

UEMOA COURT OF JUSTICE

PUBLIC HEARING OF 23 NOVEMBER 2005

Ruling no. 04 /2005

Case

Composition:

Mr Yves D. YEHOUESSI, Chairman
Mr Mouhamadou NGOM, Judge-
Rapporteur
Mr Youssouf ANY MAHAMAN, Judge
Mr Kaledji AFANGBEDJI, Advocate
General Raphaël P. OUATTARA, Registrar

Mr Mamadou G. LALLOU, residing at
Ouagadougou, 01 BP 4896 Ouagadougou 01,
trainee enrolled in the course of the Diplôme
d'Etudes Supérieures en Comptabilité et Gestion
Financière (DESCOGEF) of the Centre Africain
d'Etudes Supérieures en Gestion (CESAG) in
Dakar, with an address for service at the chambers
of Maître Mamadou TRAORE, Avocat à la Cour,
Villa Place Naba Koom, 01 BP 6225 Ouagadougou
01, plaintiff;

Appeal to assess the legality of the
decision of the Chairman of the
DESCOGEF jury

on the one
hand ;

AND

The Centre Africain d'Etudes Supérieures en
Gestion (CESAG) located in Dakar (SENEGAL)
in the person of its Director General, Mr Patrice
KOUAME, represented by Maître Benoît J.
SAWADOGO, Avocat à la Cour, 994, Rue
Agostino Neto, 01 BP 827 Ouagadougou 01,
defendant;

on the other hand ;

THE COURT

VU Articles 16 et seq. of the WAEMU Treaty;

HAVING REGARD TO Additional Protocol No. 1 on supervisory bodies ;

HAVING REGARD TO Additional Act No. 10/96 on the Statutes of the Court of Justice of the WAEMU ;

HAVING REGARD TO Regulation No. 01/96/CM on the Rules of Procedure of the Court of Justice of the WAEMU ;

HAVING REGARD to Mr Mamadou G. LALLOU dated 07 September 2004, seeking the annulment of the decision of 27 July 2004 of the Chairman of the DESCOGEF jury at CESAG;

HAVING REGARD TO the letter dated 27 July 2004 from the Chairman of the DESCOGEF jury to Mr Mamadou G. LALLOU ;

HAVING REGARD TO the order of 20 May 2005 rejecting the request to stay the annulment proceedings ;

HAVING REGARD TO the statement of defence dated 30 May 2005 ;

HAVING REGARD TO the reply dated 05 July 2005 from Mamadou G. LALLOU ;

HAVING REGARD TO the letter from Benoît J. SAWADOGO dated 09 August 2005 stating that he does not intend to file a rejoinder;

HAVING REGARD TO the other documents produced and attached to the file;

HEARD Mr Mouhamadou NGOM, Judge-Rapporteur, in his report;

HEARD Mr Pascal OUEDRAOGO, replacing Mr Mamadou TRAORE, counsel for Mamadou G. LALLOU in his oral observations;

HEARD Mr Benoît J. SAWADOGO, counsel for CESAG, in his oral observations;

HAVING heard the Opinion of the Advocate General, Mr Kalédji R. AFANGBEDJI;

Having deliberated in accordance with Community law ;

The Court hereby gives judgment ;

I - FACTS AND PROCEDURE

By application dated 07 September 2004, registered the same day at the Registry of the Court of Justice under number 01/04, Mr Mamadou Georges LALLOU, through his counsel, Maître Mamadou S. TRAORE, Avocat à la Cour de Ouagadougou, Burkina Faso, lodged an appeal to the effect that :

- to obtain the annulment of the decision of 27 July 2004 of the President of the jury of the DESCOGEF of the Centre Africain d'Etudes Supérieures en Gestion (CESAG) of Dakar;
- to declare and rule that the Chairman of the Examining Board and the CESAG are obliged to take all necessary steps to enable him to see his examination papers;
- order the correction of his/her examination papers, if he/she so requests;
- to order the setting up of a jury of honour to carry out this task;
- order CESAG to pay the costs.

By order no. 02/05 of 18 May 2005, the Court of Appeal rejected CESAG's request for a stay of the annulment proceedings. The Court then ordered that the annulment proceedings be continued.

The Court, on the report of the Judge-Rapporteur, having heard the Advocate General, decided to open the oral proceedings without a preliminary hearing. The parties were heard in oral argument at the hearing on 23 November 2005.

The Advocate General presented his conclusions at the same hearing.

The CESAG raised a plea of lack of jurisdiction with regard to the request made by Mamadou G. LALLOU.

For a fuller account of the facts of the case and the arguments of the parties, reference is made to the Report for the Hearing. These elements of the case file are reproduced below only to the extent necessary for the Court's reasoning.

II - THE COURT'S JURISDICTION

CESAG argues that the answer given by the Chairman of the DESCOGEF examination board cannot be regarded as a decision of an EU body that could be subject to censure by the Community judicature.

The applicant, Mamadou G. LALLOU maintains that the DESCOGEF diploma was instituted by Regulation No. 12/2000/CM/UEMOA of 22 November 2000 of the Council of Ministers, which is an organ of the Union.

He added that it was this same Council of Ministers that appointed the Chairman of the DESCOGEF jury.

It should first be emphasised that CESAG is an institution of BCEAO, which itself is an autonomous specialised institution of the Union.

It then follows from Regulation No. 12/2000/CM/UEMOA that the Council of Ministers, which is also an organ of the Union, has instituted within UEMOA a coordinated set of examinations, diplomas and training courses leading to the award of the Diplôme d'Etudes Supérieures de Comptabilité et de Gestion Financière (DESCOGEF).

It is also clear from the provisions of article 14 of the said Regulations that "the members of the jury are appointed for three (03) years by the Council of Ministers, on the proposal of the WAEMU Commission ...".

In the light of all this legislation, it can be said that the jury is a WAEMU institution.

By virtue of the foregoing, the Court therefore has jurisdiction not only to monitor compliance with the legislation by the institutions of the Community, but also to rule on any dispute between CESAG and candidates for the DESCOGEF examination.

III - ADMISSIBILITY OF THE ACTION

With regard to the admissibility of the action, it should first be noted that :

- that the request was submitted in accordance requirements of Article 26 of the Rules of Procedure ;
- that the applicant has fulfilled the security obligation set by Order No 08/04 of 13 October 2004.

With regard to the time limit, the appeal was registered at the Court Registry on 07 September 2004; it is well within the time limit prescribed by Article 8 paragraph 3 of Additional Protocol No. 1 relating to the supervisory bodies of the WAEMU.

In view of the foregoing, the applicant's action for annulment, as brought, must be declared admissible in form.

IV - AT THE BOTTOM

The applicant considers that the decision taken without any reason or legal basis is necessarily abusive and detrimental to his interests.

It specifies that the right to access and correct examination papers is one of the general legal principles governing the organisation of all examinations and competitive examinations.

He requests that his appeal be declared well-founded and that the decision of the chair of the DESCOGEF jury be annulled.

CESAG maintains that no rule of WAEMU law has been violated.

According to the CESAG, it is in vain to look in the applicant's writings for the basis of his rights, which are not provided for in any text.

He added that, in any event, even if such a right had existed by impossibility, its violation could not have constituted a violation of the WAEMU Treaty, still less of the acts adopted pursuant to it.

It claims that the application for annulment should be dismissed.

It should be noted that under the terms of Article 9 of Additional Protocol No. 01 on the Supervisory Bodies, "where an action is brought before it for an assessment of legality, the Court of Justice shall declare void, in whole or in part, acts which are vitiated by formal defects, lack of competence, misuse of powers, or infringement of the Union Treaty or of acts adopted in application thereof.

In the present case, it should be emphasised that the applicant has not demonstrated, nor offered to demonstrate, that the decision of the President of the DESCOGEF selection board is vitiated by a formal defect, lack of competence, misuse of powers or infringement of the Treaty on European Union or of acts adopted pursuant thereto.

It should also be noted that examination and competition boards are independent.

In any event, as the proceedings currently stand, no violation of a subjective right by a normative act or a material act generating a prejudice has been proven.

There is no particular prejudice to the personal legal position of Mr Mamadou G. LALLOU.

In any event, the Court of Appeal can neither confirm the contested decision, nor issue injunctions to CESAG for the transmission of examination papers, the correction of tests and the constitution of an honorary jury.

Consequently, the action brought by Mamadou G. LALLOU.

V - ON EXPENSES

Under article 60 paragraph 2 of the Rules of Procedure, any unsuccessful party shall be ordered to pay the costs.

Mamadou G. LALLOU has been unsuccessful in his defence and should therefore be ordered to pay the costs.

FOR THESE REASONS

La Court, ruling publicly, contradictorily in in of
Community law :

- declares itself competent to assess the legality of the decision of the Chairman of the DESCOGEF jury;
- declares the action for annulment admissible in form;
- at the bottom :
 - rejects it as ill-founded;
 - order Mamadou G. LALLOU to pay the costs.