

**OPINION N° 01 / 2021**  
**from 25 October 2021**

**Request for an opinion submitted by the Minister of  
Justice of the State of Burkina Faso relating to Articles  
24, 27 and 30 of Regulation n-05/CM/UEMOA of 25  
September 2014 on the harmonisation of the rules  
governing the profession of lawyer in the UEMOA space**

**The Minister of Justice of the State of Burkina Faso referred the matter to the  
WAEMU Court of Justice by correspondence No 2021-670/MJDHPC/CAB of 04  
June 2021, received at the Registry on 07 June 2021 and registered under No 21 DA  
004, which reads as follows:**

*"Mr President,*

*Pursuant to the provisions of Article 27 in fine of the Statutes of the WAEMU Court of  
Justice and Article 15.7 of the Rules of Procedure of the said Court, I have the  
honour of addressing to you, on behalf of the State of Burkina Faso, a request for  
an opinion on the interpretation of the provisions of Articles 24, 27 and 30 of  
Regulation No 005/2014/CM/UEMOA on the harmonisation of the rules governing  
the legal profession in the WAEMU area.*

*The purpose of the request for an opinion is to ascertain the exact interpretation  
to be given to the provisions of Articles 24, 27 and 30 relating to the admission of  
judges and associate professors of law to the profession of lawyer.*

*A difficulty in interpreting and applying these texts arose when the Council of the  
Burkina Faso Bar Association decided on 11 March 2021 to include on the list of  
trainees for three years*

*(03) years, two judges who fulfil the conditions of seniority in the jurisdiction and who  
have previously resigned from their positions.*

However, on 26/02/2016, the same Council exempted associate professors of law faculties, including Professor SOMA Abdoulaye, from the three (03) year probationary period.

Thus, Article 24 provides firstly that "Any person holding a Master's degree in law recognised by the Conseil Africain et Malgache de l'Enseignement Supérieur (CAMES) or a Master's degree in law or a diploma recognised as equivalent and the Certificat d'Aptitude à la Profession d'Avocat (C.A.P.A.) recognised in the UEMOA region, may apply to be registered on the training /isfe cle stage of a Bar in the said region.

7. Anyone applying for admission to the Bar must be of age at least 21 years old. She must be of good moral character.

E/le esf, en ocitre, tenue lle fournir au Consei/ rfe l'Orcfre :

- 1) a copy of his birth certificate;
- 2) an extract from their criminal record that is less than three months old;
- 3) proof that he/she is a national of an EU Member State;
- 4) the Master's degree in law recognised by the Conseil Africain et gfa/gacfie de l'Enseignement StJpérieur (CAMES) oo the Master's degree in law oo a degree recognised as equivalent;
- 5) Certificat d'Aptiturf e à la Profession d'Avocat (C.A.P.A.) ;
- 6) a key certificate issued by a Lawyer registered with the ta6/eau who has been sworn in for at least seven (7) years and who undertakes to provide the trainee with training in his or her own practice.

However, the following are exempt from the Certificat d'Aptitude à la Profession d'Avocat (CAPA):

- 1) magistrates with at least ten (10) years' professional experience in a court of law and who have resigned from /et/r i'unction ;
- 2j Associate professors at law faculties.

Magistrates and associate professors of law schools must, however, before taking the oath, follow the courses in law and the professional practice of a lawyer for a period of at least six (6) months in accordance with the requirements laid down by the President of the Bar.

*Before being admitted to the traineeship, and in the presence of the President of the Bar, applicants must take the following oath before the Cot/r cf'dppe/ I swear that, as a lawyer, I will practise my profession with honour, independence, competence, honesty, loyalty and respect for the rules of my Bar";*

*Next, article 27 states that: "Subject to the provisions of article 24 paragraph 4 of this Regulation, the duration of the traineeship is three (3) years. It may, exceptionally, be extended for two (2) years at the request of the trainee or if the Bar Council considers that the trainee has not fulfilled the obligations arising from the provisions of article 26 of this Regulation.*

*The trainee must be enforced by the Conseil de l'Ordre before his or her training period is extended.*

*Finally, article 30 requires that. "ñ/o/ may not be registered with the Ordre des Avocats, without prejudice to his acquired rights, if he does not meet the following conditions:*

- be a national of a Member State of the European Union;*
- be at least 24 years old;*
- be in possession of a certificate of apprenticeship; be of good character.*

*The purpose of the request for an opinion addressed to the Court is to ascertain :*

- 1- if the admission to the profession of lawyer of professors agrégés of law faculties is subject to a different legal regime from that of magistrates fulfilling the conditions of seniority in the jurisdiction and resignation from their position,'.*
- 2- if the registration on the Roll of the Ordre des Avocats in the UEMOA zone of magistrates who have completed at least ten (10) years of professional practice in a court of law and who have previously resigned from their position on the one hand, and of associate professors of law faculties on the other, is cumulatively subject to the completion of the cours de déontologie et de pratique professionnelle d'Avocat for a period of at least six (06) months, and to three (03) years of internship.*

*I look forward to receiving your opinion. Please accept, Mr Chairman, the assurance of my highest consideration.*

Victoria OUEDRAOGO/KIBORA  
*Knight of the Order of the Stallion*

P.J. :

*Copy of the decision of the Burkina Faso Bar Council of 11 March 2021*

*Copy of the decision of the Burkina Faso Bar Council of 16 February 2016*

The Court, sitting as a Consultative General Assembly under the chairmanship of Mr Daniel Amagoin **TESSOUGUE**, President of the Court of Justice of the WAEMU, on his report assisted by Mr Ervé DABONNE, Auditor at the said Court, in the presence of '

- Mr Salifou SAMPINBOGO, Judge ;  
Ms Victoire Eliane ALLAGBADA JACOB, First Advocate General ;
- Mr Mahawa Sé mou DIOUF, Judge ;
- Mr Euloge AKPO, Judge ;  
Mrs Josephine Suzanne EBAH-TOURE, Judge; Mr  
Kuami Gaméli LODONOU, Advocate General;

With the assistance of Maîtres Boubakar **TAWEYE** MAIDANDA, Registrar, and Hamidou YAMEOGO, Deputy Registrar, acting as secretary, examined the above application at its sitting of 25 October 2021.

**THE CONSULTATIVE GENERAL MEETING,**

having regard to the Treaty of the West African Economic and Monetary Union of 10 January 1994, as amended on 29 January 2003;

VU Additional Protocol I relating to the supervisory bodies of the WAEMU ,

HAVING REGARD TO Additional Act n°10/96 of 10 May 1996 on the Statutes of the Court of Justice of the WAEMU ;

VU Regulation No 01/96/CM of 05 July 1996 laying down the Rules of Procedure of the WAEMU Court of Justice, in particular Article 7 thereof;

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

HAVING REGARD TO the Minutes n°02/2016/CJ of 26 May 2016 relating to the swearing-in and installation of the members of the WAEMU Court of Justice;

HAVING REGARD TO the Procès-Verbal n°2019-08/AI/02 of 28 May 2019 relating to the appointment of the President of the Court and the distribution of functions within the Court;

HAVING REGARD TO minute no. 2021-02/AP/02 of 25 February 2021 relating to the swearing-in of a Member of the WAEMU Court of Justice;

HAVING REGARD TO Decision n°001-2013/CJ of 21 June 2013 on the Statute of Auditors of the WAEMU Court of Justice;

HAVING REGARD TO Burkina Faso's request for an opinion dated 04 June 2021, received at the Registry on 07 June 2021 and registered under number 21 DA 004;

HAVING REGARD TO **the written observations of the Republic of Benin dated 23 July 2021**

HAVING REGARD TO the written observations of the Togolese Republic dated 09 August 2021

HAVING REGARD TO the written observations of the Republic of Côte d'Ivoire dated 16 August 2021 ;

HAVING REGARD TO the written observations of the Republic of Niger dated

23 August 2021 VU the written observations of the Republic of Senegal dated 27 August 2021

VU Ordinance No 26/2021/CJ of 20 August 2021 appointing designation of a Rapporteur ;

HAVING REGARD TO the documents in the file ;

## ON THE SHAPE

This request for an opinion from the Minister of Justice of the State of Burkina Faso, addressed to the Court of Justice of the Union, is based on the provisions of Article 27 in fine of the Statutes of the said Court and Article 15.7 of the Rules of Procedure of the Court of Justice of the WAEMU.

These provisions give the Court of Justice the power to give an opinion on any difficulty encountered in the application or interpretation of acts governed by Community law when the matter is referred to it by the Commission, the Council of Ministers, the Conference of Heads of State and Government or a Member State.

The referral therefore complies with the rules of procedure and is admissible in its current form.

## AT THE BOTTOM

### 1. SUBJECT OF THE CONSULTATION

The request for an opinion from the Minister of Justice of the State of Burkina Faso, addressed to the Court, expressly seeks to know:

"1- si l'admission à la profession d'avocat des professeurs agrégés des facultés de droit obéit à un régime juridique différent de celui des magistrats remplissant les conditions d'ancienneté en juridiction et de démission de leur fonction ;

2- if registration with the *l'Ordre des Avocats* dans l'espace UEMOA des magistrats ayant accompli au moins dix (10) années de pratique professionnelle en juridiction et qui auront préalablement démissionné de leur fonction d'une part et d'autre part des professeurs agrégés des facultés de droit, *is cumulatively* subordonné à un suivi des cotés de formation et de la pratique professionnelle de l'Avocat pour une période d'au moins six (06) mois, et à trois (03) years de stage".

The first substantive question raised by the Minister of Justice of Burkina Faso is whether the conditions of eligibility laid down for these two bodies are different in view of the different treatment given to the applications of candidates from the two bodies by the Conseil de l'Ordre des avocats du Burkina.

By way of illustration, the letter refers to the case of Mr SOMA Abdoulaye, associate professor of law, who applied for registration on the Roll of the Bar on 14 July 2015.

In its decision dated 26 February 2016, the Bar Council authorised the applicant to be entered on the Roll of the Bar subject to completion of training in ethics and professional practice for a period of at least six (06) months, at the end of which he or she may take the oath.

On the other hand, on 28 December 2020, Mr BAKO Souleymane, a magistrate by profession, also submitted an application for registration on the Roll of the Ordre des Magistrates.

£IVOC6ItS of the Burkina Faso Bar. During its deliberations on 21 March 2021, the Bar Council decided that the applicant would be registered on the list of trainees and would have to complete three (03) years of traineeship from the date of taking the oath, after providing proof that he or she had attended a course on ethics and professional practice as a lawyer for six (06) months.

Lastly, on 28 December 2020, Mr OUALI Boama, a magistrate by profession, also applied to be entered on the Roll of the Bar; by order no. 2021-028/BAT/PMS dated 11 March 2021, the President of the Bar of Burkina Faso decided that this applicant was authorised to follow courses in ethics and the professional practice of law at the Centre de formation professionnelle des avocats du Burkina Faso for a period of six (06) months.

The main legal basis for the various decisions of the Bar Council and the Order of the President of the Bar are Articles 24, 27 and 30 of Regulation No 05/CM/UEMOA of 25 September 2014 on the harmonisation of the rules governing the legal profession in the UEMOA region.

**It is clear from an examination of the documents and the various decisions cited that the Burkina Faso Bar Association has applied the aforementioned texts selectively depending on whether the candidate for admission to the legal profession is a magistrate or an associate professor of law.**

The second question in the request for an opinion relates to the conditions for registration on the roll of lawyers in the WAEMU area, as regards magistrates and associate professors. Does Regulation No 05/CM/UEMOA of 25 September 2014 on the harmonisation of the rules governing the profession of lawyer in the UEMOA area provide for magistrates who have completed at least ten (10) years of professional practice in a court of law and who have previously resigned from their position on the one hand, and for associate professors at law faculties, a combination of the conditions for registration on the Roll of the Bar, i.e. attendance at a course in ethics and professional practice as a lawyer for six (06) months and then three (03) years' training as from the date of taking the oath.

## It. DISCUSSION

### A. GENERAL COMMENTS

**The aforementioned Regulation No 05/CM/WAEMU of 25 September 2014, Articles 24, 27 and 30 of which are subject to the Court's interpretation, was adopted with the aim of harmonising the rules governing the legal profession in the Member States of the Union, to further strengthen the independence of the judiciary in these countries and also contribute, to securing investments in the Community area. This has led to the definition of rules to improve the organisation of the legal profession.**

Access to the legal profession has been extended to include magistrates and teachers of law who hold an agrégation, who are admitted on the basis of merit as long as they meet a certain number of conditions defined in advance in articles 24 and 35<sup>1</sup> of the regulations. Recruitment on the basis of merit is a means of direct access to a body, allowing integration without competition, subject to holding a particular qualification or diploma. The main aim is to build on solid experience in the field concerned.

From the request for an opinion submitted to the Court, it appears that the Court must rule on the exact scope of Articles 24, 27 and 30 of Regulation No 05/CM/WAEMU of 25 September 2014 on the harmonisation of the rules governing the legal profession in the WAEMU area.

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V. arrêt n "005/2020 du 08 juillet 2020, Recours de la Commission contre décision de la Cour constitutionnelle du Bénin.



In other words, the Court is asked to clarify :

- if, on the one hand, the Regulation creates a different legal regime applicable to admission to the profession of lawyer for judges and associate professors of law ;
- on the other hand, if the requirement of the conditions of their registration on the Roll of the Bar, cumulates both the obligation to follow the courses of ethics and professional practice of lawyer for a period of six (6) months and a period of three (3) years of training.

## B. SPECIAL COMMENTS

1.) On the legal regime applicable to the admission of judges and associate professors of law

Under the terms of Article 24 of Regulation No 05/CM/UEMOA of 25 September 2014 on the harmonisation of the rules governing the legal profession in the UEMOA area:

*"To any person holding a qualification in law recognised by the Conseil Africain et hola/gac/ie de l'Enseignement Supérieur (CAMES) or the maîtrise en droit ou d'un diplôme reconnu équivalent et du Certificat d'Aptitude à la Profession cf'Avocat (C.A.P.A.) reconnu dans l'espace UEMOA, peut demander son inscription sur la liste de stage d'un Barreau dudit espace.*

*Any person applying for admission to the Bar must be at least 21 years old. E/le must be of good character.*

E/le est, en outre, tenue de fournir au Conseil de l'Ordre :

- 1) *an extract from your birth certificate;*
- 2) *an extract of its casier judiciaire dating over a period of three months;*
- 3) *evidence that he/she is a national of a Member State of the Union;*
- 4) *le diplôme de bachelier en droit reconnu par le Conseil Africain et hola/gac/ie de l'Enseignement Supérieur (CAMES) or le diplôme de maîtrise en droit or a diplôme recognised as equivalent ;*
- 5) *the Certificat d'Aptitude à la Profession d'Avocat (C.A.P.A.) ;*

6) *l'attestation* clé/ivrée par un Avocat inscrit au tableau ayant prêté serment depuis au moins sept (7) ans portant engagement à assurer dans son cabinet la formation effective du stagiaire.

In all cases, students are awarded the Certificat d'Aptitude à la Profession d'Avocat (CAPA) :

- 1) *magistrates who have completed at least ten (10) years of professional practice in a court and who have resigned their position;*
- 2) *professeurs agrégés de droit.*

However, before taking the oath of office, magistrates and associate professors of the Bar will follow courses in law and professional practice for a period of at least six (6) months in accordance with the requirements defined by the President of the Bar.

Before being admitted to the training course and upon presentation by the President of the Bar, candidates must swear an oath before the Court of Appeal in the following terms: "to practise my profession as a lawyer with honour, independence, professionalism, reliability, loyalty and dignity, in compliance with the rules of my Bar".

**Article 24 makes a clear distinction between two types of access to the legal profession in the WAEMU area: a general regime and a derogatory regime.**

The general scheme :

It is open to holders of a Master's degree in law recognised by the Conseil Africain et Malgache de l'Enseignement Supérieur (CAMES) or a Master's degree in law or a degree recognised as equivalent. They must also hold a Certificat d'Aptitude à la Profession d'Avocat (C.A.P.A.) recognised in the WAEMU region. In addition to the required documents (birth certificate, criminal record, certificate of nationality of a State of the Union), they are also required to be at least 21 years of age and to provide a certificate issued by a lawyer registered on the tableau who has been sworn in for at least seven (7) years and who undertakes to provide the trainee with effective training in his law firm.

This first category therefore concerns candidates who are generally recruited by **examination** and for whom the professional training centres for lawyers are responsible, where appropriate, for their initial training before they are admitted to a three (03) year practical training period in experienced law firms.

### **The derogation system :**

It is defined in paragraph 4 of article 24 and concerns the categories of professionals recruited on the basis of their qualifications.

**There are two main categories: magistrates with at least ten (10) years' professional experience in a court and who have previously resigned from their position, and associate professors of law faculties in accordance with article 35 of the same regulation. These two categories are identically**

exempt from the certificate of aptitude for the profession of lawyer (C.A.P.A);

- subject, before taking the oath, to courses in ethics and the professional practice of law for a period of at least six (06) months under the conditions laid down by the President of the Bar;

Finally, they must be sworn in by the President of the Bar before the Court of Appeal.

It follows from this provision of Article 24 paragraph 4 that the legal regime for access to the legal profession by magistrates and associate professors of law who meet the required conditions is identical. There is no legal justification for any difference in treatment. It is forbidden to distinguish where the law does not distinguish, in other words, as the law has provided without restrictions or conditions, the interpreter has no duty to introduce exceptions that have not been provided for by the legislator. This is the application of the Latin maxim, "*Ubi lex non distinguit, nec nos distinguere debemus*",

**Ultimately, the Burkina Faso Bar's initiative in this regard can be analysed as a selective interpretation of the provisions of Article 24 of Regulation No 05/CM/WAEMU of 25 September 2014 on the harmonisation of the rules governing the legal profession in the WAEMU area.**

2.) On the cumulative nature of the conditions for registration on the roll of lawyers in the WAEMU area for judges and associate professors of law.

Are we to consider, in the light of the provisions of Articles 24, 27 and 30 of Regulation No 05/CM/UEMOA of 25 September 2014 on the harmonisation of the rules governing the legal profession in the UEMOA area, that magistrates and associate professors are required, in addition to courses in ethics and the professional practice of Lawyers for a period of at least six (06) months, to undergo a three (03) year internship in a law firm?

The provisions of article 24, paragraph 4, second paragraph of the said regulations, expressly state that "*Magistrates and associate professors of the faculties of law must, however, before taking the oath, attend courses in law and professional practice for a period of at least six (6J) months in accordance with the procedures laid down by the President of the Bar*".

On the other hand, with regard to the traineeship system, Article 27 of the Regulations stipulates that

*"Subject to the provisions of article 24, paragraph 4 of these Rules, the duration of the traineeship is three (3) years. It may, exceptionally, be extended twice (2) by one year at the trainee's request or if the Bar Council considers that the trainee has not fulfilled the obligations arising from the provisions of article 26 of these Rules.*

*Trainees must be enfeudtJ by the Conseil de l'Ordre before their training period is extended.*

**With regard to the duration of the three-year probationary period, Article 27 expressly refers to an existing reservation in the provisions of Article 24 paragraph 4 of the Rules, which certainly concerns the derogations granted to magistrates and associate professors of law in connection with their direct admission to the profession of lawyer after completion of courses in ethics and professional practice.**

In the same vein, Article 30 of the Regulation, in setting out the conditions for registration on the roll of lawyers in the WAEMU area, refers to acquired rights as an exception to the conditions listed.

In any event, a combined reading of articles 24 paragraph 4, 27 and 30 of the Rules leads to the conclusion that the acquired rights, invoked in the context of registration on the Roll, are enjoyed by the professional categories of magistrates and associate professors, for whom article 27 makes a reservation, on the duration of the probationary period of three effective years. The persons subject to the training period are those covered by the general admission system, listed exhaustively in article 24 paragraph 1 and whose minimum age is 21.

Moreover, this interpretation, which is consistent with that of the useful effect of the Regulation, attests to the fact that the exemption from the traineeship is based on the professional experience of judges and associate professors of law, which justifies their registration on the basis of title. Consequently, the theoretical training of at least six months in the ethics and professional practice of the avOCat replaces the traineeship and provides the expected impregnation.

From a professional point of view, associate professors of law divide their time between higher education and scientific research and work in one or more higher education establishments. Magistrates, on the other hand, are professional members of the judicial and/or administrative courts, responsible for ensuring that the law is applied in the disputes referred to them. This wealth of knowledge and professional practice is sufficient justification for admission on the basis of title, subject to the conditions set out in article 24 paragraph 3 of the Rules.

This analysis leads to the conclusion that magistrates and associate professors of law faculties are not affected by the condition of "**possession of the certificate of completion of training**" prescribed in Article 30 of the Regulations in order to be entered on the roll. The exemption expressly results from the acquired rights of which they are beneficiaries and which are enshrined in Article 24, paragraph 4 and Article 27 of the Rules.

In accordance with the provisions of Article 32 of Regulation No. 01/2012/CJ repealing and replacing Regulation No. 01/2010/CJ on the Administrative Rules of the Court of Justice of the WAEMU, the rapporteur has obtained the preparatory drafting documents for Regulation No. 05/CM/UEMOA of 25 September 2014 on the harmonisation of the rules governing the legal profession in the WAEMU area.

It is clear that there is no requirement for a traineeship, with the exception of attending "courses in ethics and the professional practice of law for a period of six months in accordance with the procedures laid down by the President of the Bar".

In addition to these observations, magistrates with at least ten years' seniority and associate professors at law faculties cannot be required to complete a three (3) year traineeship in addition to the six (6) months' training in ethics and professional practice as a lawyer, whereas holders of a Master's degree complete a three (3) year traineeship.

### **III. CONCLUSIONS**

In consequence of the foregoing, the Court, sitting as a Consultative General Assembly, is of the opinion that :

1- the admission to the profession of lawyer of associate professors of law faculties obeys the same legal regime as that of magistrates fulfilling the double condition of at least ten (10) years of professional practice in a court of law and prior resignation from their position;

2- the registration on the Roll of the Ordre des Avocats in the UEMOA zone of magistrates who have completed at least ten (10) years of professional practice in a court of law and who have previously resigned from their position, on the one hand, and of associate professors of law faculties, on the other hand, is subject only to the completion of courses in ethics and professional practice as a lawyer for a period of at least six (06) months.

And signed by the Chairman, the Reporter and the Registrar.

Illegible signatures follow.

Ouagadougou, 28 October 2021

Pour le Greffier  
Le Greffier-Adjoint



The stamp is circular with a blue border. The outer ring contains the text "UEMOA" at the top and "Union Economique et Monétaire Ouest Africaine" at the bottom, separated by stars. The inner circle contains the text "COUR DE JUSTICE" at the top and "Le Greffier" in the center.

Hamidou YAMEOGO