

КОНСТИТУЦІЙНЕ ТА АДМІНІСТРАТИВНЕ ПРАВО

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THE IMPACT OF INTERNATIONAL JUDICIAL INSTITUTIONS ON THE DEVELOPMENT OF LEGAL SYSTEMS IN WEST AFRICA (CASE STUDY OF BURKINA FASO)

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Purpose: *this article examines the impact of international judicial institutions on the development of the legal systems of West Africa, namely Burkina Faso. **Research methods:** synthesis, analysis, formal-legal, comparative-legal. **Results:** the impact of international judicial institutions on the development of West African legal systems, particularly in Burkina Faso, was assessed from the perspective of international conflict resolution and its impact on the rule and development of democracy in Africa, and the main grounds for conflict resolution were identified: **Discussion:** this article reveals the influence of international judicial institutions on the development of the legal systems of West African countries, often due to the political and social realities of the countries. These countries have generally succeeded in developing a colonial system of justice. The legal systems of West African countries derive from different traditions inherited from colonization. They have also been influenced by numerous customs and religious norms which influence the structure of the judicial system in each country. The region is now collectively developing under the aegis of the Economic Community of West African States (ECOWAS).*

Key words: *International Court of Justice; United Nations International Court of Justice; legal system; colonialism; Economic Community of West African States; African Commission on Human and Peoples' Rights.*

Problem statement and its urgency. In view of the scientific and practical relevance of the subject matter today, there is knowledge of the problem of the development of legal systems in West African countries. This phenomenon has a constant trend and is constantly evolving. It is important to examine the impact of international judicial institutions on the development of legal systems in West Africa, particularly in Burkina Faso. This impact is justified by the fact that most countries in West Africa are former colonies, which have been replacing the courts and legal systems of the colonizers since their independence. This topic is highly relevant because an understanding and analysis of the impact of international judicial institutions on the legal systems of African countries are important

for the implementation by African countries of international principles of law, standards of justice and, above all, the status of the states of West Africa.

Analysis of recent research and publications. The theoretical and methodological basis of the article is the works of such scientists as C.M. Fombad, Prempeh, B. Kante, Mamadou, O.V. Mikichurov, Mirzaev, F and others. In their works scientists revealed their own views of the development of legal systems of the countries of West Africa and gave suggestions for the development of legal systems and use of legal tools of democratic processes. Currently, the role of international judicial institutions in the formation of

legal systems of the countries of West Africa is an understudied topic, which determines the importance of scientific research in this area.

The purpose of this article is to analyze the impact of international judicial institutions on the development of the legal systems of the countries of West Africa, namely Burkina Faso.

Presenting main material. According to some scholars, such as (C.M. Fombad 2011: 1017; Prempeh H.K., (1999), pp. 135-49) the evolution of constitutional justice in West Africa began in the post-colonial period from 1960. After African independence, the judiciary abdicated its duties to the benefit of the judiciary [2].

Others admit that genuine systems of constitutional justice, capable of promoting constitutionalism and the rule of law, began to emerge only during the third wave of democratization, in the 1990s in Africa (Kanté 2008: 158-59). In Kanté's view, this approach was 'fundamental' to the new legal [...] order in Francophone Africa' (2008: 159). This is particularly true of Franco-West Africa, where "constitutional justice had begun to establish a certain autonomy [...] before the beginning of the democratic transition in the early 1990s. These transitions were "the foundation of a new [...] legal order in Francophone Africa" [2, p. 159].

This view is based on institutional models and practices of constitutional justice derived from colonial regimes martyred from the West and does not take into account colonial political institutions, legal systems and institutional models of political governance [3].

Beyond the labels 'dark', 'irrelevant', 'primitive' and 'chaotic', which have so often been associated with the political organization of the continent before the fall, pre-colonial Africa had a strong political infrastructure.

The legal systems of African countries in general, and Burkina Faso in particular, are strongly influenced by international judicial institutions. Indeed, over the course of history some of the West African countries have had territorial conflicts, namely:

1) Burkina Faso and Mali in 1985, called the "Christmas War", the breakdown of the Burkina Faso-Nigeru cordon in 2013;

2) Cameroon-Nigeria border conflict in Lake Chad in 1990;

3) The post-election crisis in Côte d'Ivoire 2010-2011.

In most international conflicts in Africa, the influence and intervention of certain institutions to resolve these conflicts, such as the International Court of Justice; the International Criminal Court; and other international institutions, has prevailed. The presence of these institutions in the court system of the West African States is justified by the ratification of certain international conventions and their adherence to a number of international judicial institutions such as the African Commission on Human and Peoples' Rights, established on 2 October 1987 in Addis Ababa.

In Addis Ababa, Ethiopia; the International Criminal Court, established on 1 June 2002; and others. However, the development of legal systems in West African countries is generally strongly influenced by international judicial institutions and often interferes with the national legislation of the West African countries [2011, p. 189]. This is due to the fact that these countries are former colonies which took over the institutions and legal systems from the settlers. An example is the settlement of the Prisoner Conflict between Burkina Faso and Mali at the International Court of Justice (1983-1985) [4].

In autumn 1983, together with President Thomas Sankara, President Burkina Faso appealed to the International Court of Justice for authorization of the political reconciliation of the border conflict between the countries and filed their cases.

On 14 June 1983. On 14 January 1983, Burkina Faso (then known as Upper Volta) and Mali notified the Court of a Special Agreement concerning the Court's Chamber for the partition of the land border between the two countries. This chamber was established by decree of 3 December 1985. After serious incidents between the armed forces of the two countries at the very end of 1985. The two offending parties submitted parallel requests to the Chamber for the introduction of time-bound protective measures. The Chamber rejected these measures by an order of 10 December 1986 [5]. In its decision of 22 December 1986, the Chamber began by

identifying the rights claimed by the Parties. It stated that, in this case, the principles to be applied were the principle of non-discrimination of cordons averted from colonization and the principle of *uti possidetis Juris*, which gives precedence to the legal title of effective possession as the basis of sovereignty and whose main purpose is to ensure respect for the territorial cordons that existed at the time of independence [73, p. 81].

The Chamber specified that when these cordons were nothing more than an interchange between different administrative subdivisions or columns subordinate to the same sovereign, the application of the principle *uti possidetis Juris* led to their transformation into international cordons, as in this case [6].

He also stated that he would like to take into account the inventory of property, that is, that form of ownership which constitutes the method of interpretation of the law and is based on the law. The parties also relied on various types of evidence to corroborate their arguments, including French statutory and regulatory documents or administrative documents, pictures and "columnar effects", or, in other words, the behaviour of administrative authorities as evidence of the effectiveness of the exercise of territorial jurisdiction in the region during the columnar period. After examining these different types of evidence, the Chamber identified the corridor between the Parties in the zone of separation. The Chamber also declined to note, with respect to the Niger-Mali-Burkina Faso Tricity, that its jurisdiction is not limited simply by the fact that the end point of the cordon lies in the cordon of a third State which is not a party to the proceedings [80, p. 86]. He also stated that the rights of Niger's are in any case protected by Article 59 of the Statute of the Court [7].

The legal systems of the countries of West Africa are unique in their diversity. They tend to be based on different traditions inherited from colonization and have been influenced by numerous customary and religious norms that influence the structure of the judicial system in each country. At the same time, the region is collectively developing under the aegis of the Economic Community of West African States. The various bodies

responsible for constitutional justice are unique in their diversity in the 16 West African countries that are members of ECOWAS; in line with the various international conventions ratified by the African states.

There is no single best approach: different legal traditions often give rise to different configurations. ECOWAS also seeks to facilitate learning and understanding among the countries of the region, in particular those with different legal systems, in order to create the contours of a common West African system.

In the case of Burkina Faso, Mali, Côte d'Ivoire, Niger, Benin, Guinea, Senegal, Togo, which are former French colonies, and all members of ECOWAS, French international law actively participates in the various rules between these countries as well as in the various institutions set up between them.

With regard to the parliamentary system, Burkina Faso has committees such as the Committee on General, Institutional and Human Rights (CAGIDH). Their role is to participate in the development of the Burkina Faso judicial system. The deputies of Burkina Faso are also members of parliament (Ecowas) which consists of 120 deputies. Each of the six hundred and twenty member States (ECOWAS) has a minimum of nine seats. Regarding its duties, the parliament of ECOWAS can consider any issue of concern to the partnership, in particular the respect of human rights and fundamental freedoms, and make recommendations to institutions and community bodies. ECOWAS may also be asked to comment on matters relating to community affairs. Deputies and their alternates are elected by direct universal suffrage for a period of six years. The ultimate aim of the ECOWAS Parliament is to achieve legislative powers.

It should also be borne in mind that in Africa the influence of international bodies dominates the legal systems of West African countries. We are also dealing with the 2010-2011 post-election crisis in Côte d'Ivoire. The political crisis, which started with the second round of the presidential election in Côte d'Ivoire in 2010, the first vote in 10 years, led to an electoral void after the foreseeable vote rigging.

Two candidates, Laurent Gbagbo, the outgoing President, who has been recognized by the Constitutional Council, and Alassane Ouattara, who has been recognised by the Independent Electoral Commission and the international coalition, are seeking victory. The last firmly attached to Gbagbo fell on 4 January; the Constitutional Council voted Alassane Ouattara President of the Republic (on 6 January the following year). Laurent Gbagbo was arrested on 11 September 2011, following an alleged offensive by *the Forces républicaines de Côte d'Ivoire*, and convicted by an international criminal court, where he was convicted and acquitted on 15 June 2019 after more than seven years' preventive detention in The Hague. The resolution of this post-election crisis was made possible because most West African countries, [6, p. 12]. In particular Francophone countries, are members of the International Criminal Court [8].

In Burkina Faso today, institutional and legal pluralism is indeed an imminent reality, both at the level of government and in the everyday life of the population. If the principles of Western justice through their universality are exported to the Sub-Saharan countries as instruments of legal and judicial modernization (Merry 2006: 69), they locally generate a phenomenon of complex legal pluralism. The historical Burkina Faso-Faso journey is an example of this trend. After Independence in 1960, the State preserved the rule of law. The state preserved the legal dualism of the colonial era, so that the society preserved the social division, creating two statutory categories of citizens (Lompo Myemba 2003). During the socialist era of the Sancarist Revolution of 1983. The first experience of post-colonial legal standardization with the replacement of ordinary courts by people's courts emerged.

However, in 1995, with the introduction of the Personal and Family Code (PFC), we witnessed a desire to incorporate legal pluralism at both local and national levels.

The result of political and ideological discourse, its aim is not to shape local customs (Conac 2000; Ilboudo 2006), but rather to facilitate the emergence of public changes by means of an excessive law. The result is the formalization of the rule of law, and since then the legal duality has been replaced by the unity of a single private legislative

body, where the office ceases to have the force of law in matters governed by this code (Article 1066 of the Personal and Family Code, cited in Dabiré 2008) [9].

Conclusions. This article summarizes the results of the study and identifies the main problems of the impact of international judicial institutions on the development of the legal systems of the countries of West Africa. It should be noted that for the proper functioning of judicial institutions and the resolution of certain African international conflicts, the application of international standards is considered essential. The influence of international institutions is light as African countries have developed post-colonial systems and play a role in the education and political emancipation of Africans. Beginning in the 1960s with the independence of West African countries such as Burkina Faso, Mali, Côte d'Ivoire, Benin, Niger, Togo and Guinea until today, West African countries often seek the intervention of international judicial institutions to prevent conflicts between African countries. The impact of international judicial institutions on the development of the legal systems of West African countries, particularly Burkina Faso, has brought political and primarily democratic stability to several West African countries. This is because most African countries are members of several international institutions such as the International Criminal Court and the United Nations. These institutions have been involved in the resolution of several conflicts in Africa and in several countries around the world. As an example, we can cite the settlement of the border conflict between Burkina Faso and Mali in 1985 by an international court, the settlement of the post-election crisis in Côte d'Ivoire in 2010-2011 by an international criminal court.

However, each institution has its weaknesses and, in the particular case of Africa, international policy often influences the decisions of international justice in the countries of West Africa that are still under the guardianship of France for the former French colonies. In a recent example of the Ivorian crisis, France formally took sides with the new president, Alassane Ouattara, while the Constitutional Court of Côte d'Ivoire declared

outgoing president Laurent Gbagbo the winner of the 2010 presidential election [10].

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Діма Серге Патрік

ВПЛИВ МІЖНАРОДНИХ СУДОВИХ УСТАНОВ НА РОЗВИТОК ПРАВОВИХ СИСТЕМ КРАЇН ЗАХІДНОЇ АФРИКИ (НА ПРИКЛАДІ БУРКІНА-ФАСО)

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*Метою цієї статті є зрозуміти вплив міжнародних судових установ на розвиток правових систем у Західній Африці, зокрема в Буркіна-Фасо. Цей вплив виправдовується тим, що більшість країн Західної Африки – це колишні колонії, які успадкували судові установи та системи після їх незалежності. **Методи дослідження:** синтез, аналіз, формально-правовий, порівняльно-правовий. **Результати:** розкрито вплив міжнародної судової системи в Африці та об'єктивне значення терміну «правова система», що часто обумовлено політичними та соціальними реаліями країни. Ці країни, як правило, успадкували колоніальну систему правосуддя. Дійсно, вони ґрунтуються на різних традиціях, успадкованих від колонізації, і на них впливали численні звичаї та релігійні норми, які впливають на структуру судової системи в кожній країні. Водночас цей регіон колективно розвивається під егідою Економічного співтовариства західноафриканських держав (ЕКОВАС). **Обговорення:** з огляду на наукову та практичну актуальність предмета сьогодні, є знання про проблему розвитку правових систем в країнах Західної Африки. Це явище має постійну тенденцію і постійно розвивається.*

Теоретико-методологічною основою статті є вивчення експертів у галузі конституційного права, які у своїх працях розкривали власні погляди на проблему впливу міжнародних судових установ на розвиток правових систем країн Західної Африки і дали пропозиції щодо розвитку правових систем, які є основним інструментом для демократії. На думку деяких вчених, таких як Charles Manga Fombad, Pretre, еволюція конституційного правосуддя в Західній Африці починається у постколоніальний період з 1960 р. Після незалежності Африки, судова влада відмовилася від своїх обов'язків на користь виконавчої влади. Інші припускають, що справжні системи конституційного правосуддя, здатні пропагувати конституціоналізм і верховенство права, почали виникати лише під час третьої хвилі демократизації, у 1990-х рр. Це особливо стосується франкомовної Західної Африки, де, на думку Канте, «конституційне правосуддя почало відкривати певну автономію ... до початку демократичних перетворень наприкінці 1990-х». За його аргументацією, ці переходи були «засновником нового ... правового порядку у франкомовній Африці».

***Ключові слова:** вплив; міжнародний суд; розвиток; правова система; колоніалізм; Економічне співтовариство країн Західної Африки (ЕКОВАС); Африканська Комісія з прав людини та народів (АКПЛ).*

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