

**EXTRACT FROM THE MINUTES OF THE  
REGISTRY**

**DECREE**

**N-02/2012**

From 19 December 2012

**UEMOA COURT OF JUSTICE**

**PUBLIC HEARING OF 19 DECEMBER 2012**

- 1) Dame Mondoukè **Sidonie** SODABI
- 2) Mr Léon KOUGBENOU  
C/  
Central Bank of West African States  
(BCEAO) Agenca Principale de Cotonou

**The Court of Justice of the WAEMU, sitting in ordinary session with :**

**Mr Ousmane DIAKITE, President of the Court,**  
Chairman  
-Mr Daniel LOPES FERREIRA,  
Mr Hamidou Satifou KANE,

**Judges, assessors**

in the presence of Madame Seynabou **XDIAYE**  
**DIAKHATE**, Advocate **General**;  
**assisted by Maître Fanvongo SORO, Registrar;**

delivered the following judgment:

**Présents :**

- III. Ousmane DIAKITE, **Principal**
- Mr Daniel LOPES FERREIRA, Judge**
- Mr Hamidou Satifou KANE, Judge**
- Ms Seynabou N'Diaye DIAKHATE, **Principal lawyer**
- hge F-anvongo **SORO, Registrar**

**BETWEEN :**

1. Ms Mondoukè Sidonie SODABI, former employee of the BCEAO main branch in Cotonou;
2. Mr Léon KOUGBLENOU, former employee of the BCEAO main branch in Cotonou;

Plaintiffs, represented by Maître Victorien Olatoundji FADE, Avocat à la Cour, Carré 4 233 G Akpakpa Midombo, 03 BP : 3326 Cotonou, tel/fax : 21 33 80 08 cell : 90 98 96 66 to the Cabinet of which, domicile is as needed.

on the one hand ;

*Action for compensation*

Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO), Organisme Public International, siège social à Dakar, Avenue Abdoulaye FADIGA - BP 3108 DAKAR (Sénégal) prise en la personne de son Gouverneur, Représentée par Madame Aminata FALL NIANG, Directrice des Affaires Juridiques de la BCEAO, assistée de :

Maître Saïdou AGBANTOU, Member of the Bar of the Republic of Cameroon

Benin ; Zone Résidentielle, Lot 551 - Parcelle D. - 01  
BP 1950 COTONOU - République du Bénin - Tél  
(00229) 21 31 49 69

- Benoît J. Sawadogo, Member of the Burkina Faso  
Bar:

The parties elect domicile, as necessary, at the office of  
Benoît J. Sawadogo, lawyer at the bar of Burkina  
Faso, former President of the Bar, located at 994  
Avenue du Professeur Joseph KI-ZERBO, 01 BP 827  
Ouagadougou 01, Burkina Faso.

on the other hand ;

## THE COURT

HAVING REGARD TO the application dated 28 April 2009, received and registered at the GrePe on  
18 May 2009;

HAVING REGARD TO the letter dated 15 June 2009 serving the said request on BCEAO;

HAVING REGARD TO the statement of defence  
dated 08 April 2009 submitted by Mr Saïdou  
AGBANTOU, lawyer, on behalf of BCEAO;

HAVING REGARD TO the exceptional reply submitted by Maître Victorien OLATOUNDI  
FADE on behalf of the applicants;

HAVING REGARD TO the exceptional reply of BCEAO ;

HAVING REGARD TO the other documents in the file;

VU the Treaty of the West African Economic and Monetary Union dated 10 January 1994, in  
particular Article 38 ;

HAVING REGARD TO Additional Protocol I on the supervisory bodies of the WAEMU ;

HAVING REGARD TO Additional Act No. 10/96 of 10 May 1996 on the Statutes of the Court  
of Justice of the WAEMU ;

HAVING REGARD TO Regulation No. 01/96/CM of 5 July 1996 on the Rules of Procedure of  
the Court of Justice of the WAEMU;

HAVING REGARD TO Regulation No. 01/2010/CJ of 02 February 2010 repealing and replacing Regulation No. 01/2000/CDJ of 06 June 2000 on the Administrative Rules of the WAEMU Court of Justice;

HAVING REGARD TO Additional Act n°03/CCEG/UEMOA of 20 January 2007 renewing, appointing and ending the terms of office of members of the Court of Justice of UEMOA ;

HAVING REGARD TO Additional Act n°01/201 2/CCEG/UEMOA of 19 March 2012 renewing the term of office of a member of the UEMOA Court of Justice;

HAVING REGARD TO Minutes No 01/2010 of 13 April 2010 on the appointment of the President and the allocation of functions within the Court of Justice of the WAEMU,

HAVING REGARD TO Order n "25 bis/2012/CJ of 07 November 2012 on the composition of the plenary session of the WAEMU Court of Justice;

HEARD Mr Hamidou Salifou KANE, Judge-Rapporteur, in his report;

ORDERED Maîtres Saïdou AGBANTOU and Benoît SAWADOGO, lawyers for the defendant, to make their oral observations:

HAVING heard the Opinion of Ms Seynabou NDIAYE DIAKHATE, Advocate General; Having deliberated in accordance with Community law ;

**Has issued this decree :**

Whereas, by application dated 28 April 2009, received at the Court on 18 May 2009 and registered the same day at the Court Registry under No. 03/2009, Ms Mondouké Sidonie SODABt and Mr Léon KOUGBLENOU, both of Beninese nationality, former employees of BCEAO, Agence Principale de Cotonou in Benin, and having as counsel Maître Victorien OLATOUNDI FADE, Avocat à la Cour in Cotonou, brought before the Court of Justice an action for annulment of the decision to terminate their contract with BCEAO, Agence Principale de Cotonou (Benin).

**I. facts and procedure**

Considering that the facts of the case as set out by the applicants in their application initiating proceedings are as follows: Ms Mondouké Sidonie SODABI and Mr Léon KOUGBLENOU were hired by BCEAO Benin on 11 January 2005.

August 2000 as sales assistants for the book "Histoire de l'UMOA", under a fixed-term contract of six (6) months with a trial period of three (3) months.

At the end of the first contract, successive renewals took place until 10 March 2005, after which time there was no renewal but the applicants continued to work at the bank in various capacities, in particular as Management Agents at the bank's cybercafé from 17 July 2007 to 31 December 2008.

In all, they have worked for BCEAO Benin for eight (8) years, four (4) months and fourteen (14) days, until they were notified on 04 December 2008 that their contracts were to be terminated without notice, with effect from 31 December 2008.

On 12 January 2009, they lodged an ex gratia appeal with the National Director of BCEAO Benin seeking the outright cancellation of the decision of 04 December 2008 terminating their contracts.

As the National Director of BCEAO Benin did not respond to their request, they applied to the Court on 28 April 2009, claiming that there had been an implied decision to reject their application;

Whereas this application was registered on 18 May 2009 under number 03/2009 at the Court Registry;

That by Order dated 15 June 2009, Judge Hamidou Salifou KANE was appointed Judge-Rapporteur;

On 15 June 2009, the request was served on BCEAO, National Directorate for Benin;

That, pursuant to Order No 04/09 dated 15 June 2009, a bond to be paid into the Court Registry was set for the applicants, who actually paid it;

That by letter dated 20 July 2009, received by the Court on 07 August 2009, the law firm Saïdou AGBANTOU, Cotonou lawyer, acted on behalf of BCEAO and asked the Court for one (1) month to settle the dispute amicably;

That on 18 March 2010, the court clerk sent a broker to the AGBANTOU law firm to enquire about the amicable settlement procedure;

Whereas on 05 May 2010, Cabinet AGBANTOU submitted a statement of defence to the Court,

That on 04 June 2010, Maître OLATOUNDI FADE sent a reply to the Court,

On 06 August 2010, Benoit SAWADOGO, representing the interests of BCEAO, requested an extension of the deadline for the submission of its statement of defence;

Considering that following Order No 011/2010/CJ, dated 30 August 2010, an additional period of two (2) months, until 31 October 2010, was granted to Sawadogo, which filed on 1<sup>er</sup> October 2010, "an exceptional statement in reply";

Considering that the proceedings were closed following a Closing Order issued on 27 October 2010.

#### **It. SUBMISSIONS OF THE PARTIES**

The applicants claim that the Court should: In form,

allow their application ;

- On the merits, to declare them well founded in their pleas and consequently to :
  - Annul the decision of 04 December 2008 concerning the notification of their termination of contract without notice;
  - Order BCEAO to pay all its rights;
  - Declare all pleas to the contrary inadmissible and, in any event, ill-founded;
  - Order BCEAO to pay the costs.

Considering that BCEAO, through its Counsel, Maître AGBANTOU, hereby applies to the Court of :

- Acknowledge that BCEAO enjoys immunity from jurisdiction and execution;

- Consequently, to declare the present action inadmissible against BCEAO, the attempt at amicable settlement not being, according to him, a waiver of the enjoyment of his immunity but "a gracious approach inspired by the humanitarian concern" of the BCEAO National Representation in Benin.

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

Considering that, in support of their application, the applicants state that they were employed by the BCEAO on 11 August 2000 as sales assistants for the book "Histoire de l'UMOA", for a six (6) month contract with a three (3) month trial period;

At the end of this period, the contracts were renewed until 10 March 2008;

That since that date there has been no renewal and that they have worked continuously within the Bank in various positions, in particular as

The Bank's Gybercafé "management agents", from 17 July 2007 to 31 December 2008;

They have thus worked a total of eight (8) years, four (4) months and fourteen (14) months. (14) days with the bank ;

That during this period, they regularly received their salaries subject to all charges, the Bank thus recognising their status as non-permanent employees by regularly granting them leave and issuing them employment certificates on 11 March 2003 qualifying them as "employed" staff;

The applicants thus maintain that "the legal subordination relationship as a determining structural element of the employment contract and as a criterion for determining and classifying the employment contract has remained constant in their relationship, it being understood that they are subject to the control and supervision of their employer, the Bank";

That this relationship of subordination is also evidenced by the requests for explanations regularly sent to him by the Bank:

That by terminating their contracts without observing the notice period and without giving the slightest reason in support of this decision as required by Regulation no.

02/05/CM/uEMOA of <sup>1</sup> August 1995 relating to the regime applicable to non-permanent staff of UEMOA, the Bank in fact proceeded to unfair dismissal without serious grounds and that consequently the decision of 04 December 2008 lacks a legal basis;

Considering that the BCEAO, after having proposed an amicable settlement consisting in the payment of the sum of two million five hundred thousand (2,500,000) CFA francs to each of the applicants, who refused, requests the Court to declare that it enjoys immunity from jurisdiction and execution;

Consequently, declare the present action against it inadmissible;

In support of its claim, it states that Article 8 of the Protocol on the Privileges and Immunities of the BCEAO, ratified by Benin, provides that "the Central Bank shall enjoy immunity from jurisdiction and execution in all matters unless it expressly waives immunity in a particular case, as notified by the Governor or his Representative";

That the attempt at conciliation initiated by the Bank does not constitute a waiver of the enjoyment of its immunity, since it is a gracious approach inspired by the Bank's humanitarian concern; and that the failure of this conciliation obliges the Bank to assert its immunity before the Court;

Considering that, in reply, the applicants explain that BCEAO offered each of the applicants the sum of FCFA 2,500,000 in settlement of the dispute;

That this offer having been refused, the Bank then invoked the inadmissibility of its action on the basis of the provisions of Article 8 of the Protocol on the Privileges and Immunities of the Bank;

That this argument is irrelevant because, even if the BCEAO has a certain immunity from jurisdiction and execution, it is in relation to the national jurisdictions of the Member States of the Union;

It cannot and will not be able to claim immunity from jurisdiction and execution in relation to the WAEMU High Court, which is a Community court;

And that by virtue of the primacy of Community law over the national law of the Member States, the legal systems of the Member States are obliged to ensure, in their domestic systems, the primacy of Community rules over their national law;

That BCEAO, being a specialised institution of the Union, cannot rely on immunity from jurisdiction and execution in respect of the Court of Justice of the Union, all the more so since Article 15 of Additional Protocol 01 on the Union's Supervisory Bodies provides that "without prejudice to the provisions of Article 9 of the Treaty on European Union, the Court of Justice of the European Communities shall have immunity from the jurisdiction and execution of the Court of Justice of the Union".

The Court of Justice shall have jurisdiction in disputes relating to compensation for damage caused by Union bodies or by its servants in the performance of their duties;

Accordingly, a specialised body of the Union cannot free itself from the jurisdiction of the court set up by the Union even though it is JUSTICIALE of that court;

That the BCEAO, being part of the Union, damages caused by it to any person are legitimately brought before the UEMOA Court of Justice and that it cannot, at this level, claim any immunity from jurisdiction and execution before the Court of Justice;

In reply, the Bank asks the Court in the main proceedings to declare that it does not have jurisdiction and, in the alternative, to declare the plaintiffs' action inadmissible;

It asks the Court to declare that the BCEAO enjoys immunity from jurisdiction and execution and to declare that the BCEAO is a specialised institution of the WAEMU and not an organ of the Union;

That it is not listed in Article 16 of the Treaty on the Bodies of the Union, but that it is listed in Article 41 of the said Treaty as an autonomous specialised Institution of the Union;

That Article 15.4 of Regulation No. OR/96 gives the Court jurisdiction to hear and determine The Court shall be responsible for "the appeal of the staff of the Union. The Court shall rule on any dispute between the Bodies of the Union and their servants under the conditions laid down in the Staff Regulations;



That, consequently, it concludes that since BCEAO is not an Organ of the Union, the assessment of any dispute between its staff and BCEAO does not fall within the jurisdiction of the Court.

#### IV. AT THE BOTTOM

##### 1- Jurisdiction of the Court

Whereas the case before the Court of Justice was argued on 14 November 2012 and reserved for hearing on 19 December 2012;

After this date, the deliberations were emptied;

Considering that the applicants and their counsel, Maitre Fadé, did not appear at the hearing;

They have, however, submitted written pleadings in the present proceedings;

Whereas the defendant Banque Centrale has also submitted written pleadings in this case;

That Mr Saïdou AGBANTOU and Mr SAWADOGO Benoit, concluding lawyers, also pleaded at the Court hearing;

That in his submissions dated 08 April 2009, Maître AGBANTOU raised in limine litis the inadmissibility of the application on the grounds that the BCEAO enjoys immunity from jurisdiction and execution on the one hand and on the other hand that the BCEAO is not an Organ of the Union but a specialised autonomous Institution whose disputes with its agents do not fall within the jurisdiction of the Court;

Whereas the Court of Justice must therefore rule on its own jurisdiction in the present case before ruling on the admissibility of the application and the action brought.

Sur/e mo'Yen derived from the immunity from jurisdiction and execution for the benefit of the BCEAO

Considering that, after having offered the sum of FCFA 2,500,000 to each of the applicants in the context of a settlement offer refused by Mrs Mondoukpé and Mr KOUGBLENOU, BCEAO invoked its immunity from jurisdiction to request the Court to

declare that it enjoys immunity from jurisdiction and execution and declare the present action inadmissible;

It relies on Article 8 of the Protocol on the Privileges and Immunities of the BCEAO, ratified by Benin, which provides that "the Central Bank shall enjoy immunity from jurisdiction and execution in all matters unless it expressly waives immunity in a particular case, notified by the Governor or his representative";

Considering that the BCEAO is an autonomous specialised institution of the WAEMU under the terms of Article 41 of the Treaty ;

It is "an international public institution constituted by the member states of WAMU" according to Article 1<sup>er</sup> of the BCEAO Statutes;

That Article 4 of the said Statutes specifies that "in order to enable the Central Bank to fulfil its functions, it shall be accorded the status, privileges and immunities of international financial institutions on the territory of each of the Member States of the Union under the conditions specified by the Protocol annexed to the present Statutes, which forms an integral part of the said Statutes, To this end, it shall enjoy, in each of the Member States of the Union, the most extensive legal capacity accorded to legal persons under national law";

Whereas on 18 October 2007, a certificate of immunity from jurisdiction and execution was issued to the Banque Centrale, Agence principale de Cotonou by the Director of State Protocol of Benin;

Whereas "immunity from jurisdiction" means that the Central Bank and its assets are immune from any form of legal proceedings;

That it has the effect of removing the Bank from the jurisdiction of a national court of the Member States before which it is summoned; the national court must declare that it has no jurisdiction to hear a dispute involving the Central Bank;

Considering that "immunity from execution" means that the Central Bank enjoys on its its assets and property, wherever located and by whomsoever held, from

immunity from execution, in particular in respect of any seizure, sequestration, freezing or other compulsory execution or security measures;

Considering that, described in this way, this privilege may appear exorbitant and likely to open the way to denials of justice, since the Central Bank is an "impregnable fortress", a "no-go area" against which no legal action can be taken, whereas it has the right to take legal action against any natural or legal person before the courts of the Member States;

An abundance of case law from national courts in Member States and abroad has established and confirmed the principle of immunity from jurisdiction or execution in favour of the Central Bank (See: Cour de Cassation du Sénégal - Case of Procureur Général près la Cour d'Appel de Dakar, BCEAO, CRRAE-UMOA v Ady Khaly NIANG, in which the Court quashed judgment no. 432 of 30 July 1991 of the Social Division of the Dakar Court of Appeal, ruling that "BCEAO is therefore entitled to request the quashing of the contested judgment for breach of the Headquarters Agreement concluded between Senegal and BCEAO on 27 March 1977"; cf. also: Niamey Court of Appeal (Niger) - Judgment No. 40 of 19 April 2006 in the case of Fonds de Solidarité Africain v BCEAO - Supreme Court of Niger - Judgment No. 09-192 of 15 October 2009 of the Judicial Chamber in the case of Fonds de Solidarité Africain v BCEAO - Lastly, Cour de Cassation (France)

- 1\*" Civil Division: Judgment No. 747 FD of 19 April 2005 in the case of BCEAO vs. African Solidarity Fund) ;

But, whereas Article 3 of the Treaty of 10 January 1994 provides that "the Union shall respect in its action the fundamental rights set out in the 1948 Universal Declaration of Human Rights and the 1981 African Charter on Human and Peoples' Rights";

Article 10 of the 1948 Universal Declaration states that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him";

Article 7 of the 1981 African Charter stipulates that "Everyone has the right to have his case heard. This right shall include the right to have recourse to the competent national tribunals in respect of any act violating his fundamental rights".

recognised and guaranteed by the conventions, )ois, regulations and customs in force..." ;

Thus, the principle of immunity of the Central Bank must be combined with the right of every person to have his case heard by a Court, a right affirmed by the above-mentioned articles to which the Treaty of the Union refers;

Considering that the right to a Tribunal is a matter of international public policy ;

By applying the principle of immunity from jurisdiction and execution to the Central Bank in an absolute sense, that is to say, the impossibility for the national courts of the Member States and the Community courts to hear any action against it, the applicants in the present case would be deprived of any judicial remedy;

That the Community High Court thus committed a denial of justice;

Considering that in their pleadings at the hearing of the Court, Maître AGBANTOU explained that the Central Bank plans to set up a mechanism for settling disputes within the Bank;

At that date, the mechanism was neither created nor operational;

According to him, if the employees cannot take the Central Bank to court, there will be a denial of justice;

In his turn, Maître SAWADOGO pointed out that the immunity of the Central Bank can only give way to certain universal principles, including the right to a Court;

Considering that the Advocate General concluded that the Central Bank is part of the UEMOA-UMOA group; that the immunity invoked by the Central Bank cannot be invoked against the Court of Justice, a Community court;

Considering therefore that the plea based on the immunity of the BCEAO from jurisdiction and execution cannot prosper; that the Court of Justice must reject this plea, declare itself competent and rule on the case, all the more so as the Central Bank has not instituted within itself a Tribunal or a mechanism to rule on disputes of this nature following the example of other International Financial Institutions:

That the exception of immunity of jurisdiction and execution of the Central Bank, if it can be absolute before the national jurisdictions of the Member States, all the times that a protocol devotes it, it cannot be opposed to the Court of Justice whose fundamental mission is to take care of the respect of the Law as for the interpretation and the application of the Treaty of the Union.

*The plea in law alleging that the BCEAO has failed to fulfil its obligations under the Treaty*

Whereas counsel for the BCEAO submitted that the Court lacked jurisdiction on the grounds that the Central Bank is not an Organ of the Union within the meaning of Article 16 of the Treaty, but an autonomous Specialised Institution of the Union within the meaning of Article 41 of the Treaty;

Article 15 of Regulation 01/96 laying down the Rules of Procedure of the Court of Justice lists exhaustively the various actions which may be brought before the Court of Justice;

Point 4 of the said Article provides that the Court shall have jurisdiction to hear and determine the

The Court shall hear "appeals by the staff of the Union. The Court shall rule on any dispute between the Organs of the Union and their servants under the conditions laid down in the Staff Regulations;

Since the BCEAO is not an organ of the Union, the Court of Justice does not have jurisdiction to rule on any dispute between its staff and the BCEAO;

Considering that this argument cannot succeed ;

That, in fact, the Central Bank, a specialised institution of the Union, being designated as such in section 5 of chapter II of the Treaty, devoted to the Organs of the Union, it is the common issuing institution of the WAEMU and the WAMU, and the Organ of management of the common monetary and credit policy of the Union;

That furthermore, following the request for opinion n° 03/96 dated 10 December 1996 from the BCEAO on the draft single licence for banks and financial establishments, the Court of Justice received the request addressed to the Court by the Director of Legal Affairs of the BCEAO, stating that "the Court of Justice has decided to grant the request for an opinion even though it emanates from an organ of the Union other than those referred to in Article 16 of the Treaty" (see Recueil de textes et jurisprudences de la Cour - P111 et seq);

That this referral of a request for an opinion to the Court of Justice by the Central Bank is proof of the recognition of the Court's jurisdiction over the institution in both advisory and contentious matters;

Finally, the question of the Court's jurisdiction seems to have been definitively settled in a recent opinion (Opinion No. 01/2011 of 30 October 2011), the Court indicated that the only institution empowered to hear disputes between the BOAD and its agents is the Court of Justice; the BCEAO being a specialised institution of the Union in the same way as the BOAD cannot escape the jurisdiction of the same court;

Considering that the plea based on the status of the Central Bank with regard to the provisions of the Treaty should be dismissed and that the Court has jurisdiction pursuant to Article 8 of Additional Protocol No. 1 on the Union's Auditors, Article 27 of Additional Act 10/96 on the Statute of the Court, Article 15 paragraphs 4, 26, 55, 56 of Regulation 01/96 of 05 July 1996 on the Court's Rules of Procedure and Article 41 of the Treaty of 10 January 1994 which makes the Central Bank a specialised institution of the Union.

## **2- Admissibility of the application**

Considering that the applicants consider that by terminating their contracts without respecting the notice period and without invoking the slightest reason in support of this decision, the Central Bank in fact proceeded to unfair dismissal without any serious reason and that consequently the decision of 04 December lacks any legal basis;

Considering that the applicants worked at BCEAO, Cotonou main branch, in various positions from 14 August 2000 to 31 December 2008, i.e. for 8 years, 4 months and 14 days;

That during this period, they regularly received their salaries, subject to all social security charges, while benefiting from various entitlements to annual leave; that they received requests for explanations like the other employees of the Bank, which moreover issued them with certificates of employment;

That the applicants thus remained under the control and supervision of the Bank, thereby establishing a place of legal subordination within the meaning of employment legislation,

Considering that the National Director of BCEAO-Benin issued, on 19 March 2003 to Mrs Mondoukpé Sidonie SODABI and Mr Léon KOUCBLENOU, certificates of employment certifying that they "have been employed in his Establishment since 1<sup>er</sup> August 2000";

Both were offered for sale in the "History of WAMU" book, before moving on to other jobs,

On 04 December 2008, the National Director of BCEAO-Benin notified them of the end of their service contracts with effect from 31 December 2008;

Considering that, in view of the legal relationship of subordination between the parties, the contracts between the applicants and the Banque Centrale are contracts of employment and not contracts for the provision of services;

A contract for the provision of a service or partnership is an agreement by which a service provider with specific know-how undertakes to carry out a specific task or assignment for the other party, with the service provider not representing the client and acting on a global, fixed-price basis, the terms of which are defined in advance;

In this case, the applicants are more concerned with a contract of employment as defined in case law, i.e. "the meeting of two parties providing that one will perform work for and under the direction of the other, in return for remuneration",

That the three elements essential to the existence of a contract of employment, i.e. a service, remuneration and a relationship of legal subordination, are all present in this case;

Lastly, the letter of engagement dated 11 August 2000 had as its subject "offer of employment" and not "contract for the provision of services";

Considering therefore that the applicants are covered by Regulation No. 02/95/CM/UEMOA of <sup>1</sup> August 1995 on the conditions of employment of non  
They had signed contracts that were renewed until 10 March 2005, when there were no further renewals, but the applicants continued to work until 31 December 2008;

Whereas Article 59 of the said Rules provides that "any member of staff may submit to the appointing authority, through the proper channels, a request that the appointing authority take a decision in respect of him";

Article 60 provides that "the appointing authority shall notify the staff member concerned of its reasoned decision within a maximum of 30 days from the date on which the application was submitted. On expiry of the aforementioned period, silence on the part of the appointing authority shall be deemed to constitute an implied rejection which may give rise to an appeal within the meaning of Article 61 below";

Article 61, which grants exclusive jurisdiction to the Court of Justice, provides that: "The Court of Justice of the UEIdOA shall have jurisdiction to hear and determine any dispute between the Union and one of its contractual agents. However, an action shall not be validly brought before the Court unless the authority vested with the power of recruitment has previously received a request within the meaning of Article 59 ; if that request has resulted in an implied decision by the appointing authority to reject the request in whole or in part and if the appeal is lodged with the Court within two months of the date of publication of the decision, the date of its notification to the member of staff concerned, the date on which the member of staff concerned became aware of it or the date of expiry of the time limit for reply where the appeal relates to an implied decision to reject the request,

Whereas this application satisfies the formal and substantive requirements laid down in Articles 59, 60 and 61 of Regulation 02/95, in the case of a dispute between members of staff and a specialised institution of the European Union;

That the application should be declared admissible, particularly since the question of the nature of the action was settled by the Court in Dame Haoua TOURE v Commission de l'UEMOA (judgment of 25 June 2003 - ECR I-0000, paragraph 2). pp. 406 et seq.), in which the Court stated that "there was nothing to prevent the applicant from bringing before the Court an application both for an assessment of legality and for compensation, and it was even open to her, in view of the autonomy of the various legal remedies, to choose either the action for annulment or the action for compensation".

#### 5- The nature of the contract between the parties

Considering that the applicants are bound to the Banque Centrale by contracts of indefinite duration, the termination of which is subject to substantive and formal conditions;



That in this case, the Central Bank terminated the contracts without notice or serious grounds, which constitutes unfair dismissal giving rise to a right to damages.

#### 4- On damage and integrity

Considering that as part of the conciliation attempt, the Central Bank offered each of the claimants the sum of 2,500,000 FCFA by way of compensation;

That Maître SAWADOGO requests the Court to award damages of 18 months' salary in accordance with the case law of the Courts and Tribunals of Burkina Faso in matters of unfair dismissal;

That Maître AGBANTOU requests the Court to order Banque Centfale to pay the minimum to which the applicants were entitled before the Beninese courts, i.e. six (6) months' salary, immunity from execution and jurisdiction having, in his opinion, curbed the ardour of certain national courts which awarded up to 20 years' salary in certain cases involving the Banque Centrale;

Considering, however, that the Court has at its disposal sufficient elements of appreciation to reduce the damages to a fair proportion :

#### W Costs

Considering that it is appropriate to apply Article 61 of the Rules of Procedure and to order the Central Bank 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 :

- *Se cféc/axe compéfeni'e ;*
- *Oif that **the immunity sooley4e** by the BCEAO is not enforceable against the Community Courts,*

- declares receva6/e the reqzzéfe ;
- *O/f that the contract binding the applicants to BCEAO is in fact a contract for an indefinite period and that the breach of that contract constitutes an unfair dismissal;*
- En conséptzence conztamne la BCEAO à verser à *chacun* des requérants la *somme cinq (5) millions francs Ile CEA à titre Ile dommages ef inférés, toutes causes Ile pr5udicas confondues,".*
- Condemns BCEAO to the expense.

Signed by the Chairman and the Registrar:

The illegible signatures follow;

For a certified copy, Ouagadougou, 15 February 2013

**The Registrar,**  
  
**Fanvongo SORO**

