

COURT OF JUSTICE

from

THE WEST AFRICAN ECONOMIC AND

MONETARY UNION (WAEMU)



AVI SN° 01/2011

OF 30 OCTOBER 2011

REQUEST FOR ADVICE FROM THE WEST AFRICAN DEVELOPMENT BANK (WADB) ON

File No. 01-2011

ITS ELIGIBILITY FOR THE JUDICIAL SYSTEM OF THE UEMOA COURT OF JUSTICE

The President of the West African Development Bank (WADB) referred the matter to the WAEMU Court of Justice by letter No PRES - DJSG - 2010 L 03672 dated 26 March 2010, received at the WAEMU Court of Justice on 07 April 2010, which reads as follows:

Mr. Chairman,

The West African Development Bank (WADB) would like to have the opinion of the WAEMU Court of Justice on its eligibility for the WAEMU justice system, particularly with regard to social disputes that may arise between the institution and its staff.

Created by an agreement dated 14 November 1973, the WADB is the common financing institution for community development and economic integration. Under the terms of article 41 of the amended Treaty on Economic and Monetary Union, "The Central Bank of West African States (BCEAO) and the West African Development Bank are autonomous specialised institutions of the Union.

Without prejudice to the objectives assigned to them by the WAMU Treaty, the Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO) and the Banque Ouest Africaine de Développement (BOAD) shall contribute independently to the achievement of the objectives of this Treaty.

As part of its internal organisation, the WADB has texts governing its staff. However, these texts remain silent on the method of settling social disputes and the competent body to deal with such cases.

To fill this gap, a study was carried out into the various alternatives, including the Court of Justice system.

I would ask the Court to inform BOAD of its eligibility for its judicial system and of any formalities associated with the implementation of such a choice.

Yours sincerely

The Court, sitting in Consultative General Assembly under the chairmanship of Mr Ousmane DIAKITE, President of the WAEMU Court of Justice, on the report of Mr Abraham D. ZINZINDOHOUE, Judge-Rapporteur, in the presence of :

- Mr Daniel Lopes FERREIRA, Judge at the Court
- Mrs Ramata FOFANA née OUEDRAOGO, Judge at the Court

- Mr Hamidou Salifou KANE, Judge at the Court
- Mr Konan Jérôme ALLOU, Judge at the Court
- Mr Dabré GBANDJABA, First Advocate General at the Court
- Mrs Seynabou Ndiaye DIAKHATE, Advocate General at the Court

and assisted by Maître Fanvongo SORO, Registrar of the Court, examined the above application at its sitting of 03 October 2011.

THE CONSULTATIVE GENERAL MEETING :

HAVING REGARD TO the Treaty of the West African Economic and Monetary Union (WAEMU) of 10 January 1994;

HAVING REGARD TO Additional Protocol I on the supervisory bodies of the WAEMU ;

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

HAVING REGARD TO Regulation No. 01/96/CM on the Rules of Procedure of the WAEMU Court of Justice of 5 July 1996;

HAVING REGARD TO Regulation n°01/2010/CJ of 02/02/2010 repealing and replacing Regulation n°01/2000/CDJ of 6 June 2000 on the Administrative Rules of the Court of Justice of the WAEMU ;

HAVING REGARD TO the request for opinion n° PRES - DJSG - 2010 L 03672 dated 26 March 2010, from the President of BOAD ;

HAVING REGARD TO the written observations of Côte d'Ivoire dated 19 August 2010 ;

HAVING REGARD TO the written observations of Senegal dated 07 September 2010 ;

HAVING REGARD TO the written observations of the Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO) dated 02 November 2010;

I - FORM

The application seeks the opinion of the Court of Justice on the eligibility of the WADB for the WAEMU judicial system, in particular with regard to labour disputes that may arise between it and its staff, and on the possible formalities associated with the implementation of such a choice.

This request may be considered to be based on the provisions of Article 27 paragraph 4 of the Additional Act n°10/96 on the Statutes of the Court and Article 15-7 of Regulation n°01/96/CM on the Rules of Procedure, relating to the advisory jurisdiction of the Court, which provide that when the organs of the Union encounter difficulties in the interpretation or application of provisions of Community law, they may consult the Court for its opinion.

In its Opinion No. 03/96 issued at the request of BCEAO on 10 December 1996 on the draft single licence for banks and financial institutions, the WAEMU Court of Justice showed great flexibility as regards the conditions for referral for an opinion, with a view to guaranteeing the effectiveness of its mission.

This flexibility in the interpretation of Article 27(4) of Supplementary Act No. 10/96 on the Statutes of the Court and Article 15-7 of Regulation 01/96/CM on the Rules of Procedure relating to the Court's advisory jurisdiction enabled the Court to give BCEAO Opinion No. 03/96 of 10 December 1996.

In addition, Title II of the WAEMU Treaty, entitled "The institutional system of the Union", provides for the BCEAO and the BOAD in Chapter II entitled "The organs of the Union", in articles 16 and 41.

The request of the President of the WADB to resolve difficulties related to the omission, in the texts governing the staff of the WADB, of the method for settling social disputes and the competent body to hear such cases must be declared admissible as having fulfilled the conditions of form prescribed by the aforementioned texts.

II - THE MERITS

1 - Purpose of the consultation

In order to obtain the opinion of the WAEMU Court of Justice on its eligibility for the justice system of the West African Economic and Monetary Union (WAEMU), particularly with regard to social disputes that may arise between the institution and its staff, the West African Development Bank (BOAD) explains:

- that it is the common financing institution for Community development and economic integration;
- in the same way as the BCEAO, it is an autonomous specialised institution of the WAEMU and thus contributes, by virtue of Article 41 of the WAEMU Treaty, in complete independence, to the achievement of its objectives;
- that it has adopted staff regulations that are silent on the method for settling industrial disputes and the competent body to hear such cases.

The WADB adds that in order to fill the void relating to the method of settling labour disputes and the competent body to deal with them, it has carried out the following operations

a study of the various alternatives, including the WAEMU Court of Justice.

It would also like to know whether it is eligible to join the WAEMU judicial system and what formalities, if any, are involved in making this choice.

2 - Discussion

The WADB submitted to the WAEMU Court of Justice a main concern relating to its eligibility for the Community judicial system, in particular with regard to social disputes that may arise between it and its staff (a) and a secondary concern relating to the possible formalities associated with the implementation of such a choice (b).

a) On the eligibility of BOAD to the Community judicial system with regard to social disputes that may arise between it and its staff

Article 2 of the WAEMU Treaty states that by the said Treaty, the High Contracting Parties have completed the WAEMU established between them, so as to transform it into the West African Economic and Monetary Union.

It is therefore quite logical that Title II of the WAEMU Treaty entitled "**The institutional system of the Union**" provides for the WADB in Chapter II entitled "**The institutional system of the Union**".

"**Of the organs of the Union**", in Articles **16** and **41**.

From an analysis of these provisions, it can be said that at institutional level, the WADB is a body of the Union with the status of an Autonomous Specialised Institution which, at functional level, is responsible for financing priority development and economic integration actions.

Article 41 of the WAEMU Treaty states that: "*The Central Bank of West African States (BCEAO) and the West African Development Bank (BOAD) are autonomous specialised institutions of the Union.*"

Without prejudice to the objectives assigned to them by the WAMU Treaty, the Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO) and the Banque Ouest Africaine de Développement (BOAD) shall contribute independently to the achievement of the objectives of this Treaty.

In view of the above and taking into account its status as an autonomous specialised institution of the WAEMU, which makes it an organ of the Union, it can be said that certain provisions of Additional Protocol No. 1 relating to the supervisory bodies of the WAEMU, as well as those of Additional Act No. 10/96 on the Statutes of the Court of Justice of the WAEMU and Regulation No. 01/96/CM on the Rules of Procedure of the Court of Justice of the WAEMU, are applicable to the WADB.

This is the case with those which provide that the Court of Justice shall hear disputes between the Union and its agents, the Union being understood, in view of the **preliminary title of the WAEMU Treaty devoted to definitions (article 1)**, as the West African Economic and Monetary Union in its entirety.

Consequently, the Court of Justice is of the opinion that, far from being one alternative among others, as specified in the request for an opinion, it is the only institution legally empowered to hear disputes between the WADB and its staff.

b) On the formalities relating to the implementation of the Court's jurisdiction in disputes between BOAD and its agents

Taking into account the impossibility for its staff to turn to the national jurisdictions of the States due to the immunity of jurisdiction and execution it enjoys by virtue of its founding texts and the expressly affirmed jurisdiction of the WAEMU Court of Justice, the WADB must specify, in its staff regulations, the question of jurisdiction with regard to its disputes with said staff to enable it to exercise the fundamental right of recourse to Justice.

This gap in the staff regulations does not constitute an obstacle to referral to the Court of Justice, given the powers conferred on it by the WAEMU Treaty.

expressly attributed to the Court. However, ignorance in this area means that the situation prevailing in this specialised autonomous institution of the WAEMU with regard to the handling of disputes with staff is characteristic of a denial of justice, whereas Article 3 of the WAEMU Treaty states that, in its action, the Union shall respect the fundamental rights set out in the 1948 Universal Declaration of Human Rights and the 1981 African Charter on Human and Peoples' Rights.

These fundamental rights include the right to a fair and public hearing by an independent and impartial tribunal, which will decide on the rights and obligations of the individual.

BOAD must therefore :

- expressly include in its Staff Regulations the jurisdiction of the WAEMU Court of Justice in respect of disputes with its staff;
- to specify, if necessary, all the preconditions for referral to the Court, in accordance with Article 15, paragraph 4 of Regulation No. 01/96/CM on the Rules of Procedure of the Court, which provides 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*".

On this last point, it is necessary to specify that "...the conditions determined in the staff regulations" may consist of prior referral to any internal BOAD body capable of proposing solutions to these disputes while respecting the rights and obligations of the parties.

This is the case with regard to the staff regulations applicable to staff linked to the WAEMU Commission whose "**TITLE IX: SETTLEMENT OF DISPUTES**" contains an article 140 which provides as follows:

"The Court of Justice shall have jurisdiction in any dispute between the Union and the servant.

However, an action shall not be validly brought before the Court unless :

- *if the person concerned has previously lodged a complaint with the Joint Advisory Committee;*
- *whether the complaint resulted in an explicit or implicit decision to reject the complaint, in whole or in part, by the appointing authority.*

The appeal must be lodged with the Court within two months of either :

- *the date of publication of the decision ;*
- *of the date of notification to the official concerned ;*
- *from the day on which the person concerned became aware of it ;*
- *the date of expiry of the time limit for response, where the appeal relates to an implied rejection decision".*

III - CONCLUSIONS

Accordingly, the Court, acting in an advisory capacity, is of the opinion that :

In form, BOAD's request for an opinion is admissible;

In the background:

- the only judicial institution empowered to settle disputes between the WADB and its agents is the WAEMU Court of Justice;
- The Staff Regulations of the WADB must expressly take into account the jurisdiction of the WAEMU Court of Justice with regard to disputes between the WADB and its employees;

- these articles of association must also, where appropriate, specify all the conditions precedent to referral to the Court ;
- in the event of a referral, the applicant must comply with the rules governing the operation of the Court (Statutes, Rules of Procedure and Administrative Rules), it being understood that :
 - an application shall be made to the Court containing the information specified in Article 31 of the Statutes and Article 21 of the Rules of Procedure;
 - the organs of WAEMU are represented before the Court by an agent appointed for each case and may appoint a lawyer registered at a bar in one of the Member States either to assist the agent appointed or to represent him (Article 29 of the Statutes and Article 22 of the Rules of Procedure);
 - the other parties (BOAD agents, for example) must be represented by a lawyer registered at a bar in one of the Member States.

And have signed :

**The
Registrar**

ChairmanThe

ReporterThe

Ousmane DIAKITE

Abraham D. ZINZINDOUOUE

Fanvongo SORO