

**JUDGME  
NT NO.  
04/2020  
FROM 08 JULY 2020**

**ACTION NO. 19 R001 FOR DAMAGES  
AND LIABILITY**

**Mrs ZOMBRE née ZIDA Léontine Marie  
Florence and Mr ADJOVI Comlan  
Honorat**

**against**

**The Conference of Heads of State and  
Government of the West African  
Economic and Monetary Union  
(WAEMU)**

**and**

**the WAEMU Commission**

**Composition of the Court :**

- Mr Daniel Amagoïn  
TESSOUGUE, Chairman ;
- Mr Euloge AKPO, Judge ;
- Mr Augusto  
MENDES, Judge-  
Rapporteur ;
- Ms Victoire Eliane ALLAGBADA  
JACOB, Advocate General ;
  
- Me Boubakar TAWEYE MAIDANDA,  
Registrar.

**EXTRACT FROM THE MINUTES OF THE REGISTRY  
COURT OF JUSTICE OF THE WEST  
AFRICAN ECONOMIC AND  
MONETARY UNION (WAEMU)**

**PUBLIC HEARING ON 08 JULY 2020**

The Court of Justice of the WAEMU,  
meeting in open session on the eighth day  
of July in the year two thousand and  
twenty, in which were seated :

Mr Daniel Amagoïn TESSOUGUE,  
President; Mr Euloge AKPO, Judge; Mr  
Augusto MENDES, Judge-Rapporteur; in  
the presence of Ms Victoire Eliane  
ALLAGBADA JACOB, Advocate General;

with the assistance of Mr Boubakar  
TAWEYE MAIDANDA, Registrar ;

has rendered the following judgment:

**BETWEEN :**

**Mrs ZOMBRE née ZIDA Léontine Marie  
Florence and Mr ADJOVI Comlan Honorat,**  
acting through SCPA KAM & SOME, Société  
civile Professionnelle d'Avocats, located at  
Ouaga 2000, 01 BP.727 01  
Ouagadougou 01 Tel: (+226) 25 40 88 44

**Plaintiffs, on the one hand ;**

**AND**

**The Conference of Heads of State and  
Government of the West African Economic  
and Monetary Union (WAEMU) ;**

**The Commission of the West African  
Economic and Monetary Union (UEMOA)**  
represented by Mr Oumarou YAYE, Technical  
Adviser to the President of the Commission in  
charge of Legal Affairs, Appointed Agent and  
assisted by Mr Harouna SAWADOGO,  
Lawyer, 01 BP 4090 Ouagadougou 01,

**Defendants, on the other hand  
;**

## THE COURT

**VU** 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 Court of Justice of the WAEMU;

**VU** Regulation n°01/2012/CJ of 21 December 2012 on the Administrative Rules of the Court of Justice of the WAEMU;

**VU** 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;

**VU** Minutes No. 2019-08/AI/02 of 28 May 2019 on the appointment of the President of the Court and the distribution of functions within the Court;

**VU** Minutes n°2019-09/AP/07 of 03 June 2019 relating to the installation of the President of the WAEMU Court of Justice;

**VU** Order N°021/2019/CJ of 20 November 2019 fixing the days of the Assemblies of the WAEMU Court of Justice;

**VU** Order No 038/2020/CJ of 26 June 2020 fixing the period of the judicial holidays of the Court of Justice of the WAEMU for the year 2019-2020;

**VU** the application dated 07 January 2019, registered at the Registry of the Court of Céans under No 19R001, by which Mrs ZOMBRE née ZIDA Léontine Marie Florence and Mr ADJOVI Comlan Honorat, previously members of the Court of Justice of the WAEMU, respectively in respect of Burkina Faso and the Republic of Benin, with counsel SCPA KAM & SOME, Société Civile Professionnelle d'Avocats, brought an action for liability and compensation before the Court of Justice against the Conference of Heads of State and Government of UEMOA and the UEMOA Commission;

**HAVING REGARD to** Order No. 045/2020/CJ of 07 July 2020 on the composition of the plenary session to sit in public session on 08 July 2020;

**HAVING REGARD TO** the documents in the file ;

**HAVING REGARD TO** the summonses of the parties ;

**HEARD** the Judge-Rapporteur in his report;

**HEARD** the applicants' counsel in their oral observations;

**HAVING** heard the oral observations of the Council of the West African Economic and Monetary Union (WAEMU);

**HEARD** the Opinion of the Advocate General;

**Having considered the matter in accordance with Community**

**law: I - FACTS AND PROCEDURE**

Considering that Mrs ZOMBRE née ZIDA Léontine Marie Florence and Mr ADJOVI Comlan Honorat were appointed members of the Court of Justice of the West African Economic and Monetary Union and installed as judges on 25 June and 11 April 2013 respectively;

That the term of office of the members of the WAEMU Commission, which had expired, was extended at the Conference of Heads of State and Government held in Lomé on 30 May 2011, and that during this conference, a mandate was given to the Chairperson of the said Conference to proceed with consultations for the appointment of the Chairperson of the Commission;

That the members of the Commission were thus appointed by the Conference of Heads of State and Government by consensus, with the exception of the Chairperson of the Commission, for lack of consensus between the candidatures of Niger and Senegal;

That by additional act n°06/2011/CCEG of 21/10/2011, Mr Cheikh Hadjibou SOUMARE candidate of Senegal was appointed President of the Commission for a single term of 4 years (2011 - 2015);

That on 11 November 2011, the Conference of Heads of State and Government (CCEG), through Additional Act No. 07, specified that upon the expiry of the term of office of Mr. Cheikh Hadjibou SOUMARE, only the Representative of Niger would be entitled to present a candidate for the post of Chairperson of the Commission in accordance with the principle of rotation;

Considering that the applicants have stated that on 15 November 2011, Mr El Hadj Abdou SAKHO, former Commissioner, who was ousted in favour of Mr Cheick Hadjibou SOUMARE, brought two actions before the Court of Justice seeking, on the one hand, the Act appointing Mr SOUMARE as President of the Commission and, on the other hand, compensation for the loss which he considers he has suffered as a result of the additional act appointing Mr SOUMARE as President of the Commission;

That, according to them, the Court, in accordance with its practice, appointed two rapporteurs to hear the two cases and, despite the completion of the pre-trial proceedings and despite the diligence and several requests of Mr SAKHO's counsel, the President of the Court of Justice did not schedule the said cases for trial;

Faced with such a deadlock, the members of the Court asked the President in vain to hold an internal meeting;

That his requests remained unsuccessful so that the said members decided to hold an internal meeting which appointed the most senior Judge of the Court to replace the President, Mr Daniel Lopes FERREIRA;

That it was in this context that a first draft additional act was drawn up, recalling the members of the Court who had signed the decision to replace Mr FERREIRA, which was rejected by the WAEMU Heads of State and Government;

That subsequently, an ad hoc committee made up of the Presidents of the Supreme Courts of Benin, Burkina Faso, Côte d'Ivoire and Senegal, set up to find a way out of the crisis, proposed the reinstatement of President FERREIRA as President of the Court, with a view to the resumption of the Court's activities;

That at the 18<sup>ème</sup> Conference of Heads of State and Government, Mr Cheick Hadjibou SOUMARE, whose appointment as President of the Commission was challenged before the Court, submitted for adoption by the Conference an Additional Act seeking the recall of all members of the Court who had taken part in the internal assembly that removed President FERREIRA;

That by Additional Act No. 04/2015/CCEG/UEMOA of 13 June 2015, the seven members of the Court involved in the crisis were recalled for a period of six months, from 1<sup>er</sup> March 2015, to their respective States notwithstanding the opposition of the Heads of State of Burkina Faso and Niger;

That they specify that by Additional Act No. 02/2016/CCEG/UEMOA of 08 January 2016, the Conference of Heads of State and Government dismissed the seven members of the Court of Justice referred to above;

That the applicants, considering themselves wronged by this revocation decision, have brought an action before this Court seeking an order that the Conference of Heads of State and Government of WAEMU and the Commission of WAEMU compensate for the damage caused by the adoption of the Additional Act of 8 January 2016 revoking their appointment;

Considering that the request was served, on 08 January 2019, on the President of the WAEMU Commission who appointed Mr Oumarou YAYE, Technical Adviser to the President of the Commission in charge of Legal Affairs, Agent of the WAEMU Commission in this case;

The defendants, through their counsel, Harouna SAWADOGO, filed a statement of defence on 05 March 2019;

That on 16 April 2019 the written proceedings were closed and, by Order No. 010/2019/CJ of 16 April 2019, a rapporteur was appointed;

That the bond has been paid in accordance with the bond receipt dated 23 April 2020 ;

## **II- ARGUMENTS OF THE PARTIES**

Considering that in support of their appeal, Mrs ZOMBRE Léontine Marie Florence and Mr ADJOVI Comlan Honorat, request the WAEMU Court of Justice to declare that Additional Act n° 02/2016/CCEG/UEMOA of 08 January 2016, dismissing the members of the WAEMU Court of Justice, is illegal and, consequently, order the WAEMU Conference of Heads of State and Government (CCEG) and the Union to compensate the resulting damage;

In order to establish the Union's liability, they state that the Union, through one of its bodies, committed a fault which caused them damage and that there is a causal link between that fault and the damage suffered;

With regard to misconduct, they point out that the term of office of a member of the WAEMU Court of Justice is acquired by appointment for a period of six years.

(6) years renewable and that the end or interruption of this mandate, or the loss of the status of Judge at the WAEMU Court of Justice only occurs in three cases: replacement, resignation or death;

That thus, according to the plaintiffs, the adoption by the Conference of Heads of State and Government of the Additional Act n°02/2016/CCEG/UEMOA of 08 January 2016, concerning the dismissal of the members of the Court, is illegal on the grounds that the said act violates the provisions of the legislation applicable to the organs of UEMOA, in particular Additional Act No. 10/96 of 10 May 1996 on the Statute of the Court of Justice of WAEMU and Regulation No. 01/96/CM/UEMOA of 05 July 1996 on the Rules of Procedure of the Court of Justice of WAEMU, a judicial body;

They add that nowhere does it appear that the Conference of Heads of State and Government can deal, in any way whatsoever, with the dismissal or early termination of the term of office of a member of the WAEMU Court of Justice, with regard to its very precise powers provided for in Articles 17, 18 and 19 of the Treaty; that the only body competent to terminate the functions of members of the WAEMU Court of Justice, apart from the member himself or herself or in the event of force majeure (death), is the Court of Justice itself by means of succession, as indicated in the provisions of Article 12 of Additional Act No. 10/96 on the Statutes of the WAEMU Court of Justice;

That they thus conclude that this wrongful conduct by one of the Union's bodies has caused them enormous damage which deserves fair and equitable compensation;

That the applicants submit that the loss suffered by them is deducted from the loss of remuneration, with all the benefits from which they would have benefited, from the date of their dismissal until the normal end of their term of office, i.e. 10 April 2019 for Mr ADJOVI Comlan Honorat and 24 June 2019 for Mrs ZOMBRE Léontine Marie Florence;

They should recall that prior to their appointment to the WAEMU Court of Justice, Mrs ZOMBRE Léontine Marie Florence held the position of Legal Adviser to the President of Faso and Mr ADJOVI Comlan Honorat held the position of Director of Cabinet to the Minister in charge of relations with Parliament and that both were destined for successful careers in the judicial system of their countries, but placed themselves at the service of sub-regional community justice, for a renewable term of six years;

They consider that this early and wrongful dismissal has disrupted their personal, professional, family and financial lives and, in the light of the provisions relating to the conditions of service in force at UEMOA, set out in Decision No 19/2008/CM/UEMOA and Notes No 0441/DSAF/DRH of 02 May 2013 and No 0887/DSAF/DRH of 01 August 2013, they claim by way of compensation:

- For Mrs ZOMBRE Léontine Marie Florence :
  - holiday pay for the years 2014, 2015, 2016, 2017, 2018 and 05 months of 2019, totalling 27,377,165 CFA francs;
  - fuel supplies for the last six months of 2015, 2016, 2017, 2018 and 5 months of 2019 amounting to CFA 8,021,080 ;
  - Cumulative salaries for 2016, 2017, 2018 and the five months of 2019 amounting to 207,224,086 FCFA;
  - the 13<sup>ème</sup> months, representing the period 2016, 2017, 2018 and 2019, of FCFA 17,268,673;
  - school aid, for the years 2016, 2017, 2018 and 2019, of a amounting to CFA F 40,433,968;
  - payment of the balance of the end-of-contract indemnity, i.e. the sum of FCFA 12,130,190;
- For Mr ADJOVI Comlan Honorat :
  - the fuel supply for the last six months of 2015, 2016, 2017, 2018 and the 03 months of 2019, of a 6 363 000 CFA francs;
  - salaries due during 2016, 2017, 2018 and 2019 in the amount of CFA F 245,569,077;
  - the sum of FCFA 20,464,089, representing the 13<sup>ème</sup> months of the years 2016 to 2018 and 03 months of 2019;
  - school aid, for the years 2016, 2017, 2018 and 2019, of a amounting to CFA F 50,373,144;
  - end-of-contract indemnity of CFA F 15,099,944;
  - removal allowance of CFA F 2,000,000;

They also maintain that following their dismissal they have suffered greatly, both morally and psychologically, their reputation having been tarnished and, to compensate for the moral prejudice suffered, they request that the defendants be ordered to pay them each the sum of 50,000,000 CFA francs;

Whereas, in their statement of defence, the defendants plead that the Court should dismiss all the applicants' claims as unfounded;

They point out that, as the plaintiffs themselves pointed out in their application dated 07 January 2019 on page 8, 1<sup>er</sup> paragraph: "In order to engage the liability of the Union, it must be shown that the Union, through one of its organs, has committed a fault; that the fault has caused damage to another person and that there is a causal link between the fault and the damage suffered";

That they consider that the fault in this case results from their dismissal by an illegal act materialised by additional act n° 02 /2016/CCEG/UEMOA of 08 January 2016, taken by the Conference of Heads of State and Government and notified to them by the President of the UEMOA Commission;

That they specify that the fault alleged by the plaintiffs is the fact that the Conference of Heads of State and Government took an illegal act for their dismissal;

That the defendants note, however, that by a judgment dated 13 February 2019, the WAEMU Court of Justice declared the Additional Act at issue to be lawful and legal, so that that judgment establishes the non-existence, in the present case, of any fault on the part of the Union arising from the adoption of an unlawful normative act likely to cause damage to others;

They add that, pursuant to Article 15.5 of Regulation No. 01 /CM, laying down the Rules of Procedure of the Court of Justice of WAEMU, the non-contractual liability of the Union may only be incurred for normative acts of its organs causing damage to others and conclude that, in the present case, Additional Act No. 02/2016/CCEG/UEMOA of 08 January 2016, having been declared legal, cannot therefore cause damage to the claimants; their claims for compensation should therefore be dismissed as ill-founded on the basis of Judgment No 04/2017 delivered on 18 April 2017 by the WAEMU Court of Justice;

### **III- DISCUSSION**

#### **1. Form**

Considering that under the terms of article 15.5 al.3 of the rules of procedure, "Liability claims against the Union or the Union's liability claims against third parties or its agents shall be barred after three (3) years from the date on which the damage occurred...";

That Additional Act n°02/2016/CCEG/UEMOA on the dismissal of the members of the Court of Justice of the Union, which is the subject of the appeal lodged on 07 January 2019, was adopted on 08 January 2016;



That, consequently, the application, duly filed in accordance with the required time limit, must be declared admissible;

## **2. Background**

Whereas, under the provisions of Article 15 of Protocol No 1 relating to the organs of the Union, the Court of Justice shall have jurisdiction in disputes relating to compensation for damage caused by the organs of the Union and, under the provisions of Article 15-5 of the Rules of Procedure, the Court of Justice alone shall have jurisdiction to declare that non-contractual liability exists and to order the Union to pay compensation for damage caused either by acts of a material nature or by legislative acts of the organs of the Union or of its servants in the course of or in connection with the performance of their duties;

Considering that in order for the Union to be held liable, three conditions must be met:

- misconduct relating to its material actions or to the legislative acts of the Union bodies, or to the conduct of its servants in the performance of, or in connection with, the performance of their duties;
- damage ;
- and a causal link between the fault and the damage;

That, however, the fault alleged by the plaintiffs is based on the adoption of Additional Act No. 02/2016/CCEG/UEMOA of 08 January 2016 on the dismissal of the members of the Court of Justice of UEMOA;

That in Judgment No. 01/2019 of 13 February 2019, the Court of Justice upheld the legality of the said Additional Act, by virtue of the exceptional circumstances ;

Under the terms of Article 57 of Regulation No. 01/96/CM on the Rules of Procedure of the Court of Justice, "the Judgment shall be binding from the date of its delivery";

Consequently, as the alleged fault has not been established, the action for liability and compensation must be dismissed;

## **3. Costs**

Whereas, under Article 60(2) of the Rules of Procedure of the Court of Justice, the unsuccessful party shall be ordered to pay the costs;

That the said article should be applied and the applicants ordered to pay the costs;

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

**Ruling publicly, in adversarial proceedings at first and last instance, in matters of Community law and non-contractual liability;**

- **Declares admissible the action for damages and compensation brought by Mrs ZOMBRE née ZIDA Léontine Marie Florence and Mr ADJOVI Comlan Honorat against the Conference of Heads of State and Government of the WAEMU and the Commission of the WAEMU;**
- **Dismisses the said action;**
- **Orders Mrs ZOMBRE née ZIDA Léontine Marie Florence and Mr ADJOVI Comlan Honorat to pay the costs.**

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

***Illegible signatures follow.***  
**Ouagadougou, 09 July 2020**

**The Registrar**

**Boubakar TAWEYE MAIDANDA**