political theory does not make the Parliament, the executive and the judiciary independent and unrelated in the execution of their respective functions. And it is here that great caution has to be exercised in having a clear understanding of the working of the theory. The exact aim of the political theory is to make the three political branches work by keeping their balance, without any one being able to have control over the other. In other words it prohibits, for example, the executive from usurping entirely the legislative power from parliament, and inversely the parliament from usurping the executive power from the executive. If this is not avoided, then the fundamental aim of the theory fails.

Having said this about the theory of separation of powers, let us now look at our main theme, the role of the Council of Ministers in the legislative process.

II. The Council's Constitutional Legislative Role

Looking at the Constitution we find articles dealing with the Council of Ministers' role in the initiation and promulgation of laws. Article 71 of the Constitution reads:

"The Ministers shall discuss in Council and, through the Prime Minister, submit to the Emperor all matters of policy there-in discussed. In all cases in which legislation is deemed to be necessary or appropriate, the decisions made in Council and approved by the Emperor shall be communicated by the Prime Minister to Parliament in the form of proposals for legislation."

If the decision of the Council is in relation to a draft proclamation, this Article empowers the Council to initiate the legislative proposal to be forwarded to Parliament. Thus the Article shows the Council's role in the legislative process.

Since Article 71 — in the context of the law-making process — requires that action be taken by the Emperor, the Council and the Parliament, it refers particularly to proclamations. Although, as has been said above, the Council of Ministers does discuss proposals of legislation before they are submitted to Parliament, the Emperor can, by virtue of Articles 34 and 86 (a) of the Constitution, propose legislation and submit it directly to Parliament without having it discussed in the Council of Ministers. In practice, however, since the promulgation of the 1955 Revised Constitution no proposal of legislation has ever been communicated to Parliament without having been discussed by the Council of Ministers as Article 71 requires.

It seems to me appropriate to examine now whether Article 71 empowers the Council of Ministers to initiate other legislative proposals, such as decrees and orders. Since in accordance with Article 71 the Council can discuss any "matter of policy", it is reasonable to conclude that there is nothing in the Article which prohibits the Council from proposing and presenting to the Emperor through the Prime

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Minister decrees and orders as well. It must, however, be noted that this conclusion is not explicitly stated in the Article; it is concluded by interpretation. Following this interpretation the Council of Ministers has in the past presented decrees and orders to the Emperor and upon His approval such laws have been published in the *Negarit Gazeta*. But now Order No. 44 of 1966 has explicitly given this power to the Council of Ministers. I will deal with this in part three.

Apart from this, Articles 115 and 118 explicitly state that the annual budget and additional funds of the Empire are initiated by the Council of Ministers. Article 66 states that the appointment, promotion, transfer, suspension, retirement, dismissal and discipline of all Government officials under the rank of Vice Minister shall be governed by regulations made by the Council of Ministers and approved and proclaimed by the Emperor. Also Article 44 of the Constitution states that no one may be deprived of his property except upon a finding by ministerial order issued pursuant to the requirements of a special expropriation law approved by the Council of Ministers and published in the *Negarit Gazeta*.

The above shows that the Council of Ministers, by virtue of the Constitution, does play a significant role in the legislative process.

III. The Council's Delegated Legislative Role

The Council of Ministers' role in the legislative process does not emanate only from the Constitution. It also has a delegated legislative role.

A. Delegation Given by the Emperor

In accordance with the Emperor's speech in March, 1966 and Order No. 44 of 1966 published in the *Negarit Gazeta*, the Prime Minister was authorized to form his Cabinet by nominating his ministers to the Emperor, for appointment and investiture by His Majesty. In addition to this, the Order states that the Ministers shall collectively form the Council of Ministers and shall be responsible for all decisions taken by them in Council. Under the Emperor the Council of Ministers is responsible for the conduct of state affairs. The Order authorizes the Council of Ministers to make decisions concerning all matters brought before it, leaving only matters of major policy to be communicated to the Emperor through the Prime Minister. A question that may be posed here is: With respect to the legislative process, what additional powers did the Council acquire in this Order which it did not possess by virtue of the Constitution? If we accept the wide interpretation given to Article 71, it can be said that the Order has not given any additional power to the Council of Ministers. However, it can be said that the Order explicitly gives the power that otherwise can be obtained by a wide interpretation of Article 71. What are these additional powers or functions which the Council explicitly acquired by the Order?

1. Article 71 of the Constitution has given to the Council of Ministers the power to propose laws. However, as I have already said, although it has not been exercised so far, the Emperor can by virtue of Articles 34 and 86 (a) of the Constitution, propose laws and submit them directly to Parliament without having them discussed in the Council of Ministers. Since the promulgation of Order 44, by which the Emperor has given the Council of Ministers under Him the power to make decisions concerning the conduct of state affairs, the Council of Ministers has been empowered to discuss legislation proposed by the Emperor before it is communicated to Parliament. It should, however, be noted that the proposal of legislation cannot be communicated to Parliament without being approved by the Emperor.

2. Article 92 states that in cases of emergency that arise when the Chambers are not sitting the Emperor can proclaim decrees consistent with the Constitution. However, these decrees are proclaimed after they have been discussed in the Council of Ministers and approved by the Emperor. To show this it is enough to quote that part of the preamble of a decree:

“In accordance with Article 92 of Our Revised Constitution and on the advice of Our Council of Ministers We Decree as follows”

3. According to Articles 88 and 91, if the Emperor rejects a proposal of legislation approved by Parliament, He can send it back to Parliament with His observations. In practice, however, this is done after the matter has been discussed in the Council of Ministers.

4. It has already been mentioned above that the Emperor can enact laws by virtue of Articles 26-36. These laws are also published in the Negarit Gazeta after they have been discussed in the Council of Ministers and approved by the Emperor. For example, it is by an order issued by the Emperor in accordance with Article 27 of the Constitution that the organization, powers and duties of all Ministries, executive departments and the administration of the Government are determined. That this is promulgated after it has first been studied in the Council of Ministers is shown by the preamble to such orders:

“In accordance with Article 27 of Our Revised Constitution and on the advice of Our Council of Ministers We hereby Order as follows.”

Laws that are proclaimed under Article 29 are not different from this. Article 30 deals with international treaties, and while some of these are proclaimed directly by the Emperor, others have to be approved by the Parliament. Article 122 states that such international treaties, on equal footing with the Constitution, are the supreme law of the Empire. Also, these international treaties become effective and thus the supreme law of the Empire after they have been studied in the Council of Ministers and approved by the Emperor, or approved also by the Parliament as the case may be.

B. Legislative Power Delegated by both the Emperor and Parliament (By a Proclamation)

If we examine each of the proclamations that are proclaimed periodically we find that they empower the Minister concerned with their execution to make regulations for the proper carrying out of the proclamation. There are also cases where the proclamation empowers the Council of Ministers itself to issue regulations for the execution of the laws. Under these circumstances, all regulations are sent to the Council of Ministers for approval. However, in cases where the proclamation has authorized the Minister or chartered organization concerned with its execution to issue regulations, the Minister or the organization can make the regulations without having approval from the Council of Ministers. There are, however, still some cases where the Council of Ministers is required to approve regulations even when the Proclamation has authorized the Minister concerned to make them. Examples of these are laws dealing with taxes, revenues, general payment of rates, or civil rights. All regulations dealing with such cases must be approved by the Council of Ministers.

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IV. The Drafting of Laws

So far we have seen that the Council of Ministers plays a significant role in the initiation and enactment of Proclamations, Decrees, Orders and Regulations. How does the Council of Ministers proceed to do this? Who drafts the laws? Is there an adequate organization for this?

A draft law is communicated to the Council of Ministers through the concerned Minister after it is prepared by the concerned Ministry, organization, or the legal department of the Prime Minister's office. When the Council of Ministers makes a decision which requires a proposal of legislation, the Council requests either the Ministry concerned or the Office of the Prime Minister to prepare the draft. A draft law which has been thus prepared is communicated by the Council of Ministers to its Legal Committee for further study. The Committee has as its permanent members the Minister of Justice, the High Commissioner of the Central Personnel Agency and the Pension Commission, and one person from the Prime Minister's Office. The Minister who proposed the draft chairs the Committee to study the draft legislation. When the Committee thus does its work, it gets all staff services from the Ministry which is concerned with the legislation. If the legislation requires redrafting, it is done either by the Ministry concerned or by the Prime Minister's Office.

The draft legislation thus studied and approved by the Committee is submitted to the Council of Ministers for final action. If the draft is approved by the Council, the draft is then sent to the Emperor in accordance with Article 71 of the Constitution for approval and communicated to Parliament through the Prime Minister for further action. When the draft legislation is an order or a decree, it is sent in accordance with Article 71 of the Constitution and Order 44 to the Emperor for approval and goes for publication to the Ministry of Pen through the Prime Minister's Office. However, when the draft legislation approved by the Council is a regulation, it is communicated to the Prime Minister's Office through the Minister concerned, for publication. The Prime Minister's Office passes it to the Ministry of Pen to be published in the Negarit Gazeta.

