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Prospects of Handling Digital Technology Disputes by Courts of Integration Associations

Valentina P. Talimonchik

Russian State University of Justice, Saint Petersburg, Russia

Keywords

Court of the Eurasian Economic Union,
court,
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dispute resolution,
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integration associations,
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justice,
law

Abstract

Objective: to analyze the competence and procedure of case handling by the courts of integration associations, allowing them to resolve disputes related to information technologies, and to identify the prospects of handling of this category of disputes by the courts of integration associations.

Methods: the main research methods were analysis, synthesis, and problem-theoretical method.

Results: the article identified the main features of the "disputes related to digital technologies" category in relation to resolving disputes involving individuals by the courts of integration associations. It reveals opportunities for some courts of integration associations to resolve disputes related to information technologies. The said opportunities are provided by the courts competence, allowing the appeal of individuals, as well as by the dispute resolution procedure involving experts. By analyzing international treaties and practice of courts of integration associations, the author proves that the changes in the category of "disputes related to digital technologies" are related not only to technologies, but also to information and communication systems. By own judgments, the author reveals the content of disputes related to digital technologies in the courts of integration associations.

Scientific novelty: the paper reveals the peculiarities of the category "disputes related to digital technologies" in relation to the courts of integration associations and the prospects of resolving disputes related to information technologies by the courts of integration associations.

Practical significance: the conclusions provided in the article can be used to improve the practice of courts of integration associations.

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Contents

Introduction

Traditionally, the issue of technology disputes resolution has been the responsibility of the United Nations Commission on International Trade Law (hereinafter – UNCITRAL). The 79th session of UNCITRAL Working Group II was held in New York on February 12–16, 2024[1].

An outcome document is also submitted to the 80th session, scheduled for September 30–October 4, 2024 in Vienna[2]. UNCITRAL has already achieved certain results with respect to international commercial arbitration.

[1] The UN Commission on International Trade Law (UNCITRAL) Working Group II on Dispute Settlement adopted the document "Technology Dispute Settlement and Adjudication: Model Exceptions and Explanatory Texts".

[2] Draft UNCITRAL Model Exceptions on Express Dispute Settlement Based on Expert Opinion (SpecialEOS).

First, a category of technology-related dispute was developed. It includes a wide variety of categories arising from "high" technologies across industries and services. Information technologies are not identified separately.

Second, common model exceptions were developed. For example, the arbitration exception contains the application of the UNCITRAL Expedited Arbitration Rules, with modifications for expedited appointment of the arbitrator by the appointing institution, expedited consultation with the parties, and convenient venue and language of the proceedings.

Third, an expert opinion exception is being worked on. An exception on the appointment of independent technical consultants is proposed. To select the technical consultant, the tribunal shall consult on the area of specialization and terms of reference for the expert. The parties are entitled to comment on the clarifications provided by the technical consultant.

In general, UNCITRAL is close to finalizing a system for the resolution of technology-related disputes arising from international transactions.

Since 2021, the World Intellectual Property Organization (further – WIPO) turns to advanced technologies[3]. The WIPO Arbitration and Mediation Center handles ICT-related disputes and has the potential to resolve issues relating to information and communication systems. Unlike UNCITRAL, which handles technology-related disputes by international commercial arbitration, the WIPO Center has offered effective pre-trial resolution of these types of disputes.

As of July 1, 2021, a new version of the WIPO Expert Opinion Rules is in force. An opinion is understood as a judgment rendered by an expert in accordance with Article 17 of the Rules on a matter referred to expert examination. Article 17 of the Rules provides that the expert may make a decision based on, without limitation: 1) any information provided by the parties; 2) the expert's competence; 3) any other information that the expert considers relevant to the case. The expert may, after consultation with the parties, make an interim or partial decision.

The competence of UNCITRAL and WIPO cannot refer to international judicial institutions. International judicial institutions have a separate legal framework for their activities, are characterized by narrow competence and do not constitute a system.

International judicial institutions are currently active in resolving disputes between states and individuals. The courts of various integration associations potentially may handle technology-related disputes.

[3] They cover digital technologies (Internet of Things (IoT), blockchain, metaverse, artificial intelligence (AI) including generative AI (GenAI), big data and cloud computing), as well as physical technologies (autonomous driving, 3D printing and hardware innovations).

The courts of integration associations on the African continent are numerous[4]. The judicial practice of integration associations may use UNCITRAL's Technology Related Dispute Indicators[5].

Disputes related to information technologies, handled in the integration associations, have been poorly researched. The practice of the EU Court of Justice was studied by Thomas Shaw (2016).

Fundamental studies on information technology law by Chris Reed and John Angel (2007), Andrew Murray (2010), Thomas Smedinghoff (2000), Diana Rowland and Elisabeth Macdonald (2005), Rowland et al. (2017) contain sections on commercial domain disputes.

A thorough analysis of the judicial practice, mainly national, can be found in (Armstrong et al., 2021).

A research by F. F. Wang (2014) devotes a special section to electronic commercial disputes.

Works on legal regulation of advanced technologies by T. Hoeren & B. Kolany (2018), M. Burri (2021), S-Y. Peng, C-F. Lin and T. Streinz (2021), S. Chesterman (2021), M. Compagnucci (2020), M. Kovac (2020), and N. Rebe (2021) do not touch upon courts of integration associations.

The rather extensive academic literature on the legal aspects of blockchain also does not address the problem of technology-related dispute resolution by courts of integration associations, as integration policies in this area are just emerging (Cappiello & Carullo, 2021; Herian, 2018; Stabile & Prior, 2020; Bambara & Allen, 2018; Fox & Green, 2019; Barker, 2020).

As the practice of the EU Court of Justice, including that related to digital technologies, is always subject to rigorous doctrinal analysis, this study will focus on integration associations in Africa and South America. The analysis will focus on two questions: 1) whether the competence of the courts of the integration associations allows them to handle digital technology disputes; and 2) whether the procedural rules of the courts of the integration associations take into account the specific features of this type of disputes, namely shortened procedural time limits and the participation of experts.

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4 Court of Justice of the Common Market for Eastern and Southern Africa; Court of Justice of the East African Community; Court of Justice of the Central African Economic and Monetary Community; Court of Justice of the West African Economic and Monetary Community; Tribunal of the South African Development Community.

5 UNCITRAL's Draft Provisions on Technology Dispute Settlement provide examples of disputes arising in various industries: aerospace, audio, automotive or mobility means, artificial intelligence, biotechnology, computer manufacturing, electronics, information technology, medical devices, military/defense nanotechnology, nuclear physics, photonics, robotics, semiconductors, telecommunications, pharmaceuticals and financial technology. All these disputes are inextricably linked to economic integration.

1. Prospects for handling digital technology disputes by the courts of integration associations on the African continent

1.1. Prospects for handling digital technology disputes by the Court of Justice of the Common Market for Eastern and Southern Africa

1.1.1. Peculiarities of the competence of the Court of Justice of the Common Market for Eastern and Southern Africa

The competence of the Court of Justice of the Common Market for Eastern and Southern Africa (hereinafter referred to as the COMESA Court) to handle a certain category of disputes is determined by COMESA Treaty[6]. Also, to determine the competence of the COMESA Court to handle disputes related to digital technologies, the category of "digital technologies" should be defined.

At present, the term "technologies" in relation to digital technologies is a conventional term. In addition to the well-established term "information and communication technologies" (ICT), it should include information and communication systems[7].

Characteristically, ICT and information and communication systems are developed by private actors who enter into various kinds of contractual relationships.

ICTs accompany information throughout its "life cycle", which involves a variety of disputes. When information is created, disputes relate to intellectual property rights[8]. When ICTs are put into circulation, various service contracts are concluded (for implementation or technical support)[9]. Disputes may be related not only to contracts, but also to the use of ICTs without the developer's authorization.

Information and communication systems are also characterized by the concept of life cycle[10]. As with ICT, the use of information and communication systems is mediated through various contracts. At the phases of researching, designing and

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6 Treaty establishing the Common market for Eastern and Southern Africa. https://clck.ru/3DsBHS

7 Artificial Intelligence, big data, neural networks, distributed ledgers and other systems that are relatively autonomous from a human.

8 If the software, database, or technology in the form of a trade secret is custom-built.

9 ICTs as a tool are used to search, obtain, disseminate, transfer, store, transform, systematize, destroy information and access to it, for which purpose the operator of a search engine, the owner of a website, the person with whom the information is linked, enter into legal relations, about which disputes may arise.

10 The Resolution of the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) "Recommendation on the Ethical Aspects of Artificial Intelligence", adopted at its 41st session held in Paris from November 9 to 24, 2021, defines the notion of the life cycle of an artificial intelligent system as follows: the entire set of phases, from the research, design and development phases through to the deployment and utilization phases, which include maintenance, operation, marketing, financing, monitoring and evaluation, performance control, decommissioning, dismantling and disposal.

developing an information and communications technology system, these are labor and contracting agreements, and also investment ones. The deployment of an information and communications technology system may require agents and distributors. The use of an information and communications technology system involves various service contracts[11]. Various types of torts, including unfair competition, may occur after the deployment of an information and communications technology system.

It should be stated that disputes related to digital technologies arise mainly in the field of private international law. They are "transferred" to the public law sphere if: 1) public international law allows private parties to appeal to an international judicial institution; 2) an international treaty defining the terms of reference of an international judicial institution touches upon issues related to ICT and information and communication systems.

An analysis of Section 5 of the COMESA Treaty allows us to distinguish the categories of cases in which individuals may bring cases before the COMESA Court. First, any person having residence or domicile in a Member State may apply to the COMESA Court of Justice to appeal against acts of COMESA bodies when national remedies have been exhausted. Second, the COMESA Court also performs the function of arbitrating private contracts.

The COMESA Treaty defines the general[12] and specific aims and objectives of the Common Market. The specific objectives are formulated for specific areas of cooperation. In the field of communications, the objective is to promote cooperation that would facilitate the production of goods, trade in goods and services, and the movement of people. In the field of industry, the objectives are to eliminate rigidity in production structures in order to ensure high quality goods and services competitive in the Common Market and to create appropriate favorable conditions for the private sector to participate in economic development and cooperation within the Common Market, to cooperate in the field of industrial development. Cooperation in the information field is not separately identified. Issues of support for advanced technologies can be addressed within the framework of industrial development.

11 Contracts on the services of maintenance, operation provision, monitoring and evaluation, performance control, as well as decommissioning, dismantling and disposal.

12 The general goals include, inter alia: (1) to achieve sustainable growth and development of member States by promoting a more balanced and harmonious development of their production and marketing structures; (2) to promote joint development in all areas of economic activity and joint adoption of macroeconomic policies and programs to improve the living standards of their peoples and strengthen closer relations among their member States; (3) to cooperate in creating a favorable environment for foreign, cross-border, and domestic investment, including jointly promoting research for development; 4) to strengthen relations between the Common Market and the rest of the world and to develop common positions in international forums. These objectives are so broadly formulated that they do not require adaptation to the needs of information and communication systems development.

1.1.2. Peculiarities of the procedure of the COMESA Court of Justice for resolving digital technology disputes

The COMESA Court's 2016 Rules of Procedure[13] take into account the possibility of an expert's participation in the proceedings. They provide for a special request by the applicant for the appointment of an expert. A special rule is provided for the expert questioning: if the expert notifies the Registrar of the Court at least fifteen days before the hearing that he or she is unable to communicate adequately in one of the languages of the COMESA Court, the Court may permit the expert to give his or her evidence in English or another language and interpretation must be provided. If a person is called to testify as an expert, the Registrar may appoint a reasonable fee for the time spent both in testifying and in performing any work on the case. Characteristically, the examination procedure is not separately regulated; the status of an expert is similar to that of a witness.

The COMESA Court's 2016 Rules of Procedure cannot objectively take into account the shortened time limits for proceedings in disputes related to information technology, as they do not separately distinguish this category of disputes[14]. In general, the volume of cases heard by the COMESA Court involving legal persons is insignificant.

1.2. Prospects for handling digital technology disputes by East African Court of Justice

1.2.1. Analysis of the competence of East African Court of Justice to handle digital technology disputes

Section 8 of the 1999 East African Community Treaty[15] governs the status of the East African Community Court of Justice. The East African Community Court of Justice is the judicial body that enforces the law in interpreting, applying and enforcing the provisions of the 1999 Treaty.

In relation to private parties, the East African Community Court of Justice hears the following appeals: 1) by private parties on the validity of any act of a Member State on the ground that it violates the Treaty; 2) by parties to commercial contracts where their agreements contain an arbitration exception conferring jurisdiction on the Court.

The Community's objective is to develop policies and programs aimed at broadening and deepening cooperation between Member States in the political, economic, social and cultural fields, research and technology, defense, security, as well as in the legal and judicial spheres for their mutual benefit. Thus, research and technology is singled out as a separate area of cooperation.

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13 COMESA Court of Justice. https://clck.ru/3DsBdr

14 Examples of cases involving legal persons handled by COMESA Court are: Malawi Mobile Limited vs COMESA; Malawi Mobile Limited Vs Government of the Republic of Malawi & Malawi Communication Regulatory Authority.

15 East African Court of Justice. (1999). The Treaty. https://clck.ru/3DsBez

In order to achieve the common objective, the Community shall, inter alia, ensure: (1) sustainable growth and development of the region; (2) mainstreaming gender in all its endeavors and enhancing the role of women in cultural, social, political, economic and technological development; (3) strengthening partnerships with the private sector and civil society to achieve sustainable socio-economic and political development. The East African Community is characterized by a clear orientation towards development, which contributes to the expansion of competencies of the Court of Justice of this integration association.

1.2.2. Peculiarities of the procedure of East African Court of Justice for resolving digital technology disputes

The Court of Justice of the East African Community is very active. The panel of the first instance has so far heard 179 cases, while the appeal panel has heard 53 cases, of which the most frequent are cases involving appeals by individuals and legal entities. For example, the case Chester House Limited v. the Attorney General of the Republic of Uganda & 3 others dealt with the protection of foreign investment.

The 1999 Treaty and the Rules of Procedure 2019[16] of the East African Community Court of Justice set certain rules for appeals by individuals.

The 1999 Treaty sets a short time limit for appeals by private parties: proceedings must be commenced within two months of the entry into force, publication, directive, decision or action complained of, or from the date on which the complainant became aware of it. The parties may be represented by a lawyer entitled to appear before the Supreme Court of any of the Member States.

Chapters VII and XII of the Rules of Procedure set out the procedure for handling cases. Expert participation is provided for. The parties may examine the expert's report at the Registry and obtain copies at their own expense. In the case of any person called by the Court to testify as an expert, the Registrar may appoint a reasonable fee for the time spent both in giving evidence and in carrying out any work on the case. The procedure for engaging an expert is not regulated in detail. The expert is not engaged by the Court, but by the parties concerned.

1.3. Prospects for handling digital technology disputes by the Court of Justice of the West African Economic and Monetary Union

1.3.1. Analysis of the competence of the Court of Justice of the West African Economic and Monetary Union to handle digital technology disputes

The Court of Justice of the West African Economic and Monetary Union (hereinafter referred to as the ECOWAS Court of Justice) has been handling individual complaints since 2005.

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[16] East African Court of Justice. (2019). Rules of procedures 2019. https://clck.ru/3DsBoz

The 1975 Treaty on the Economic Community of West African States (ECOWAS)[17] included a mandate for the Community Court of Justice to handle disputes relating to the Treaty interpretation and operation. The rules for the Court functioning were established by the 1991 Protocol on the Community Court of Justice. The Court became operational in December 2000.

The ECOWAS Additional Protocol of 2005[18] established the rules for admissibility of complaints to include disputes between individuals and their own member states. The ECOWAS Court of Justice included the following divisions: the ECOWAS Administrative Tribunal, the Court of Human Rights, the Court of Arbitration, and the Inter-State Dispute Resolution Tribunal.

According to Article 4 of the 2005 Protocol, individuals and legal entities have the right to appeal to the ECOWAS Court of Justice. There is no need to exhaust domestic remedies to approach the ECOWAS Court of Justice.

The ECOWAS Treaty defines the overall objective of the association without specifying it[19]. It also defines the means of achieving the objective, which may contribute to the development of information and communication systems in the region[20].

ECOWAS focuses on economic integration but emphasizes information as a separate area of cooperation.

1.3.2. Peculiarities of the procedure of the ECOWAS Court of Justice for resolving digital technology disputes

According to the Rules of Procedure of the ECOWAS Court of Justice, in force since January 1, 2022[21], the Court may use an expert opinion. The order appointing the expert must define his or her task and set a time limit within which he or she must prepare his or her opinion.

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17 ECOWAS. https://clck.ru/3DsBxo

18 Supplementary Protocol A/SP.1/01/05 amending the preamble and Articles 1, 2, 9 AND 30 of Protocol A/P.1/7/91 relating to the community Court of Justice and Article 4 paragraph 1 of the English version of the said Protocol. https://clck.ru/3DsByp

19 The ECOWAS objective is to promote cooperation and integration leading to an economic union in West Africa in order to improve the living standards of its peoples and to maintain and consolidate economic stability, strengthen relations among member States and contribute to the progress and development of the African continent.

20 The means of achieving the objective include: 1) harmonization and coordination of national policies and promotion of integration programs, projects and activities, including in the fields of industry and communications, as well as information, science, and technology; 2) promotion of joint production enterprises; 3) elimination of obstacles to the free movement of people, services and capital between the member States; 4) establishment of an economic union; 5) promotion of joint ventures by private enterprises and other economic operators; 6) harmonization of standards; 7) promotion of information dissemination, especially among rural populations, women's and youth organizations and socio-professional associations such as media associations, business men and women, workers and trade unions.

21 Community Court of Justice, ECOWAS (The Economic Community of West African States) rules of the Community Court of Justice of the Economic Community of West African States (ECOWAS). https://clck.ru/3DsBzs

The expert shall receive a copy of the Court's order, together with all the documents necessary for the examination. He or she shall be supervised by the judge-rapporteur, who may be present during the examination and who shall be informed of the task progress. The court may require the parties or one of them to deposit security for the costs of the expert's opinion. After the expert has given his or her opinion, the Court may order to interrogate him or her, having first notified the parties of the need for his or her presence. Before performing the task, the expert shall take the following oath in writing or in court: "I swear or affirm that I will perform my task faithfully and impartially". If either party objects to the expert on the ground that he or she is not a competent or proper person to act as an expert, or for any other reason, or if the expert refuses to testify, take an oath, the matter shall be resolved by the court.

Thus, the Rules of Procedure of the ECOWAS Court of Justice, in force since January 1, 2022, best reflect the specificity of digital technology disputes.

1.4. Possibility of resolving digital technology disputes by the courts of other integration associations on the African continent

1.4.1. Problem of resolvability of digital technology disputes by the South African Development Community Tribunal

The SADC Tribunal was established under Article 9 of the SADC Treaty[22]. Previously, the SADC Tribunal had dealt with disputes involving private persons. Cases brought before the SADC Tribunal involved expropriation of private property by states. In Mike Campbell (Pvt) LTD and Others v. Zimbabwe (Case No. SADC (T) 2/2007, Main Decision of November 28, 2008), the applicant's rights were violated by the expropriation of his private property without compensation. In handling the case, the SADC Tribunal was guided by principles of international human rights law rather than applying any specific human rights treaty.

Following its decisions against the Government of Zimbabwe in this and related cases, the Tribunal functioning was suspended. A process of reviewing its competence followed. The new 2014 Protocol on the Tribunal sought to revise the Tribunal's mandate by limiting it to handling disputes involving states only. As a consequence, the SADC Tribunal was prevented from handling digital technology disputes involving private actors.

22 Southern African Development Community. (2021). SADC Treaty. https://clck.ru/3DsFEk

1.4.2. Problem of resolvability of digital technology disputes by the Court of Justice of the Economic and Monetary Union of Central Africa

Article 5 of the 1994 Treaty establishing the Central African Economic and Monetary Community (CEMAC)[23] stipulates that the judicial chamber of the CEMAC Court of Justice shall provide for the interpretation of the CEMAC Treaty and subsequent conventions.

With regard to the potential to resolve disputes involving private parties, the Court ensures the validity of decisions, directives and regulations of the Community institutions. Appeals by private parties are not separately identified.

The power to handle other disputes may be conferred on the Court by decisions adopted by the Conference of Heads of State and Government.

2. Prospects for handling digital technology disputes by the courts of the South American integration associations

2.1. Prospects for handling digital technology disputes by the Court of Justice of the Andean Community

2.1.1. Analysis of the competence of the Court of Justice of the Andean Community to handle digital technology disputes

The competence of the Court of Justice of the Andean Community is defined by the 1996 Agreement establishing the Court of Justice of the Andean Community[24] It includes disputes involving private persons[25].

An action to invalidate an Andean Community act must be brought within two years from the date of its entry into force. If this period has expired, any of the parties to the proceedings referred to the national courts may petition the national court to declare the decision of the Andean Community authority inapplicable to the particular case.

The 1969 Cartagena Agreement[26] defined the general objective of the Andean Community[27]. Mechanisms and measures were provided to achieve the integration objective, including: (1) adoption of joint programs, implementation of industrial programs and means of industrial integration; (2) implementation of services programs

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23 Traite instituant la Communaute Économique et Monetaire de l'Afrique Centrale (Texte authentique). https://clck.ru/3DsFJE

24 Treaty creating the Court of Justice of the Andean community. https://clck.ru/3DsFL7

25 Natural or legal persons may bring an action to invalidate decisions adopted by the Andean Council of Ministers of Foreign Affairs or the Andean Community Commission, resolutions of the General Secretariat or agreements that affect their subjective rights or legitimate interests.

26 Andean Subregional Integration Agreement (Cartagena Agreement). https://clck.ru/3DsFMs

27 To promote the balanced and harmonious development of the member States on equal terms through integration and socio-economic cooperation; to accelerate their economic growth; and to promote their participation in the regional integration process, with the prospect of the gradual formation of a Latin American Common Market.

and liberalization of intra-regional trade in services; and (3) adoption and implementation of programs to promote scientific and technological development. The latter measure allows the Andean Community to function under advanced technology development.

2.1.2. Features of the procedure of the Court of Justice of the Andean Community for handling digital technology disputes

The Statute of the Court of Justice of the Andean Community regulates the involvement of experts in a very limited manner[28]. The parties, with the Tribunal's prior authorization, may participate in a hearing through experts only to clarify technical issues. During the hearing, the Chairperson and the judges may question the experts. Thus, experts are engaged by the parties.

However, the Andean Community established a regional system for the protection of intellectual property, which led to the active work of the Andean Community Court of Justice in resolving such disputes. The WIPO Lex database contains 117 decisions of the Andean Community Court of Justice on intellectual property issues. For example, in 2024, the Andean Community Court of Justice acted as the final instance in the copyright disputes Carlos Alberto Massó Vasco vs Caracol Televisión S.A., Entidad de Gestión Colectiva de Derechos de Productores Audiovisuales de Colombia vs IA TRIP S.A.S. (propietaria del establecimiento hotelero Hotel Picasso Inn). Given the experience of the Andean Community Court of Justice with respect to "traditional" telecommunications, disputes in the area of intellectual property and advanced technologies are unlikely to cause significant difficulties.

2.2. Problem of resolvability of digital technology disputes within other South American integration associations

2.2.1. Problem of resolvability of digital technology disputes by the Caribbean Court of Justice

The 1973 Treaty Establishing the Caribbean Community (hereinafter – CARICOM)[29] did not provide for the establishment of the Community Court of Justice. Later, the Treaty was revised.

Established in 2001, The Caribbean Community Court of Justice has both first instance and appellate jurisdiction. In its appellate jurisdiction, the Court acts as a court of the final instance in civil and criminal cases for those states that have recognized its appellate jurisdiction. As a court of first instance, it applies international law to the interpretation and application of the Revised Treaty of Chaguaramas. The 2001 Agreement establishing the Caribbean Court[30] does not provide for appeals by individuals, but the Caribbean Community

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28 Estatuto del Tribunal de Justicia de la Comunidad Andina. https://clck.ru/3DsFTt

29 Treaty establishing the Caribbean Community. https://clck.ru/3DsFVu

30 Agreement establishing the Caribbean Court of Justice. https://clck.ru/3DsFXT

Court of Justice recognized such jurisdiction in 2008 in the case of two entities against Guyana.

Although there are no clear treaty provisions establishing the jurisdiction of the Caribbean Community Court of Justice to handle digital technology disputes, its rules are highly adapted to handling this type of dispute. In particular, the Caribbean Court of Justice Original Jurisdiction Rules 2021[31] regulate a number of expertise issues: the essential duty of the expert before the Court to assist the Court to decide impartially the issues relevant to the expert's competence; the order in which that duty is to be exercised; the content of the expert's report; the expert's right to apply to the Court for instructions; the Court's power to limit expert opinion; the Court's power to appoint a single expert; and the consequences of failure to provide the expert's opinion. In general, such detailed regulation of expert involvement not only contributes to the resolution of information technology disputes, but could be taken into account in UNCITRAL's work on this topic.

2.2.2. Problem of resolvability of digital technology disputes within Mercosur

The 1991 Treaty establishing the Common Market between the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay (Treaty of Asunción)[32] did not provide for the possibility of private participation in the Mercosur dispute settlement mechanism. By concluding the Treaty of Asunción, the member states decided to establish a Common Market by December 31, 1994. The Common Market was to include, among other things, the free movement of services, coordination of macroeconomic and sectoral policies of the participating states in the fields of industry, services and any other areas that may be agreed upon. As a consequence, the sphere of information, telecommunications, including ICTs, was not singled out in the structure of the Common Market and was not regulated separately.

The Brazilian and Olivos Protocols established procedures for the resolution of disputes concerning the interpretation, application or non-compliance with the Asunción Treaty or any of its protocols, and decisions of Mercosur bodies. However, no mechanism was developed for handling appeals from legal entities and individuals. Individuals can only file complaints with the National Offices of the Common Market Group of the participating state in which they reside. The lack of a unified dispute resolution mechanism within Mercosur hinders the resolution of disputes related to information technologies.

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31 Caribbean Court of Justice. Original Jurisdiction Rules 2021. https://clck.ru/3DsFdd

32 Treaty establishing a Common Market between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay (Treaty of Asuncion). https://clck.ru/3DsFdd

3. Prospects for handling digital technology disputes by the Court of the Eurasian Economic Union

3.1. Analysis of the competence of the Court of the Eurasian Economic Union for handling digital technology-related disputes

The Court of the Eurasian Economic Union (hereinafter – the EAEU Court) has the competence to resolve disputes involving private persons – economic entities in relation to the acts of the ECE, which, among other things, may be related to information technologies.

The possibility of handling information technology disputes is determined by the specificity of the ECE competence[33]. The potential to resolve disputes related to information and communication systems derives from a number of EAEU acts[34].

In addition, a number of "information society services" have been included in the list of sectors in which free movement of services and uniform policies are ensured[35]. Potentially, disputes related to these categories of services could be resolved by the EAEU Court of Justice.

Special types of services are governed by the general provisions on the single market for services (Advisory Opinion of the EAEU Court of Justice of July 10, 2020). There are no special rules on "information society services" in the EAEU legislation.

3.2. Peculiarities of the procedure of the Court of the Eurasian Economic Union for resolving digital technologies disputes

The Statute of the EAEU Court provides for Specialized Expert Groups only for the resolution of disputes relating to support of agriculture, industrial subsidies, and special trade measures. Disputes related to digital technologies are not singled out as a separate category of disputes requiring the establishment of Specialized Groups.

For these three categories of disputes, the requirements for experts are highlighted: 1) high qualification, knowledge and experience in relation to the subject matter of the dispute; 2) independence; 3) no conflict of interest.

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33 In particular, the Commission carries out activities in the following areas: 1) competition policy; 2) mutual trade in services and investment; and 3) intellectual property. In all of these areas, issues related to the use of information technology may arise.

34 Artificial intelligence technologies are included in the List of priority economic activities for industrial cooperation of EAEU member states, approved by the Decision of the Eurasian Intergovernmental Council of November 27, 2018, No. 9, as well as the List of "industries of the future", approved by the Order of the Eurasian Intergovernmental Council of March 7, 2017, No. 2.

35 According to the Decision of the Supreme Eurasian Economic Council of December 23, 2014 No. 110, the list of sectors of the common market of services, in particular, includes: 1) services related to databases, including the provision of information on websites; provision of services of searching for data and other information from information resources; 2) services of providing assistance in keeping computer systems in working condition, their maintenance, and improvement of programs.

At the same time, the rules of proceedings in the EAEU Court allow participation of experts, including experts of Specialized Groups, as well as specialists. But only experts of Specialized Groups are granted immunities.

An expert or specialist has a number of rights[36]. They shall submit a written opinion on the issues raised. An expert or specialist may not participate in handling a dispute in which they previously participated in another capacity.

The general deadline for a decision in the EAEU Court is not later than 90 days from the date of the claim receipt, so the EAEU Court can promptly resolve disputes related to digital technologies.

Conclusions

The following conclusions can be drawn based on the study results.

The term "digital technology disputes" is complex and encompasses not only ICT-related disputes, but also disputes related to information and communication systems in general.

This category of disputes includes digital technology disputes arising from international contracts and non-contractual relations between private actors, handled by national courts under the rules of international jurisdiction, as well as international commercial arbitrations, and disputes handled by international judicial institutions to which private parties may be a party. Digital technology disputes can potentially arise in inter-state relations.

Courts in a number of integration associations (except the South African Development Community Tribunal, the Court of Justice of the Central African Economic and Monetary Community, and Mercosur) have the potential to handle digital technology disputes, and the Andean Community Court of Justice has been active in intellectual property disputes, including in relation to ICTs. The possibility of handling digital technology disputes by the courts of integration associations is ensured by the specifics of their competence, which allows for private parties, as well as by the dispute resolution procedure, which includes the involvement of experts. However, the principle of transparency of their activities does not allow for the confidentiality of such proceedings, and the problem of shortening the terms of handling of digital technology disputes can only be resolved in the very distant future.

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[36] Familiarize oneself with the case materials related to the subject matter of the expertise; ask questions to other persons involved in the dispute; request additional materials to provide an opinion.

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Author information

Valentina P. Talimonchik – Dr. Sci. (Law), Associate Professor, Professor of the Department of General Theoretical Legal Disciplines, North-West branch of the Russian State University of Justice
Address: 5 Aleksandrovskiy park, 197046 Saint Petersburg, Russia
E-mail: talim2008@yandex.ru
ORCID ID: https://orcid.org/0000-0002-5302-460X
Scopus Author ID: https://www.scopus.com/authid/detail.uri?authorId=57190001688
WoS Researcher ID: https://www.webofscience.com/wos/author/record/H-1253-2013
Google Scholar ID: https://scholar.google.com/citations?user=7EluYwgAAAAJ
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Перспективы рассмотрения споров, связанных с цифровыми технологиями, судами интеграционных объединений

Валентина Петровна Талимончик

Российский государственный университет правосудия, Санкт-Петербург, Россия

Ключевые слова

интеграционные объединения,
международное право,
право,
правосудие,
разрешение споров,
спор,
суд,
Суд Евразийского экономического союза,
судья,
цифровые технологии

Аннотация

Цель: проведение анализа компетенции и процедуры рассмотрения дел судами интеграционных объединений, позволяющих им разрешать споры, связанные с информационными технологиями, и определение перспектив рассмотрения этой категории споров судами интеграционных объединений.

Методы: использованы основные методы исследования – анализ, синтез и проблемно-теоретический метод.

Результаты: выявлены основные особенности категории «споры, связанные с цифровыми технологиями» применительно к специфике разрешения споров с участием частных лиц судами интеграционных объединений, а также потенциальные возможности для ряда судов интеграционных объединений разрешать споры, связанные с информационными технологиями, которые обеспечиваются особенностями компетенции судов, допускающей обращение частных лиц, а также процедуры разрешения споров, включающей привлечение экспертов. Доказано изменение категории «споры, связанные с цифровыми технологиями» как связанной не только с технологиями, но и информационно-коммуникационными системами, посредством анализа международных договоров и практики судов интеграционных объединений; в результате собственных суждений автора выявлено содержание споров, связанных с цифровыми технологиями, в отношении судов интеграционных объединений.

Научная новизна: в работе выявлены особенности категории «споры, связанные с цифровыми технологиями» в отношении судов интеграционных объединений и перспективы разрешения споров, связанных с информационными технологиями, судами интеграционных объединений.

Практическая значимость: выводы, данные в статье, могут быть использованы при совершенствовании практики судов интеграционных объединений.

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Сведения об авторе

Талимончик Валентина Петровна – доктор юридических наук, доцент, профессор кафедры общетеоретических правовых дисциплин, Северо-Западный филиал Российского государственного университета правосудия
Адрес: 197046, Россия, г. Санкт-Петербург, Александровский парк, 5
E-mail: talim2008@yandex.ru
ORCID ID: https://orcid.org/0000-0002-5302-460X
Scopus Author ID: https://www.scopus.com/authid/detail.uri?authorId=57190001688
WoS Researcher ID: https://www.webofscience.com/wos/author/record/H-1253-2013
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