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Human Rights in the Senegalese Administrative Justice System and in West African States

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Abstract

The judiciary is the competent supervising authority to ensure that the administration complies with the powers conferred upon it by the legislator under the law and in such a manner as to ensure the protection of the rights of individuals guaranteed under the Constitution and the law from any abuse like abuse of power or deviation. When such a mechanism is in place, it will ensure that individuals are guaranteed their rights and freedoms, this will also make those who own and issue administrative decisions get committed to observe the law, demonstrating their competence in the conduct of the Authority's work and its commitment to the law. On this basis, every State must give its judicial power a force to achieve this purpose but often a flaw in the structure of States sometimes leads to the violation of the rights and freedoms of individuals, and they can only resort to the regional and national courts to protect their rights.

Keywords: Human rights, Administrative justice, Court, West African States, Senegal

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Introduction

Public rights and freedoms must be guaranteed and protected from any threat or violation. The executive authority is often responsible for violating many public rights and freedoms. The judiciary has the duty to protect public rights and freedoms from breaches through administrative courts, he administrative judge is the judge of the general administration, and may confirms its decision, or sometimes objected or canceled it. If we look at the administrative judiciary, we find that the judge uses the mechanisms and means in front of him to preserve public freedoms from threats of public administration, Defining the terms of reference, expanding the scope of the capacity for appeals, opening the door for urgent procedures, filling gaps in incomplete legislation, establishing general legal principles, especially those relating to public freedoms, unrestricted interpretation of the law in favor of public freedoms. In addition, the legislative authority may in some cases enact legislation that leads to the violation of human rights and fundamental freedoms in a manner inconsistent with constitutional values and principles. Here, the importance of judicial monitoring of the constitutionality of laws is seen as a guarantee of human rights in case of violation by the legislature. Judicial oversight of the executive branch is a means of protecting human rights and fundamental freedoms, this control aims to put end the individual decisions and instructions issued by the executive authority which violate basic principles of human rights.

1. Judicial control over the executive power.

The judicial scrutiny function with regard to the executive is to ensure that any delegated legislation is consistent with the scope of power granted by Parliament and to ensure the legality of government action and the actions of other public bodies. On the application of an individual, judicial review is a procedure through which the courts may question lawfulness of actions by public bodies. This requires judges to be independent of government and Parliamentary influence.[2]

Judicial review of administrative action is perhaps the most important development in the field of public Law in the second half of this century. Judicial review is a great weapon in the hands of judges.

It comprises the power of a court to hold unconstitutional and unenforceable any law or order based upon such law or any other action by a public authority which is inconsistent or in conflict with the basic law of the land. By judicial control is meant the power of the courts to examine the Legality of the officials act and thereby to safeguard the fundamental and other essential rights of the citizens. The underlying object of judicial review is to ensure that the authority does not abuse its power and the individual receives just and fair treatment and not to ensure

[2] Richard **BENEWELL** and Onagh **GAY**, The Separation of Powers, p 7

that the authority reaches a conclusion, which is correct in the eye of law. The role of judiciary in protecting the citizens against the excess of officials has become all the more important with the increase in the powers and discretion of the public officials in the modern welfare states.

But the courts cannot interfere in the administrative activities of their own accord. They can intervene only when they are invited to do so by any person who feels that his right has been abrogated or are likely to be abrogated as a result of some action of the public official. Secondly, the courts cannot interfere in each and every administrative act, as too much of Judicial action may make the official too much conscious and very little of it may make them negligent of the rights of citizens, with perhaps one exception, constitutional administration has little to add to the traditional understanding of judicial review of executive actions. This is because a review of the President's actions via the administrative state is no different from a review of his powers traditionally.

Madison was an executive official a member of the administrative state of the early nineteenth century when he refused to deliver Marbury's commission. The Court held that because Marbury's right had vested and the law conferred no discretion on Madison, the law required Madison to deliver Marbury's commission. That is still the law applied today to ministerial actions of administrative officials. Matters of administrative discretion, however, are generally unreviewable, much as actions committed by the political question doctrine to the political wisdom of the President are unreviewable.[3]

1.1 Senegalese administrative justice system.

Immediately after independence, Senegal adopted the unified judicial system. According to Law No. 17-60, the Supreme Court is the supreme authority of the Senegalese judicial hierarchy. It deals with administrative proceedings either in the form of an appeal to the courts of first instance, as a holder of primary competence the situation continued until 1984, when amendments were made at the level of the lower courts without the higher courts.[4] The subsequent reform in 1992 was the creation of the Constitutional Council, the Court of Cassation and the Council of State.[5]

The case continued until 2008, when the Court of Cassation and the Council of State are combined in one court,[6] and became the Supreme Court, that is the current judicial system in force now. The judicial system takes its legal basis from the current Constitution of 2016, and the law No. 34-2008 establishing the Supreme Court, and the law No. 26-2014 regulating the Supreme Court, and the law 1145-2015 regulating the First and Second Instance Courts. The judicial system Senegalese uniform, which means that the courts have jurisdiction in all cases

[3] Ilan **WURMAN,** Constitutional Administration, Stanford Law Review, Volume 69, February 2017, p 416

[4] Fatou Kiné **CAMARA**, Institutions juridiques, Université Cheikh Anta Diop de Dakar 2014, p. 19

[5] Ismaïla Madior **FALL**, Documents constitutionnels Sénégal de 1959 à 2007, Faculté de droit et des sciences politiques, Université Cheikh Anta Diop de Dakar, p. 138

[6] Fatou Kiné **CAMARA**, les organes judiciaires nationaux des juridictions supérieures, Faculté de droit et des sciences politiques, Université Cheikh Anta Diop de Dakar, 2014, p. 4

before, whether civil, criminal and administrative cases While there is a special department to deal with administrative cases within the Supreme Court, whether in cases of abuse of power or conflicts that arise between the decentralized local administrative councils as being competent in these cases in the first instance, in addition to the appeal of the judgments of the First and Second Instance Courts, In the administrative field, we conclude from this that the judicial control over the executive branch is vested in the administrative judiciary, while the control over the legislative authority is vested in the Constitutional Council.

1.2 Lawsuits and Public Freedoms in Senegalese Administrative Court.

Senegal's constitution is guaranteed for all citizen's indigenous rights, the Constitution mentioned the following "The Republic of Senegal guarantees all citizens individual freedoms, economic and social rights, including collective rights. These freedoms and rights are also civil and political rights" "Any threat to freedom or obstruction to the exercise of any right is condemned by law ..." [7]A citizen has the right to appeal to the national judiciary if his rights are violated by the executive authority and he is entitled to initiate a legal action in the Community Court of Justice of the Economic Community of West Africa. According to the Senegalese judicial system, the Supreme Court discharges the task of protecting the rights and freedoms of individuals and groups if they are violated by the executive. The Supreme Court is competent only to hear cases of abuse of power, which the Council of State had before it was abolished. The Code of Civil Procedure states: "Any legal procedure must be preceded by an invitation to the administrative authority concerned to accept the invitation. If more than four months have passed without a reply, if the request is not accepted, the case must be filed within two months after the decision of the administrative authority, or the expiration of the four-month deadline, which means implicit rejection.[8]

"The law allows the applicant to file an application for suspension of execution if the implementation results in harm to him, as stipulated in article 730 of the Code of Procedure "The prosecution may not suspend the execution of the contested decision, but by means of an explicit request from the claimant, the court competent to hear the case may issue an order to suspend the implementation of the decision in question if the implementation of the decision is subject to irreparable harm." Administrative decisions of the executive branch are the main source of threats to the rights and freedoms of individuals. This is the secret of the existence of an administrative judiciary as a custodian and observer. It is very dangerous for the administration to exercise its discretion without any limitation, because there a negative impact on the rights of individuals and their public freedoms. The importance is to ensure the rights of individuals when necessary. This is an important development of monitoring the legality of the administrative decision.

[7] Article 8 and 9 of the Constitution.

[8] The Code of Civil Procedure of 1964 article 729 to article 768. Article 729.

2. Administrative decisions and human rights.

2.1 The administrative penalty.

The administrative penalty was defined as: "Those sanctions with the punitive characteristics imposed by administrative authorities on individuals, regardless of their functional identity, shall be treated as an original way of deterring the breach of certain laws and regulations The administrative penalty has a specific purpose: to achieve compatibility between individual activity and the requirements of the public interest, without violating the rights of individuals, which it acquires independently of the legal systems of administrative control and what it may share in penal philosophy from disciplinary, contractual or criminal sanctions.[9]

2.2 Administrative control.

Administrative control restricts private activity by imposing restrictions and controls on individuals exercising their freedoms and activities in order to protect public order and defines them as "the set of rules and procedures adopted by the administration using the privileges of the public authority to enable individuals to enjoy their rights and freedoms and to maintain public order within the state Either by legal action or by material measures Thus, the administrative penalty differs from the disciplinary action in terms of the basis and the purpose. In essence, the administrative penalty is issued on the basis of an actual violation in which the person is against the law in all its categories. However, the disciplinary measure is based on the possibility of a threat to public order.[10]

The administrative punishment is intended to suppress and deter the violator of the laws and regulations, while the administrative control aims to protect public order before the breach of it and not punishment for the person concerned, but in general the control measure involves restriction or deprivation of some rights and freedoms in some aspects Take it and especially the Appreciation Said the administrator.

2.3 Disciplinary punishment.

If the employee violates his professional duties, he is subject to disciplinary punishment within the penalties stipulated in the Personnel Law. The disciplinary punishment is the social reaction that the society signs by the public authorities against the perpetrator of the crime. In order to make the proportion between this sanction and the crime committed, the penalty is a guarantee that the administration protects itself so that the offending employee does not return, as is the case for other employee's disciplinary sanctions are applied only within a specific group such as a union, for the purpose of ensuring respect for the rules governing that group. Such sanctions are not applied to all citizens regardless of their professional identity. Thus, disciplinary

[9] Amin **MUSTAFA**, General Theory of Administrative Penal Law, New University House, Egypt, 1996, p 16
[10] Boumediene **KURTUN**, administrative punishment and legality, University of Abu Bakr Belqayd, Tlemcen 2011, p. 29

punishment requires a functional association between the offender and the State, The punishment shall be imposed upon him, when he exceeds the requirements of his duty.[11]

3. Senegalese administrative judiciary and human rights.

We mentioned earlier that the main source of threats to human rights, sometimes reaching the stage of violation by the executive branch lies in the administrative decisions, and the administrative decision is to disclose the administrative authority of its binding will in the form determined by the system in accordance with the powers it has under the regulations and regulations with a view to creating or arranging Certain legal effects where possible and permissible and motivated by a public interest.[12] In making any administrative decision, consideration should be given to the elements which, if one pillar is broken, must be proven by the administrative judiciary and then canceled. The main elements of the administrative decision are as follows:

3.1 The reason.

It refers to the factual or legal situation that calls on the administrative authority to take the decision. It is an external element that precedes administrative decision-making, for example a realistic situation that threatens public security or a decision by the administrative control authority to protect the public order with its elements.

3.2 The procedures.

The general rule is that administrative decisions do not have a specific form. The administration is free to choose the appropriate format for the decision unless the system restricts it in a certain way, such as the withdrawal of nationality or expropriation for public benefit.

3.3 Competence.

Means determining who has the authority to issue the decision, for example the competence of the Minister to issue some decisions, or substantive jurisdiction, and means the identification of certain issues within the jurisdiction of the Council of Ministers, as well as temporal and spatial jurisdiction and the penalty of violating the non-rules of jurisdiction.

[11] Fatty **SAFA**, Judicial Control of the Principle of Proportionality in Disciplinary Sanctions, University of Muhammad Khader Biskra, Faculty of Law and Political Science, Department of Law, 2014, p. 7

[12] Hassan Hashem, Administrative Law, King Abdul Aziz University, Faculty of Economics and Management, Department of Systems, 2002, p. 7

3.4 Subject.

The Subject is the subject of the administrative decision or the direct effect of the decision, such as the establishment, modification or cancellation of a legal status, provided that this shop is possible and permissible.

3.5 Purpose.

The Purpose is the ultimate goal that the administrative decision seeks to achieve, such as the transfer of an employee or his leave to ensure the proper functioning of the public facility regularly, and each decision has an objective, but the decision must be free from abuse of power. Although there is no special legislation in the Administrative Judiciary of the Republic of Senegal, but we find that when examining the decisions of the Senegalese administrative courts, we find that the cause of these provisions does not emerge from one of these defects.

4. The Community Court of Justice of the Economic Community of West African States (ECOWAS).

4.1 History of ECOWAS.

History of ECOWAS Although the ECOWAS region was founded on the 18th of May 1975, its roots go back to the early 1960s. The ex-president of Liberia, William Tubman, took the first step towards a West African community. This was in 1964, when the first agreement was signed. The countries involved in this agreement were Cote d'Ivoire, Guinea, Liberia and Sierra Leone. Unfortunately, this agreement did not achieve any of the goals it should have. Seven years later, in April 1972, two generals, Gowon from Nigeria and Eyadema from Togo, picked up the concept again and restructured it. They started differently and went on a trip to 12 different countries to present their idea to the then governments. In December 1973 the representatives of these countries gathered together for a discussion in Lomé. The ideas and concepts were discussed, evaluated and changed by lawyers and experts in this field in January 1974. In addition, a conference with the actual governments was held in Monrovia in January 1975. After all these meetings and conferences, the 15 finally involved countries signed a corporate contract and created the Economic Community of West African States. This happened on 28th May 1975. During these years some of the countries left the ECOWAS region, such as Mauritania in 2002. Others, such as Cape Verde, became part of the Community in 1977.[13] The actual member states are: Benin, Burkina Faso, Cote d'Ivoire, Gambia, Ghana, Guinea-Bissau, Liberia, Mali, Nigeria, Senegal, Sierra Leone, Togo, Cape Verde, Guinea, and Niger. ECOWAS consists of 15 member states with three different spoken languages (English, French, and Portuguese), different currencies and a total population of 220 million people. The

[13] Mba **ATİNGA**, The economic community of West African state (ECOWAS) and the control of illicit proliferation of small arms and ligtweapons in West Africa (1998-2005), Atlanta University Center, 2008, p 47

mission of ECOWAS is to promote economic integration across the region. In order to enter the business region of ECOWAS it is very important to know everything about the structure, the status of the institutions and the member states of ECOWAS. This will help you think about difficulties that can arise by doing business in the ECOWAS region and enable you to try dealing with them before entering the region.[14]

4.2 Governance Structure.

The Economic Community of West African States (ECOWAS) comprises three arms of governance, namely, the Executive, the Legislature and the Judiciary. At the helm of the organization structure is the Chairman of the Authority of Heads of State and Government. The Chairman is the current Head of State and Government appointed by other Heads of State and Government to oversee the affairs for a period of one year. The Minister in charge of ECOWAS affairs in the country of the Chairman of the Authority automatically becomes the Chairman of Council of Ministers; similarly, that country presides over all other ECOWAS statutory meetings for the year (ministerial and senior level, such as the Technical Committees). At the helm of the Executive arm of the Community is the President of ECOWAS Commission appointed by the Authority for a non-renewable period of four years. He is assisted by a Vice President and 13 Commissioners.[15] The legislative arm of the Community is the Community Parliament headed by the Speaker of the Parliament. The administrative functions of the Parliament are directed by the Secretary General of the Parliament. Pending elections by direct universal suffrage in the future, parliamentarians are seconded by national Parliaments to the Community Parliament for a period of four years. The judicial arm of the Community is the Community Court of Justice, headed by the President. They are all seconded by the Supreme Courts of their respective Member States to fill the country positions. The Court ensures the interpretation and application of Community laws, protocols and conventions. The administrative functions of the Court are handled by the Court Registrar who is assisted by other professionals.

4.3 The Court of Justice of the Community.

4.3.1 Creation.

The Community Court of Justice was created pursuant to the provisions of Articles 6 and 15 of the Revised Treaty of the Economic Community of West African States (ECOWAS). Its Organizational framework, functioning mechanism, powers, and procedure applicable before it

[14] The Structure of the Economic Community of West African States (ECOWAS) Veröffentlicht am 11. Mai 2015 von Gastautor http://www.subsahara-afrika-ihk.de.

[15] http://www.ecowas.int,about-ecowas,governance-structure.

are set out in Protocol A/P1/7/91 of 6 July 1991, Supplementary Protocol A/SP.1/01/05 of 19 January 2005, Supplementary Protocol A/SP.2/06/06 of 14 June 2006, Regulation of 3 June 2002, and Supplementary Regulation C/REG.2/06/06 of 13 June 2006.[16]

4.3.2 Composition.

The Court is composed of seven (7) independent Judges who are persons of high moral character, appointed by the Authority of Heads of State of Government, from nationals of Member States, for a four-year term of office, upon recommendation of the Community Judicial council. The Mandate of the Court is to ensure the observance of law and of the principles of equity and in the interpretation and application of the provisions of the Revised Treat and all other subsidiary legal instruments adopted by Community.

4.3.3 Jurisdiction.

Advisory Jurisdiction, the Court gives legal advisory opinion on any matter that requires interpretation of the Community text. Contentious Jurisdiction, the Court examines cases of failure by Member States to honor their obligations under the Community law; The Court has competence to adjudicate on any dispute relating to the interpretation and application of acts of the Community; The Court adjudicates in disputes between Institutions of the Community and their officials; The Court has power to handle cases dealing with liability for or against the Community; The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State; The Court adjudges and makes declarations on the legality of Regulations, Directives, Decisions, and other subsidiary legal instruments adopted by ECOWAS.

4.3.4 Access to the Court.

Access to the Court is open to the following: All Member States and the Commission, for actions brought for failure by Member States to fulfill their obligations; Member States, the Council of Ministers and the Commission, for determination of the legality of an action in relation to any Community text. Individuals and corporate bodies, for any act of the Community which violates the rights of such individuals or corporate bodies; Staff of any of the ECOWAS Institutions; Persons who are victims of human rights violation occurring in any Member State; National courts or parties to a case, when such national courts or parties request that the ECOWAS Court interprets, on preliminary grounds, the meaning of any legal instrument of the Community; The Authority of Heads of State and Government, when bringing cases before the Court on issues other than those cited above.[17]

[16] Guy Fleury **NTWRI**, La Cour de justice de la CEDEAO, ou l'émergence progressive d'une Cour régionale des droits de l'Homme, Le journal de l'université jean moulin Lyon 3 n° 11 décembre 2013 p 11

[17] El Hadji Omar **DIOP**, L'ordre juridique interne des organisations d'intégration africaine, p 17

4.3.5 Procedures in court.

Cases are filed before the Court through written applications addressed to the registry. Such applications must indicate the name of the applicant, the party against whom the proceedings are being instituted, a brief statement of the facts of the case, and the orders being sought by the plaintiff. The Court applies the Treaty, the Conventions, Protocols and Regulations adopted by the Community and the general principles of law as set out in Article 38 of the Statute of the International Court of Justice. In the area of human rights protection, the Court equally applies, inter alia, international instruments relating to human rights and ratified by the State or States party to the case.

4.3.6 Decisions of the Court.

Decisions of the Court are not subject to appeal, except in cases of application for revision by the Court; decisions of the Court may also come under objection from third parties. Decisions of the Court are binding and each Member State shall indicate the competent national authority responsible for the enforcement of decisions of the Court.

5. The decision of Court in the case of Hussein Habré.

In August 2011 and January 2012, a Senegalese court of appeal refused to rule on two requests for extradition from Belgium because the legal documents were not in order. In both cases, the Senegalese government had not apparently transmitted the intact Belgian legal documents to the court. Belgium submitted a fourth request for extradition to the Senegalese authorities in January 2012 but this request has not yet been transmitted to the courts. No progress was made in the case until Macky Sall's victory against Wade in the presidential election in March 2011. The new Senegalese government quickly announced that it planned to pursue Habré in Senegal rather than extradite him to Belgium and took measures to that effect, including by signing the recent agreement with the AU. While negotiations over Habré prosecution in Senegal dragged on, several international courts were seized of the matter. On February 19, 2009, Belgium filed a case with the ICJ, demanding that Senegal prosecute or extradite Habré

to Belgium in accordance with its obligation under the Convention against Torture. The case remains pending. Meanwhile, Habré turned to regional courts to stop Senegal from prosecuting him. A case filed before the African Court on Human and Peoples Rights was dismissed, because Senegal has not yet accepted the Court competence to take up individual complaints. In October 2008, Habré also filed in parallel a case with the ECOWAS Court. Based in Abuja, Nigeria, the ECOWAS Court was conceived to be an institution akin to the European Union European Court of Justice judicial body mandated to ensure that the member states of the economic and customs union comply with its undertakings. As only member states could

initially bring cases to the Court, it remained idle for many years. In 2005, however, ECOWAS member states gave the Court jurisdiction to take up cases brought by individuals, including those based on alleged violations of the African Charter on Human and Peoples Rights and international human rights instruments. The Court has since become increasingly active, with the majority of the cases having a human rights dimension.[18]

Habré based his case primarily on the argument that Senegal passed the laws necessary to assert jurisdiction over his alleged international crimes only after he committed them. This, Habré claimed, violated his right under Article 15 of the International Covenant on Civil and Political Rights ("ICCPR"), which stipulates that "no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed." In its judgment of November 18, 2010, the Court partially upheld Habré claim. It found that a trial in a Senegalese court under the existing national legal framework would violate the prohibition of retroactive criminal laws, but left open a window of opportunity for accountability.

6. The African Court on Human and Peoples' Rights.

6.1 African Court in Brief.

The African Court on Human and Peoples' Rights (the Court) is a continental court established by African countries to ensure protection of human and peoples' rights in Africa. It complements and reinforces the functions of the African Commission on Human and Peoples' Rights. The Court was established by virtue of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, (the Protocol) which was adopted by Member States of the then Organization of African Unity (OAU) in Ouagadougou, Burkina Faso, in June 1998. The Protocol came into force on 25 January 2004 after it was ratified by more than 15 countries. To date, only the following twenty nine (30) States have ratified the Protocol: Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Cote d'Ivoire, Comoros, Congo, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic, South Africa, Senegal, Tanzania, Togo, Tunisia and Uganda.[19]

The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights, (the Charter), the Protocol and any other relevant human rights instrument ratified by the States concerned. Specifically, the Court has two types of jurisdiction: contentious and advisory. The Court is composed of eleven Judges, nationals of Member States of the African Union. The first

[18] Jan Arno **HESSBUEGGE**, ECOWAS Court Judgment in Habré v. Senegal Complicates Prosecution in the Name of Africa, February 03, 2011, American Society of International Law.
[19] http://en.african-court.org/index.php/about-us/court-in-brief

Judges of the Court were elected in January 2006, in Khartoum, Sudan. They were sworn in before the Assembly of Heads of State and Government of the African Union on 2 July 2006, in Banjul, the Gambia. The Judges of the Court are elected, after nomination by their respective States, in their individual capacities from among African jurists of proven integrity and of recognized practical, judicial or academic competence and experience in the field of human rights. The judges are elected for a six year or four year terms renewable once. The judges of the Court elect a President and Vice-President of the Court among themselves who serve a two-year term. They can be re-elected only once. The President of the Court resides and works on a full time basis at the seat of the Court, while the other ten (10) judges work on a part-time basis. In the accomplishment of his duties, the President is assisted by a Registrar who performs registry, managerial and administrative functions of the Court. The Court officially started its operations in Addis Ababa, Ethiopia in November 2006, but in August 2007 it moved to its seat in Arusha, the United Republic of Tanzania, where the Government of the Republic has provided it with temporary premises pending the construction of a permanent structure. Between 2006 and 2008, the Court dealt principally with operational and administrative issues, including the development of the structure of the Court's Registry, preparation of its budget and drafting of its Interim Rules of Procedure. In 2008, during the Court's Ninth Ordinary Session, judges of the Court provisionally adopted the Interim Rules of the Court pending consultation with the African Commission on Human and Peoples' Rights, based in Banjul, the Gambia in order to harmonize their rules to achieve the purpose of the provisions of the Protocol establishing the Court, which requires that the two institutions must harmonize their respective Rules so as to achieve the intended complementarity between the African Court on Human and Peoples' Rights and the African Commission on Human and Peoples' Rights. This harmonization process was completed in April 2010 and in June 2010, the Court adopted its final Rules of Court. According to the Protocol (Article 5) and the Rules (Rule 33), the Court may receive complaints and/or applications submitted to it either by the African Commission of Human and Peoples' Rights or State parties to the Protocol or African Intergovernmental Organizations. Non-Governmental Organizations with observer status before the African Commission on Human and Peoples' Rights and individuals from States which have made a Declaration accepting the jurisdiction of the Court can also institute cases directly before the Court. As of March 2014, only seven countries had made such a Declaration. The Court delivered its first judgment in 2009 following an application dated 11 August 2008 by Mr Michelot Yogogombaye against the Republic of Senegal. As at September 2013, the Court has received 28 applications. It has already finalized 23 cases. Currently the Court has 5 pending cases on its table to examine including Requests for advisory opinion.

6.2 Composition.

6.2.1 The judges.

A verbal note from the AU Commission (Secretariat of the AU) sent on 5 April 2004 to the States Parties to the African Court (those that have ratified the Protocol) insists that the moral authority, credibility and reputation of the African Court will depend, to a large extent, on its composition. The court consists of eleven judges elected for a term of six years, renewable once.[20]

The judges, however, remain in office until replaced. If that date is scheduled for after a case which has already been the subject of a hearing, the judge concerned shall continue to serve until the completion of that case (art. 2 of the Interim Rules of Court). The judges (except their president) exert part-time employment subject to amendments by the Conference of Heads of State and Government of the AU (art. 15.4 of the Protocol). The issue of employment of full-time judges was discussed by the drafters of the Protocol, and it was noted that if this option were adopted, the number of judges would be reduced to seven, for financial reasons. Depending on the volume of cases that the Court will have to treat, experience will prove whether this part-time employment is effective. For example, the Council of Europe made a political choice in 1998 with the adoption of Protocol No. 11 to transform the European Court of Human Rights into a permanent judicial body.

6.2.2 The Registry.

A Registrar is appointed by the Court from among the nationals of Member States of the AU (art. 24.1 of the Protocol). The Interim Rules of the Court state (Title 2) that candidates for the post of Registrar shall enjoy the highest moral authority and possess the legal, administrative and linguistic knowledge and experience required to exercise his or her functions. The Registrar is appointed for a term of 5 years, renewable. The functions of the Registrar are defined by article 25 of the Interim Rules of Court. They include: – keeping a general list of cases; – being a regular channel of communication to and from the Court; – sending to the parties a copy of all pleadings; – establishing the minutes of Court sittings; – providing translation and interpretation according to the Court needs; – printing and publishing Court's judgments, advisory opinions and orders; – preparing the draft budget of the Court; – maintaining relations between the Court and the departments of the AU Commission as well as the organs of the AU. In other regional systems, the Courts elect the Registrar by secret ballot. Candidates in the European and American systems should enjoy the highest moral character and possess the legal, administrative and linguistic knowledge and experience required to perform their work. The Registrar assists the Court in carrying out its functions. He or she is responsible for the organization and activities of the Registry, under the authority of the President of the Court. He

[20] Towards the African Court of Justice and Human Rights, International Federation for Human Rights, p 41

or she keeps the records of the court and serves as an intermediary for communications and notices from or to the court. For example, the Registrar shall notify the parties of judgments, advisory opinions and other Court decisions. The Registrar, subject to the secrecy attached to his duties, responds to inquiries concerning the activity of the Court, including those from the press.

6.3 Access to the Court.

This chapter studies and explains article 5 of the Protocol which lists the persons, organizations or institutions which may submit cases to the Court to denounce human rights violations committed by a State which has ratified the Protocol. An important part is devoted to individuals' and NGOs' right of access. This is only possible if States have explicitly accepted such a right. This is one of the Court's main limitations although individuals and NGOs can attempt to get round this obstacle through the African Commission. Following this Article 5: Access to the Court;

1. The following are entitled to submit cases to the Court a. The Commission; b. The State Party which has lodged a complaint to the Commission; c. The State Party against which the complaint has been lodged at the Commission; d. The State Party whose citizen is a victim of human rights violation; e. African Intergovernmental Organizations.

2. When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join.

3. The Court may entitle relevant Non-Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34 (6) of this Protocol.[21]

6.4 Jurisdiction.

Contentious Jurisdiction of the Court. Under Article 3 of the Protocol, the Court has jurisdiction to deal with all cases and disputes submitted to it regarding the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the concerned States. Advisory Jurisdiction of the Court. Under Article 4 of the Protocol, the Court may, at the request of a Member State of the African Union, any of the organs of the African Union, or any African organization recognized by the African Union, provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission. Extension of Jurisdiction of the Court to Deal with Criminal Matters In February 2009, the Assembly of Heads of State and Government of the African Union requested the AU

[21] Towards the African Court of Justice and Human Rights, International Federation for Human Rights, p 41

Commission, in consultation with the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights, to assess the implications of extending the jurisdiction of the Court to try international crimes, such as genocide, crimes against humanity and war crimes and to submit a report thereon to the Assembly in 2010. To implement this decision of the Assembly, the African Union Commission engaged a consultant to undertake a study on the implications of extending the jurisdiction of the African Court of Justice and Human Rights (yet to become operational), including considering whether unconstitutional change or prolongation of government, could be considered a new crime.[22]

Conclusion:

We find that the respect of human rights and fundamental freedoms by the executive requires the existence of a judicial mechanism to impose penalties in the event of violation of any law that conflicts with the rights and freedoms provided for in the Constitution, and give the right to any person to resort to the judiciary in order to challenge the decisions of the executive authority to protect the right, we see that administrative justice is one of these mechanisms which can be ensure the individuals rights.

However, no matter how national jurisdictions try to establish human rights safeguards, this is not sufficient to guarantee human rights. Hence the importance of regional and international institutions to fill the vacuum that we may sometimes find in national legislation. If the ECOWAS Tribunal has largely succeeded in protecting the rights of individuals through the possibility of bringing cases to individuals without complicated conditions, at the same time there are many difficulties for the African Court of Human Rights to deal with the challenges. This does not prevent us to say that the both needs fundamental reforms to redress the shortcomings of national laws.

[22] http://en.african-court.org/index.php/about-us/court-in-brief

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