

**JUDGME
NT NO.
02/2017
28 MARCH 2017**

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

PUBLIC HEARING OF 28 MARCH 2017

Action for payment of financial consequences

Sieur Jean Yves SINZOGAN

C/

The WAEMU Commission

The Court of Justice of the WAEMU, meeting in ordinary public session on the twenty-eighth of March two thousand and seventeen, in which were seated :

Madame Joséphine Suzanne EBAH TOURE,
President ;

Mr Salifou SAMPINBOGO, Mr Mahawa Sémou DIOUF, Mr Daniel Amagoin TESSOUGUE, Mr Augusto MENDES, Judges ;

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

with the assistance of Maître Hamidou YAMEOGO,
Deputy Registrar ;

has rendered the following judgment:

BETWEEN :

Sieur Jean Yves SINZOGAN acting through his counsel, Maître Pascaline SOBGHO, Lawyer registered at the Bar of Burkina Faso,

**Applicant, on the one
hand ;**

AND

The UEMOA Commission, represented by Mr Ibrahima SAMBE, Agent, and by Mr Harouna SAWADOGO, Attorney at Law, member of the Burkina Faso Bar,

**Defendant, on the other
hand ;**

Composition of the Court :

- Mrs Joséphine S. EBAH TOURE, Chairman
- Mr Salifou SAMPINBOGO, Judge
- Mr Mahawa S. DIOUF, Judge, Rapporteur
- Mr Daniel A. TESSOUGUE, Judge
- Mr Augusto MENDES, Judge

- Ms Victoire Eliane ALLAGBADA J.,
Advocate General

- Mr Hamidou YAMEOGO, Registrar

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;

HAVING REGARD TO 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 Order N°09/2017/CJ of 02 February 2017 on the composition of the plenary session to sit in ordinary public hearing on 07 March 2017;

HAVING REGARD TO the summonses of the parties ;

HAVING REGARD TO the request by Sieur Jean Yves SINZOGAN for payment of financial consequences, registered at the court registry on 05 May 2012, then regularised on 28 June 2012;

HEARD the Judge-Rapporteur in his report;

HAVING heard the oral observations of counsel for Sieur Jean Yves SINZOGAN;

HAVING heard the oral observations of the Agent and the Council of the WAEMU Commission;

HAVING heard the Opinion of the Advocate General;

Having deliberated in accordance with Community law :

I- FACTS AND PROCEDURE

The file shows the following facts:

Mr Jean Yves SINZOGAN, acting through his counsel, Maître Pascaline Sobgho, lodged an application with the WAEMU Court of Justice, registered at the Registry on 05 May 2012 and subsequently regularised on 28 June 2012, against the WAEMU Commission for payment of a financial penalty.

In support of his action, the applicant set out the following:

Initially, he was an employee of the Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO), recruited on 15 July 1997 as a senior manager with the rank of deputy director under an open-ended contract notified by confidential letter no. 558/97.

On 15 May 2007 he was seconded by his employer to the WAEMU Commission for a period of 5 years from 1^{er} June 2007.

Article 2 of Decision No 152.05.2007 of the Governor of the BCEAO specifies that during the period of his secondment, "...Mr SINZOGAN's remuneration and social benefits shall be paid by the BCEAO on behalf of the Commission, which shall reimburse the Bank on an annual basis";

It continues "...the social benefits of the person concerned are paid directly by the BCEAO and are reimbursed by the Commission on presentation of a statement relating thereto".

Jean Yves SINZOGAN pointed out that despite the precision of the aforementioned terms, the WAEMU Commission, to which he had brought his claims on several occasions, had not been willing to take his legitimate rights into account.

By way of illustration, he pointed out that after being appointed Director of the Cabinet of the Commissioner in charge of the Department of Business Development, Telecommunications and Energy by decision no. 0306/2008/PC/UEMOA of 21 October 2008, he continued to receive a monthly salary of one million six hundred and twenty-seven thousand eight hundred and twenty-five (1,627,825) CFA francs, a much lower amount than that paid to his colleagues in the same position.

According to him, the cumulative salary differential is one hundred and six million seven hundred and forty-seven thousand eight hundred and seventy-five (106,747,875) CFA francs.

After payment of the deposit set by the Court, as attested by the receipt on file, Mr SINZOGAN's application was served on the WAEMU Commission by letter from the Registrar dated 30 June 2012.

The Commission, after informing that it had appointed Maître SAWADOGO lawyer registered at the bar of Burkina Faso and Agent Eugène KPOTA to represent it, filed a brief on 22 October 2012.

The claimant filed reply submissions on 26 November 2012.

Following the rejoinder submitted by the Commission to the Registry on 1^{er} February 2013, the written proceedings were declared closed by order of the President of the Court dated 04 November 2013, followed by the appointment of a rapporteur by Presidential order of 06 November 2013.

This last act will be rescinded and replaced by the Presidential Order of 07 September 2016 appointing a new Judge-Rapporteur.

II- PLEAS IN LAW AND CLAIMS OF THE PARTIES

1. THE APPLICANT

A. In form

The applicant considers that his action is admissible because he has brought an action before the Court of Justice of the European Communities in the form and within the time limits laid down by Community law, in accordance with the following provisions:

- Article 15(4) of Regulation 01/96 on the Rules of Procedure, concerning the jurisdiction of the WAEMU Court of Justice to hear its action;
- article 140 of regulation 07/2010/CM/UEMOA of 1^{er} October 2010 on the UEMOA staff regulations relating to referral to the Joint Consultative Committee as a prerequisite for certain types of appeal.

He considered that the defendant was mistaken in maintaining that he had brought his action after the statutory time limits had expired, at a time when the dispute had not yet arisen.

B. At the back

On the merits, Mr SINZOGAN pointed out that the WAEMU Commission still owed him a monthly salary supplement of 2,372,175 francs for the entire period during which he had been Director of Cabinet. He pointed out that at the same time, civil servants of his rank working at the WAEMU Commission were receiving a salary of four million francs per month, which appeared to be a clear violation of his right to fair treatment.

This situation may have caused him a loss of earnings for which he sought compensation in the sum of FRF 106,747,875.

He also claims to have suffered significant losses estimated at 250,000,000 francs in damages, in addition to the legal costs he incurred.

2. THE DEFENDANT

A. In form

The defendant, the WAEMU Commission, raised in limine litis the inadmissibility of Mr SINZOGAN's action.

It explained in its pleadings that Mr SINZOGAN had submitted an initial application to the Chairman of the Commission and received an explicit decision from the latter rejecting his claims on 12 April.

Following this response, he turned to the BCEAO by sending a letter to the Governor on 14 October 2011.

Since the banking authority had not replied to his letter, he finally decided to refer the matter to the Joint Consultative Committee on 08 January 2012.

The UEMOA Commission therefore suggests that the deadline for referring a case to the Committee be set either from 12 April 2011 or from 14 October 2011, since on the latter date, Mr SINZOGAN was supposed to be aware of the existence of the decision of the President of the Commission against him.

B. At the back

The defendant invariably emphasised in its pleadings that the plaintiff's action was misdirected against it and that decisions no. 152/05/2007 of 15/05/2007 of the Governor of the BCEAO and no. 0306/2008/P COM/UEMOA were intended to govern their relationship with regard to the payment of its financial benefits.

It therefore invites the Court to refer Mr SINZOGAN back to court for further proceedings.

III- DISCUSSION

A- FORM

1. Jurisdiction

The parties appear to accept the obviousness of the Court's jurisdiction to hear the present action since none of them has made any submissions on this point.

However, as jurisdiction is a matter of public policy, the Court must of its own motion refer to the rules on which it is based, notwithstanding the acquiescence of the parties.

A reminder of certain provisions of the law will suffice to dispel this argument, in particular:

- Article 8 of Additional Protocol No. 1 on the supervisory bodies of the WAEMU: "...The Court of Justice shall assess the legality of regulations, directives and decisions.
any natural or legal person against an act of an organ of the Union adversely affecting it...".

- Article 27 of Additional Act No. 10/96 on the Statute of the WAEMU Court of Justice reads as follows: "The Court shall have jurisdiction in particular to hear actions for annulment of regulations, directives and decisions of WAEMU bodies as provided for in Articles 8 et seq. of Additional Protocol No. 1".

The decision now referred to the Court for censure is unquestionably a derived Community rule.

Its source is a Community body, in this case the WAEMU Commission acting through its President.

This is the type of dispute involving the Community civil service that falls exclusively within the jurisdiction of the Court of Justice, to which the law refers when it speaks of "any dispute between the Bodies of the Union and their servants under the conditions laid down in the Staff Regulations" or the case law when it refers to "any dispute between the Bodies of the Union and their servants under the conditions laid down in the Staff Regulations".

"the existence of an employment relationship between the employee and the body.

2. Admissibility

Mr SINZOGAN's written application contains all the information prescribed by the Additional Act establishing the Rules of Procedure of the WAEMU Court of Justice.

The bond set was duly paid by the applicant.

It is common ground that he has the capacity to sue and an interest in suing, since the decision taken is supposed to adversely affect his salary benefits.

The time limit for lodging an appeal with the Court is determined by reference to the rules laid down in the Staff Regulations to which the employee is subject.

On this point, no dispute has been raised in the various pleadings in the case file as to the fact that Mr SINZOGAN is a BCEAO executive who was seconded by his employer to the WAEMU Commission for a period of 5 years.

As such, the rules of the BCEAO Staff Regulations were applicable to him as regards the definition of his rights and obligations, as well as actions to protect them.

It should be noted that the BCEAO Staff Regulations do not set up a Joint Consultative Committee, the referral of which within a specific timeframe would be a prerequisite and a condition for the validity of an appeal to the Court of Appeal.

It should therefore be noted that the formalities and procedural deadlines set out in Regulation No. 04/2010/WAEMU Staff Regulations are not enforceable against the claimant.

Consequently, the action brought by Mr Jean-Yves SINZOGAN should be declared admissible in form.

3. Background

Agreements signed between BCEAO and the WAEMU Commission, which were supposed to govern the salary system of Mr SINZOGAN, were the subject of decisions No 152/05/2007 of 15/05/2007 of the Governor of BCEAO and No 0306/2008/PCOM/UEMOA.

Until the dispute arose, the said agreements had not been terminated by any of the parties.

Also in the course of the proceedings, no dispute arose as to the validity of the clauses contained therein.

Article 2 of Decision No 152/05/2007 of the Governor of BCEAO stipulates that: "... Mr SINZOGAN's remuneration and social benefits shall be paid by BCEAO on behalf of the Commission, which shall reimburse the Bank on an annual basis", then "... the social benefits of the person concerned shall be paid directly by BCEAO and shall be reimbursed by the Commission on presentation of a statement relating thereto".

The clarity of the indications provided by these agreements speaks for itself, since nowhere was it stipulated that the WAEMU Commission had to pay the claimant's remuneration and social benefits directly.

In view of the foregoing, Jean-Yves SINZOGAN's claims against the Commission should be dismissed.

IV- ON EXPENSES

It follows from the provisions of Article 60 of the Court's Rules of Procedure that any unsuccessful party shall be ordered to pay the costs.

However, under the terms of Article 61 of the aforementioned Rules, in disputes between the Union and its agents, the costs incurred by the Bodies of the Union shall be borne by them, without prejudice to the provisions of paragraph 5 of Article 60 of the aforementioned Rules.

It is therefore appropriate to order the applicant to pay the costs and to declare that the costs incurred by the WAEMU Commission are to be borne by it.

For these reasons :

Ruling publicly and adversarially in matters of Community public service at first and last instance;

In form :

- **Declares itself competent ;**
- **Declares SINZOGAN's action admissible;**

In the background:

- Dismisses all the claims of Jean Yves SINZOGAN;
- Orders the costs to be borne by the applicant in accordance with the provisions of Article 60 paragraph 2 of the Court's Rules of Procedure.
- Resolves that the costs incurred by the WAEMU Commission shall be borne by it in accordance with the provisions of Article 61 of the Rules of Procedure.

Thus made, judged and pronounced in public hearing in Ouagadougou on the day, month and year above.

And have signed :

The

PresidentThe Registrar

Joséphine Suzanne EBAH TOURE

Hamidou YAMEOGO