

TASSEMBEDO T. Ludovic

against

Regional Stock Exchange (BRVM)

"Community civil service law - Action for damages - Jurisdiction of the WAEMU Court of Justice - Non-compliance with the provisions of the Staff Regulations - Inadmissibility".

Summary of the judgment

1. Jurisdiction of the WAEMU Court of Justice

With regard to the BRVM's staff regulations, the judge of the action is also the judge of the exception.

It follows from the provisions of the BRVM's Articles of Association and the Regulations implementing the said Articles of Association that the WAEMU Court of Justice has jurisdiction to settle any dispute between the BRVM and one or more of its employees concerning the application of the Articles of Association and job security.

2. Compliance with the provisions of the Staff Regulations is a matter of public policy insofar as it relates to the administrative procedure, which constitutes a substantial formality.

Consequently, an appeal that does not meet the statutory prerequisites is inadmissible.

REPORT BY THE JUDGE- RAPPORTEUR

By application dated 30 July 2002, registered at the Registry of the WAEMU Court of Justice on 02 August 2002 under number 02/2002, Mr TASSEMBEDO T. Ludovic, a computer engineer, formerly in charge of networks in the Information Technology Department of the Bourse Régionale des Valeurs Mobilières (BRVM), through his counsel Maître Mamadou SAVADOGO, Avocat à la Cour de Ouagadougou, Burkina Faso, brought an action for damages seeking an order that BRVM pay the sum of 43,550,496 FCFA by way of contractual duties and compensation for the loss suffered. He also requested that BRVM issue him with an employment certificate.

By reply dated 9 December 2002, Mr TASSEMBEDO amended the quantum of his initial claim and now claims the total sum of 37,674,486 FCFA.

I. THE FACTS

The facts of the case, as set out by the applicant and not contested by the defendant, are as follows:

He was recruited by BRVM on 15 September 1997 and appointed head of the IT department, Mr TASSEMBEDO maintained that he had performed his duties without receiving the full remuneration agreed between him and his employer. Following numerous complaints, he was barred from entering his office and the BRVM premises on 30 October 2000. After this state of affairs was established by a bailiff, he was reinstated in his job by his employer, who then notified him of a two-month lay-off with effect from 3 November 2000. On 7 November 2000, he unsuccessfully lodged an administrative appeal with his Managing Director.

On 22 December 2000, the latter imposed a new sanction, a reprimand for insubordination, in relation to the same facts.

Mr TASSEMBEDO lodged another administrative appeal with his line manager, to no avail.

When the first sanction expired, he returned to work on 2 January 2001, but the electronic badge allowing him access to the computer room was withdrawn. On 5 February 2001, he received a new note from his department head specifying additional restrictive measures taken against him.

Still according to the claimant, on 30 March 2001 he again contacted the Director General, who, in return, sent him a letter setting a three-month probationary period due to expire on 25 April 2001, which also contained "insulting" terms.

On expiry of the probationary period, Mr TASSEMBEDO wrote to his head of department to find out what he should do. In response, he was told that not only were the restrictive measures maintained, but that disciplinary proceedings had also been initiated against him.

The applicant pointed out that, in the face of this relentless harassment, which had resulted in two disciplinary sanctions without a disciplinary board, and in measures designed to make the working atmosphere unbearable, an exchange of more than fifteen letters in one year, all aimed at complicating his administrative situation, he ended up resigning from BRVM by letter dated 23 May 2001.

He added that on reading the facts and the report of the Disciplinary Board, it appears that a certain number of behaviours, measures and attitudes had the effect of making his working conditions impossible and thus led him to resign.

He considered that there had been unfair dismissal in disguise. According to established case law, the person responsible for the termination in such circumstances is the employer, not the employee, who has merely yielded to pressure, since the employer, not the employee, had the will to terminate the contract.

He further states that since the termination occurred without any justifiable fault on his part, he is entitled to claim not only the sum of 24,554,034 FCFA in damages, but also the sums of :

- FCFA 5,456,452 in severance pay,
- CFAF 7,200,000 in liability compensation,
- FCFA 6,340,000 for additional subsistence costs,

a total of 43,550,486 FCFA.

The appeal was served on the Director General of the Bourse Régionale des Valeurs Mobilières by letter from the Registrar of the Court dated 21 August 2002.

By letter dated 30 September 2002, the Director General of BRVM informed the Court of the appointment of his agent in the person of Mr Léopold OUEDRAOGO, Head of BRVM's National Office for Burkina Faso.

By letter dated 4 November 2002, Mr Harouna SAWADOGO informed the Court of his appointment to defend the interests of BRVM.

On the report of the Judge-Rapporteur, the Advocate General having been heard, the Court decided to open the oral proceedings without prior measures of inquiry.

However, it invited the applicant to produce the BRVM staff regulations and copies of the court decisions cited in his application dated 30 July 2002.

II. SUBMISSIONS OF THE PARTIES

Mr TASSEMBEDO claims that the Court should:

*** in the form**

- reject the pleas of lack of jurisdiction and inadmissibility raised by BRVM ;
 - as a result :
 - 1) declare itself competent ;
 - 2) declare the applicant's action admissible;

*** at the back**

- declare that the plaintiff's resignation was provoked and obtained under duress, and is in fact a dismissal;
- declare that the dismissal is unfair;
- order the BRVM to pay the plaintiff the total sum of 37,674,486 FCFA;
- order it to pay the costs, which will be awarded to Maître Mamadou SAVADOGO on a pro rata basis.

BRVM claims that the Court should:

*** in limine litis**

to the principal

declare that it has no jurisdiction to examine the action brought by Mr TASSEMBEDO T. Ludovic on the basis of Article 27 of Supplementary Act No. 10/96 on the Statute of the WAEMU Court of Justice and Article 15 of Regulation No. 01/96/CM on the Rules of Procedure of the WAEMU Court of Justice;

Alternatively

Declare and rule that the action brought on 2 August 2002 by Mr TASSEMBEDO T. Ludovic was made in breach of Article 2401 of the Staff Regulations and Article 6105 of the Implementing Rules of the Staff Regulations in that Mr TASSEMBEDO did not have recourse to an arbitration committee as prescribed before any referral to the Court;

accordingly

declare the said action
inadmissible;

*** in the alternative, on the merits**

- declare the action inadmissible for lack of legal basis;
- reject the pleas put forward by the applicant;

as a result :

- Dismiss all of Mr TASSEMBEDO T. Ludovic of all his unfounded claims;
- order it to pay all the costs.

III. PLEAS AND ARGUMENTS OF THE PARTIES

1. Jurisdiction

A. Pleas in law and arguments of BRVM

By memorandum dated 5 November 2002, the BRVM, which concludes that the Court of Justice has no jurisdiction to hear the action brought by Mr TASSEMBEDO T. Ludovic, points out that none of the texts on which the applicant bases his claim for compensation gives the WAEMU Court of Justice jurisdiction to settle disputes arising from the termination of the contract between the parties. It further argues that an action for damages may only be brought against the organs of the Union.

It considers that, in any event, the Court's jurisdiction should not be determined by reference to BRVM texts but on the basis of Additional Protocol No. 10/96 on the Statutes of the WAEMU Court of Justice and Regulation No. 01/96/CM on the Rules of Procedure of the WAEMU Court of Justice.

It also states that Mr TASSEMBEDO's application does not fall within any of the Court's fields of jurisdiction.

B. Pleas in law and arguments of the applicant

In a reply dated 9 December 2002, the applicant, acting through his counsel, sought dismissal of the plea of lack of jurisdiction, pointing out that Title 6 of the Staff Regulations, which contains Article 6105, is entitled "*Security of Employment*". He added that there was no need to go back over Article 2401 of the Staff Regulations insofar as the Implementing Rules were merely the practical definition of the Staff Regulations, which they "*cannot contradict or amend (in) any provision*". He maintains that it is clear from Chapter 1 of Title 6 of the Implementing Regulations that job security within BRVM is ultimately ensured by the court of first instance. Still according to the applicant, he fails to see how the court responsible for reviewing the security of his job could not assess the circumstances in which he lost it.

In the applicant's view, Article 6101 of the Staff Regulations relating to job security does deal with dismissal.

The applicant points out that the BRVM has not been recognised by any court other than the Cour de céans to rule on disputes that may arise between it and its agents.

It should be noted that, having itself told its agents to bring any disputes they might have against it before the court, BRVM is now arguing that the Court's jurisdiction cannot be assessed in relation to BRVM texts.

It points out that the question raised is whether the definition of the jurisdiction of the WAEMU Court of Justice is limitative and exclusive of any conventional attribution of jurisdiction.

It considers that no provision of the Statutes or of the Rules of Procedure of the Court stipulates exclusivity or the restrictive nature of the field of jurisdiction of the Court, which is not a court of exception but a court of ordinary law with a supranational vocation. It specifies that as long as a choice of court clause conferring jurisdiction on the Court is not contrary to its supranational role or to public policy, the Court cannot be required to decline jurisdiction, especially not at the request of the party that conferred jurisdiction on it.

C. BRVM's response to the applicant's arguments

In a rejoinder dated 9 January 2003, BRVM argued that the applicant had misinterpreted the provisions of Article 2401 of the Staff Regulations and Article 6105 of the Implementing Rules. It maintains that these provisions govern employment relations within the BRVM with the principal objective of avoiding as far as possible the breakdown of employment relations.

In this respect, it points out that under the terms of Article 2401 of the Staff Regulations, any dispute between it and one of its employees relating to the application of the Staff Regulations is subject to arbitration by a three-member committee.

It specifies that this is in fact a prior recourse to conciliation between the parties. It is only if this procedure fails that either party may bring the dispute before the WAEMU Court of Justice. However, it notes that the applicant never resorted to the arbitration committee before resigning.

BRVM also noted that Mr TASSEMBEDO T. Ludovic has resigned and is therefore no longer a BRVM agent. It added that none of the texts invoked by Mr TASSEMBEDO in support of his claim conferred jurisdiction on the WAEMU Court of Justice for the termination of employment relations. It specified that it had not conferred any jurisdiction on the Court of Justice concerning dismissal or resignation.

2. Admissibility of the action brought by Mr TASSEMBEDO T. Ludovic

In its statement of defence, BRVM points out that under the terms of Article 2401 of the Staff Regulations, *"any dispute between BRVM and one or more staff members concerning the application of these regulations shall be submitted to arbitration by a committee of three members, one appointed by the Director and the other by the staff member(s) concerned from among the staff members. The third arbitrator shall be a lawyer chosen by mutual agreement by the two parties from within or outside BRVM, who shall chair the work of the committee.*

If one of the parties does not accept the committee's proposal for resolving the dispute, it may refer the matter to the WAEMU Court of Justice. The Court's decision is binding on both parties and is final.

The BRVM deduces that the present proceedings were brought in connection with the termination of an employment contract and not the application of the articles of association. In the BRVM's view, there is no legal basis for the action.

It points out that, assuming that the present action concerns the application of the Statutes, both Article 2401 of the Statutes and Article 6105 of the Rules of Procedure require prior mandatory recourse to an arbitration committee or an administrative appeal before any referral to the Court. MR TASSEMBEDO T. Ludovic respected neither of them.

In his reply brief, the applicant, who seeks dismissal of the objection of inadmissibility raised by BRVM, produces the various prior administrative appeals initiated by him, as well as certain responses.

These are :

- of the appeal of 12 September 2001 addressed to the head of the hierarchy, followed by a reply dated 4 October 2001;
- of the appeal of 17 October 2001 addressed to the Head of the Information Technology Department, followed by a reply dated 31 October 2001;

- of the appeal of 15 November 2001 addressed to the Director General of the BRVM, which has remained unanswered.

In its rejoinder, BRVM, which concludes that Mr TASSEMBEDO's appeal is inadmissible on the grounds of failure to comply with the provisions of Article 2401 of the Staff Regulations and Article 6105 of the Implementing Rules of the Staff Regulations, also points out that none of the appeals lodged in the proceedings complies with the letter or spirit of Article 6105 itself.

BRVM maintains that the purpose of the appeal referred to in this article is to reverse a contested decision and to denounce the harassment to which the agent is subjected.

It points out that at the time the applicant sent the letters to BRVM officials, he was no longer a BRVM agent, which is why the same letter had three successive addressees.

3. Background

A. Pleas in law and arguments of the applicant

The claimant maintains that the only legal issue raised by this case is whether or not the resignation caused by the employer's harassment actually constitutes dismissal.

He points out that the response of case law has been unquestionable for several decades and in all the national legislations of African States and even beyond Africa.

He points out that on assessing the facts, the Court will see that the intention to terminate the employment relationship came not from him but from BRVM.

He added that coercion, pressure and harassment were the reasons for his resignation.

While claiming redundancy pay, a responsibility allowance and an **e n d - o f - y e a r** bonus, he considers that the unfair nature of his dismissal is not sufficient to justify his dismissal.

The dismissal and the various losses resulting therefrom amply justify an award of damages equivalent to one and a half years' salary.

B. Pleas in law and arguments of BRVM

In its statement of defence, BRVM argues that neither the Court's Articles of Association nor its Rules of Procedure give it the power to convert a resignation into a dismissal.

It adds that an action for compensation is based on the liability of the defendant who, by a material or legal act, causes damage to another person.

It points out that in the case in question the employment relationship was terminated on the initiative of the claimant himself.

In dismissing the claim, BRVM noted that the claimant had not been able to identify the loss for which damages were sought. It considers that the nature of the claims is incompatible with the action for compensation. It stated that the claims as formulated were merely the pecuniary consequence of the annulment of a decision to dismiss.

According to BRVM, no action for annulment has been brought before the Court of Appeal. There was no decision to challenge.

According to the BRVM, the essential basis of the claim for compensation is the faulty operation of the administration, as evidenced by an illegal act that causes harm to the recipient, and that the employee who is the victim of harassment has other remedies than resignation.

It also points out that the court rulings submitted to the hearing are isolated and cannot constitute case law.

It states that Mr TASSEMBEDO has not provided the slightest proof of any coercion, and that at no time has he claimed that the letter of resignation sent to his employer was drafted and submitted for his signature by the latter.

Lastly, BRVM pointed out that the initial claim set out in the application for compensation was not consistent with the claim set out in the applicant's reply, and that the application did not include a claim for an end-of-year bonus; it considered that this head of claim was not properly before the Court.

The Judge-Rapporteur

Paulette BADJO EZOUEHU

OPINION OF THE ADVOCATE GENERAL

I. FACTS AND PROCEDURE

A) The facts

On 03 November 2000, Mr Ludovic TASSEMBEDO, a computer engineer and senior executive working in Abidjan (Côte d'Ivoire) at the headquarters of the Bourse Régionale des Valeurs Mobilières (BRVM) of the Union Economique et Monétaire Ouest Africaine (UEMOA), was given a disciplinary sanction of two (2) months' dismissal with immediate effect and maintenance of pay.

Article 1 of the decision to impose the disciplinary sanction of suspension taken by the Managing Director of BRVM states that this sanction was imposed on Mr Ludovic TASSEMBEDO for security reasons.

Mr Ludovic TASSEMBEDO, a senior manager in the Information Technology Department, is accused of acts of indiscipline, including a serious breach of the higher authority that is the General Management by his refusal to accept a note dated 30 October 2000 from the General Manager, which invited him to accept the organisation of the BRVM Information Technology Department.

After Mr Ludovic TASSEMBEDO had been notified of this decision (on the same date of 03 November 2000), he lodged an administrative appeal with the Director General of BRVM by letter dated 07 November 2000, in which he requested that the decision to lay him off be rescinded and that he be authorised to resume his duties:

- that on Monday 30 October 2000, having returned home after the normal office closing time of 5.30 p.m., he received a telephone call shortly after 9 p.m. from a BRVM agent who wanted to meet him and give him a letter from the Director General of BRVM;

- that he had indicated a meeting place to the agent and that he had gone to meet him at the place indicated;
- that, unable to verify the authenticity of the letter on the spot, he wished to defer receipt of it.

Under the terms of a bailiff's report drawn up at BRVM headquarters on Friday 03 November 2000 at the request of Mr TASSEMBEDO, the latter stated that he had had two (2) meetings with the Managing Director of BRVM on 20 and 30 October 2000 at the latter's request and that during their meeting on 30 October 2000, the Managing Director had verbally informed him of BRVM's wish to separate from him.

Mr TASSEMBEDO added:

- that same day, the Managing Director had asked him to accompany him to the office of the administrative manager and that, when they arrived in the said office, the Managing Director had repeated to the latter the decision that he had just taken against him, namely: separation and termination of the employment contract as of that moment; that he exempted him from the notice period;
- that he was no longer authorised to have access to BRVM's IT system or premises;
- Following this, without having given him his letter of dismissal, the Managing Director asked the administrative manager to escort him back to his office so that he could collect his belongings and leave BRVM;
- that since then, he has no longer had access to his office (closed by the administrative manager) or to the BRVM premises.

In addition to the disciplinary sanction of dismissal taken against Mr TASSEMBEDO, the Director General of BRVM, by decision n°005/12/BRVM-DG-SHR dated 22 December 2000, imposed a new disciplinary sanction on him, namely a reprimand.

Article 2 of this decision specifies that this sanction was imposed on Mr TASSEMBEDO for insubordination and that it was imposed after considering the conclusions of the Management Committee.

Article 1 of the same decision states that these conclusions were forwarded to General Management after the Disciplinary Committee had examined Mr TASSEMBEDO's case.

This decision was notified to Mr TASSEMBEDO on the same day and set the date for his return to work at 02 January 2001.

By letter dated the same day (22 December 2000), the Managing Director of BRVM imposed a series of injunctions on Mr TASSEMBEDO. In effect, he made Mr TASSEMBEDO's return to work subject to strict compliance with the following conditions:

- submit a letter of engagement beforehand, in which they formally undertake to comply with the organisation of the Information Technology Department and to respect the authority of their line manager;
- during a probationary period of three (3) months, be required to produce and submit to his/her line manager a weekly report on his/her activities within the department, with a copy to General Management and the Human Resources Department;
- the Head of the Information Technology Department will propose to the General Management security measures aimed at restricting his access to the BRVM's critical IT systems throughout the three (3) month probationary period;
- any breach of discipline or failure to comply with the above instructions will result in the most serious disciplinary proceedings being taken against the employee.

By letter dated 21 January 2001, Mr TASSEMBEDO, in accordance with the provisions of Articles 6.101 to 6.105 of the Regulations governing the application of the Staff Regulations of the BRVM, referred the matter to his direct hierarchical superior so that he could intercede with the person responsible for the sanction.

In this letter, Mr TASSEMBEDO pointed out that In this letter, Mr TASSEMBEDO pointed out:

- that, under BRVM regulations, a suspension is a second-level disciplinary sanction and a reprimand is a first-level disciplinary sanction;
- that he found it difficult to understand why, for the same facts and without any prior request for an explanation, General Management could at the same time lay him off and reprimand him, which constitutes a double sanction under the law and is therefore formally prohibited.

After the disciplinary sanction of suspension had expired, Mr TASSEMBEDO returned to work on 02 January 2001, but his electronic badge, which gave him access to the computer room, was withdrawn.

As soon as he returned to work, Mr TASSEMBEDO complied with the instructions given to him. He drew up the new letter of appointment (received by the General Manager's secretariat on 25 January 2001) and submitted all the weekly reports on his activities within the department (sixteen weekly activity reports from 01 February to 17 May 2001).

The administrative appeal that he had sent to his immediate superior remained unanswered. On the contrary, on 05 February 2001, his immediate superior informed him in writing of the additional restrictive measures taken against him.

By letter dated 30 March 2001, Mr TASSEMBEDO lodged an administrative appeal with the Director General, stating that :

- that he had still not received a response from his head of department to the administrative appeal he had lodged with him on 11 January 2001;
- that once the time limit had expired, he took the liberty of making the same requests to the Board to rescind the sanctions that had been imposed on him.

In response to this letter, the Managing Director sent Mr TASSEMBEDO a letter dated 30 March 2001 specifying a probationary period of three (3) months.

Having noted that no measures had been taken in his respect to sanction the three (3) month probationary period to which he had been subject as soon as he returned to work on 02 January 2001, Mr TASSEMBEDO then, on 03 May 2001, sent a letter to his head of department to find out what action to take. By letter dated 04 May 2001, the latter replied that the measures would be maintained.

For his part, in two (2) letters written on 11 May 2001 and addressed to Mr TASSEMBEDO, the Managing Director of the BRVM informed Mr TASSEMBEDO:

- that, for reasons of efficiency and safety, the restrictive measures taken by his manager were maintained;
- he regretted to inform her that the observation period (probationary period) was inconclusive;
- during this period, Mr TASSEMBEDO was accused of a persistent attitude and acts of insubordination, constituting disciplinary misconduct;
- that he had not thought it necessary to follow up his letter of 22 December 2000, which gave him formal notice to respond by 02 January 2001 at the latest, the date on which he was to return to work following the suspension imposed on him;
- Mr TASSEMBEDO did not reply until 25 January 2001, i.e. twenty-three (23) days after the deadline;
- that he continued to show a lack of respect for his line manager and a constant refusal to comply with service orders;
- that these acts of insubordination constituted a repeat offence on his part,
- that his disciplinary file had been referred to the Disciplinary Board for review.

On 15 June 2001, the Disciplinary Board met to rule on the disciplinary action brought by the Managing Director of BRVM against Mr Ludovic TASSEMBEDO. In its report, the Disciplinary Board stated that Mr TASSEMBEDO was accused of the following offences during his observation period:

- a persistent attitude of insubordination, as evidenced by a delay of twenty-three (23) days following a letter from the General Manager of BRVM giving him formal notice to respond within a specified period;
- a lack of respect for his line manager and a constant refusal to comply with service orders.

After hearing the representative of General Management on the one hand and the respondent (Mr TASSEMBEDO) on the other, the Committee, basing itself on the various elements contained in the various documents made available to it, noted :

- with regard to the delay in responding during the twenty-three (23) days, the accused exercised two (2) administrative remedies to obtain a review of the sanctions imposed on him;
- as regards the first appeal dated 28 December 2000 addressed to his hierarchical superior, the reply was received on 09 January 2001 within the regulatory time limit of fifteen (15) days;
- in the case of the second administrative appeal sent to the head of department on 11 January 2001, he was given thirty (30) days in which to respond;
- that this appeal had not been answered;
- that the Committee had been unable to find any provision in the various regulations that clearly defined the attitude to be adopted by an employee after lodging an appeal;
- in other words, the question was whether the administrative appeal temporarily suspended the penalty;

- in the absence of regulatory provisions on this issue, the Committee concluded that the various appeals could justify the twenty-three (23) day delay observed by the accused and that, consequently, this attitude could not be perceived as insubordination or lack of respect;
- as regards the observation period, during this period the Committee noted numerous exchanges of correspondence before and during the work submitted to the accused by his line manager;
- that the Committee had wondered whether these exchanges could be considered as insubordination or, on the contrary, exchanges of points of view on a given subject, since in fact the work requested had been done but had been poorly executed and consequently did not correspond to the expectations of the department manager;
- that the Committee had judged that it had not found, among the evidence made available to it, any fact that clearly attested to a lack of respect or insubordination during this period.

Having considered that the actions of the Managing Director and his Head of Department were pure malice, as evidenced by two (2) disciplinary sanctions taken in two (2) months without a Disciplinary Board, and having considered that the measures they were taking against him were increasingly intolerable, all aimed at complicating his administrative situation, Mr Ludovic TASSEMBEDO, by letter of resignation dated 23 May 2001, terminated his contract of employment with BRVM.

B) Procedure

By application dated 30 July 2002, received on 1^{er} August 2002, Maître Mamadou SAVADOGO, Avocat au Barreau de Ouagadougou, acting in the name and on behalf of Mr Ludovic TASSEMBEDO, brought an action before the Cour de céans seeking an order that BRVM pay him a total sum of 43,550,486 CFA francs for wrongful dismissal.

In support of his claim, Maître Mamadou SAVADOGO states:

- that it appears from the facts and the report of the Disciplinary Board that a certain number of behaviours, measures and attitudes had the effect of making working conditions impossible for Mr TASSEMBEDO, thus leading him to resign if he could not justify regular dismissal;
- that the BRVM authorities' desire to get rid of him first manifested itself on 30 October 2000 when Mr TASSEMBEDO was prevented from accessing his workstation;
- that these acts were the only factors that led to the resignation of Mr TASSEMBEDO, who had always wished to continue working at BRVM;
- that there is thus disguised dismissal according to jurisprudence as old as firm and constant, affirmed and applied in all the judicial systems of the UEMOA space, and that under the terms of this jurisprudence the author of the rupture in such circumstances is the employer and not the worker who has merely yielded to pressure;
- that it is necessary to analyse the reasons for this termination, the true perpetrator of which is the employer, and the exact reason must be sought in the period when the harassment began (30 October 2000), the date on which Mr TASSEMBEDO's offices were closed;
- in this respect, he had not been accused of anything serious, as attested by the Disciplinary Board's report, and there were grounds for considering that he had been dismissed without cause or without serious cause and, in any event, that his dismissal had been unfair;
- that the resulting damage is not only the loss of his job but also the mental suffering he has endured at BRVM since 30 October 2000, as a result of unjustified disciplinary sanctions (excessive and therefore illegal dismissal of two members of his staff).
(2) months and a reprimand), which justify the claim for the sum of 24,554,034 FCFA corresponding to eighteen (18) months' salary;
- as the termination was without fault on the part of the claimant, he claims payment of his contractual and legal rights, which are :

- 1) redundancy payment: FRF 5,456,452, equivalent to four (4) months' salary.
salaries, the net salary being 1,214,113 francs plus 150,000 francs (monthly responsibility bonus never paid), i.e. 1,364,113 francs ;
- 2) the liability indemnity he always claimed until his dismissal: 150,000 francs per month for four (4) years, i.e. 7,200,000 francs;
- 3) payment of his salary for the period during which he was obliged to remain in Abidjan because the BRVM authorities did not ensure his move to Ouagadougou, i.e. from September 2001 to January 2002: 6,340,000 francs;

- that the total amount claimed by Mr TASSEMBEDO is :

• damages:FRF	24,554,034
• redundancy payments:FRF	5,456,452
• liability indemnities:FRF	7,200,000
• additional subsistence costs:	6,320,000 francs

A total of : **FRF 43,550,486**

- that the applicant requests the Court to order the BRVM to pay him the total sum of 43,550,486 francs in payment of his contractual rights and as compensation for the damage he has suffered;
- that, moreover, BRVM has so far refused to issue the applicant with an employment certificate in accordance with the model provided for in the Staff Regulations and the Implementing Rules for the said Regulations; and without the said employment certificate containing, as BRVM has done, blank periods as if there had been a period of inactivity during the period of recruitment;
- that the applicant seeks an order from the Court that a work certificate be issued in his favour.

By statement of defence dated 05 November 2002, received on 06 November 2002, Maître Harouna SAWADOGO, Avocat au Barreau de Ouagadougou, acting in the name and on behalf of BRVM, raised in limine litis two objections alleging that the Court lacked jurisdiction and that the action brought by Mr Ludovic TASSEMBEDO was inadmissible.

1) The plea of lack of jurisdiction

After noting that the applicant had brought the matter before the Court of Appeal on the basis of the provisions of Article 2.401 of the BRVM Staff Regulations and Article 6.105 of the Implementing Rules for the said Regulations, Maître SAWADOGO pointed out that:

- that these provisions respectively regulate disputes in the event of application of the Staff Regulations and internal administrative appeals; that none of these provisions concern the termination of employment relationships or compensation in the event of termination of such relationships;
- Articles 2.401 of the Staff Regulations and 6.105 of the Implementing Rules for the Staff Regulations raise the problem of the application and interpretation of the BRVM's Articles of Association;
- that, consequently, none of these texts gives the Court jurisdiction to settle disputes following the termination of an employment contract;
- that recourse for damages is only available against the Bodies of the Union;
- that, in any event, the Court's jurisdiction cannot be determined by reference to the texts of the BRVM but on the basis of Additional Protocol No 10/96 of 10 May 1996 on the Statute of the Court of Justice and Regulation No 01/96/CM of 05 July 1996 on the Rules of Procedure of the WAEMU Court of Justice;
- that, consequently, the Court will be pleased to declare that it does not have jurisdiction to hear the case brought before it.

2) Objection to admissibility

After stating that the claimant alleges that the Court has jurisdiction by virtue of the provisions of the Staff Regulations (Article 2.401) and the Implementing Rules for the said Regulations (Article 6.105), Maître SAWADOGO maintains that the said articles regulate the dispute between BRVM and one or more agents in the context of the application of the said Regulations.

He points out that under article 2.401 of the Staff Regulations :

- *"any dispute between BRVM and one or more agents concerning the application of the Articles of Association shall be submitted for arbitration to a Committee of three (3) members, one appointed by the Director and the other by the agent(s) concerned from among the agents. The third member is a legal expert chosen by mutual agreement by the two parties within or outside BRVM and who chairs the work of the Committee;*
- *if one of the parties does not accept the Committee's proposal for resolving the dispute, it may refer the matter to the WAEMU Court of Justice;*
- *the Court's decision is binding on both parties and is final.*

Thus, Maître SAWADOGO maintains:

- that the present proceedings were brought in connection with the termination of an employment contract and not the application of the Staff Regulations;
- that, consequently, the action lacks a legal basis;
- that the Court be pleased, on this ground, to declare the said action inadmissible.

Observing that if it is accepted that the present action concerns the application of the Articles of Association at this level, Article 2401 of the Staff Regulations of the BRVM and Article 6105 of the Implementing Rules of these Regulations prescribe that prior to any referral to the Court, compulsory prior recourse must be made to an Arbitration Committee or an administrative appeal.

SAWADOGO asks the Court to declare the application inadmissible, as the applicant has neither lodged an appeal with the Arbitration Committee nor exercised the prior administrative appeal.

In the alternative

Maître H. SAWADOGO notes:

- that the action for compensation is based on the liability of the defendant who, by a material or legal act, causes damage to another person;
- that in the case in question, BRVM did not take any material or legal action;
- that Mr TASSEMBEDO himself initiated the termination of the employment relationship;
- that the act contested by Mr TASSEMBEDO emanates from himself and not from BRVM;
- that if there is damage, it results from the action taken by Mr TASSEMBEDO (his resignation);
- that the termination of the employment relationship is evidenced by a letter of dismissal from the employer and not a letter of resignation as is the case;
- that Mr TASSEMBEDO was absent from his post for around ten days without justification;
- that BRVM had the opportunity to dismiss him; that it would have done so legitimately because an unjustified absence of an executive of the company constitutes gross misconduct under the Staff Regulations and its Implementing Rules, which gross misconduct may be grounds for dismissal, but BRVM did not do so;
- that the resignation was made by the applicant himself.

On the basis of these observations, Maître H. SAWADOGO asks the Court to dismiss Mr TASSEMBEDO's claim that his resignation should be converted into a dismissal.

With regard to Mr TASSEMBEDO's claims for payment of the sum of 43,550,486 francs in respect of the contractual and legal rights set out above, Maître H. SAWADOGO asks the Court to dismiss his claims as unfounded.

In fact, Maître H. SAWADOGO notes that:

- that the claims as formulated were merely the pecuniary consequence of the annulment of a decision to dismiss;
- that in the present case, no action for annulment has been brought before the Court of Appeal; that this could not be otherwise since there was no decision to be challenged;
- that the essential basis of the claim for compensation is the defective operation of the administration enshrined in an illegal act, which would cause prejudice to the addressee and that here again the BRVM cannot be accused of having taken an illegal act comparable to a defective operation of its bodies and having caused prejudice to Mr Ludovic TASSEMBEDO.

By reply dated 09 December 2002, received at the Court Registry on 10 December 2002, Maître Mamadou SAVADOGO, counsel for Mr Ludovic TASSEMBEDO, rejected all the arguments of the defence. He asked the Court to order the latter to pay him a total sum of 43,550,486 francs, reduced to 37,674,486 francs in the said application.

In a rejoinder dated 09 January 2003, Mr Harouna SAWADOGO again submitted the following pleadings:

- the lack of jurisdiction of the WAEMU Court of Justice to hear the case;
- that the action brought by Mr Ludovic TASSEMBEDO is inadmissible;
- consequently, Mr Ludovic TASSEMBEDO's action be dismissed.

II. DISCUSSION

1) Jurisdiction of the WAEMU Court of Justice

Mr Ludovic TASSEMBEDO was recruited on 15 September 1997 as a senior manager in BRVM's IT department. In this capacity, from a professional point of view, he came under the regime established by the BRVM Staff Regulations dated 08 July 1999 and its Implementing Regulations dated 03 January 2000.

Article 2.401 of the BRVM Staff Regulations provides:

"Any dispute between BRVM and one or more agents concerning the application of these Articles of Association shall be submitted to arbitration by a Committee of three (3) appointed members..."

"If one of the parties does not accept the Committee's proposal for resolving the dispute, it may refer the matter to the WAEMU Court of Justice. The Court's decision is binding on both parties and is final."

The Court of Justice of the West African Economic and Monetary Union (UEMOA) is the court to which the claimant has appealed.

Regulation n°01/96/CM/UEMOA of 05 July 1996 on the Rules of Procedure of this Court, dealing with appeals by staff of the Union, provides in Article 15(4) that the Court shall rule on any dispute between the organs of the Union and their staff under the conditions laid down in the Staff Regulations.

BRVM is a public limited company. It is a Specialised Financial Institution and the beneficiary of a public service concession awarded by the signatory States of the West African Monetary Union (WAEMU). By virtue of the jurisdiction clause contained in article 2.401 of its Staff Regulations, it is assimilated to a WAEMU body.

Under this clause, the WAEMU Court of Justice has final jurisdiction over any dispute between BRVM and one or more of its agents.

Although he has terminated his contract of employment with BRVM, Mr TASSEMBEDO is, under the provisions of Article 2.401, an agent of BRVM.

The Court must therefore declare that it has jurisdiction to hear the dispute between BRVM and the applicant.

Form

Article 2.401 of the Staff Regulations, the provisions of which have just been set out, requires that any member of staff involved in a dispute with BRVM must first submit the said dispute to arbitration by a Committee of three (3) members. If one of the parties does not accept the Committee's proposal for resolving the dispute, it may refer the matter to the WAEMU Court of Justice.

In the present case, the applicant did not submit any documents to the file showing that he had complied with the provisions of Article 2.401 mentioned above, which required him to refer the matter to the Committee beforehand.

Attached to the reply brief of Maître Mamadou SAVADOGO (counsel for Mr TASSEMBEDO), received at the Court Registry on 09 December 2002, were copies of three letters written in Abidjan by Maître JOURVENANCE Sery, a lawyer at the Abidjan Bar, the applicant's previous counsel.

These letters are dated :

- the first, on 12 September 2001,
- the second, dated 17 October 2001,
- the third, dated 15 November 2001,

were addressed to :

- Mr Abdel Kader DIAYE, line manager to Mr Ludovic TASSEMBEDO,
Information Technology Department, BRVM/D.C.BR ABIDJAN;

- Mr Abdel Kader N'DIAYE, Head of the BRVM/D.C.BR ABIDJAN Information Technology Department;
- the Managing Director of the Bourse Régionale des Valeurs Mobilières (BRVM) in Abidjan.

In each of these three letters, Maître JOUR-VENANCE Sery, acting in the name and on behalf of Mr TASSEMBEDO, lodged with the addressees an administrative appeal called "*administrative appeal before referral to the WAEMU Court of Justice*".

His intention was to comply with the provisions of Article 6.101 of the Implementing Rules of the BRVM Staff Regulations, which stipulates that in application of the provisions of Article 6.101 of the Staff Regulations, an administrative appeals procedure is established, applicable to complaints by staff against performance appraisals and administrative decisions, as well as against harassment of any kind.

These administrative appeals, the procedure for which is established in three (3) phases by Article 6.102 of the same regulations, are not the type of appeal indicated in Article 2.401 of the BRVM's Staff Regulations prior to referral to the WAEMU Court of Justice in the event of a dispute between the BRVM and one or more of its employees.

The Court must therefore declare Mr Ludovic TASSEMBEDO's action inadmissible.

Background

In the event that the Court declares Mr TASSEMBEDO's application admissible, it will necessarily have to rule on the merits. It is for that eventuality that we approach this part of the proceedings.

The claimant alleges that his resignation was a disguised dismissal or, in other words, an unfair dismissal.

The following question therefore needs to be answered: *was Mr TASSEMBEDO's resignation prompted by the actions and behaviour of the BRVM authorities?*

The issue here is whether the nature and severity of the sanctions and measures taken by the BRVM authorities against Mr TASSEMBEDO forced him to terminate his employment contract with BRVM.

On 03 November 2000, a disciplinary sanction of two (2) months' dismissal was imposed on Mr TASSEMBEDO. The decision to impose this sanction refers to acts of indiscipline, in particular the refusal to receive a note from the General Manager of BRVM dated 30 October 2000.

According to Mr TASSEMBEDO's statements, he was present at his workstation on Monday 30 October 2000 and had spent a normal working day without any mail having been forwarded to him. He added that, on returning home, shortly after 9 p.m., he received a telephone call from a BRVM agent who wanted to give him a letter; that he had indicated a place to the agent and that he had gone to meet him; that having found the circumstances in which the letter was to be received abnormal, he had preferred to postpone it.

Any agent could, without the slightest hesitation, defer or refuse receipt of the note from the CEO that night.

The decision to lay off the applicant specified that the letter that Mr TASSEMBEDO was to receive invited him to accept the organisation of the Information Technology department. *Was there any urgency in notifying such a letter to Mr TASSEMBEDO, who had to be at his workstation in the early hours of the next day?* The answer is surely no.

If the BRVM authorities had judged that Mr TASSEMBEDO had committed a fault by his refusal to receive the said letter, should the sanction that they should impose be a two (2) month lay-off?

The answer to this question is negative if we refer to the provisions of Article 72 of Regulation No. 01/95/CM of 1^{er} August 1995 on the Staff Regulations of WAEMU Officials, which sets the duration of a lay-off at a maximum of eight (8) days. This period may serve as a reference since the Implementing Regulations of the BRVM Staff Regulations do not specify the quantum of the sanction of dismissal.

Article 9.103 of the BRVM Staff Regulations provides that a Disciplinary Board shall be set up to examine disciplinary offences and propose fair sanctions. There is no indication that this Disciplinary Board was consulted and proposed the sanction imposed on the applicant.

It is important to note that the immediate effect of a two (2) month suspension and the closure of Mr TASSEMBEDO's office without his being able to access it from the date on which the disciplinary decision was signed are circumstances that made the sanction very severe for the applicant.

The applicant was then reprimanded for insubordination. No reasons were given for the decision to impose a reprimand on 22 December 2000. It is difficult to know what Mr TASSEMBEDO was accused of. The reason for which the applicant was again disciplined in two (2) months should have been specified. In our opinion, the word insubordination seems vague.

On the same date of 22 December 2000 on which the disciplinary sanction of reprimand was imposed on Mr TASSEMBEDO, the Director General of BRVM took a series of measures against him, as specified above, which should be recalled here:

- write a new letter of commitment ;
- during a probationary period of three (3) months, be required to produce and submit to his/her line manager a weekly report on his/her activities within the department, with a copy to General Management and the Human Resources Department;
- the Head of the Information Technology Department will propose to the Executive Management security measures aimed at restricting his access to the BRVM's critical IT systems throughout the three (3) month probationary period;
- any breach of discipline or failure to comply with the above instructions will result in the most serious disciplinary proceedings being taken against the employee.

These measures appear to be manifestly exaggerated and very severe in nature and in combination. The acts of which Mr TASSEMBEDO is accused do not merit this series of measures.

To be convinced of this, one need only recall, by way of example, the content of the report drawn up on 30 July 2001 by the Disciplinary Board following the disciplinary action brought against Mr TASSEMBEDO by the Managing Director of BRVM, who had criticised Mr TASSEMBEDO during his observation period for his persistent attitude and acts of gross insubordination. After holding several sessions, the Disciplinary Board ruled that the acts of which Mr TASSEMBEDO was accused constituted a breach of the Code of Ethics.

Mr TASSEMBEDO were unfounded.

Finally, Mr TASSEMBEDO learned from a letter dated 11 May 2001 from the Director General of BRVM that the restrictive measures taken by his department head were being maintained and that the observation period was inconclusive.

Continuing to undergo the same restrictions and a new observation period could only be very trying for Mr. TASSEMBEDO, a senior manager who had already been with the company for more than three (3) years without having previously incurred the slightest sanction.

These difficulties were likely to undermine Mr TASSEMBEDO's desire and determination to continue to put his expertise at the service of BRVM.

On the basis of our analysis of the sanctions imposed on Mr TASSEMBEDO and the measures and restrictions to which he was subjected by the BRVM authorities, we consider that these sanctions, measures and restrictions forced Mr TASSEMBEDO to terminate, against his will, the employment contract binding him to BRVM.

Mr TASSEMBEDO's resignation must be analysed as a disguised dismissal, and therefore as an unfair dismissal.

With regard to Mr TASSEMBEDO's request for an employment certificate that complies with the regulatory requirements of the BRVM, this claim appears to be well-founded.

In view of the foregoing, we consider :

- that the Court should declare that it has jurisdiction to hear the action brought before it by Mr Ludovic TASSEMBEDO ;
- that it must declare the action inadmissible;
- that if it declares the said appeal admissible, it must rule that Mr Ludovic TASSEMBEDO's resignation is a disguised unfair dismissal decided by the BRVM authorities;
- that, consequently, it must uphold Mr Ludovic TASSEMBEDO's claims;
- that the Court should order the BRVM authorities to issue the applicant with an employment certificate in accordance with the model annexed to the text of the Implementing Rules for the BRVM Staff Regulations.

Finally, we believe that the Court should order BRVM to pay the costs.

The Advocate General :

Kalédji AFANGBEDJI

JUDGMENT OF THE COURT

02 July 2003

Between

**Mr TASSEMBEDO T. Ludovic And
The Regional Stock Exchange (BRVM)**

The Court, composed of Mr Yves D. YEHOUESSI, President; Ms Paulette Badjo EZOUERU, Judge-Rapporteur; Mr Youssouf Any MAHAMAN, Judge; Mr Kalédji AFANGBEDJI, Advocate General; Mr Raphaël P. OUATTARA, Registrar;

delivers this judgment :

By application dated 30 July 2002, registered at the Registry of the WAEMU Court of Justice on 02 August 2002 under number 02/2002, Mr TASSEMBEDO T. Ludovic, a computer engineer, formerly in charge of networks in the Technology Department of the Bourse Régionale des Valeurs Mobilières (BRVM), through his counsel, Maître Mamadou SAVADOGO, Avocat à la Cour de Ouagadougou, Burkina Faso, brought an action for compensation seeking an order that BRVM pay the sum of 43,550,496 FCFA by way of contractual duties and compensation for the loss suffered;

He also asked BRVM to issue him with a work certificate;

In a reply dated 9 December 2002, the claimant amended the quantum of his claim and now claims only the sum of 37,674,486 FCFA ;

The facts of the case, the course of the proceedings, the pleas and arguments of the parties developed during the written procedure may be summarised as follows:

I. FACTS AND PROCEDURE

Mr TASSEMBEDO was recruited on 15 September 1997 as a computer engineer at BRVM and was subsequently confirmed as head of the IT department. He claims that he performed his duties without receiving the full remuneration agreed between him and his employer. Following numerous complaints, he was barred from entering his office and the BRVM premises on 30 October 2000. After this state of affairs was established by a bailiff, he was reinstated in his job by his employer, who then notified him of a two-month lay-off with effect from 3 November 2000. On 7 November 2000, he unsuccessfully lodged an administrative appeal with his Managing Director.

On 22 December 2000, the latter imposed a new sanction, a reprimand for insubordination, in relation to the same facts.

Mr TASSEMBEDO lodged another administrative appeal with his line manager, to no avail.

When the first sanction expired, he returned to work on 2 January 2001, but the electronic badge allowing him access to the computer room was withdrawn. On 5 February 2001, he received a new note from his head of department specifying additional restrictive measures taken against him.

On 30 March 2001, he again referred the matter to the General Manager who, in return, sent him a letter setting a three-month probationary period due to expire on 25 April 2001, which also included "insulting" terms.

On expiry of the probationary period, Mr TASSEMBEDO wrote to his head of department to find out what he should do. In response, he was told that not only were the restrictive measures maintained, but that disciplinary proceedings had also been initiated against him.

The claimant pointed out that in the face of this relentless harassment, which resulted in two disciplinary sanctions without a disciplinary board, and in measures designed to make the working atmosphere unbearable, in addition to an exchange of more than fifteen letters in one year,

all pointing to a complication in his administrative situation, he eventually resigned from BRVM in a letter dated 23 May 2001.

He added that on reading the facts and the report of the Disciplinary Board, it appears that a certain number of behaviours, measures and attitudes had the effect of making his working conditions impossible and thus led him to resign.

He considered that there had been unfair dismissal in disguise and, according to established case law, the person responsible for the termination in such circumstances is the employer and not the employee, who has merely yielded to pressure, since the will to terminate is at the level of the employer and not the employee.

He also states that since the termination occurred without any justifiable fault on his part, he is entitled to claim not only the sum of 24,554,034 FCFA in damages, but also the sums of :

- FCFA 5,456,452 in severance pay,
- CFAF 7,200,000 in liability compensation,
- FCFA 6,340,000 for additional subsistence costs,

a total of 43,550,486 FCFA.

The appeal was served on the Director General of the Bourse Régionale des Valeurs Mobilières by letter from the Registrar of the Court dated 21 August 2002.

By letter dated 30 September 2002, the Director General of BRVM informed the Court of the appointment of his agent in the person of Mr Léopold OUEDRAOGO, Head of BRVM's National Office for Burkina Faso.

By letter dated 4 November 2002, Mr Harouna SAWADOGO informed the Court of his appointment to defend the interests of BRVM.

III. SUBMISSIONS OF THE PARTIES

Mr TASSEMBEDO claims that the Court should:

- **in the form**

- reject the pleas of lack of jurisdiction and inadmissibility raised by BRVM ;

- as a result :

- 3) declare itself competent ;

- 4) declare the applicant's action admissible;

- **at the back**

- declare that the respondent's resignation was provoked and obtained under duress, and is in fact a dismissal;

- declare that the dismissal is unfair;

- order the BRVM to pay the plaintiff the total sum of 37,674,486 FCFA;

- order it to pay the costs, which will be awarded to Maître Mamadou SAVADOGO on a pro rata basis.

BRVM claims that the Court should:

- **in limine litis**

to the principal

declare that it has no jurisdiction to examine the action brought by Mr TASSEMBEDO T.

Ludovic on the basis of Article 27 of Additional Act No. 10/96 on the Statute of the Court of Justice of the European Communities.

Justice and 15 of Regulation No. 01/96/CM on the Rules of Procedure of the Court of Justice of the WAEMU;

alternatively

rule that the action brought on 2 August 2002 by Mr TASSEMBEDO T. Ludovic was brought in breach of Article 2401 of the Staff Regulations and Article 6105 of the Implementing Rules of the Staff Regulations in that Mr TASSEMBEDO did not have recourse to an arbitration committee as prescribed before any referral to the Court;

accordingly

declare the said action inadmissible;

- **in the alternative, on the merits**
 - declare the action inadmissible for lack of legal basis;
 - reject the pleas put forward by the applicant;

as a result :

- Dismiss all of Mr TASSEMBEDO T. Ludovic of all his unfounded claims;
- order it to pay all the costs.

III. PLEAS IN LAW AND ARGUMENTS OF THE PARTIES

1. Jurisdiction

A. Pleas in law and arguments of BRVM

By memorandum dated 5 November 2002, the BRVM, which concludes that the Cour de céans does not have jurisdiction to hear the action brought by Mr TASSEMBEDO T. Ludovic, points out that none of the texts on which the applicant bases his claim for compensation gives jurisdiction to the UEMOA Court of Justice to settle disputes arising from the termination of his contract with BRVM.

of the contract between the parties. It also submits that the action for damages is available only against the bodies of the Union.

It considers that, in any event, the Court's jurisdiction should not be determined by reference to BRVM texts but on the basis of Additional Protocol No. 10/96 on the Statutes of the WAEMU Court of Justice and Regulation No. 01/96/CM on the Rules of Procedure of the WAEMU Court of Justice.

It also states that Mr TASSEMBEDO's application does not fall within any of the Court's fields of jurisdiction.

B. Pleas in law and arguments of the applicant

In a reply dated 9 December 2002, the applicant, acting through his counsel, sought dismissal of the plea of lack of jurisdiction, pointing out that Title 6 of the Staff Regulations, which contains Article 6105, is entitled "*Security of Employment*". He added that there was no need to go back over Article 2401 of the Staff Regulations insofar as the Implementing Rules were merely the practical definition of the Staff Regulations, which they "*cannot contradict or amend (in) any provision*". He maintains that it is clear from Chapter 1 of Title 6 of the Implementing Regulations that job security within BRVM is ultimately ensured by the court of first instance. Still according to the applicant, he fails to see how the court responsible for reviewing the security of his job could not assess the circumstances in which he lost it.

In the applicant's view, Article 6101 of the Staff Regulations relating to job security does deal with dismissal.

The applicant points out that the BRVM has not recognised any court other than the Cour de céans to rule on disputes that may arise between it and its agents.

It should be noted that, having itself told its agents to bring any disputes they might have against it before the court, BRVM is now arguing that the Court's jurisdiction cannot be assessed in relation to BRVM texts.

It points out that the question raised is whether the definition of the jurisdiction of the WAEMU Court of Justice is limitative and exclusive of any conventional attribution of jurisdiction.

It considers that no provision of the Statutes or of the Rules of Procedure of the Court establishes the exclusivity or the restrictive nature of the field of jurisdiction of the Court, which is not a court of exception but a court of ordinary law with a supranational vocation. It specifies that as long as a choice of court clause conferring jurisdiction on the Court is not contrary to its supranational role or to public policy, the Court cannot be required to decline jurisdiction, especially not at the request of the party that conferred jurisdiction on it.

C. BRVM's response to the applicant's arguments

In a rejoinder dated 9 January 2003, BRVM argued that the applicant had misinterpreted the provisions of Article 2401 of the Staff Regulations and Article 6105 of the Implementing Rules. It maintains that these provisions govern employment relations within the BRVM with the principal objective of avoiding as far as possible the breakdown of employment relations.

In this respect, it points out that under the terms of Article 2401 of the Staff Regulations, any dispute between it and one of its employees relating to the application of the Staff Regulations is subject to arbitration by a three-member committee.

It specifies that this is in fact a prior recourse to conciliation between the parties. It is only if this procedure fails that either party may bring the dispute before the WAEMU Court of Justice. However, it notes that the applicant never resorted to the arbitration committee before resigning.

BRVM also noted that Mr TASSEMBEDO T. Ludovic has resigned and is therefore no longer a BRVM agent. It added that none of the texts invoked by Mr TASSEMBEDO in support of his claim conferred jurisdiction on the WAEMU Court of Justice for the termination of employment relations. It specified that it had not conferred any jurisdiction on the Court of Justice concerning dismissal or resignation.

2. Admissibility of the action brought by Mr TASSEMBEDO T. Ludovic

In its statement of defence, BRVM points out that under the terms of Article 2401 of the Staff Regulations, *"any dispute between BRVM and one or more staff members concerning the application of these regulations shall be submitted to arbitration by a committee of three members, one appointed by the Director and the other by the staff member(s) concerned from among the staff members. The third arbitrator shall be a lawyer chosen by mutual agreement by the two parties from within or outside BRVM, who shall chair the work of the committee.*

If one of the parties does not accept the committee's proposal for resolving the dispute, it may refer the matter to the WAEMU Court of Justice. The Court's decision is binding on both parties and is final.

From this, the BRVM deduced that the present proceedings were brought in connection with a breach of the employment contract and not the application of the articles of association. In the BRVM's view, there is no legal basis for the action.

It emphasises that, even if the present action concerns the application of the Statutes, both Article 2.401 of the Statutes and Article 6.105 of the Rules of Procedure prescribe that, before any action is brought before the Court, prior recourse must be had to an arbitration committee or an administrative appeal. MR TASSEMBEDO T. Ludovic did not comply with either of these provisions.

In his reply brief, the applicant, who seeks dismissal of the objection of inadmissibility raised by BRVM, produces the various prior administrative appeals initiated by him, as well as certain responses.

These are :

- of the appeal of 12 September 2001 addressed to the head of the hierarchy, followed by a reply dated 4 October 2001;
- of the appeal of 17 October 2001 addressed to the Head of the Information Technology Department, followed by a reply dated 31 October 2001;

- of the appeal of 15 November 2001 addressed to the Director General of the BRVM, which has remained unanswered.

In its rejoinder, BRVM, which concludes that Mr TASSEMBEDO's appeal is inadmissible for failure to comply with the provisions of Article 2.401 of the Staff Regulations and Article 6.105 of the Implementing Rules of the Staff Regulations, also points out that none of the appeals lodged in the proceedings complies with the letter or spirit of Article 6.105 itself.

BRVM maintains that the purpose of the appeal referred to in this article is to reverse a contested decision and to denounce the harassment to which the agent is subjected.

It points out that at the time the applicant sent the letters to BRVM officials, he was no longer a BRVM agent, which is why the same letter had three successive addressees.

3. Background

A. Pleas in law and arguments of the applicant

The claimant maintains that the only legal issue raised by this case is whether or not the resignation caused by the employer's harassment actually constitutes dismissal.

He points out that the response of case law has been unquestionable for several decades and in all the national legislations of African States and even beyond Africa.

He points out that on assessing the facts, the Court will see that the intention to terminate the employment relationship came not from him but from BRVM.

He added that coercion, pressure and harassment were the reasons for his resignation.

While claiming redundancy pay, a responsibility allowance and an **e n d - o f - y e a r** bonus, he believes that the unfair nature of his dismissal is not sufficient to justify his dismissal.

The dismissal and the various losses resulting therefrom amply justify an award of damages equivalent to one and a half years' salary.

B. Pleas in law and arguments of BRVM

In its statement of defence, BRVM argues that neither the Court's Articles of Association nor its Rules of Procedure give it the power to convert a resignation into a dismissal.

It adds that an action for compensation is based on the liability of the defendant who, by a material or legal act, causes damage to another person.

It points out that in the case in question the employment relationship was terminated on the initiative of the claimant himself.

In dismissing the claim, BRVM noted that the claimant had not been able to identify the loss for which damages were sought. It considers that the nature of the claims is incompatible with the action for compensation. It stated that the claims as formulated were merely the pecuniary consequence of the annulment of a decision to dismiss.

According to BRVM, no action for annulment has been brought before the Court of Appeal in this case, and no decision has been challenged.

According to the BRVM, the essential basis of the claim for compensation is the faulty operation of the administration, as evidenced by an illegal act that causes harm to the recipient, and that the employee who is the victim of harassment has other remedies than resignation.

It also points out that the court rulings submitted to the hearing are isolated and cannot constitute case law.

It states that Mr TASSEMBEDO has not provided the slightest proof of any coercion, and that at no time has he claimed that the letter of resignation sent to his employer was drafted and submitted for his signature by the latter.

Lastly, the BRVM pointed out that the initial claim set out in the application for compensation was not consistent with the claim set out in the applicant's reply, and that the application did not include a claim for an end-of-year bonus; consequently, it considered that this head of claim was not properly before the Court.

At the hearing on 30 April 2003, the parties developed the arguments put forward during the written procedure;

However, the claimant has stated that he will not amend his claim as set out in his reply and will stick to the amounts claimed in his statement of claim;

The Advocate General presented his conclusions at the same hearing;

IN LAW

The Court will first have to rule on its jurisdiction to hear this case, and then on the admissibility of the action, before examining the parties' arguments on the merits.

*** On the plea of lack of jurisdiction**

BRVM argues that none of the texts on which the applicant bases its action gives the Court of Appeal jurisdiction to settle disputes arising from the termination of the contract between the parties.

According to BRVM, actions for damages may only be brought against the organs of the Union. It considers that the Court's jurisdiction should not be assessed in relation to BRVM texts, but on the basis of Additional Protocol No. 10/96 on the Statutes of the WAEMU Court of Justice and the Rules of Procedure.

It points out that it has not conferred any jurisdiction on the Court of Appeal with regard to dismissal or resignation.

Mr TASSEMBEDO, who submits that the objection should be dismissed, argues that it follows from Chapter 1 of Title 6 of the Implementing Regulations of the Staff Regulations that job security within BRVM is ultimately ensured by the court of first instance. He added that he did not see how the court responsible for reviewing the security of his job could not assess the circumstances in which he had lost it.

Still according to the claimant, the BRVM text on which his action is based does deal with dismissal and no court other than the Cour de céans has been recognised by the BRVM to rule on disputes that may arise between the latter and its employees.

It should first be noted that Article 3 of the BRVM's Articles of Association *states that "as from its approval by the Conseil Régional de l'Épargne Publique et des Marchés Financiers, the Bourse Régionale des Valeurs Mobilières has the status of a Specialised Financial Institution and is the beneficiary of a public service concession granted by the signatory States of the WAMU Treaty"*.

In the light of these provisions, it can be said that BRVM can be assimilated to a body of the Union.

In addition, under the provisions of paragraph 2 of article 2401 of the BRVM's staff regulations, "if one of the parties does not accept the committee's proposal for resolving the dispute, it may refer the matter to the WAEMU Court of Justice. The Court's decision is binding on both parties and is final".

It also follows from the provisions of paragraph 3 of Article 6105 of the Implementing Rules of the BRVM Staff Regulations that "the Director General's reply is final within BRVM. However, a member of staff who is not satisfied with this response may bring a complaint against BRVM before the WAEMU Court of Justice".

It should be noted that, for the settlement of any dispute between BRVM and one or more employees concerning the application of the Staff Regulations, as well as for job security, jurisdiction is always vested in the Cour de céans, which makes the final decision.

In addition, it should be noted that it is the rule that the judge of the action is also the judge of the exception, and that the jurisdiction of the Cour de céans, in these circumstances, is justified by practical reasons, judicial logic and simple common sense.

In application of this rule, if in the present case the dispute were to be split up or divided into several proceedings before two different courts - the Court of Appeal, which has jurisdiction to hear the claimant's action, on the one hand, and another court not yet designated by the BRVM to hear the defence raised by the latter, on the other - this could lead not only to differences of assessment, but also to a risk of conflicting decisions.

In view of the foregoing, the jurisdiction of the Cour de céans for the whole matter is natural. The objection raised by BRVM should therefore be dismissed and the Cour de céans should be declared competent to rule on the dispute between the parties.

* **On the objection of inadmissibility**

BRVM points out that Mr TASSEMBEDO did not comply with either the mandatory prior recourse to an Arbitration Committee or the administrative recourse before bringing the matter before the Court of Appeal. It points out that at the time the applicant sent the letters to BRVM officials, he was no longer a BRVM agent, which is why the same letter had three successive addressees.

The appellant, who seeks to have the objection dismissed and his appeal upheld, maintains that he produced in evidence the various prior administrative appeals that he had lodged, as well as the responses to those appeals.

It should be remembered that under the provisions of Article 2401 of the Staff Regulations, any dispute between BRVM and one or more members of staff concerning the application of these regulations shall be submitted to arbitration by a committee of three members, one of whom shall be appointed by the Chairman of BRVM.

General Manager and the other chosen by the agent(s) concerned from among the agents. The third arbitrator is a lawyer chosen by mutual agreement by the two parties from within or outside the BRVM and who chairs the work of the committee.

Articles 6101 et seq. of the implementing regulations state that "an administrative appeals procedure shall be established to deal with complaints by staff against performance appraisals and administrative decisions and against harassment of any kind. The administrative appeals procedure has 3 stages:

- The first stage is at the level of the direct hierarchical superior or the author of the contested decision;
- The second phase involves the department manager;
- the third phase involves the Managing Director.

The Director General's response is final within BRVM. However, any agent who is not satisfied with this response may bring a complaint against BRVM before the WAEMU Court of Justice".

It should be noted that the applicant's attempts to claim that he had complied with these provisions were unsuccessful.

Mr TASSEMBEDO Ludovic, through his counsel, Maître Jour- Venance SEREY, sent three letters to Mr Abdel Kader N'DIAYE, in his capacity as line manager and head of the Information Technology department, and then to the Director General of BRVM.

However, these letters, the subject of which was "administrative appeal before referral to the WAEMU Court of Justice", should have preceded Mr TASSEMBEDO's resignation and should have been part of the administrative appeal procedure defined by article 6101 of the BRVM's staff regulations.

In addition, the Arbitration Committee set up by Article 2401 of the Staff Regulations was never consulted before the application was lodged with the Court of Appeal.

As a rule, compliance with the provisions of the Staff Regulations is a matter of public policy insofar as it relates to the regularity of the administrative procedure, which constitutes a substantial formality.

In the circumstances, it should be noted that the legal action brought by Mr TASSEMBEDO does not satisfy the above conditions.

It should therefore be declared inadmissible.

ON EXPENSES

The applicant was unsuccessful in his appeal.

Pursuant to Article 60 of the Rules of Procedure, any unsuccessful party shall be ordered to pay the costs.

However, as this is a dispute between an institution of the Union and its agent, it is appropriate, in accordance with the provisions of Article 61 of the same Regulation, to charge the costs to the BRVM.

FOR THESE REASONS

The Court, sitting in open court, having heard the parties, in matters relating to the Community Civil Service :

decides :

- 1) The objection of lack of jurisdiction raised by the Bourse Régionale des Valeurs Mobilières (BRVM) is rejected.
- 2) The UEMOA Court of Justice has jurisdiction to rule on the dispute between BRVM and Mr TASSEMBEDO T. Ludovic ;

3) Mr TASSEMBEDO's action is inadmissible as to form;

4) BRVM is ordered to pay the costs.