

**JUDGMENT NO.
05/2017
FROM 30 May 2017**

**COURT OF JUSTICE OF THE WEST
AFRICAN ECONOMIC AND
MONETARY UNION (WAEMU)**

PUBLIC HEARING OF 30 May 2017

**Actions for assessment of legality and
annulment of decisions**

**The Heirs of the late Abdou Karim FALL,
Shareholders of TOTAL SENEGAL SA**

C/

**The Regional Council for Public Savings and
Financial Markets (CREPMF)**

Composition of the Court :

- **Mr Salifou SAMPINBOGO, Chairman,**
- **Mr Mahawa S. DIOUF, Judge**
- **Mr Daniel Amagoin TESSOUGUE, Judge**
- **Mr Euloge AKPO, Judge-Rapporteur**
- **Mr Augusto MENDES, Judge**

- **Ms Victoire Eliane J. ALLAGBADA,
Advocate General**

- **Mr Hamidou YAMEOGO, Registrar**

The Court of Justice of the WAEMU, meeting in ordinary public session on thirty May two thousand and seventeen, in which were seated :

Mr Salifou SAMPINBOGO, Chairman ;

Mr Mahawa Sémou DIOUF, Mr Daniel Amagoin TESSOUGUE, Mr Euloge AKPO, Mr Augusto MENDES, Judges ;

in the presence of Ms Victoire Eliane J. ALLAGBADA, Advocate General;

with the assistance of Maître Hamidou YAMEOGO, Deputy Registrar ;

has rendered the following judgment : BETWEEN :

The heirs of the late Abdou Karim FALL, shareholders of TOTAL SENEGAL SA, advised by SCPA BA & OUMAIS, Avocats à Cour OUMAIS, Avocats à la Cour, 19, Rue Vincens x Escarfait à Dakar (Senegal), Maître Abdou THIAM, Avocat à la Cour à Dakar (Senegal), 76, Rue Mousse DIOP x THIONG, Maître Coumba SEYE NDIAYE, Avocat à la Cour, 68 rue Wagane DIOUF à Dakar (Senegal), l'Association d'Avocats BITEYE & CISSE avocats à la Cour à Dakar (Sénégal), villa Ovata, 7628, Route de la pyrotechnie, Mermoz, Dakar (Sénégal), all electing domicile for the purposes of the present proceedings at the address of the Etude de la SCPA BA & OUMAIS specified above,
Plaintiffs, on the one hand ;

AND

The Conseil Régional de l'Épargne Publique et des Marchés Financiers de l'UEMOA (CREPMF), having its registered office at Abidjan, Côte d'Ivoire, Avenue Joseph Anoma, opposite Banque de l'Habitat, acting in the name and on the instructions of its Chairman, having as its counsel SCPA N'GOAN ASMAN & Associés, Avocats près la Cour d'Appel d'Abidjan, 37 rue de la Canebière, 01 BP 3361 Abidjan 01, Tel: +225 22 40 47 00/05,

Defendant, on the other hand ;

THE COURT

HAVING REGARD TO the Treaty of the West African Economic and Monetary Union dated 10 January 1994, as amended on 29 January 2003;

VU Additional Protocol No. 1 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 05 July 1996 on the Rules of Procedure of the WAEMU Court of Justice;

HAVING REGARD TO Regulation n°01/2012/CJ of 21 December 2012 on the Administrative Rules of the Court of Justice of the WAEMU ;

HAVING REGARD TO Minute No. 01/2016/CJ of 25 May 2016 on the appointment of the President of the Court and the distribution of functions within the Court;

HAVING REGARD TO Minutes No 02/2016/CJ of 26 May 2016 relating to the swearing-in and installation of the members of the WAEMU Court of Justice;

HAVING REGARD TO the application by the Heirs of the late Abdou Karim FALL, Shareholders of TOTAL SENEGAL SA, dated 9 February 2015, registered at the Court Registry on 12 February 2015 under number 15 R 002, seeking an assessment of the legality and annulment of Decisions n°2014-072 and n°2014-073 dated 12 December 2014 of the Conseil Régional de l'Epargne Publique et des Marchés Financiers (CREPMF);

HAVING REGARD TO Order No 14/2017/CJ of 21 April 2017 on the composition of the plenary session to sit in ordinary public session;

HAVING REGARD TO the summonses of the parties ;

HEARD Mr Euloge AKPO, Judge-Rapporteur, in his report;

HEARD counsel for the applicants in their oral observations;

HEARD counsel for the defendant in his oral observations;

HEARD Ms Victoire Eliane J. ALLAGBADA, Advocate General, in her Opinion;

Having deliberated in accordance with Community law :

I. FACTS AND PROCEDURE

Whereas by application dated 09 February 2016, registered at the Registry of the Court of Justice of the West African Economic and Monetary Union (WAEMU) on 12 February 2015, under number 15 R 002, the heirs of the late Abdou Karim FALL, shareholders of TOTAL SENEGAL SA, lodged an **appeal to assess the legality and to annul decisions n° 2014-072 and n°2014-073 dated 12 December 2014 of the Conseil Régional de l'Epargne Publique et des Marchés Financiers de l'UEMOA (CREPMF)** lifting the suspension of the public offer to sell 290.000 shares of TOTAL-SENEGAL SA and the issue of 715,300 additional shares of TOTAL-SENEGAL SA on the regional financial market;

That it appears from the file that by correspondence dated 06 and 25 June 2014, the Société de Gestion et d'Intermédiation Compagnie de Gestion Financière et de Bourse (SGI CGF BOURSE) SA sent the Conseil Régional de l'Epargne Publique et des Marchés Financiers de l'UEMOA (CREPMF) a visa application file for the launch of a public offer to sell 290.000 shares in favour of TOTAL-SENEGAL, a public limited company with a capital of FCFA 3,257,770,000 having chosen to be listed on the UMOA Bourse Régional des Valeurs Mobilières (BRVM); That on 02 September 2014, the CREPMF responded favourably, issuing Decision 2014-045 authorising the public offer for sale of 290,000 shares in TOTAL-SENEGAL on the regional financial market, followed by its listing on the stock exchange; That the authorisation was registered under visa no. OA/14-04 ;

That furthermore, by correspondence dated 25 August 2014, SGI CGF BOURSE requested from the CREPMF an authorisation to integrate 715,300 ordinary shares held by the minority shareholders of TOTAL OUTRE MER for the constitution of the free float on the BRVM of TOTAL SENEGAL; That on 18 September 2014, the CREPMF responded by issuing Decision No. 2014-049 by which it authorised TOTAL-SENEGAL to issue on the regional financial market of the UMOA 715.000 ordinary shares in addition to the issue authorised under visa No. OA/14-04, for an amount of FCFA 8.583 billion;

That 08 October 2014 is the date selected for the launch of the tender subscription period;

That, on the other hand, on 10 October 2014, CREPMF received correspondence dated 03 October 2014, in which counsel for the Heirs of the late Abdou KARIM FALL informed CREPMF that they were contesting the legality of transfers of shares to non-shareholder third parties, made by TOTAL OUTRE MER, on the authorisation of the Board of Directors of TOTAL SENEGAL, by producing a writ of summons for that purpose before the national judge of Senegal and inviting CREPMF to take all measures it deems useful;

That the CREPMF then decided to suspend the public offer for sale of the 290,000 shares and the additional issue of 715300 shares, by decisions no. 2014-051 and no. 2014-52 of 24 October 2014, pending the results of the investigation that it will conduct and the conclusions of the legal proceedings under way in Senegal ;

What happened on 12 December 2014, the CREPMF proceeds:

- the lifting of the suspension of the public offer to sell 290,000 shares of TOTAL-SENEGAL on the regional financial market of the WAMU, followed by its listing on the stock exchange, by decision n° 2014-072 ;
- the lifting of the suspension of the issue of 715,300 additional shares of TOTAL-SENEGAL on the regional financial market of the UMOA, by decision n° 2014-073;

That it is for this reason that the heirs of the late Abdou Karim FALL, shareholders of TOTAL SENEGAL SA, have brought an action before the WAEMU Court of Justice for the purpose of obtaining :

IN THE FORM :

- Reject CREPMF's objection that the action is inadmissible;
- Declare the action admissible;

IN THE BACKGROUND :

- Reject the pleas in law and submissions to the contrary as unfounded;
- Declare the action just and well-founded and in so doing ;
- Declare illegal the decisions n° 2014-072 and n° 2014-073 of 12 December 2014 of the Conseil Régional de l'Epargne Publique et des Marchés Financiers de l'UMOA (Regional Council for Public Savings and Financial Markets of the UMOA) lifting the suspensions of the public offer to sell TOTAL- SENEGAL ;

- Annul decisions n° 2014-072 and n° 2014-073 of 12 December 2014 of the Conseil Régional de l'Épargne Publique et des Marchés Financiers de l'UMOA lifting the suspensions of the public offer to sell TOTAL-SENEGAL ;
- Instruct the Conseil Régional de l'Épargne Publique et des Marchés Financiers (CREPMF) de l'UMOA to cancel the approvals granted pursuant to Decision No. 2014-045 dated 02 September 2014 authorising the public offer for sale of 290,000 shares in TOTAL-SENEGAL on the regional financial market, followed by its listing on the stock exchange and Decision No. 2014-049 dated 18 September 2014 authorising the issue of 715,300 additional shares in TOTAL-SENEGAL SA on the regional financial market;
- Order the return of the deposit to the applicants;
- Order the Conseil Régional de l'Épargne Publique et des Marchés Financiers (CREPMF) de l'UMOA to pay all the costs and reimburse the applicants for the expenses incurred in the proceedings;

II. THE PLEAS IN LAW OF THE PARTIES

Considering that in support of their action, **the applicants begin by arguing, in their application dated 09 February 2015**, that the court of appeal has jurisdiction to hear the present case involving CREPMF , a WAMU body, in accordance with Community texts, in particular Article 2 of the Constitutive Treaty of WAEMU and Article 2 of the Convention establishing CREPMF dated 03 July 1996 ;

That they were aware of the CREPMF's decisions on 14 January 2015, as evidenced by the letter sent to the chairman of the said regulatory body, and that their appeal is being lodged within the two-month time limit, in accordance with the provisions of Article 50 of the appendix to the agreement dated 03 July 1996;

Considering that, **as regards the merits, the applicants put forward three pleas in law;**

That, firstly, there has been a breach of Article 130 of the CREPMF's General Regulations, on the basis of which the suspension measures were taken; That they consider that the suspension measures have been lifted on the basis of a guarantee provided by TOTAL OUTRE MER, whereas neither the agreement nor its appendix provides for the possibility of a suspension that can be lifted on the basis of a guarantee provided by TOTAL OUTRE MER.

On the basis of a guarantee, although the guarantee will not be used to cover the loss of the securities by future purchasers, who are different from the subscribers;

That, secondly, there has been a violation of Articles 42 to 46 of the appendix to the agreement creating the CREPMF dated 03 July 1996; That the measures lifting the suspension were taken without prior investigation and without respect for the adversarial principle; That they were never summoned to be heard or to be able to hand over evidentiary documents, even though TOTAL OUTRE MER was invited to a meeting which enabled it to make the guarantee offer; That, worse still, the decisions lifting the suspension were notified to all the protagonists, except to them alone;

That there is a breach of equality in the handling of the case by the CREPMF and a violation of Article 10 of the Universal Declaration of Human Rights and Article 7 of the African Charter on Human and Peoples' Rights;

That thirdly, there has been a breach of CREPMF Instruction No 36/2009 on public offerings of securities within the WAEMU; That the applicants claim that Total SENEGAL SA did not convene a general meeting to obtain authorisation to increase its capital by issuing an additional 715,300 shares; That, however, the general meeting remains the only competent body to authorise this additional issue, in accordance with the provisions of Articles 564 and 832 to 840 of the new revised OHADA Uniform Act on commercial companies; That, finally, they criticise CREPMF for having accepted a guarantee offered by TOTAL OUTRE- MER, whereas the additional issue was made by TOTAL SENEGAL SA, which issued new shares that did not belong to the guarantor; That this is tantamount to the absence of a guarantee;

Considering that in reply to these pleas, **in its statement of defence dated 25 February 2015, the Conseil Régional de l'Épargne Publique et du Marché Financier (CREPMF) (Regional Council for Public Savings and the Financial Market) raises the inadmissibility of the action brought by the applicants for lack of interest in bringing proceedings;** That according to the provisions of Article 15 of Regulation No. 1/96/CM on the Rules of Procedure of the WAEMU Court of Justice, *"this action is open to any natural or legal person, against any body of the Union adversely affecting it"*;

That, however, the disputed decisions of the CREPMF do not adversely affect the FALL heirs; That "That the complaint made against the contested decisions and the public offer of sale is that they would compromise the exercise of the right to reclaim the shares on which they are based.

they claim to have a right of ownership and a right to follow; That the FALL heirs are claiming a right of pre-emption over the shares concerned; That, however, the right of pre-emption consists solely of the right to acquire a property in preference to any other person, in the event of a sale; That it confers only a right of preference and does not confer either a right of ownership or a right to follow conferred by security interests and therefore a right of revendication;

That, in accordance with the provisions of Article 225 of the OHADA Uniform Act on Company Law, there can be no nullity with regard to third parties acting in good faith; That the provisions of Article 771-3 of the new Uniform Act referred to by the applicants are not applicable in this case, as they were not yet in force at the time of the private sale; That the completion of the public sale offer does not call into question and does not cause the applicants to lose the right to damages that may result for them from the cancellation of the private sale, in accordance with Article 1142 of the Civil Code; That this right will be exercised against TOTAL-SENEGAL and TOTAL OUTRE MER and not against the investors;

That, moreover, the Senegalese national court dismissed the claimants' action for suspension of the effects of the private sale and the public offers; that the interest of the FALL heirs can only be of a compensatory and pecuniary nature and is not jeopardised by the completion of the public sale offer;

Considering **that, on the merits**, CREPMF maintains that the three pleas put forward by the applicants cannot justify the annulment of the contested decisions;

That, firstly, it considers that it has neither exceeded its powers nor violated the provisions of article 130 of its general regulations; That the exercise of the power to suspend offers or subscription operations granted to it by the said article is optional and it has freedom of assessment and decision; That the suspension of offers is a provisional measure; That the CREPMF, a regulatory authority, may reverse its decision by lifting the suspension and that in the present case it was able to rule that the interests of savers were not in principle threatened and that it could lift the suspension in the interests of the market; That the censure sought by the applicants would lead to a review of expediency;

Secondly, with regard to a violation of Articles 42 to 46 of the Annex to the Convention establishing the CREPMF, the CREPMF considers that opening and conducting an investigation is a right and not an obligation; that the CREPMF has the right to summon or not to summon the defendants and witnesses; that the means, form and manner of conducting

the investigation are not dictated and that TOTAL-SENEGAL and the CREPMF are not obliged to do so.

TOTAL OUTRE MER asked to be received by the CREPMF after the decision on the public sale offer had been taken and not as part of a sanction procedure; In the present case, Article 45, invoked by the applicants, cannot be applied because the disputed decisions are not sanctions and do not form part of a disciplinary procedure;

Lastly, the applicants' plea alleging infringement of Article 5 of Instruction No 36/2009 on public offerings and of Articles 564, 832 and 840 of the new OHADA Uniform Act is based on an error of legal analysis, for two reasons:

That the first is that the complementary share issue operation does not have the effect of increasing the capital, due to the fact that, on the one hand, the shares making up this second batch of shares have already been created, exist and belong to well-identified shareholders; that, on the other hand, the capital of TOTAL SENEGAL, amounting to FCFA 3,257,770.000 FCFA, at the time of the completion of the operation, remains unchanged and that the additional issue of 715,300 just meets the requirements of article 62 of the general regulations of the BRVM which provides among the conditions for the admission of securities to listing, the distribution of at least 20% of the capital to the public, from the time of listing; That the public offer for sale of the 290,000 shares represents only 8.9% of the share capital of TOTAL SENEGAL;

That the second reason is that, as the issue of additional shares is not a capital increase, there is no need for the Extraordinary General Meeting to deliberate on the matter, nor is there any need to exercise preferential subscription rights; That the principle of the initial public offering and listing of TOTAL-SENEGAL SA was the subject of a resolution of the Combined General Meeting of 19 June 2014 with correlative amendments to the Articles of Association to adapt them to the special legal regime for Companies making public offerings, in particular the removal of clauses restricting the free transferability of shares (preferential approval clause) ;

It follows that none of the pleas raised by the applicants is legally relevant and cannot justify the annulment sought;

He therefore requests that the Court of Appeal: IN THE FORM :

Declare the heirs of the late Karim ABDOU FALL inadmissible with regard to their application; ON THE GROUND:

- Declare the heirs of the late Karim ABDOU FALL unfounded in all their claims;

As a result,

- Reject their request for the annulment of decisions no. 2014-072 and 2014-073 dated 12 December 2014 lifting the suspension of the public offer for sale (OPV) and the issue of additional shares ;
- Reject the request to order the CREPMF to cancel the visa granted pursuant to decision no. 2014-042 of 02 September 2014;
- Dismiss the application for an order for the return of the deposit to the heirs of the late Karim ABDOU FALL;
- Order them to pay the costs;

Considering that the plaintiffs have replied to these rebuttals, **in their brief dated 05 February 2015**, to indicate that the objection of inadmissibility raised by the defendant should be rejected, because they do indeed have a right of pre-emption over the shares in respect of which TOTAL OUTRE MER exercises a right in rem; That any beneficiary of the pre-emption agreement may demand its execution by exercising its right to follow; That the terms of the preference pact oblige the transferor of the shares to propose the sale first to the beneficiary, on pain of the ineffectiveness of the sale concluded with third parties and the substitution of the latter by the beneficiary; That it follows that the lack of interest to act, raised by CREPMF, is unfounded; all the more so since the shares in TOTAL SENEGAL were resold on the market, in disregard of their rights, without any formality, by the transferees, in particular the Unions des Assurances du Gabon and du Cameroun, located outside the WAEMU; that the decisions appealed against by the CREPMF are prejudicial to them and cause them definite harm;

That they deplore the disregard of the statutory clause provided for in Article 8 of the Company's Articles of Association, which instituted a right of pre-emption imposing on TOTAL SENEGAL and the shareholders the obligation to give Senegalese nationals the benefit of 35% of the share capital in the event of the sale of shares belonging to foreign shareholders; That the sanction for the violation of a right of pre-emption is nullity and not the award of damages;

Considering that **in its rejoinder and in its memorandum dated 17 June 2015**, CREPMF supplemented its arguments by asserting that the right of pre-emption entails only a right of preference or priority in favour of its holder in the event of a sale; that it does not belong to the legal category of securities and therefore does not entail a right to follow; that it is a right generating an obligation to perform; that its non-performance is therefore resolved by damages, in accordance with Article 1142 of the Civil Code;

That with regard to the exclusive reservation of shares for Senegalese nationals, Article 8.1 of the Articles of Association invoked by the applicants in support of their claim does not refer to TOTAL-OUTRE MER, the owner of the shares transferred, but rather to the Board of Directors, on which it imposes no obligation, but only gives an option; That an option may not be used;

Considering that the Court must first rule on its jurisdiction to hear the present case, and then on the admissibility of the action, before examining the pleas in law of the parties;

III. OF THE DISCUSSION

III. 1. ON THE COMPETENCE OF THE COURT

Whereas the jurisdiction of the Court requires no special comment ;

That it nevertheless seems useful to note that it is enshrined, in the present case, in the provisions of Article 8 paragraph 2 of Additional Protocol No 1 relating to the supervisory bodies of the WAEMU, which authorise the Court of Justice to hear appeals on grounds of legality or annulment open to "any natural or legal person against any act of an organ of the Union adversely affecting it";

It is true that the present case involves the CREPMF, which is a WAMU body in accordance with Community texts, in particular Article 1^{er} of the Annex to the Convention establishing the CREPMF dated 03 July 1996;

Considering that the Treaty of the West African Monetary Union (WAMU), amended on 20 January 2007, stipulates in Article 2 paragraph 2 that "The Treaty of the West African Monetary Union (WAMU) is supplemented by the Treaty of the West African Economic and Monetary Union (WAEMU);

Since 20 January 2007, the two treaties governing WAMU and WAEMU have constituted a single set of rules, and the Court of Justice remains a judicial control body common to WAMU and WAEMU;

It must be held that the court of first instance has jurisdiction to hear this case involving the CREPMF;

III. 2. S U R L A R E C E V A B I L I T Y

Considering that the **Conseil Régional de l'Épargne Publique et du Marché Financier (CREPMF) (Regional Council for Public Savings and the Financial Market)** raises the **inadmissibility of the action brought by the applicants for lack of interest in bringing proceedings**; the decisions appealed against by the CREPMF (Regional Council for Public Savings and the Financial Market) do not adversely affect the FALL heirs;

Whereas in actions for annulment, the interest in bringing proceedings corresponds to the interest in obtaining the annulment of an act undertaken, i.e. the annulment must be likely, in itself, to have legal consequences or, in other words, the action must be likely, by its result, to procure a benefit for the party who brought it;

Without prejudging the merits, it is important to note that the CREPMF recognises at the very least that the FALL heirs have a right of pre-emption over the shares affected by the decisions taken;

It is therefore clear that if the present case were to succeed, it would benefit the heirs of the late Abdou Karim FALL who brought it;

It follows that the applicants have an interest in bringing proceedings and that this interest is shown to be born, present, personal, direct, concrete, legitimate and legally protected;

That CREPMF's application should therefore be dismissed and the action brought by the heirs of the late Abdou Karim FALL should be declared admissible in form;

III. 3. S U R L E F O N D

Considering that the applicants are asking the court to declare illegal and to annul Decisions No 2014-072 and No 2014-073 of 12 December 2014 of the Conseil Régional de l'Épargne Publique et des Marchés Financiers de l'UMOA lifting the suspensions of the public offer to sell shares in TOTAL-SENEGAL;

Considering that, with regard to the first plea alleging **infringement of article 130 of the CREPMF's General Regulations** on which the suspension measures were based, it should be noted that paragraph 1^{er} of article 130 provides that: *"The Regional Council may, at any time after the issue of its approval and during the course of offers or subscription operations following capital increases, suspend them for serious reasons likely to harm the interests of*

investors, such as the disclosure of incomplete or erroneous information...";

That it is clear that the interruption of offers or subscription operations following capital increases is an optional power granted to the CREPMF, the exercise of which falls within its power to assess whether or not the conditions laid down in the aforementioned article have been met;

That this sovereign power to assess the conditions authorises it to suspend any measure of interruption that it may have taken if it considers that the conditions legally required for its continuation are no longer fulfilled;

Since neither the aforementioned article nor any other Community regulation prohibits the suspension of offers or subscription operations following capital increases, any measure taken in this regard by the CREPMF, in the case in point, does not depart from Community law;

That it is therefore appropriate to reject this first plea as inoperative;

Considering that the second plea alleging **infringement of articles 42 to 46 of the appendix to the agreement dated 03 July 1996 for failure to carry out a prior investigation**, failure to comply with the adversarial principle (failure to convene a meeting), it should be pointed out that articles 42 to 44 referred to in the first part of this plea concern the investigation that may be carried out in this matter;

Article 42 stipulates *that: "The Regional Council may, either on the basis of a complaint from a third party or on its own initiative, carry out investigations in the interests of the market or at the request of foreign stock market authorities into matters falling within its remit..."*;

It follows from these provisions that the investigation referred to by the applicants does not constitute an obligation on the part of the CREPMF but rather an option left to its sovereign discretion;

By failing to carry out the said investigation, CREPMF has not departed from Community law;

It follows that the first part of this second plea lacks relevance and must be rejected;

Considering that, with regard to Articles 45 and 46 of the second part of the second plea in law, which the applicants allege have been infringed on the grounds of failure to convene a hearing or to ensure that the parties are heard, it should be noted that the said Articles are only applicable in the *case of "financial, administrative or disciplinary sanctions"*;

It follows that Articles 45 and 46 of the Annex to the Agreement establishing the CREPMF do not apply to the case in point, which concerns the lifting of the suspension of the public offer for sale (OPV) and the issue of additional shares;

In these circumstances, the applicants have no grounds for alleging a breach of equality in the handling of the case by the CREPMF, a breach of Article 10 of the 1948 Universal Declaration of Human Rights, or a breach of Article 7 of the 1981 African Charter on Human and Peoples' Rights;

Consequently, the second part of this second plea also lacks relevance and must be rejected;

Considering that on the third and last plea alleging **infringement of Article 5 of CREPMF Instruction No 36/2009 on public offerings within WAEMU**, it is important to **note that** the applicants criticise CREPMF for having taken Decision 2014-049 approving the additional issue when Total SENEGAL SA had not convened a general meeting to obtain authorisation to proceed with a capital increase through an additional issue of 715300 shares, even in violation of the provisions of Articles 564 and 832 to 840 of the new revised OHADA Uniform Act on Commercial Companies and in disregard of the provisions of Article 8 of the Articles of Association of TOTAL-SENEGAL which are incompatible with the constitution of the shares concerned as a free float, if applicable;

They also criticise CREPMF for having accepted a guarantee offered by TOTAL OUTRE-MER, whereas the additional issue was made by TOTAL SENEGAL SA, which issued new shares that did not belong to the guarantor;

Considering that it is clear from the facts and the documents in the file that the additional issue of 715,300 shares in question in no way increased the capital of TOTAL SENEGAL by 3,257,770,000 FCFA;

That the additional issue of 715,300 shares relates to shares already held in the portfolio of Sénégal Outre-Mer and is in fact only intended to enable TOTAL-SENEGAL to comply with the provisions of Article 62 of the General Regulations of the BRVM, which requires that, in order for securities to be listed, at least 20% of the share capital must be distributed to the public as soon as the securities are floated on the stock exchange. The public offer to sell the 290,000 shares represents only 8.9% of the share capital of TOTAL SENEGAL;

Under these conditions, CREPMF is not obliged to note in advance the convening of an Extraordinary General Meeting to authorise the additional issue of 715,300 shares in order to grant its approval;

Considering that, in the present case, a resolution of the Combined General Meeting held on 19 June 2014 made amendments to the Articles of Association of TOTAL-SENEGAL in order to adapt them to the special legal regime of Companies making public offerings, with the deletion of clauses restricting the free transferability of shares or preferential approval clause, provided for in Article 8 ;

Considering, moreover, that it is not within the jurisdiction of this court, one of the organs of judicial review of the West African Economic and Monetary Union, to review compliance with the rules of the Organisation for the Harmonisation of Business Law in Africa (OHADA), which are governed by a different legal standard;

It follows from the foregoing that the plea **alleging infringement of Article 5 of CREPMF Instruction No 36/2009 on public offerings within WAEMU is also irrelevant and should be rejected;**

That it is therefore necessary to declare that Decisions No 2014-072 and No 2014-073 of 12 December 2014 of the Conseil Régional de l'Epargne Publique et des Marchés Financiers de l'UMOA (Regional Council for Public Savings and Financial Markets in the WAMU) lifting the suspension of the public offer to sell shares in TOTAL-SENEGAL are in no way illegal;

That their application for annulment and all the applicants' other consequential claims on the merits should be dismissed;

P A R C E S M O T I F S

Ruling publicly, adversely in proceedings for annulment, at first and last instance:

In form :

- Declares itself competent ;
- Declares the action admissible;

In the background:

- Notes that decisions n° 2014-072 and n° 2014-073 of 12 December 2014 of the Conseil Régional de l'Epargne Publique et des Marchés Financiers de l'UMOA waiving

suspensions of the public offer for sale of TOTAL- SENEGAL shares are in no way illegal;

- Consequently, dismisses the Heirs of the late Abdou Karim FALL of all their claims;
- Orders the Heirs of the late Abdou Karim FALL to pay the costs.

Thus made, judged and pronounced in public hearing in Ouagadougou on the days, months and year above.

And have signed :

The

PresidentThe Registrar

Salifou SAMPINBOGO

Hamidou YAMEOGO