

Opinion n° 003/2003

Opinion of the Court of 22 October 2003 on the interpretation of Articles 48, 55 and 57 of Regulation No 01/95/CM of 1^{er} August 1995 on the Staff Regulations of Officials of the European Union.

Summary of the opinion

The Court is of the opinion that a member of a body, an official or a member of the non-permanent staff of the Union and the members of their family may only be entitled to reimbursement of the cost of a return journey on the occasion of their paid leave once every two (2) years, irrespective of the spouse's personal circumstances.

A V I SN° 03/2003
of 22 October 2003

**REQUEST FOR AN OPINION FROM THE WAEMU COMMISSION ON THE
INTERPRETATION OF ARTICLES 48, 55 and 57 OF REGULATION N°01/95/CM
OF 1^{er} AUGUST 1995 ON THE STATUTES OF OFFICIALS OF THE UNION**

The President of the WAEMU Commission referred the matter to the WAEMU Court of Justice by letter No. 03-163/PC/CJ of 18 June 2003, registered under No. 04/03, which reads as follows:

"Mr President,

The procedures for implementing the right to annual leave and related benefits within the WAEMU are governed in particular by articles 48, 55 and 57 of Regulation No. 01/95/CM of 1^{er} August 1995 on the Staff Regulations of Officials of the Union.

Article 55, which lays down the basic principles applicable in this area, provides that "civil servants whose habitual residence is not in the country of the place of employment and who are not nationals of that country shall be entitled to paid annual leave at the rate of two and a half working days per month.

Civil servants working in the State of which they are nationals are entitled to paid leave at the rate of two working days per month.

Entitlement to leave is acquired pro rata temporis, each annual period, after an effective period of service of ten months.

The dates on which leave is taken are determined by the requirements of the service".

Article 57 provides that "on the occasion of paid leave, the Union shall pay the transport costs of the official referred to in Article 55, paragraph 1, and the members of his family, as defined in Article 48 above, for one return journey every two years,

as well as those relating to baggage, in accordance with the conditions laid down in the regulations implementing these Staff Regulations".

Lastly, article 48 states that "for the application of these Staff Regulations, a spouse and dependent children are considered to be members of the family, up to a limit of six children per family".

Differences of opinion have arisen in the interpretation of these various provisions between the Commission and one of its female executives, a non-national of Burkina Faso, whose husband is a member of another EU body.

The claimant, who was granted thirty (30) days' administrative leave in 2003, claimed air tickets for herself, her husband and her children.

However, the spouse in question had received the same travel documents for all the members of the family concerned during his leave in 2002.

In the Commission's view, the issue of airline tickets to the husband, pursuant to the above provisions, in particular Article 48 of Regulation No 01/95/CM of 1^{er} August 1995, should remove any claim to travel tickets by the wife.

In support of her claims, however, she argued to the contrary on the grounds that she and her husband belonged to two separate bodies of the Union and that the latter exercised a statutory mandate which placed him in a situation different from that of an ordinary civil servant.

I would therefore like, in the context of Article 27 in fine of the Statute of the Court of Justice of the WAEMU and Article 15-7^e of its Rules of Procedure, to ask your court's opinion on the interpretation to be given to the aforementioned provisions.

Yours sincerely

Moussa TOURE "

The Court, sitting as a Consultative General Assembly under the chairmanship of Mr Yves D. YEHOUESSI, President of the WAEMU Court of Justice, on report by Mr Mouhamadou NGOM, Judge-Rapporteur, in the presence of Ladies and Gentlemen :

- Youssouf ANY MAHAMAN, Court Judge
- Ramata FOFANA née Ouédraogo, Court Judge
- Paulette BADJO EZOUEHU, Court Judge
- Malet DIAKITE, First Advocate General at the Court
- Kalédji AFANGBEDJI, General Counsel

and assisted by Mr Raphaël P. OUATTARA, Registrar of the Court, examined the above application at its sitting of 22 October 2003.

THE CONSULTATIVE GENERAL MEETING

Having regard to the Treaty of the West African Economic and Monetary Union (WAEMU) dated 10 January 1994 ;

Additional Protocol I on the supervisory bodies of the WAEMU ;

Having regard to Additional Act n° 10/96 on the Statutes of the WAEMU Court of Justice of 10 May 1996 ;

Having regard to Regulation No. 01/96/CM on the Rules of Procedure of the WAEMU Court of Justice of 5 July 1996;

Having regard to Regulation n°01/2000/CDJ repealing and replacing Regulation n° 1/96/CDJ relating to the Administrative Rules of the WAEMU Court of Justice dated 6 June 2000 ;

Having regard to Articles 48, 55, 56 and 57 of Regulation No 01/95/CM of 1^{er} August 1995 on the Staff Regulations of Officials of the European Union;

See Articles 27 and 32 of Regulation 02/95/CM on the conditions of employment of non-permanent staff of the WAEMU;

Vula décision n°257/99/COM/UEMOA fixant les modalités de jouissance des congés accordés aux membres et au personnel des organes de l'UEMOA ;

Vula request for opinion n°03-163/PC/CJ of 18 June 2003 from the President of the WAEMU Commission;

The request for an opinion addressed to the Court of Justice as it results from the letter of the President of the WAEMU Commission, is based on the provisions of articles 27 in fine, of the statutes of the said Court, and 15-7^e of the Rules of Procedure of the WAEMU Court of Justice.

This application, duly filed, is admissible in form.

I. SUBJECT OF THE CONSULTATION

It follows from the terms of the letter from the President of the Commission that there is a difference of interpretation of the provisions of Article 57 of Regulation No. 01/95/CM of 1^{er} August 1995 on the Staff Regulations of Officials of the European Union.

According to the UEMOA Commission, the issuance of airline tickets to the family during the husband's leave in 2002 should remove any claim to travel documents from the wife, who was granted leave in 2003.

As for the wife in question, an executive at the Commission, she considers that she and her husband belong to two distinct bodies of the Union, and that the latter exercises a statutory mandate placing him in a different situation.

How should the provisions of Article 57 of Regulation No. 01/95/CM of 1^{er} August 1995 on the Staff Regulations of Officials of the European Union be interpreted?

II. DISCUSSION

Firstly, the legal sources of Community legislation on the right to annual leave and related benefits will be identified, before examining the scope and guiding principle.

A. Applicable legislation

The normative texts governing the right to annual leave of members of the organs, officials and non-permanent staff of the WAEMU are :

- Articles 48, 55, 56, 57 et seq. of Regulation No 01/95/CM of 1^{er} August 1995 on the Staff Regulations of Officials of the European Union;
- Articles 27 and 32 of Regulation No 02/95/CM on the conditions of employment of non-permanent staff of the WAEMU;
- decision n°257/99/COM/UEMOA laying down the conditions for entitlement to leave granted to members and staff of UEMOA bodies.

Under the terms of Article 1 of the said decision, the leave entitlements of the members and staff of the Union's Bodies are established at the end of each twelve (12) month period of activity.

Article 2 stipulates that administrative leave on the basis of established entitlements is granted each year, at the request of the person concerned and taking into account the requirements of the service.

However, a servant who is exceptionally detained or recalled from leave for reasons of service shall retain his entitlements or remaining entitlements for a period of three (3) years from the date on which they were established.

It follows from these provisions that the Community legislation applicable both to members of bodies and to officials and non-permanent staff of the Union, as regards leave, is the same. It is therefore immaterial whether a member of staff belongs to a particular body or not.

other EU body, regardless of its status. What is the scope of these Community rules on leave entitlement?

B. Scope of application

Under the terms of Article 57 of Regulation 01/95/CM of 1^{er} August 1995 on the Staff Regulations, "on the occasion of paid leave, the Union shall pay, at the rate of one return journey every two years, the transport costs of the official referred to in Article 55, paragraph 1, and the members of his family, as defined in Article 48 above, as well as those relating to luggage, in accordance with the conditions laid down by the regulations implementing these Staff Regulations".

It should be noted that Community texts on holiday entitlement define two categories of addressee:

- members, officials and non-permanent staff of the Union's bodies ;
- members of their families.

In order to be covered by Community legislation on leave entitlement as a member of staff of the Union, it is sufficient to be a member of a Body, an official or non-permanent staff. No other condition seems to be required. What about family members?

The regulations precisely define the term "family member".

Under the terms of both Articles 48 of Regulation 01/95 and 27 of Regulation 02/95, the spouse and dependent children are considered to be members of the family, up to a limit of six children per family.

An examination of these provisions shows that only one spouse can be a beneficiary. It follows that for polygamous workers, a problem may arise for the second, third or fourth wife who would like to claim the benefit. Current legislation seems to exclude this.

As far as children are concerned, the applicable texts only refer to dependent children, up to a limit of six (6) per family.

There is no mention of parentage.

Does this apply only to children living in the household?

What about adult children still dependent on their parents?

In any event, the condition of dependent child appears to be met whenever the child in question is mainly dependent on the member, civil servant or agent who is generally responsible for its care.

What is the guiding principle of this Community legislation on holiday entitlement?

C. Guiding principle

It should first be pointed out that the Community legislator did not envisage the case of a couple where both husband and wife are staff members of the Union. Be that as it may, the only guiding principle of Community legislation in terms of covering the cost of an official's return journey, as referred to in article 55 paragraph 1 of Regulation no. 01/95/CM of 1^{er} August 1995 on the Staff Regulations of Officials of the European Union, is the principle of equality or the principle of non-discrimination.

Article 57, which is self-evident because it leaves no room for doubt, stipulates that the Union will **only** pay for an official's return journey once **every two years**.

Under this provision, a female executive who is not a national of Burkina Faso and whose spouse is a member of another EU body cannot benefit annually from the coverage offered by Article 57 of the Regulation.

Any other interpretation of this provision would render it meaningless and run counter to the principle of equality.

In any event, adopting the point of view of a female executive who is not a national of Burkina Faso and whose husband is a member of another EU body would be tantamount to granting support to the couple and their children every year, and thus calling into question the principle of equality and non-discrimination between staff members, which is neither the letter nor the spirit of the regulations.

In the light of the foregoing observations, the Court is of the opinion that :

A member of a body, an official or a member of the non-permanent staff of the Union and the members of their family may only be paid for a return journey on the occasion of their paid leave once every two (2) years, regardless of the spouse's personal situation.

