

COURT OF JUSTICE

from

THE WEST AFRICAN ECONOMIC AND
MONETARY UNION (WAEMU)



OPINION N°001/2016

**REQUEST FOR AN OPINION FROM THE REGIONAL CONSULAR CHAMBER
ON THE INTERPRETATION OF ARTICLES 6, 8 AND 16 OF ADDITIONAL
ACT NO. 2/97 LAYING DOWN THE POWERS, COMPOSITION AND
ORGANISATIONAL AND OPERATIONAL PRINCIPLES OF THE
REGIONAL CONSULAR CHAMBER OF THE WEST AFRICAN ECONOMIC
AND MONETARY UNION (UEMOA)**

The President of the Regional Consular Chamber referred the matter to the WAEMU Court of Justice by letter n°0115/14/CCR/OH/PDT of 10 November 2014 received at the Court of Justice on 20/11/2014 and which reads as follows:

"Mr President,

I have the honour of requesting your opinion on the interpretation to be given to Articles 6, 8 and 16 of Additional Act No. 2/97 laying down the powers, composition and principles of organisation and operation of the WAEMU Regional Consular Chamber.

Article 8 states: "Members shall be appointed for a term of three (3) years, renewable once (01) only" and Article 16 states:

"The General Meeting elects the officers for a term of three years.

(3) years, renewable once only".

In addition, Article 6 sets the number of representatives for each Member State and, above all, specifies the professional categories from which they must be drawn.

In 2015, at the request of some of its members, the Regional Consular Chamber, at its General Meeting held in Lomé, Togo from 05 to 07 April, sought the opinion of the WAEMU Commission on the application of the provisions of Articles 6, 8 and 16 concerning the reconciliation of the length of terms of office with membership of a sector.

Initially, the latter deemed that the practice of allowing members to change consular institution or professional association at the end of two statutory terms of office was in keeping with the spirit of the texts, and thus to be able to sit again on behalf of another consular institution or professional association.

This interpretation therefore paved the way for a practice whereby certain members of the Regional Consular Chamber were able to carry out more than two (2) mandates mentioned in the Additional Act by changing their principals.

In view of the forthcoming convening of our General Meeting, which is essentially devoted to the renewal of all our statutory bodies whose terms of office have expired, I have sent a letter, as is customary, to my fellow Presidents of the Chambers of Commerce and at the same time Vice-Presidents of the CCR, inviting them to send me the list of their representatives for the new term of office in accordance with the aforementioned provisions of the Additional Act.

I sent a copy of this letter to the President of the WAEMU Commission, who acknowledged receipt and sent me back a letter dated 17 March 2014, in which he drew attention, as I did myself, to the need to comply with the provisions of Articles 6, 8 and 16, which provide for a three (03) year term of office renewable once (1) only for members.

He recalled that in the past, some members, after having completed the two (02) mandates had changed professions and had again been able to sit on the bodies of the Regional Consular Chamber, he noted that this practice was not in accordance with the spirit of the provisions of articles 6, 8 and 16 of the aforementioned Additional Act.

This new interpretation therefore overturned the previous one.

This situation therefore suggested a certain confusion in which some Chambers of Commerce appointed their members on the basis of the restrictive interpretation of the texts, while others did so on the basis of the first interpretation, which could be described as "extensive", faced with the very real risk of finding ourselves with a college made up of delegates with different legal statuses when our General Meeting was convened, there was no other way of avoiding a breach of equality between them than to have recourse to the legal opinion of the WAEMU Court of Justice.

This appeal for interpretation of the texts will also make it possible to clarify this issue once and for all and to avoid placing the CCR, its members and its decisions in a situation of legal exposure with uncertain consequences in the future.

It will be up to the next General Meeting to elect a new Board, which could be challenged and its decisions challenged if the college that elected it does not have an undisputed legal basis.

Mr. President, we would like to inform you, however, that the response to this request is of the utmost urgency for our Institution because of the expiry of the mandate of the current General Assembly, and the need for the private sector in our Community area to set up, without delay, new Bodies capable of pursuing and strengthening its involvement in the process of regional economic integration.

In conclusion, I would like to summarise the question posed by recalling the issues involved.

Article 6 of the Additional Act n°2/97 stipulates that each country shall appoint 7 representatives from the following sectors:

- 03 representatives of consular institutions (Chamber of Commerce and Industry, Chamber of Agriculture, Chamber of Trades);
- 01 representative of professional associations or employers' organisations from the industries ;
- 01 representative of professional associations or employers' organisations of importers/exporters ;
- 01 representative of professional associations of banks and financial institutions ;
- 01 representative of a professional association or employers' organisation from a sector designated by the National Chamber of Commerce and Industry by sectors not listed above.

The question is whether one and the same person who has been appointed, for example, as a representative of the Employers' Organisations of Importers/Exporters, can at the end of the two mandates (02) provided for by the texts, sit again as a representative of the Chamber of Agriculture and begin two new mandates and so on.

It is the answer to this question that we are bringing to your attention in order to obtain the opinion of your august institution as quickly as possible.

Thank you for your kind attention. Please accept, Sir, the assurance of my highest consideration.

The Court, sitting as a Consultative General Assembly, under the chairmanship of Mr Salifou SAMPINBOGO, acting Judge of the President of the WAEMU Court of Justice, on his report, in the presence of :

Mrs Eliane Victoire ALLAGBADA Jacob, Advocate General;

Mr Bawa Yaya ABDOULAYE, First Advocate General; Mr

Mahawa Sémou DIOUF, Judge;

Mr Daniel Amagoin TESSOUGUE, Judge; Mr Euloge

AKPO, Judge;

Mr Augusto MENDES, Judge ;

And assisted by Maître Hamidou YAMEOGO, Deputy Registrar of the Court, examined the above application at its sitting of 07 December 2016.

THE CONSULTATIVE GENERAL MEETING

Having regard to the Treaty of the West African Economic and Monetary Union (WAEMU) dated 10 January 1994, as amended on 29 January 2003;

Having regard to Additional Protocol No. 1 relating to the supervisory bodies of the WAEMU;

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

Having regard to Regulation n°01/96/CM on the Rules of Procedure of the WAEMU Court of Justice dated 05 July 1996;

Having regard to Regulation n°01/2012/CJ of 21 December 2012 repealing and replacing Regulation n°01/2010/CJ of 02 February 2010 on the Administrative Rules of the Court of Justice of the WAEMU;

Having regard to the request for opinion n°0115/14/CCR/OH/PDT dated 10 November 2014 from the President of the Regional Consular Chamber;

Having regard to the written observations of Senegal dated 09 January 2015 ;

Having regard to Togo's written observations dated 27 January 2015 ;

Having regard to the written observations of Côte d'Ivoire dated 28 January 2015 ;

Having regard to Decision N°010/CJ/2016 of 05 December 2016 on the interim Presidency of the WAEMU Court of Justice;

I- ON THE SHAPE

The request for an opinion addressed to the Court of Justice as it results from the letter of the President of the Regional Consular Chamber is based on the provisions of articles 27 in fine, of the statute of the aforementioned Court and 15 - 7^{ème} of the Rules of procedure of the Court of Justice of the UEMOA.

In fact, article 40, paragraph 1 of the Union Treaty states: "a consultative body called the Regional Consular Chamber shall be set up within the Union, bringing together the Consular Chambers of the Member States and whose operating procedures shall be laid down by means of an additional act of the Conference of Heads of State and Government".

In its opinion no. 03/96 of 10/12/1996, the Court accepted that any Union body could refer a matter to it for an opinion, provided that the appeal came from a competent body.

In the light of the foregoing, the application by the President of the Regional Consular Chamber, duly lodged, must be declared admissible in form.

II- ON THE BACKGROUND

1. SUBJECT OF THE CONSULTATION

It follows from the terms of the letter from the President of the Regional Consular Chamber that differences of interpretation have arisen in the reading of articles 6, 8 and 16 of Additional Act n°2/97 fixing the Attributions, Composition and Principles of Organisation and Functioning of the Regional Consular Chamber of the WAEMU.

Article 6 of the Additional Act No. 2/97 sets the number of representatives for each State at 7 and specifies the professional categories from which they must be drawn.

Article 8 states: *"Members shall be appointed for a term of three (03) years, renewable once (01) only"*.

Lastly, Article 16 states: *"The General Meeting shall elect the members of the Executive Committee for a term of three (03) years, renewable once only"*.

Current practice has allowed Members to change consular institution or professional association at the end of the two (02) regulatory mandates and thus be able to sit again on behalf of another consular institution or professional association.

With a view to the renewal of the expired mandates of the members of the Statutory Organs, the President of the WAEMU Commission, in response to correspondence from the President of the Regional Consular Chamber, reminded him that although in the past some members, after having served two (02) mandates, had changed professions and had been able to sit again on the bodies of the Regional Consular Chamber, he pointed out that this practice did not comply with the spirit of Articles 8 and 16 of the aforementioned Additional Act.

In such a situation, the Court is asked to interpret the provisions of Articles 6, 8 and 16 of the aforementioned Additional Act.

2. DISCUSSION

An analysis of these texts shows that they refer, on the one hand, to the mandate of the members and, on the other hand, to that of the members of the executive committee.

- The first type of mandate is that of the members of the Regional Consular Chamber who are the representatives of the national Chambers, Professional Associations and Employers' Organisations of the Member States.

The members of the Chamber are appointed for a term of three (03) years, renewable once (01) only (article 8).

- The second type of mandate is that of the members of the Bureau of the Consular Chamber, the composition of which is fixed by Article 15 of Additional Act n°2/97 fixing the Attributions, Composition and Principles of Organisation and Functioning of the Regional Consular Chamber of the WAEMU.
- The General Meeting elects the members of the Executive Committee for a term of three (3) years, renewable once (1) only (article 16 above).

In a sure and uncontested way, the legislator wanted to make coincide, at the same time, the end of the two types of mandate, namely that of the members of the Regional Consular Chamber who are the representatives of the national Chambers, the professional Associations and the employers' organisations of the Member States and that of the members of the bureau of the Regional Consular Chamber.

A cross-reading of articles 8 and 16 of the aforementioned Additional Act indicates a clear desire to limit the number of terms of office of members of the Regional Consular Chamber to two (2).

The provisions of the WAEMU texts are intended to prevent individuals representing the National Local Chambers, professional associations and employers' organisations of the Member States from spending too long at the level of the Regional Consular Chamber. Limiting the term of office of members of the Consular Chamber to three (3) years, renewable only once, reflects the desire of the WAEMU authorities to ensure regular replacement of consular members.

The fact of migrating from one professional organisation to another does not erase the mandates already carried out in respect of the Regional Consular Chamber and does not prevent the application of the provisions of article

8 above, which limits the number of mandates. This migration clearly attests to a known intention to defraud.

The only criterion relevant to the issue in question is that of being a Member (**natural person**) of the Regional Consular Chamber, whose term of office is three (3) years, renewable once.

III- CONCLUSIONS

Consequently, the Court, sitting as a Consultative General Meeting, issues the following opinion:

In form :

The request from the President of the Regional Consular Chamber is admissible.

In the background:

- the fact of migrating from one professional organisation to another does not erase the mandates already carried out for the Regional Consular Chamber and does not prevent the application of the provisions of the aforementioned article 8, which limits the number of mandates. This migration clearly demonstrates an intention to defraud;
- limiting the number of mandates to two is a criterion linked to the natural person of the mandatary.

And signed by the Acting President-Rapporteur and the Deputy Registrar.

Ouagadougou, 07 December 2016

Salifou SAMPINBOGO

Hamidou YAMEOGO