**Haoua TOURE case**

**against WAEMU**

**Commission**

(Français) "Fonctionnaire - Recours en responsabilité extra contractuelle - Recours en réparation" (French version only)

Summary of the judgment

*Community civil service law.*

*Action for non-contractual liability and compensation for damage suffered by a Union official wrongfully dismissed.*

*Obligation for the appointing authority to consult the human resources authority prior to any second-level sanction.*

*Dismissal must comply with the rules laid down in Article 76 when it is envisaged as a disciplinary sanction.*

**REPORT BY THE JUDGE-RAPPORTEUR**

## I. FACTS AND SUBMISSIONS OF THE PARTIES

By application dated 19 August 2002, registered on 20 August 2002, Mrs Haoua Touré, through her lawyers, Maîtres Moumouny Kopiho and Mamadou Coulibaly, brought an action against Decision No 449/2001 of 28 June 2001 of the President of the WAEMU Commission, which dismissed her from her post.

Ms Haoua Touré was recruited as a secretary-typist at the WAEMU Commission by Decision No. 016/2000/PC/UEMOA of 14 January 2000.

By Decision No. 232/2001/PC/UEMOA dated 02 April 2001 of the President of the WAEMU Commission, she was medically evacuated for consultation, examination and treatment at the COCHIN Hospital in PARIS (France).

After returning to Ouagadougou, by letter dated 30 May 2001, the claimant applied to the President of the Commission for reimbursement of the subsistence expenses (allowances and transport) incurred in connection with her medical evacuation.

On 08 June 2001, the President of the WAEMU Commission referred to the Chairman of the Advisory Disciplinary Committee the matter of "manoeuvres to obtain payment of additional subsistence and transport expenses" against Mrs Haoua Touré.

On 11 June 2001, she received an invitation to appear before the Disciplinary Advisory Board for a disciplinary h e a r i n g scheduled for 19 June 2001.

At the end of the meeting, the Disciplinary Advisory Committee issued its opinion no. 03/2001, according to which the extension of Mrs Touré's stay beyond 22 April 2001 in the absence of a document authorising her to do so was characteristic of an unauthorised absence. However, the said Committee unanimously considered that Mrs Haoua Toure could benefit from extenuating circumstances in view of her illness and the fact that all the examinations that she had undergone and the medical tests that she had undergone had been carried out without her consent.

The treatment she received after leaving hospital is covered by the medical records.

The Advisory Disciplinary Committee also pointed out that there had been no attempt to obtain payment of additional costs from the applicant.

However, by Decision no. 449/2001/PC/WAEMU dated 28 June 2001, the President of the Commission dismissed the applicant for "serious misconduct consisting of manoeuvres designed to benefit from unjustified advantages".

On 06 August 2001, the applicant lodged an application with the President of the Commission for annulment of Decision No 449/2001 of 28 June 2001.

She then unsuccessfully applied to the Joint Arbitration Advisory Committee on 20 February 2002, after the deadline for response had expired, for an order suspending the implementation of Decision no. 449/2001 concerning her dismissal.

In her application, Ms Haoua Touré, through her counsel, asked the Court to declare her appeal admissible, her dismissal unlawful and to order the WAEMU Commission to pay her the sum of one hundred million (100,000,000) CFA francs as compensation for the serious professional, material and moral damage she suffered as a result of her dismissal.

The appeal was notified on 04 September 2002 to the President of the Commission, who by letters No 3849/PC/CJ and No 3850/PC/CJ of 13 September 2002 informed the Court respectively of the appointment of his agent in the person of Mr Eugène Kpota, Legal Adviser, and of the appointment of Maître Harouna Sawadogo, avocat à la Cour, to represent Mr Kpota before the Court.

By a statement of defence dated 03 October 2001, Maître Harouna Sawadogo, avocat à la Cour, acting on behalf of the Commission, requests the Court to:

**Form**

to the principal

rule that the appeal lodged on 20 August 2002 by Mrs Haoua Touré did not satisfy the requirements of Articles 107, 108 and 112 of Regulation No 01/95/CM on the Staff Regulations of Officials of the WAEMU;

**accordingly**

declare the said action inadmissible;

**alternatively**

take note of the applicant's request that the Court of First Instance declare the contested decision unlawful and at the same time draw the pecuniary consequences thereof by ordering the Commission to pay compensation for the damage suffered ;

**accordingly**

declare the said action inadmissible as it stands on the ground that it is unfounded;

**At the back**
**secondarily**

reject the pleas put forward by the applicant

**accordingly**

- Dismiss all her claims as unfounded;
- order it to pay the costs.

On the report of the Judge-Rapporteur, the Advocate General having been heard, the Court decided to open the oral procedure without any prior investigative measures. However, it invited the WAEMU Commission to produce two documents, namely :

- Opinion 03/2001 of the Disciplinary Advisory Committee;
- Decision n° 016/2000/PC/UEMOA of 14 January 2000, recruiting Mrs Haoua Touré.

The Court also invited the applicant to produce the letter of referral to the Comité Consultatif Paritaire d'Arbitrage.

**II. PLEAS AND ARGUMENTS OF THE PARTIES**

**ON THE SHAPE**

In its statement of defence dated 03 October 2002, the WAEMU Commission concluded that Mrs Haoua Touré's application was inadmissible on the following grounds:

- that by invoking the provisions of Articles 107, 108 and 112 of Regulation No 01/95/CM on the Staff Regulations of Officials of the WAEMU, the plaintiff has misapplied the aforementioned provisions; the compulsory prior recourse imposed in this case being that laid down in Article 108 of Regulation No 01/95/CM and not that of Article 107, which the plaintiff mistakenly referred to;

- that the preliminary appeal lodged sought to revoke Decision No 449/2001/PC/WAEMU of 28 June 2001;

- it is therefore clear that the compulsory prior appeal that is appropriate in this case is that provided for in Article 108 of Regulation No 01/95/CM, which concerns complaints against an act of the appointing authority;

- consequently, the alleged referral to the Comité Consultatif Paritaire d'Arbitrage four months after notification of the dismissal decision was out of time.

Again according to the Commission, the period of appeal prior to direct referral to the Joint Consultative Arbitration Committee, before referral to the hierarchical authority, may not exceed seven months if all the time limits are added together. In this case, the seven-month period expired on 28 February 2002.

She also pointed out that Article 112 of Regulation No 01/95/CM prescribed a time-limit of two months from the date of expiry of the time-limit for replying, where the appeal related to an implied decision rejecting the application. The applicant therefore had until 28 April 2002 to lodge her appeal. By lodging her appeal on 20 August 2002, Mrs Touré Haoua incurred a time bar by acting outside the time-limit, with the result that the present appeal is inadmissible.

b) Pleas in law and arguments of the applicant

In its reply of 13 November 2002, the applicant contends that it was right to institute the preliminary proceedings required by Article 107 of Regulation No 01/95/WC.

Still according to the applicant, this prior appeal is based on the provisions of Article 76 of the aforementioned Staff Regulations, the authority empowered to impose second-degree sanctions and invested with the power of appointment must logically be competent to hear an informal appeal through the hierarchy.

It adds that, in any event, the provisions of Article 107 do not provide for a procedure other than the one followed in prescribing that "any official may submit to the appointing authority, through the proper channels, a request that the appointing authority take a decision concerning him".

It considers that the appointing authority takes its decision, after having, where appropriate, sought the opinion of the Joint Arbitration Advisory Committee. It shall notify its reasoned decision to the official concerned, within a maximum period of four months from the date on which the request was made; on expiry of this period, the silence of the Appointing Authority shall be deemed to constitute an implied decision of rejection, which may give rise to a complaint, within the meaning of Article 108 of Regulation No. 01/95/CM.

It therefore concludes that the Commission's pleas in law are rejected and that its action is admissible.

c) The Commission's response

In its rejoinder dated 26 November 2002, the WAEMU Commission maintains that Article 107 of Regulation No. 01/95/CM/UEMOA of 1er August 1995 concerns only the case of an official who does not have a decision and who wishes to obtain one.

It added that the applicant's appeal, lodged on 6 August 2001, sought to revoke Dismissal Decision No 449/2001/PC/UEMOA of 28 June 2001, and could only validly be addressed to the Joint Arbitration Advisory Committee.

That by referring to the President of the WAEMU Commission and then to the Joint Consultative Arbitration Committee a complaint seeking to revoke the act of the appointing authority, the applicant duplicated the use of the informal appeal, with the consequence of distorting the starting point of the time limit for the contentious appeal.

It also points out that the prior appeal lodged by the plaintiff on 06 August 2001 with the President of the WAEMU Commission relates solely to the cancellation of the dismissal. Neither the President of the WAEMU Commission nor the Joint Arbitration Advisory Committee had been seised of an ex gratia appeal for compensation.

Lastly, the Commission emphasises that since these informal appeals, which were made prior to any regular referral to the Court, did not relate to any payment of money by way of compensation for the damage suffered, the action for compensation brought by the applicant must be declared inadmissible.

**B. THE BACKGROUND**

The applicant considers that Decision No 449/2001/PC/WAEMU dated 28 June 2001 of the President of the WAEMU Commission terminating its functions, as a disciplinary sanction, was taken in breach of Article 77 of Regulation No 01/95/CM of 1er August.

1995 on the Staff Regulations of Officials of the WAEMU, because she had not been invited to provide a prior written explanation of the facts of which she was accused.

She points out that her dismissal, a disciplinary measure, did not comply with the provisions of articles 86 and 76 of the above-mentioned regulations.

She pointed out that the penalty imposed on her was of the second degree and that, under the terms of the aforementioned Article 76, "second-degree penalties are imposed by the appointing authority, on the recommendation of the authority responsible for human resources management and after consulting the Disciplinary Advisory Committee".

She points out that Decision No. 449/2001 dismissing her refers to the opinion of the Disciplinary Advisory Committee but in no way to any proposal by the authority responsible for human resources management; as this proposal was not referred to, it could not therefore have been made.

She considers that the Decision relating to her dismissal is vitiated by formal defects, that it is irregular and abusive, which is why, under the terms of Article 107 of Regulation No. 01/95/CM, she petitioned the appointing authority on 06 August 2001 to revoke Decision No. 449/2001/PC/UEMOA of 28 June 2001 relating to her dismissal.

Again according to the applicant, the appointing authority took no action on her request four months after it was made, which amounts to an implied decision to reject her within the meaning of paragraph 4 of Article 107.

The applicant points out that, in accordance with paragraph 2 of the aforementioned article, she lodged an unsuccessful complaint with the Joint Consultative Arbitration Committee, in compliance with the required form and time limit, after the expiry of the time limit for responding, seeking an order suspending the execution of Decision no. 449/2001 concerning her dismissal.

For all these reasons, Mrs Haoua Touré asks the Court to declare her dismissal unfair and to order the WAEMU Commission to pay her the sum of

**one hundred million (100,000,000) CFA francs by** way of compensation for the serious professional, material and moral prejudice she suffered as a result of this unfair dismissal.

As for the UEMOA Commission, it points out that, since the dismissal of Ms Haoua Touré was not annulled or annullable on the basis of the action for compensation, the damage caused to the applicant cannot be based on the heads of claim as she presented them, but on the damage arising exclusively from the administrative malfunctioning of the Commission.

It stated that neither the absence of a proposal for a penalty from the authority responsible for human resources management nor the absence of a written explanation from the plaintiff could be assimilated to a faulty operation of the Union's bodies likely to cause damage.

It added that the decision to dismiss h a d been preceded by a disciplinary meeting at which the applicant had provided the necessary explanations of the facts of which she was accused.

According to the Commission, the President of the WAEMU Commission did not commit any irregularity amounting to a dysfunction of the organs of the Union by taking Decision No 449/2001/PC/UEMOA without any proposal f r o m the "authority in charge of the management o f human resources".

Finally, the Commission considers that, in any event, as the applicant's action does not s e e k to annul Decision 449/2001, the objections raised both in its application and in its reply remain wholly ineffective in the present case.

**The Judge-Rapporteur :**

**Daniel Lopes FERREIRA**

## OPINION OF THE ADVOCATE GENERAL

### I. THE FACTS GIVING RISE TO THE ACTION

By application dated 19 August 2002, registered at the Registry on 20 August 2002, Mrs Haoua TOURE, through her lawyers KOPIHO and COULIBALY, brought an action against the decision of the WAEMU Commission which dismissed her from office on 28 June 2001.

The interested party was recruited on 14 January 2000 by the Commission as a secretary-typist to work in the services of this institution; she is an official and is therefore subject to Regulation No 01/95/CM of 1er August 1995 on the Staff Regulations of Officials of the WAEMU.

On 30 May 2001, she wrote to the Chairman of the Commission requesting reimbursement of additional expenses (accommodation and local transport) incurred in connection with her medical evacuation to Paris (France).

By letter no. 01-036 dated 8 June 2001, the Chairman of the Commission referred to the Disciplinary Advisory Board the facts of unauthorised absence and fraudulent claim for the above-mentioned expenses, of which he accused the applicant.

In its opinion of 19 June 2001, the Committee concluded that the claim did not contain any fraudulent manoeuvres.

On 28 June 2001, by decision no. 499/2001/UEMOA, the President of the Commission dismissed the applicant **"for serious misconduct consisting of manoeuvres designed to benefit from unjustified advantages"**.

On 6 August 2001, Ms TOURE lodged an appeal with the President of the Commission, the Appointing Authority (hereinafter AIPN), entitled **"Application for administrative rehabilitation"**, in which she considered that the description of the facts of which she was accused was inaccurate and that the disciplinary procedure should be revised and the appointment of Ms TOURE dismissed.

sanction annulled for lack of grounds, and that she should consequently be reinstated in her duties.

The President of the Commission did not react to this appeal;

On 20 February 2002, through the President of the Commission, she lodged a complaint with the Joint Consultative Arbitration Committee (hereinafter CCPA); she asked the CCPA to stay the execution of the decision to dismiss her, which had been ordered in breach of the provisions of Article 76 of the aforementioned Regulation No. 01/95/CM.

The Committee took no action on his request;

Ultimately, she challenged the dismissal decision before the Court.

**II. SUBMISSIONS OF THE PARTIES**

The applicant claims that the Court should :

- declare the action admissible in form;

- on the merits, declare her dismissal unfair and order the Commission to pay her compensation of one hundred (100) million CFA francs for the professional, material and non-material damage she has suffered;

The defendant, for its part, submits that, as a matter of form, the action must be declared inadmissible for failure to comply with the formalities required by Articles 107, 108 and 112 of Regulation No 01/95/CM on the Staff Regulations, and that, in the alternative, it must be declared inadmissible for failure to comply with the formalities required by Articles 107, 108 and 112 of Regulation No 01/95/CM on the Staff Regulations,

the applicant should be given notice that it is asking the Court to declare that the contested decision is unlawful and at the same time to draw the pecuniary consequences thereof by ordering it to pay compensation for the damage suffered;

That, on the merits, the pleas raised by the applicant are unfounded and that the action must be dismissed.

**III. PLEAS AND ARGUMENTS OF THE PARTIES**

The applicant raises various complaints against the contested decision, relating to formal irregularities and a failure to state reasons.

With regard to the irregularities of form, she argues that on 30 May 2001, she had submitted to the President of the WAEMU Commission a request for reimbursement of expenses (allowances and transport) resulting from her medical evacuation to the COCHIN hospital in PARIS, but that contrary to all expectations, on 11 June 2001, she received a summons inviting her to appear on 19 June 2001, before the Disciplinary Advisory Board, to be heard on the extension of her stay and her claim for expenses;

That after her hearing, she was dismissed by the President of the Commission, even before she had been invited to explain in writing, in the case in point, the facts of which she was accused, and even though the dismissal measure had to be proposed in advance to the authority responsible for human resources;

That the omission of these formalities constitutes a procedural defect in the ordering of the decision and infringes the provisions of Articles 76, 77 and 86 of the Staff Regulations.

On the merits, she submits that she was evacuated on 2 April 2001 to the COCHIN hospital in PARIS, for illness (consultations, medical examinations and treatment); that the UEMOA, her employing body, covered the cost of the return journey by air, the cost of hospitalisation and pharmaceutical products for two days; that because of the shortness of the two (2) day period, she had, before her evacuation, consulted the Director of Cabinet of the President of the Commission, Mr Antoine SARR, on what to do in the event of an extension of her stay for medical reasons; that he had reassured her that, in such circumstances, the extension ordered by the doctors treating her would not give rise to any unfortunate administrative consequences; that as these doctors had ordered her to make a more detailed diagnosis on the spot of one of the ailments (chronic headaches) from which she was suffering, she had deduced, in good faith, that she could continue her consultations; that the extension of her stay was motivated by the authorisation of the Director of the Private Office and that, consequently, the dismissal was not justified; that the simple fact of claiming reimbursement of expenses arising from this extension is far from reckless and cannot give rise to a dismissal.

disciplinary sanction in the absence of forgery, use of forgery and fraudulent manoeuvres; that the Chairman of the Commission should simply have accepted or rejected her complaints; that the reason given for dismissing her was based on facts that were not of a nature to justify dismissal, that the dismissal was unfair;

Lastly, since the Commission did not give him the opportunity to explain himself in writing in the context of a dismissal, a second-level sanction, it infringed the provisions of Article 77 of the Staff Regulations, and therefore the rights of the defence.

The defendant puts forward the following arguments against the applicant:

She observed that the pre-litigation procedure had not been properly organised; that, in fact, the prior remedy to be exercised in such cases was that provided for in Article 108 of the Staff Regulations, which concerned complaints against an act of the appointing authority, and not that provided for in Article 107, which was wrongly referred to by the applicant and concerned the case of an official who did not have a decision and wished to obtain one by means of a prior administrative remedy; since the applicant had been notified of the decision to dismiss her on 28 June 2001, she had, under the terms of the aforementioned Article 108, a period of three months from 28 June 2001 - the date of notification - in which to refer the matter to the ACFA; since the applicant did not submit her complaint until four (4) months after 28 June 2001, the appeal must be declared inadmissible;

That in the event of a direct referral to the ACFA before the referral to the hierarchical authority, the preliminary appeal may not last more than seven (7) months if all the time limits are added together; that in the present case this time limit of seven (7) months expired on 28 February 2002;

Article 112 of the Staff Regulations allows an official whose prior appeal has been implicitly dismissed a period of two (2) months in which to bring proceedings; the applicant then had until 28 April 2002 at the latest to refer the matter to the Court of Justice; by referring the matter to the Court of Justice on 20 August 2002, the applicant has been precluded from bringing proceedings and must be deprived of her right to do so;

That the action is still inadmissible because the applicant asked the Court to declare the decision to dismiss her unlawful and to order UEMOA to pay damages of one hundred (100) million CFA francs; that the purpose of such an application is to obtain

the legality of that decision and an action for damages, whereas the statutes and rules of that court give it no jurisdiction to rule at the same time on the legality of a Community act and on financial compensation; the latter should be no more than the counterpart of the action for annulment, where the Commission refuses to draw any consequences from the annulment of its decision.

On the merits, the defendant submits that it cannot be held liable towards the applicant because the decision to dismiss was not annulled and because it (the defendant) did not commit any fault, which is a decisive element in the concept of liability.

In her reply, the applicant refutes the Commission's arguments and submits that a proper analysis of the provisions of Articles 107 and 108 of the Staff Regulations leads to the conclusion that the prior (hierarchical) appeal required is indeed that provided for in Article 107 of the Staff Regulations, that that appeal is justified in the light of the provisions of Article 76 of the Staff Regulations, which give the authority vested with power to impose penalties the power to hear prior appeals ; that the pre-litigation formalities were properly followed in that she (the applicant) first lodged a pre-litigation appeal with the Appointing Authority by letter dated 6 August 2001; that the Appointing Authority did not react for four (4) months; that she then lodged a complaint with the ACFA on 20 February 2002, the time-limit for which began to run on 6 December 2001; that she cannot be held to be precluded from doing so.

It considers that there is no need for it to dwell on the plea of lack of competence raised by the Commission concerning the actions for assessment of legality and for compensation, insofar as it did not bring an action for misuse of powers (assessment of legality).

She reiterates that she has suffered damage that deserves compensation under Article 16 of Additional Protocol No. 01, Article 27(6) of the Court's Statute and Article 15(5)$^{e}$ (1) and (3) of the Court's Rules of Procedure.

In its rejoinder, the Commission reiterated the arguments it had developed in its statement of defence, and further argued that the only purposes of the preliminary actions brought by the Appointing Authority and the ACFA were respectively to annul and suspend the contested decision;

since the purpose of the appeals lodged with the Appointing Authority and the ACFA was not to obtain compensation, the applicant is wrong to claim in her application to the Court the payment of sums of money by way of compensation for the damage suffered.

## IV. LEGAL DISCUSSION

### A. Pleas as to form

The defendant first alleges infringement of Articles 107, 108 and 112 of the Statute relating to the formalities of the pre-litigation procedure and referral to the Court, an infringement which would result in the inadmissibility of the action.

Secondly, it submits that the Court has no jurisdiction to deal simultaneously with an action for damages and the legality of a Community measure; consequently, the action should be declared inadmissible;

Under the terms of Articles 107 and 108 of the Staff Regulations, any official may refer a matter to the Appointing Authority for a decision concerning him, through the hierarchical channel. The Appointing Authority has a period of four (4) months from the date on which the request is made to take a decision; failure to act within that period is tantamount to an implied decision rejecting the request, which may be the subject of a complaint to the ACFA; the complaint may relate to an act of the Appointing Authority adversely affecting the official, either because the authority has taken a decision or because it has failed to take a measure required by the Staff Regulations and the implementing rules.

The complaint, in accordance with Article 108, must be lodged within a period of three (3) months from :

- the date of expiry of the time limit for responding when the complaint relates to an implied rejection decision (paragraph 2 of the article);

- from the date of notification of the decision or of the official's knowledge of the decision, in the case of an individual decision ;

- from the date of publication of the act in the case of a general measure;

The ACFA must rule within a maximum of one (1) month from the date of referral;

The Appointing Authority has three (3) months from the date of receipt of the ACFA's opinion to take and notify its decision to the official;

On expiry of the period of four (4) months following the lodging of the complaint, failure to reply to the complaint shall be deemed to constitute an implied decision rejecting it, which may be appealed before the Court;

Under Article 112 of the Staff Regulations, this appeal is only admissible if the applicant has previously lodged a complaint with the ACFA and if the complaint has resulted in an implicit or explicit decision by the Appointing Authority to reject the complaint in whole or in part.

It is not disputed that the applicant lodged a prior, hierarchical appeal with the appointing authority on 6 August 2001; that the appointing authority did not take any action within the four-month statutory period allowed to it, which ran from 6 August 2001 to 6 December 2001, the date on which the period for replying expired; that there was an implied decision to reject, within the meaning of Article 107(4) ; that the applicant lodged a complaint against that decision with the CCPA by letter dated 20 February 2002, i.e. within the three-month time-limit from the implied decision of rejection; that the CCPA, which was required to give a ruling within one month of the date of referral, did not reply; that since its inertia did not allow the remainder of the pre-litigation formalities to be complied with, the applicant must be deemed to have complied with the structure and time-limits of the pre-litigation procedure and to have rightly referred the matter to the Court.

The Commission's argument that the complaint to the ACFA should be lodged within three rather than four months of notification of the dismissal decision is unfounded, in the light of the provisions of Articles 107(4) and 108(2), which are applicable in this case.

Furthermore, the applicant should not be prejudiced by the failure of the ACFA to act due to an administrative malfunction on the part of the Commission's departments, since it carried out the necessary formalities at that level.

*Employees must not suffer as a result of poor organisation of the service, which infringes their rights under the Articles of Association* (cf. Droit du contentieux administratif by René CHAPUS - 7e edition no. 596 to 597 pages 421 and 422).

It follows that the pleas alleging infringement of the aforementioned provisions are unfounded and must be rejected.

The defendant also challenges the Court's jurisdiction to deal simultaneously with an action for damages and the legality of a Community measure. It also claims that the Court should note that the applicant intends to have the decision to dismiss her declared unlawful, with the legal pecuniary consequences.

The application before the Court is clearly an action for compensation for unfair dismissal.

The applicant is not asking the Court to assess the legality of a Community measure, but to rule that the dismissal was unfair and to award her damages.

Moreover, the defendant itself acknowledges in its rejoinder (last paragraph) that the subject of the action is not an assessment of legality (annulment).

Furthermore, nothing in the Court's Statutes or Rules of Procedure prohibits an individual from bringing an application for annulment and damages before the Court, let alone for the Court to assess it.

The pleas put forward are therefore unfounded and must be rejected.

Lastly, the defendant argued that the applicant's action was inadmissible on the grounds that the prior administrative complaint and the contentious action were not based on the same cause of action and the same subject-matter.

The purpose of the pre-litigation appeal is to bring about the intervention of the Appointing Authority with a view to an amicable settlement of the dispute. It sets the framework for the debate and enables the Appointing Authority and the ACFA to find out what objections the appellant has to the contested decision.

In her prior action before the Appointing Authority, the applicant challenged the legality of the decision to dismiss her, on the grounds that there were no grounds, and requested that she be reinstated in her post. In her complaint to the ACFA, she supported these pleas by invoking the provisions of Articles 76, 77, 86, 107 and 108 of the Staff Regulations, and then developed them in her application; there is clearly a causal link between the arguments and pleas in the administrative complaint and those in the legal action.

And on the point of this causality which conditions the admissibility of the action, a judgment of the Court of Justice of the European Communities is quite edifying:

*"In particular, an application for compensation made to the Court for the first time is admissible, even though the administrative complaint sought only the annulment of the allegedly prejudicial decision. Such an application for annulment requires the appointing authority to remedy the alleged illegality and to take all the measures required to put the applicant back in the position he would have been in had the illegality not been committed. Such measures must necessarily include compensation for the damage resulting from the unlawfulness of the contested measure and which would not be made good by the adoption of a new, unlawful measure".*

(ECJ 14 February 1989, Bossi v Commission of the European Communities).

The Court confirmed this case law in the Sergio Del PLATO v Commission of the European Communities judgment of 10 March 1989:

*"In particular, an application for compensation made to the Court for the first time is admissible, even though the administrative complaint sought only the annulment of the allegedly harmful decision, and such an application for annulment may involve a claim for compensation for the damage caused by that decision".*

It follows that the objection of inadmissibility raised is unfounded and must be rejected.

**B. Substantive pleas**

The applicant justifies the unfairness of the dismissal on the grounds that the contested decision infringed the provisions of Articles 77, 76 and 86 of the Staff Regulations.

She argues that, in application of these texts, she should have been invited to explain in writing, before her dismissal, the facts of which she is accused, and that the Appointing Authority should have consulted the authority responsible for human resources before taking its decision.

1) The plea alleging infringement of Article 77

Article 77 stipulates that the civil servant must be heard in writing before any disciplinary action is taken, unless the action is a warning.

In the case of dismissal, the applicant should have been heard. Her rights were therefore not safeguarded. She was not given the opportunity to present her defence.

The Court of Justice of the European Communities has always protected the rights of civil servants through its case law:

*"Respect for the rights of the defence in any proceedings liable to result in penalties, in particular fines or periodic penalty payments, is a fundamental principle of Community law which must be observed, even where the proceedings are of an administrative nature; by virtue of that principle, the Commission must make known to the parties against whom it is proceeding (for abuse of a dominant position) their views on the objections which it has raised against them".*

(ECJ judgment of 13/2/1979, Case Hoffmann Laroche v Commission, ECR 1979, 1ère part, page 511, recitals 9 and 11).

*"The provisions of the Staff Regulations do not allow a distinction to be made between the means of defence available to the official during disciplinary proceedings, depending on whether*

*this procedure may or may not involve the Disciplinary Board, or depending on the severity of the sanction that could be imposed on the civil servant".*

(ECJ judgment of 17/12/1981, Case Demont v Commission, ECR 1981 page 3157).

2) The plea in law alleging infringement of Articles 76 and 86

Article 76 requires the Appointing Authority to consult the human resources authority prior to any second-level sanction, including dismissal. The human resources authority was not involved in drawing up the decision, and could have made proposals if it had been consulted.

The formality instituted by Article 76 is substantial in view of the provisions of Article 86, which state that dismissal must comply with the rules laid down in Article 76 when it is envisaged as a disciplinary sanction.

The defendant omitted the formalities prescribed by Articles 77 and 76 of the Staff Regulations; in other words, it committed formal irregularities in the legal structure of the decision; but are these defects sufficient to engage its liability in an action for damages? Case law requires fault. Was the Commission at fault?

3) The Commission's fault in failing to give reasons for the dismissal decision

The applicant benefited from a medical evacuation decision (decision n°232/2001/PC/UEMOA of 2/4/2001), to the COCHIN hospital in PARIS, and which had the Commission pay for consultations, examinations, medical care, daily allowances for two (2) days, and transport by plane to and from Ouagadougou-Paris- Ouagadougou.
The patient was to undergo an expert examination by a neurosurgeon (diagnosis by the UEMOA's attending physician, Mr Ouédraogo Mahamadi).

A status report shows that the person concerned entered and left the COCHIN hospital on 21 April 2001;

A letter dated 25 April 2001 from Dr Caynard of the rheumatology department of the COCHIN hospital to an unnamed colleague invited the latter to treat the claimant for headaches;

A certificate dated 29 June 2001 from Dr Géraldine Falgarone of the rheumatology department at the COCHIN hospital, states that the claimant should be referred to a neurologist; it states that *"as the neurologist at the COCHIN hospital was unable to attend, she was referred to an external neurologist"*.

Ms Haoua TOURE was then seen at the FOCH hospital, as evidenced by an outpatient status report dated 14 May 2001 and an appointment form with Dr Decroix, for 26 April 2001 at 4.30pm, *"examination requested: brain scan; clinical details: chronic headaches"*.

At the end of her treatment in the Paris hospitals, the claimant returned to Ouagadougou on 16 May 2001. On 30 May 2001, she wrote to the President of the Commission requesting reimbursement of the allowances and transport costs resulting from her prolonged stay following the medical consultations.

The Commission claims that this claim is fraudulent, but does not characterise it as such.

The penalty imposed on the applicant solely because of her claim for the costs of proven medical consultations, when the alleged fraudulent manoeuvres have not been substantiated, the extension of the stay constituting unauthorised absence is not at issue in relation to the grounds for the dismissal decision, and the recklessness of the claim has not been proven either, lacks relevance;

The defendant's assessment of the facts seems to us to be manifestly erroneous; this error should deprive the decision of any legal basis; in the case law of the Court of Justice of the European Communities, it constitutes a failure to state reasons (cf. CJEC 5/4/1984 Case José ALVAREZ v European Parliament - ECR 1984-4 paragraph 16).

Failure to state reasons, it should be remembered, is also censured in French law, from which our various national laws - a source of Community law - are inspired.

In this respect, the French Court of Cassation has ruled that an erroneous assessment of the facts is likely to invalidate the judicial decision (cf. Boré Cassation civile, Sirey 1988, page 439, no. 1325) and that it cannot be denied the power to review the legal classification of the facts as gross negligence, serious negligence or inexcusable negligence, particularly in employment matters (cf. above-mentioned work, page 481, no. 1474).

It follows from the foregoing that the dismissal was unfounded and therefore unfair.

In summary, we conclude that the appeal is admissible and well-founded.

UEMOA must pay the costs pursuant to Article 61 of the Court's Rules of Procedure.

**The First Advocate General :**

**Malet DIAKITE**

**JUDGMENT OF THE COURT**

**25 June 2003**

**Between**

**Ms Haoua TOURE And**

**The WAEMU Commission**

The Court, composed of Mr Yves D. YEHOUESSI, President; Mr Daniel Lopes FERREIRA, Judge-Rapporteur; Ms Ramata FOFANA, Judge; Mr Malet DIAKITE, First Advocate General; Mr Raphaël P. OUATTARA, Registrar;

**hereby gives judgment :**

Whereas by application dated 19 August 2002, registered at the Registry of the WAEMU Court of Justice on 20 August 2002 under No 03/ 2002, Mrs Haoua Touré, former secretary-typist at the Presidency of the WAEMU Commission, through her counsels Mr Moumouny Kopiho and Mr Mamadou Coulibaly, lawyers at the Court of Ouagadougou, Burkina Faso, brought an action against Decision No 449-2001/PC/UEMOA dated 28 June 2001 by which the President of the UEMOA Commission dismissed her from her post for serious misconduct consisting of manoeuvres designed to benefit from unjustified advantages and sought payment of the sum of 100.000,000 francs;

**In fact**

## I. FACTS AND PROCEDURE

The applicant had been recruited as a secretary-typist at the WAEMU Commission by Decision No. 016/2000/PC/UEMOA of 14 January 2000.

By Decision No. 449-2001/PC/UEMOA of 28 June 2001, Ms Haoua Touré was dismissed for serious misconduct constituted by manoeuvres aimed at benefiting from unjustified advantages.

On 06 August 2001, on the basis of Article 107 of Regulation No. 01/95/CM of 1er August 1995 on the Staff Regulations of Officials of the WAEMU, Ms Haoua Touré lodged an unsuccessful application with the President of the Commission for the annulment of Decision No. 449-2001/PC/UEMOA concerning her dismissal.

On 20 February 2002, it lodged a complaint with the Comité Consultatif Paritaire d'Arbitrage (Joint Consultative Arbitration Committee), which took no action on its request; it therefore appealed to the WAEMU Court of Justice.

The appeal was notified on 04 September 2002 to the President of the Commission who, by letters No 3849/PC/CJ and No 3850/PC/CJ of 13 September 2002, informed the Court respectively of the appointment of his agent in the person of Mr Eugène Kpota, Legal Adviser to the Commission, and of the appointment of Maître Harouna Sawadogo, Avocat à la Cour, to represent Mr Kpota before the Court.

## II. SUBMISSIONS OF THE PARTIES

The applicant claims that the Court should:

- declare the action admissible in form;

- on the merits, declare her dismissal unfair and order the Commission to pay her compensation of one hundred (100,000,000) million CFA francs for the professional, material and non-material damage she has suffered.

The defendant claims that the Court should:

**in the form**

to the principal

- rule that the appeal lodged on 20 August 2002 by Mrs Haoua Touré did not satisfy the requirements of Articles 107, 108 and 112 of Regulation No 01/95/CM on the Staff Regulations of Officials of the WAEMU;

accordingly

- declare the said action inadmissible;

alternatively

- take note of the applicant's request that the Court of First Instance declare the contested decision unlawful and at the same time draw the pecuniary consequences thereof by ordering the Commission to pay compensation for the damage suffered ;

accordingly

- declare the said action inadmissible on the ground that it is unfounded;

on the merits, in the alternative

- reject the pleas put forward by the applicant;

accordingly

- Dismiss all her claims as unfounded;
- order it to pay the costs.

## III. PLEAS AND ARGUMENTS OF THE PARTIES

### 1. Admissibility

a) Pleas in law and arguments of the UEMOA Commission

In its statement of defence dated 03 October 2002, the WAEMU Commission concluded that Mrs Haoua Touré's application was inadmissible, arguing that:

- that by invoking the provisions of Articles 107, 108 and 112 of Regulation No 01/95/CM on the Staff Regulations of Officials of the WAEMU, the plaintiff has misapplied the aforementioned provisions; the compulsory prior appeal imposed in this case being that laid down in Article 108 of Regulation No 01/95/CM and not that of Article 107, which the plaintiff mistakenly referred to;

- that the action brought sought to revoke Decision No 449-2001/PC/WAEMU of an individual nature;

- it is therefore clear that the compulsory prior appeal that is appropriate in this case is that provided for in Article 108 of Regulation No 01/95/CM, which concerns complaints against an act of the appointing authority;

- consequently, the alleged referral to the Comité Consultatif Paritaire d'Arbitrage four months after notification of the dismissal decision was out of time.

Again according to the Commission, the period of appeal prior to direct referral to the Joint Consultative Arbitration Committee, before referral to the hierarchical authority, may not exceed seven months if all the time limits are added together. In this case, the seven-month period expired on 28 February 2002.

She also pointed out that Article 112 of Regulation No 01/95/CM prescribed a time-limit of two months from the date of expiry of the time-limit for replying, where the appeal related to an implied decision rejecting the application. The applicant therefore had until 28 April 2002 to lodge her appeal. When she lodged her appeal on 20 August 2002, Ms Haoua Touré

incurred the foreclosure by acting out of time; which entails the inadmissibility of the present action.

b) Pleas in law and arguments of the applicant

In its reply of 12 November 2002, the applicant contends that it was right to institute the prior action required by Article 107 of Regulation No 01/95/WC.

Again according to the applicant, this prior appeal is based on the provisions of Article 76 of the aforementioned Staff Regulations, the authority empowered to impose second-degree sanctions and invested with the power of appointment must logically be competent to hear an informal appeal through the hierarchy.

It adds that, in any event, the provisions of Article 107 do not provide for a procedure other than the one followed in prescribing that "any official may submit to the appointing authority, through the proper channels, a request that the appointing authority take a decision concerning him".

It considers that the appointing authority takes its decision, after having, where appropriate, sought the opinion of the Joint Arbitration Advisory Committee. It shall notify its reasoned decision to the official concerned, within a maximum period of four months from the date on which the request was submitted; on expiry of this period, the silence of the Appointing Authority shall be deemed to constitute an implied decision of rejection, which may give rise to a complaint, within the meaning of Article 108 of Regulation No. 01/95/CM.

It therefore concludes that the Commission's pleas in law should be rejected and that its action is admissible.

c) The Commission's response

In its rejoinder dated 26 November 2002, the WAEMU Commission maintains that Article 107 of Regulation No. 01/95/CM/UEMOA of 1er August 1995 concerns only the case of an official who does not have a decision and who wishes to obtain one.

It added that the applicant's appeal, lodged on 6 August 2001, sought to revoke Dismissal Decision No 449/2001/PC/UEMOA of 28 June 2001, and could only validly be addressed to the Joint Arbitration Advisory Committee.

That by lodging a complaint with the President of the WAEMU Commission, and then with the Joint Consultative Arbitration Committee, seeking to revoke the act of the appointing authority, the applicant duplicated the use of the informal appeal, with the consequence of distorting the starting point of the time limit for the contentious appeal.

It also points out that the prior appeal lodged by the plaintiff on 06 August 2001 with the President of the WAEMU Commission relates solely to the annulment of the decision to dismiss. Neither the President of the UEMOA Commission nor the Comité Consultatif Paritaire d'Arbitrage (Joint Arbitration Advisory Committee) had been seised of an ex gratia appeal for compensation.

Lastly, the Commission emphasises that, as these informal appeals, which were made prior to any regular referral to the Court, did not relate to any payment of money by way of compensation for the damage suffered, the action for compensation brought by the applicant must be declared inadmissible.

**2. At the back**

The applicant considers that Decision No 449-2001/PC/UEMOA dated 28 June 2001 of the President of the UEMOA Commission terminating her appointment, as a disciplinary sanction, was taken in breach of Article 77 of Regulation No 01/95/CM of 1er August 1995 on the Staff Regulations of Officials of the UEMOA, because she was not invited to explain herself in writing beforehand on the facts of which she is accused.

She points out that her dismissal, a disciplinary measure, did not comply with the provisions of articles 86 and 76 of the above-mentioned regulations.

She pointed out that the penalty imposed on her was of the second degree and that, under the terms of the aforementioned Article 76, "second-degree penalties are imposed by the appointing authority, on the recommendation of the authority responsible for human resources management and after consulting the Disciplinary Advisory Committee".

She points out that Decision No. 449-2001/PC/UEMOA concerning her dismissal refers to the opinion of the Disciplinary Advisory Committee, but in no way to any proposal from the authority responsible for human resources management, and that no such proposal was ever made.

She considers that the decision relating to her dismissal is vitiated by formal defects, that it is irregular and abusive, which is why, under the terms of Article 107 of Regulation No. 01/95/CM, she applied to the Appointing Authority on 06 August 2002 to rescind Decision No. 449/2001 concerning her dismissal.

Again according to the applicant, the appointing authority took no action on her request four months after it was made, which is equivalent to an implied decision of rejection within the meaning of paragraph 4 of Article 107.

The applicant points out that, in accordance with paragraph 2 of the aforementioned article, she lodged an unsuccessful complaint with the Joint Consultative Arbitration Committee, in compliance with the required form and timeframe, after the deadline for a response had expired, seeking an order to suspend the implementation o f Decision No 449-2001/PC/UEMOA concerning her dismissal.

For all these reasons, Mrs Haoua Touré asks the Court to declare her dismissal unfair and to order the WAEMU Commission to pay her the sum of **one hundred million (100,000,000) CFA francs** as compensation for the serious professional, material and moral damage she has suffered as a result of this unfair dismissal.

As for the UEMOA Commission, it points out that since the dismissal of Ms Haoua Touré was neither annulled nor voidable on the basis of the action for compensation, the damage caused to the applicant cannot be based on the heads of claim as she presented them, but on the damage arising exclusively from the administrative malfunctioning of the Commission.

It stated that neither the absence of a proposal for a penalty from the authority responsible for human resources management nor the absence of a written explanation from the plaintiff could be assimilated to a faulty operation of the Union's bodies likely to cause damage.

It added that the decision to dismiss had been preceded by a disciplinary meeting at which the applicant had provided the necessary explanations of the facts of which she was accused.

According to the Commission, the President of the WAEMU Commission did not commit any irregularity amounting to a dysfunction of the organs of the Union by taking Decision No 449-2001/PC/UEMOA without any proposal from the "authority in charge of the management of human resources".

Lastly, the Commission considers that, in any event, as the action brought by the applicant does not seek to annul Decision No 449-2001/PC/WAEMU, the complaints raised both in its application and in its reply remain wholly inoperative in the present case.

**In law**

By application lodged at the Court Registry on 20 August 2002, Ms Haoua Touré, a former secretary-typist at the Presidency of the WAEMU Commission, brought an action seeking, firstly, a declaration that her dismissal was unfair and, secondly, an order that the Commission pay her the sum of one hundred million francs (F100,000,000) in compensation for the professional, material and non-material damage allegedly caused by her dismissal.

**Form**

The WAEMU Commission puts forward three pleas in law in support of its objection to the inadmissibility of Mrs Touré's action. According to the Commission, the first plea alleges infringement of the provisions of Articles 107, 108 and 112 of the Staff Regulations; the second plea alleges that the Court of First Instance does not have jurisdiction to hear simultaneously an action for compensation and an action to assess the legality of a Community measure; the third plea alleges that the administrative complaint and the contentious action are not identical in cause and purpose.

*The first plea in law alleges infringement of Articles 107, 108 and 112 of the EC Treaty. WAEMU Staff Regulations.*

The Commission maintains that Mrs Touré's appeal did not meet the requirements of Articles 107, 108 and 112 of Regulation No 01/95/CM on the Staff Regulations of Officials of the WAEMU. It added that the alleged referral to the Joint Consultative Arbitration Committee four months after notification of the decision to dismiss had been made out of time. It pointed out that the applicant had until 28 April 2001 to lodge her appeal and that by referring the matter to the Court on 20 August 2002, she had acted out of time. Finally, it stated that neither the Comité Consultatif Paritaire d'Arbitrage nor the President of the Commission had been asked to submit an application for compensation.

The applicant, who contests all of the grounds raised by the Commission and who concludes that her appeal is admissible, argues that she legitimately and previously exercised her right to an informal appeal through the hierarchy by applying to the appointing authority on the one hand and to the Joint Consultative Arbitration Committee on the other, within the statutory time limits.

It is common ground that, following the decision to dismiss her on 28 June 2001, Mrs Touré, relying first of all on the provisions of Article 107(1) of the Staff Regulations, duly lodged an administrative appeal with the President of the WAEMU Commission, the appointing authority, on 6 August 2001, seeking the annulment of the said decision for lack of grounds, as well as her administrative rehabilitation.

The Appointing Authority did not respond to Mrs Touré's request within the four-month period running from 06 August 2001 to 06 December 2001, when the deadline for responding expired.

Faced with this implicit rejection, Mrs Touré, in another application dated 20 February 2002, duly referred the matter to the Chairman of the Joint Consultative Arbitration Committee of the WAEMU, in accordance with the provisions of Article 108 paragraph 1 of the WAEMU Staff Regulations, within a period of three months, requesting a stay of execution of the decision to dismiss her.

The said Committee, which was required to give its decision within one month of the matter being referred to it, did not react and did not issue any opinion to the appointing authority, which in turn had a maximum of three months to notify the applicant of its decision in writing.

Faced with the inertia of both the appointing authority and the Comité Consultatif Paritaire d'Arbitrage, the applicant, who had correctly carried out all the formalities required of her at her level, had every opportunity to refer the matter to the Court, after the implied rejection decision, within the period between 20 June 2002 and 20 August 2002. It did so.

Since the case was duly brought before the Court on 20 August 2002, the Commission's attempt to argue that the applicant had acted out of time was unsuccessful.

In these circumstances, the plea alleging infringement of Articles 107 and 108 of the WAEMU Staff Regulations should be dismissed.

*The plea that the Court does not have jurisdiction to hear both an action for damages and an action for assessment of legality.*

The WAEMU Commission submits that the Court of First Instance cannot simultaneously hear an action for damages and an action to assess the legality of a Community measure.

The applicant points out that Article 112 of Regulation No 01/95/CM of 1er August 1995 in no way limits the type of claims that UEMOA staff may bring before the Court. She points out that she has never brought an action before the Court for misuse of powers.

It is clear both from an examination of the application and from the documents submitted to the Court by the applicant that the applicant never intended to bring either an action for assessment of legality or an action for compensation before the Court of Cassation.

Even if that were the case, there was nothing to prevent the applicant from bringing an application before the Court both for an assessment of legality and for compensation and it was even open to her, because of the autonomy of the different legal remedies, to choose either the action for annulment or the action for compensation.

In those circumstances, the plea that the Court lacked jurisdiction to hear two actions simultaneously must be rejected, as the Court always has jurisdiction.

*The plea alleging that the administrative complaint and the contentious appeal are not identical in purpose and cause*.

The WAEMU Commission argues that there is no identity of cause and purpose between the administrative complaints and the legal action brought by Mrs Touré.

The appellant asks the Court to disregard this argument by the Commission, which has no basis in law.

It is common ground that Mrs Touré put forward the same pleas in law in both her preliminary and contentious appeals. Moreover, her contentious appeal does not alter the cause or the object of her prior complaint.

Furthermore, it is the rule that a claim for compensation made for the first time before the Court is admissible, even though the administrative complaint only sought the annulment of the allegedly harmful decision, and such a claim for annulment may involve a claim for compensation for the damage caused by that decision.

Consequently, the complaint alleging that the complaints and the contentious proceedings were not identical in cause and purpose should be dismissed.

It follows from the foregoing that all three pleas in law must be rejected and the action brought by Mrs Touré must be declared admissible in form.

**At the back**

*On the claim for damages.*

The applicant maintained that the decision to terminate her employment as a disciplinary measure had been taken in breach of Article 77 of the Staff Regulations. She added that she had never been invited to explain the facts complained of in writing beforehand.

In the applicant's view, her dismissal did not comply with the provisions of Articles 86 and 76 of the aforementioned Regulations. She considered that the decision to dismiss her was vitiated by formal defects; that it was irregular and improper.

For all these reasons, the applicant requests that the WAEMU Commission be ordered to pay the sum of F100,000,000 by way of damages for the professional, material and non-material harm suffered as a result of the decision of the President of the WAEMU Commission.

The WAEMU Commission, which concludes that the applicant's case should be dismissed, points out that neither the absence of a proposed sanction from the authority responsible for human resources management, nor the absence of a written explanation from the applicant, can be assimilated to a faulty operation of the WAEMU bodies likely to cause prejudice.

It points out that the decision to impose the penalty was preceded by a disciplinary board meeting at which the applicant provided the necessary explanations.

According to the Commission, the President of the Commission, as the person most responsible for managing the Union's staff, did not commit any irregularity amounting to a malfunction of the bodies by taking the decision to dismiss without any proposal from the authority responsible for managing human resources.

In order for the Commission to be held liable, a number of conditions must be met, including that the conduct of which the Commission is accused is unlawful, that the damage has actually occurred and that there is a causal link between the conduct and the damage claimed.

Has the WAEMU Commission committed an illegal act?

In any event, under the terms of Article 77 of the Regulations, "*the official must be heard in writing before any disciplinary action is taken, unless the action is a warning".*

In this respect, *"Article 76 requires the appointing authority to consult the human resources authority prior to any second-level sanction".*

As a result, this formality introduced by the Community text is substantial in light of the provisions of Article 86, which states that *"dismissal must comply with the rules laid down in Article 76 when it is envisaged as a disciplinary sanction".*

In any event, the Commission, which acknowledges that it did not comply with those provisions which were binding on it, committed a series of irregularities liable to give rise to liability towards the applicant.

In addition, the Commission, which claims that the applicant's claim for unjustified advantages is fraudulent, has not characterised that fraud.

The penalty imposed on the applicant merely because she claimed the costs of proven medical consultations, when the alleged fraudulent manoeuvres had not been reported, and the extension of the stay constituting unauthorised absence was not at issue in relation to the grounds for the dismissal decision, was not justified.

The dismissal was therefore unfair and the claimant's complaint well-founded.

In that context, the condition relating to the existence of wrongful conduct on the part of the Commission being sufficiently established and the absence of any ground for mitigating or exonerating the Commission's liability being added to it, the contested decision gave rise to the damage relied on by the applicant; her claim for compensation for the damage suffered by her must be upheld.

However, the sum of FRF 100,000,000 claimed was excessive in relation to the applicant's salary; the Court has sufficient evidence to reduce the amount to FRF 100,000,000.
20.000.000 F.

Consequently, the WAEMU Commission should be ordered to pay Mrs Touré the sum of twenty million (20,000,000) francs by way of damages for all causes of loss.

**Costs**

As this is a dispute between the Union and its agent, it is appropriate, in accordance with the provisions of Article 61 of the Rules of Procedure, to order UEMOA to pay the costs.

**FOR THESE REASONS**

The Court, sitting in open court, having heard the parties, in matters relating to the Community civil service ;

Declares and decides :

- the appeal is admissible;

- the dismissal is unfair;

- consequently orders the WAEMU Commission to pay Mrs Haoua Touré the sum of twenty million (20,000,000) francs by way of damages for all causes of loss;

- orders the WAEMU Commission to pay the costs.