

**JUDGME
NT NO.
03/2017
28 MARCH 2017**

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

PUBLIC HEARING OF 28 MARCH 2017

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 Sosthène A.M. ZONGO Lawyer
registered at the Bar of Burkina Faso,

**Applicant, on the one
hand ;**

AND

The Banque Centrale des Etats de l'Afrique de
l'Ouest (BCEAO), represented by: Maître Mame Adama
GUEYE, Avocats associés inscrit au Barreau du Sénégal;
Maître Benoit SAWADOGO, Avocat inscrit au Barreau
du Burkina Faso,

**Defendant, on the other
hand ;**

Action for annulment of a dismissal decision

Sieur Jean Yves SINZOGAN

C/

The Central Bank of West African States
(BCEAO)

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 application by Mr Jean Yves SINZOGAN for the annulment of a dismissal measure taken against him dated 09 November 2011, registered at the clerk's office on the same day under no. 11R005.bis ;

HEARD the Judge-Rapporteur in his report;

HEARD counsel for Sieur Jean Yves SINZOGAN in his oral observations;

HAVING HEARD the Councils of the Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO) in their oral observations;

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:

Jean Yves SINZOGAN acting through his counsel, Maître Sosthène A.M ZONGO Lawyer, member of the Burkina Faso Bar, filed an application with the WAEMU Court of Justice on 09 November 2011, registered at the Registry on the same day under no. 11R005.bis, against the Central Bank of West African States (BCEAO), seeking the annulment of a dismissal measure taken against him.

In support of his action, he gave the following details:

He was recruited on 15 July 1997 by BCEAO as a senior manager with the rank of deputy director under a permanent contract notified by confidential letter no. 558/97.

Following a request approved by the employer, he was seconded to the WAEMU Commission for a period of 5 years from 1^{er} June 2007.

During his time at the Commission, Jean Yves SINZOGAN decided to stand as a candidate in the presidential elections in his home country, Benin. His application was officially accepted by the Constitutional Court of Benin in a ruling handed down on 08 February 2011.

Mr SINZOGAN had previously requested and obtained from the WAEMU Commission the end of his secondment, which was confirmed by a decision dated 28 January 2011.

On 21 February 2011, he applied to the Governor of the BCEAO for the same measure, as well as for a leave of absence for a period to be determined by mutual agreement.

In response to the latter request, BCEAO took decision no. 052-02 of 23 February 2011, by which it terminated his secondment with effect from 28 February 2011 and then reinstated him in its staff and assigned him to its head office in Dakar, Senegal.

At the same time, in a letter dated 23 February 2011, BCEAO's Director of Human Resources gave him formal notice to return to his post, failing which he would be penalised, and drew his attention to the fact that his decision to stand for election violated his statutory and ethical obligations.

In compliance with the authority's injunction, he travelled to Dakar to his place of work to take up his duties on 3 March 2011.

For reasons he would later explain, Mr SINZOGAN was absent from work as soon as he took up his duties, without seeking prior authorisation from his superiors.

As a result of this behaviour, he was brought before the Bank's Disciplinary Board, which ordered the suspension of his employment contract for 6 months with total deprivation of remuneration.

Despite his acquiescence to the disciplinary sanction, the Director of Human Resources appealed the decision to the Governor of BCEAO who, in confidential letter no. 2510, dismissed him for serious misconduct.

After an unsuccessful appeal, Jean Yves SINZOGAN finally undertook to have the sanction annulled by the Court of Appeal; this was formalised by a request from his counsel filed with the Court Registry, registered on 9 November 2011 under number 11 R/005 bis.

A few exchanges of correspondence took place between the registry and the applicant with a view to regularising the procedure.

The amount of the deposit set by the Court was paid, as evidenced by the receipt dated 10 July 2012 on file.

SINZOGAN's application was notified to BCEAO pursuant to registry document no. 013/2012 of 24 January 2012.

BCEAO filed its statement of defence on 20 February 2012, followed by the claimant's reply on 10 April 2012.

A rejoinder filed by BCEAO on 21 May 2012 completed the written proceedings, which were closed by order of the President of the Court No. 014/2012/CJ of 22 June 2012, followed by the appointment of a rapporteur.

Order no. 006/2016/CJ of 07 September 2016 appointed us to replace the latter.

II. PLEAS IN LAW AND CLAIMS OF THE PARTIES

1. THE APPLICANT

A. In form

1) Jurisdiction

In his written submissions, the plaintiff's lawyer asserted the Court's jurisdiction to hear his action. He referred to case law and the law to support his argument.

Case law: In August 1996, the BCEAO asked the Court of Justice to rule on a request for an opinion on the draft single licence for banks and financial institutions.

The appellant pointed out that, in so doing, BCEAO had behaved like a WAEMU body subject to the jurisdiction of its Court of Justice.

The law: Article 15 paragraph 4 of Regulation N°01/96/CM on the Rules of Procedure expressly states that "the Court shall hear any dispute between the organs of the Union and their agents".

2) **Admissibility**

Mr SINZOGAN maintained that his application was admissible because it had taken the required form. He pointed out that it was lodged on 9 November 2011 after notification of the decision rejecting his informal appeal on 24 September 2011, noting in passing that the BCEAO staff regulations did not require him to make a prior appeal to the Joint Consultative Committee.

B. At the back

According to the applicant, the dismissal decision of 26 July 2011 must be rejected on the following grounds:

- The texts invoked (BCEAO Staff Regulations and Code of Ethics) are unenforceable against him as he was not notified of them.
- There was a manifest error of assessment of the facts on the part of BCEAO, in that:
 - On the one hand, the prohibition on political activity is not an absolute rule, since it is possible to grant an employee leave of absence to carry out an elective or public mandate (article 2 of Regulation R16/PE-PAT).
 - On the other hand, BCEAO did not suffer any prejudice as a result of his candidacy, which had the effect of removing any seriousness from his act.
- He had not abandoned his post because his absence was the result of a situation of force majeure brought about by his employer. His employer had not given him the time or the means to organise his move.

2. **THE DEFENDANT**

A. In form

1) **Jurisdiction**

In its pleadings, BCEAO argued that the WAEMU Court of Justice lacked jurisdiction to hear the claimant's action, relying on three types of provision:

The WAMU and WAEMU Treaties, Additional Protocol No. 1 and the Court's Rules of Procedure.

According to her, articles 5 of the WAMU Treaty and 16 of the WAEMU Treaty and its own statutes have made the BCEAO a specialised institution that is not subject to the jurisdiction of the Court of Justice. Like the BOAD, its essential mission is to provide

Its articles of association make it an international public institution with legal personality, financial autonomy and the power to acquire, dispose of and deal in assets.

The provisions of articles 8 et seq. of Additional Protocol No. 1 relating to the supervisory bodies of the WAEMU, reproduced in Rules of Procedure No. 1 of 01/96/CM/UEMOA (art. 14), assign to the Court of Justice the exclusive task of "ensuring compliance with the law as regards the interpretation and application of the WAEMU Treaty and the acts adopted in implementation thereof". The BCEAO therefore considered that, as it was not an organ of the WAEMU, the Court could not apply its staff regulations in a dispute between it and its staff member.

2) Admissibility

BCEAO argued that the claimant's action was inadmissible on the grounds that it was time-barred and that it violated a formalism enshrined in the case law of the WAEMU Court of Justice.

It explains that Mr SINZOGAN initiated his action on 9 November 2011 after receiving notification of the Governor's decision to dismiss him on 26 July 2011.

Moreover, the letter he sent to the Governor does not constitute an application for an injunction, since the claims made therein are not identical to the pleas in law set out in his application initiating the proceedings. However, the requirement of parallelism between the two acts was affirmed by the Community judicature in the *Kossi Mawili Agokla v. WAEMU Commission* judgment of 18 December 2001.

As the absence of an informal appeal can be analysed as a procedural defect due to the failure to comply with a substantial formality, the applicant's action should be declared inadmissible.

This would even be time-barred if the time limits are calculated from the date of notification of the dismissal (26 July 2011), taking into account the non-existence of an informal appeal.

B. Au Fond

BCEAO argued that gross negligence was present in this case.

She pointed out that her agent had deliberately taken a position of defiance towards her by absenting himself from his workstation without prior authorisation, for a period of leave that he had ruthlessly granted himself by writing a simple letter that he left with the Director of Human Resources.

In her view, SINZOGAN had used a false alibi, citing an illusory force majeure, even though he intended to continue his political activities. The period of leave was to coincide with the organisation of the presidential elections in Benin.

In the light of these factors, BCEAO considered that the pleas put forward by the applicant were unfounded, in particular :

- Applicable legislation cannot be enforced for lack of notification.
- This plea is irrelevant because the said formality was complied with as soon as the employment contract was signed, when the legislation applicable to the staff was put online.

- Nor can a manifest error of assessment of the facts succeed in that :
 - On the one hand, standing as a candidate in a presidential election constitutes a breach of the professional obligations of loyalty, discretion and reserve within the meaning of the law.
 - On the other hand, the continuation of the offending activity despite the warning given by the authorities constitutes a blatant act of insubordination.

III. DISCUSSION

1. Jurisdiction

The legal and jurisprudential arguments provided by the appellant were conclusive as to the jurisdiction of the Court of Justice in this case.

The UMOA and UEMOA Treaties created a single Union called UEMOA with an institutional system comprising bodies including BCEAO and BOAD, which were given the status of specialised institutions in view of their specific functional characteristics. However, despite these characteristics and the autonomy granted to them (art 41 WAEMU Treaty), they nonetheless participate in "achieving the objectives of the Union". The conduct of their monetary function in no way impedes their status as bodies governed by the provisions of Additional Protocol No. 1 relating to the supervisory bodies of the WAEMU, Additional Act 10/96 on the Statutes of the Court of Justice of the WAEMU and Regulation 01/96/CM on the Rules of Procedure of the Court of Justice of the WAEMU.

Under these provisions, the Court of Justice "shall rule on any dispute between the bodies of the Union and their servants under the conditions laid down in the Staff Regulations".

This point of view was supported by Opinion No. 1/2011 of 30 October 2011 of the WAEMU Court of Justice, which recognised its jurisdiction to rule on disputes between BOAD and its agents. A second ruling n°02 of 19 December 2012 Sidoni and Léon Kougbenou C / BCEAO, abounded in the same direction.

It follows from the foregoing that the WAEMU Court of Justice has exclusive jurisdiction to hear Mr SINZOGAN's action.

2. Admissibility

The applicant applied to the Court by way of a written application from his counsel dated 08 November 2011, containing all the particulars required by law to be admissible in form.

Registered at the court registry on 09 November 2011, it seeks the annulment of the decision of the Governor of the BCEAO dated 26 July 2011, notified on the same day, which ordered his dismissal.

The applicant lodged an informal appeal with the Governor of the BCEAO, who notified him of the decision to reject his application on 24 September 2011.

Contrary to the defendant's position, it should be noted that Jean Yves SINZOGAN is covered by the special status of BCEAO staff, which does not provide in its procedural rules for prior referral to a Joint Consultative Committee before a dispute is brought before the courts.

The inadmissibility of this plea cannot therefore be upheld.

The Governor of the BCEAO, for his part, acted in the capacity of the body he is supposed to represent and with which agent SINZOGAN has an employment relationship.

In this case, the issue is whether the decision of the body in question to dismiss its member of staff was well-founded.

These details make it possible to identify the nature of Mr SINZOGAN's action as a Community civil service dispute. This type of dispute is not governed by the provisions of Article 8 of the Additional Protocol on the supervisory bodies of the WAEMU.

Consequently, the claimant cannot be held to have disregarded the time limits of an action for assessment of legality which is not the seat of his legal action.

Admissibility, on the other hand, should be assessed in the light of the provisions of Article 16 of Additional Protocol No. 1 relating to the supervisory bodies of the WAEMU, Article 27-5 of Additional Act No. 10/96 on the Statute of the Court of Justice, and the Special Staff Regulations of the BCEAO, which alone are applicable in this case.

On analysis, it is remarkable to note that the Special Statute does not provide for a time limit for bringing this type of action, which is logical since the BCEAO has never considered the Court's jurisdiction.

The legal vacuum thus created does not, however, allow us to conceive of the exercise of such an action without a limit of a prescriptive nature, above all because of the imperative of fair treatment.

To make up for this, we need to use the standards established by case law to achieve balanced justice, such as the notion of "reasonable time".

Analysed from this angle, there is reason to say that Mr SINZOGAN's action is admissible because it was initiated in a time interval relatively close to the notification of the disputed measure.

3. Background

3.1 On non-enforceability

To exonerate himself, Mr SINZOGAN pleaded the inopposability of the texts invoked by BCEAO to justify his dismissal. He stated that he had not been notified of them.

BCEAO, for its part, presented the following documents to contradict him:

- Confidential letter no. 617/96 of 19 August 1996 appointing Mr SINZOGAN for an indefinite period with a probationary period, specifying that his career would be governed by the management staff regulations and by the implementing regulations;
- Confidential letter no. 558/97 of September 1997 definitively integrating the above-mentioned person and containing the same references;
- Decision No 152-05-2007 concerning his secondment to the WAEMU Commission expressly refers to Article 46 of the BCEAO Statutes and Article 46 of the BCEAO Staff Regulations.

As SINZOGAN has benefited from these measures, which have marked the course of his career, it is inappropriate to plead failure to notify.

More decisively, the texts in question are regulatory in nature and BCEAO has maintained, without being denied, that they are regularly put on line for publication.

3.2 Abandonment of post

BCEAO filed a bailiff's report showing that agent SINZOGAN was absent from work from 10 March 2011 to the end of May 2011 without authorisation.

The latter admitted the facts.

However, he tried to justify them by accusing BCEAO of having put him in a situation of force majeure.

Force majeure cannot be presumed. It is up to the person invoking it to show how the alleged event was unforeseeable and irresistible.

Furthermore, SINZOGAN has not offered to justify the excess of his self-proclaimed leave which was extended beyond ten days.

Abandonment of post is therefore established.

3.3 Manifest error of assessment and insubordination

The Code of Ethics and Deontology is a body of binding rules appended to the BCEAO Staff Regulations, intended to supplement the conditions of employment of BCEAO staff.

of employment. It is integrated into the Staff Regulations and all the regulations adopted for their application.

Under the terms of article 1 paragraph 3 of the aforementioned code, "employees on secondment or availability" are included in its scope of application.

The professional obligations of loyalty, discretion and reserve that bind agents are clearly expressed in the provisions of articles 10 and 11.

Any failure to comply with these rules shall render the offender liable to the penalties provided for in the Staff Regulations (art. 15).

Jean Yves SINZOGAN has undeniably engaged in political activity. A ruling by Benin's Constitutional Court confirmed his candidacy in the highly political presidential election.

For the purposes of his campaign, he had opened a website which served as a medium for the public expression of his opinions.

These facts are clearly at odds with the rules of his status.

Worse still, they have continued despite a solemn warning from the BCEAO.

This means that Mr SINZOGAN had voluntarily put himself in a position of reckless defiance towards his employer.

This is blatant insubordination and an act of disloyalty with regard to the commitments set out in his employment contract.

His public outbursts for the purposes of political propaganda must have come as a surprise, if not a shock, to informed opinion, which is fully aware of the requirement for impartiality, discretion and reserve that applies to all BCEAO staff.

It was therefore wrong to consider that BCEAO had not suffered any damage, even though its actions had undoubtedly had a disastrous effect in terms of image.

It follows from the foregoing that Jean Yves SINZOGAN's dismissal for gross misconduct is fully justified.

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.

Mr Jean Yves SINZOGAN should therefore be ordered to pay the costs and the expenses incurred by BCEAO should be borne by him.

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 Jean Yves SINZOGAN's claims as unfounded;**
- **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;**
- **That the costs incurred by BCEAO shall be borne by it pursuant to 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