

SOME ASPECTS OF THE PROTECTION OF HUMAN RIGHTS IN THE EAST AFRICAN COURT

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Abstract. This article is dedicated to the issues that emerged due to the uncertain competence of the East African Community (EAC) and jurisdiction of the EAC Court of Justice. The authors raise a question of “legislative” authorities of supranational organizations, conduct a comparative analysis with the European system of protection of human rights, as well as thoroughly review the delimitation of competences using the example of European Union. The work also analyzes the constitutional document of EAC and judicial practice of EAC Court. The authors provide statistical data that confirm inefficiency of the African Court on Human and Peoples’ Rights, and touch upon the question of parallel jurisdiction of the EAC Court in the area of human rights and the African Court. The article demonstrates the presence of complex and contradictory issues, which resolution affects the further work of EAC Court as a quasi-judicial agency on protection of human rights. In order to solve such issues, it is necessary to extend the time limit for filing a complaint to six months and simplify the procedure for filing a complaint, eliminating the condition of exhaustion of domestic remedies when it is evident that the domestic courts deliberately delayed the case.

Keywords: African Charter, Sub-regional community, Regional system, Fragmentation, East African Court of Justice, Jurisdiction, African Court on Human and Peoples’ Rights, EU Court, ECOWAS, EAC, SADC, Protection of human rights.

Introduction. Protecting human rights plays a vital role in the development of African regional integration, which negates the assumption that regional integration is created for purely economic purposes. Recent global changes in the political and economic spheres have led to the fact that human rights have become a necessary element of regional integration throughout the world and, of course, in Africa. The human rights clauses in some of the founding treaties of the African regional economic communities, as well as the case law of the integration courts of these communities, provide convincing evidence of the participation of regional economic associations in the integration of human rights. The East African community (EAC) is an intergovernmental organization composed of six countries: Tanzania, Kenya, Uganda, Rwanda, Burundi and South Sudan. The East African community was originally founded in 1967 and ceased to exist after 10 years of operation, in 1977. However, in 2000, it was revived when three heads of state of Tanzania, Kenya and Uganda signed the Treaty on the establishment of the Community (hereinafter – the Treaty), Rwanda and Burundi joined later. The youngest member of the community is South Sudan, which joined in 2016. One of the goals The East African community is human rights promotion and protection, which are enshrined in the African Charter on human and peoples' rights. In accordance with article 6 (d) of the Treaty, good governance is fundamental, including respect for the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunity, gender equality, and the recognition, promotion and protection of human and peoples' rights, in accordance with the African Charter on human and peoples' rights [1]. Article 7 provides for the principles governing the practical achievement of community objectives, one of which is the maintenance of universally recognized human rights standards. The member States of the community shall refrain from any action that may jeopardize the achievement or implementation of these objectives. One of the tools of solving the problem of human rights protection, we see the East African Court. (East African Court of Justice).

Methods. In the process of research, general scientific methods of cognition were used, such as dialectics, analysis and synthesis, the generalization method, and the system-structural method. Special scientific methods were widely used: legal, technical, historical, method of forecasting. In-depth analysis of legislation and judicial practice allowed us to identify patterns that will be written in this research.

Results and discussions. The East African court is an international integration court with the task of resolving disputes between States members of the East African community. The East African court is established under Article 9 (c) 11 of the EAC Treaty and is empowered to interpret and enforce the terms of the Treaty by member States [3]. The court does not have the power to hear individual complaints of alleged human rights violations. However, the jurisdiction of the East African court is provided for under art. 27 of the Treaty [1], which provides that "the court shall have jurisdiction as a court of first instance, appellate, human rights and other jurisdiction to be determined by the Council on a suitable subsequent date". To that purpose, States parties should sign the Protocol to give the court expanded jurisdiction. By this condition, the Treaty left the possibility for the court to expand its jurisdiction in the field of human rights protection in the future. In some of the founding treaties of the newly established African regional economic associations, the protection of human rights is characterized as one of the fundamental principles in their activities. The revised ECOWAS Treaty, for example, places the protection of human rights among the fundamental principles of this organization (art. 4 (g)). Under the Treaty, ECOWAS operates in accordance with the African Charter on Human and Peoples' Rights. The ECOWAS Court’s jurisdiction, as already mentioned, includes addressing issues related to the protection of human rights. The activities of the Court have recently been particularly active in this area. Among other African economic associations, ECOWAS is taking the most significant measures to promote and protect

human rights. The fundamental treaties of other associations, such as the Arab Maghreb Union, do not mention human rights at all, the same goes for the Economic Community of Central African countries [11].

Despite the lack of clear jurisdiction of the East African court to establish and deal with cases of human rights violations, the Court ruled on individual complaints. One case is the case of Katabazi V. against the Secretary-General of the East African community, where the court made a request to establish the legality of the detention of Ugandan prisoners. The attorney-General of Uganda raised a preliminary objection, stating that the court had no jurisdiction over human rights issues, as the charges against Uganda were human rights-based. EAC decided that "although the court will not assume jurisdiction to resolve disputes in the field of human rights, he will not waive the exercise of his jurisdiction of interpretation under article 27(1) simply because the reference includes allegations of human rights violations. [4]" In case of Placed Rugumba against the Secretary-General of the East African community, East African court established in Rwanda [6], the detention of one of its citizens without connection with the outside world, contrary to articles 6 (d) and 7 (2) of the Treaty EAC [1], which oblige member States to respect the principles of good governance and the rule of law. The court also referred to the provisions of the African Charter on human and peoples ' rights referred in article 7 (2) of the EAC and stated that these provisions are not decorative or for external beauty but were "intended for member States" [4]. In the case of Rugumba, the Court refused to follow the principle of exhaustion of domestic remedies, as that would be an obstacle to filing a claim. Similarly, in the case Arevita vs attorney General of Kenya and others, the Court decoded that domestic law could not be called upon to justify the breach of Contract [7]. In the case of an Independent medical legal unit against the attorney-General of Kenya and others, the East African court made another important decision in the field of human rights. This case consolidated the position of the court in the Katabazi case.

Summary. The human rights situation in East Africa has not yet reached the desired standard. The world witnessed human rights violations in Kenya in 2007 during the violence following the national elections. The region also witnessed the genocide in Rwanda in 1994, which resulted in the death of some 800,000 people. Restrictions on the exercise of civil and political rights, acts of physical violence, especially against vulnerable groups, and denial of justice continue to exist. The lack of a clear jurisdiction to rule on human rights impedes the process of deeper integration into EAC, as there are strong reasons to believe that the citizens of EAC have not been able to obtain appropriate remedies in their national courts. The process of giving the court of the EAC a clear human rights jurisdiction began in 2004, but since the court still does not have such a mandate, there is no effective protection of human rights in the region.

Another problem is article 30 (2) of the EAC Treaty, which provides that the proceedings shall be "commenced within two months of the adoption, publication, Directive, decision or action complained of or in the absence thereof, on the date on which the applicant becomes aware of it, as the case may be." In the community, such as EAC, where most people do not know about their rights, the restriction of two months is unrealistic, and the predominance of two months to access the court EAC can be considered as contrary to the principle of the rule of law, which member States EAC operate. In the presence of the restrictive clause referred to in article 30 (2) and revealing the decision in the case of Independent Medical Unit , in which the case was dismissed by the appeals chamber, applying the strict rule in accordance with article 30(2) [8], citizens EAC threatened by the denial of access to the East African court of justice. The independence of the judges of the court of the HAC can be another problem. The summit, which is the principal governing body of the EAC, appoints judges from among the persons nominated by the EAC member States. The same summit elects the President and Vice-President of the appeals chamber and the chief justice and the Deputy chief justice of the first instance division, all of whom are responsible for the management and supervision of the court's divisions. Judges can also be removed by the summit. In their joint communiqué of the 8th summit, the heads of state and government of the member States of the EAC, inter alia, decided that, "the procedure for the removal of judges from office under the Treaty will be revised to include all possible reasons for the removal of others than specified in the Treaty, that a special summit will be convened very soon to consider and comment on the proposed changes to the Treaty" [2].

The amendment to the Treaty gave the summit greater authority over the grounds for the removal of a judge. In the event that a judge is removed under the provisions of article 26 (2)(b) of the EAC Treaty [1], it is no longer required that the summit refer the matter to an independent special Tribunal, as provided in article 26 (1)(a) of the Treaty. The grounds for the removal of judges raise suspicion of the independence and impartiality of the court, as the judge may be removed from office as a result of misconduct or inability to perform his or her functions for "any reason". The challenge is based on the phrase "for any reason". The current situation could create opportunities for the summit to abuse its power.

Conclusion. In conclusion, it is worth noting the following. The EAC court is defined as an international court, although it operates in the East African region, rather, as a civil court, therefore its jurisdiction is limited. It is also not a court for the protection of human rights, until an additional protocol enters into force expanding the court's jurisdiction. The activities of the EAS Court can be best understood, given the fact that EAC member states at the national level did not attach much importance to the protection and promotion of human rights. There was a clear reluctance and sometimes hostility towards ensuring the protection of human rights by national courts. This can easily explain why the governments of the EAC countries are slow to grant full jurisdiction in the field of human rights protection to the EAC court [10]. And although this fact could demoralize the judges of the Court of the Supreme Arbitration Court, they, on the contrary, demonstrated their competence. They were decisive

and thus contributed to the transfer of human rights cases to the Court. This can be explained by the development of the human rights situation in the West, where there is an increase in the influence of decisions of courts on the protection of human rights on national law, as well as the human rights competence of the EU Court of Justice. Obviously, the EAC Court illustrates the current global trend in the implementation of the protection of human rights in Africa. Although it is a regional court whose activities cover trade, he already has some experience in handling human rights cases [9]. However, the EAC Court made decisions only on seven cases involving human rights violations, but the decisions made are sufficient to create a practice based on article 27 of the Treaty, where it is clear that there is no need for a Protocol on the special jurisdiction of the court for human rights cases. In our view, the two-month time limit for filing a complaint is a much more global problem, since the vast majority of EAC do not have the physical ability to file a complaint. In this regard, it is obvious that it is necessary to increase the time limit for filing a complaint to six months and to simplify the procedure for filing a complaint, excluding the condition of exhaustion of domestic remedies, when it is obvious that the case is deliberately delayed by national courts.

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References

1. Treaty for the Establishment of the East African Community (EAC) URL: http://www.wipo.int/wipolex/ru/treaties/text.jsp?file_id=173330;
2. Legal Notice EAC/11/2007; 8th Summit of the East African Community Heads of State Joint Communiqué, 30 November 2006, Arusha, Tanzania;
3. Mezyayev, A.B. International Courts and Africa // *Asia and Africa today*. 2005. № 11. P. 14-18;
4. James Thuo Gathii, Variation in the Use of Subregional Integration Courts between Business and Human Rights Actors: The Case of the East African Court of Justice, 79 *Law and Contemporary Problems* 37-62 (2016)
5. James Katabazi and 21 Others v. The Secretary General of the East African Community and The Attorney General of Uganda, Ref. No. 1 of 2007.
6. Plaxeda Rugumba v. The Secretary General of The East African Community and Attorney General of Rwanda, Ref. No. 8 of 2010, EACJ First Instance Division; rugu;
7. Mary Ariviza & Okotoh Mondoh v. Attorney General of Kenya & Secretary General of East Africa Community, Ref. № 7 of 2010;
8. Independent Medical Unit v. The Attorney General of Kenya and Others, Ref. No. 3 of 2010, EACJ First Instance Division.
9. Ispolinov A.S. Evolution of the practice of the Court of Justice of the European Union in the field of human rights // *Bulletin of Moscow University. Series 11, Right*. 2013. No. 4. P. 80-97.
10. Gathii J.T. (2013) Mission Creep or a Search for Relevance: The East African Court of Justice's Human Rights Strategy. *Duke Journal of Comparative & International Law*, vol. 24 (249).
11. Njenga Lily. The Genesis of the Court's jurisdiction of the East African community in the field of human rights // *Questions of economics and law*. 2016. № 10. ISSN: 2072-5574 P.22-27.