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Advantages of the Role of National Courts and Tribunals

The involvement of national courts and tribunals in the enforcement of community law offers several advantages. We will limit ourselves to three of them. First, it boosts the confidence of economic operators as it gives them the assurance that, in the event of a breach, by a member state, of the rights conferred on them by the community instruments, or if their economic activities are seriously hampered by the excessive regulations of a member state incompatible with community law, causing them substantial financial loss, they can seek a remedy *locally*, that is, in the national courts or tribunals, in accordance with procedural rules laid down by national law and which their lawyers are familiar with (with the possibility of a reference being made to the community court for a binding preliminary ruling).

It is indeed one thing to create rights, but quite another to ensure that the beneficiaries of those rights will be able to exercise them and can have access to justice without any obstacle, within a reasonable time, if their rights are violated. Access to justice is one of the requirements of the rule of law. The existence of such guarantees, the fact that individuals can actually, in practice, not just in theory, institute a lawsuit against a member state in order to assert their community rights, helps to ensure that the actions of public authorities, including at the borders, are compatible with the provisions of the institution's

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legal instruments, that conflicting rules of national law are harmonised or amended, creating a legal environment conducive to intra-community trade and investment. Needless to say, the objectives of a regional economic community can hardly be attained if the rights established by, or pursuant to, the treaty in favour of economic agents cannot be enforced at the national level.

Secondly, it helps to increase awareness about community law. If national courts are obliged to apply community law in its entirety and to protect the rights which the latter confers on individuals, then they may have to familiarise themselves with that law as well as with those rights and the *permitted derogations and exceptions*. This will entail vigorous promotion of community law – and most probably its inclusion in the training programme of lawyers – within the region, leading to a greater awareness about it as well as about the community as a whole – its institutions, objectives, competences, etc. It may not be an overstatement to say that the EEC/EU owes its success to a large extent to the fact that its law is widely disseminated and widely known and used throughout the Community/Union.

Thirdly, it helps to prevent conflict between the community court and national courts, guaranteeing a harmonious relationship between the two judicial authorities. As noted above, the community legal system is a special legal system; it is fundamentally different from the ‘ordinary’ international legal system in that it is automatically integrated, right from the date of entry into force of the treaty, into the legal systems of the member states. If the community court were to have jurisdiction to decide disputes within the same legal systems of the member states and actions could be brought to it directly by individuals without any preconditions, it would most certainly come into conflict from time to time with national courts, holders of judicial powers within the domestic legal order. This could result, for example, in the intractable situation where one makes a ruling and the other overturns it on appeal. Such a conflict could have a very negative impact on the relations between the community court and the national courts and, by extension, the

member states, undermining the ability of the community court to function effectively and to play the role of the prime mover of the economic integration process.

Conclusion

To sum up, one can say that the involvement of national courts and tribunals in the enforcement of community law is crucial to the effective implementation of economic community rules and the realization of the objectives of the community. Besides, it encourages the participation of the nationals (natural and legal persons) – who are also subjects of community law – in the process of regional economic integration and is, therefore, one of the indispensable conditions for making a regional economic community a ‘community of peoples’, a community in which all the players – both public authorities and private parties – are answerable to the law in conformity with the requirements of the rule of law. It is thus a key factor in the success of an economic community, and may have to be adopted by the African Regional Economic Communities. The Court of Justice of the Economic Community of West African States (ECOWAS) seems to have indicated the way to go. In a judgment delivered in July 2012 the Court stated: “At this point, one should bear in mind that national courts are also Community courts as they have competence to apply the Community law which forms part of the internal order” (Judgement No. ECW/CCJ/JUD/11/12). (Earlier, it had stated that “the Protocol on the Court does not empower individuals with the *locus standi* to sue a Member State for violation of its obligations enshrined in Community texts”). It may not be unnecessary to observe that about one year after this important ruling by the ECOWAS Court, the Court of Justice of the Common Market for Eastern and Southern Africa (COMESA) held, in a case involving a private company and the Government of Mauritius (*Polytol Paints v Mauritius*) that individuals have an enforceable right under the COMESA Treaty (Erasmus, G. 2013). The Mauritius Government had argued that “...non-fulfilment by Mauritius of its

obligations, if any, under the COMESA Treaty is not enforceable by the national courts.”

It is hoped that the African Regional Economic Communities (RECs) will embrace the aforesaid ruling of ECOWAS Court of Justice and put in place training programmes designed to enhance the capacity of national courts to apply the Community law. For the growth and success of the process of regional economic integration in Africa and the acceleration of intra-African trade and investment depend to a large extent on the effective implementation of the relevant legal instruments, including their enforceability at national level.

READ ALSO: [The Role of National Courts and Tribunals in the Enforcement of Community Law \[2\]](#)

References

African Charter on Human and Peoples’ Rights (1981)

Amministrazione delle Finanze dello Stato v Simmenthal (Case 106/77) [1978]

Agreement Establishing the Caribbean Court of Justice (2001)

Cartou, L., Clergerie, J.L., Gruber, A. & Rambaud P., *L’Union Européenne*, Paris : Dalloz 5e edition

Conseil d’Etat, Assemblée, 20 October 1989, *Nicolo*, Rec. Lebon, p.190

Constitution of the Federal Republic of Nigeria 1999

Convention for the Establishment of the Central American Court of Justice (1907)

Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

Cour de Cassation, Chambre Mixte, 24 May 1975, *Administration des Douanes v Société Cafés Jacques Vabre*

East Africa Community EAC Treaty (1999)

Erasmus, G. 2013, *The COMESA Court of Justice: Regional agreements do protect private parties*. Stellenbosch: tralac

European Economic Community: Treaty concerning the Accession of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom (1972)

Flaminio Costa v ENEL (Case 6/64) [1964]

Lopes, C., 2016, *Regional integration and monetary unions in Africa* (www.uneca.org/es.blog/regional-integration-and-monetary-unions-in-africa) last accessed 04 July 2016

Polytol Paints & Adhesives Manufacturers Co. Ltd v The Republic of Mauritius, 31 August 2013

R v Secretary of State for Transport, *ex parte* Factortame Ltd (No.2) (Case 213/89) [1990]

Republic of South Africa: Act N° 22 of 2015: Protection of Investment Act, 2015

THE AFRICA CEO FORUM 2016, Abidjan: *The big debate: is regional integration failing?*

(www.theafricaceoforum.com/en/program/). Last accessed 04 July 2016

The Role of National Courts and Tribunals in the Enforcement of Community Law [3]

The Constitution of Kenya Revised edition 2010

The Treaty of Rome (1957)

Tillotson, J. & Foster, N., 2003, *Text, Cases and Materials on European Union Law*, London: Cavendish Publishing Limited, 4th edition

Transatlantic Consumer Dialogue Doc. No. 15/13
(www.consumerinternational.org/.../tacd-ttip-resolution-investor-state-dispute-resolution.pdf) Last accessed 27 June 2016

Treaty Creating the Court of Justice of the Andean Community (1996)

Van Gend en Loos v Nederlandse Administratie der Belastingen (Case 26/62)
[1963]

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