

N° 01
of 06 March 2008

UEMOA COURT OF JUSTICE - OUAGADOUGOU
(BURKINA FASO)

ORDER

The year two
thousand and eight
and Thursday six
March

**Mr Eugène YAÏ (Maître
Issouf BAADHIO)**
(Bénéwendé S. SANKARA)
C/

The President of the Court of Justice of the West African
Economic and Monetary Union, sitting in his chambers at the
seat of the said Court, following the application for a stay of
execution by Mr Eugène YAÏ ;

1. **The WAEMU Conference of
Heads of State and
Government**
2. **The WAEMU Commission
(Maître Harouna SAWADOGO)**

Assisted by Mr Narcisse HOUNYO, Ad hoc Registrar; Made
the following order:

BETWEEN

Mr Eugène YAÏ, UEMOA Commissioner, of Ivorian nationality,
residing in Ouagadougou, with an address for service at the
office of Maître Issouf BAADHIO, Avocat à la Cour, 01 BP.
2100 OUAGADOUGOU 01 and Maître Bénéwendé S.
SANKARA, Avocat à la Cour, 01 BP. 4093 OUAGADOUGOU
01,

on the one hand ;

AND

1. The Conference of Heads of State and Government of
WAEMU, represented by its Legal Representative
2. The UEMOA Commission, whose registered office is at
Ouagadougou, 01 BP 543, in the person of its Legal
Representative, Mr Soumaïla CISSE, its President,
represented by Mr Eugène KPOTA, Agent of the said
Commission, who is represented by Maître Harouna
SAWADOGO, Avocat à la Cour, 01 BP. 4091
Ouagadougou 01,

on the other hand ;

The President of the Court of Justice of the West African Economic and Monetary Union (WAEMU) :

Having regard to the Treaty of the West African Economic and Monetary Union dated 10 January 1994;

Having regard to 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 ;

Having regard to Regulation n°01/96/CM of 5 July 1996 on the Rules of Procedure of the Court of Justice of the WAEMU ;

Having regard to Regulation n°01/2000/CDJ of 6 June 2000 repealing and replacing Regulation n°1/96/CDJ relating to the Administrative Rules of the WAEMU Court of Justice ;

Having regard to Additional Act n°03/CCEG/UEMOA of 20 January 2007 renewing, appointing and ending the terms of office of Members of the Court of Justice of UEMOA ;

Having regard to Additional Act n°05/CCEG/UEMOA of 18 May 2007 appointing and ending the term of office of a member of the Court of Justice of UEMOA ;

Having regard to Minutes n°01/2007/CDJ relating to the appointment of the President and the distribution of functions within the WAEMU Court of Justice;

Having regard to the application of Mr Eugène YAÏ, registered at the Court Registry on 12 June 2006 under No 02/2006 ;

HAVING REGARD TO the statement of defence of 25 October 2006 by the Harouna SAWADOGO law firm, representing the defendants;

Having regard to the pleadings ;

Makes this order.

By application dated 07 June 2006, registered at the Court Registry on 12 June 2006 under No 01/2006, Mr Eugène YAÏ, WAEMU Commissioner, lodged through his Counsel, Maître Issouf BAADHIO, Avocat à la Cour, Ouagadougou, an action for assessment of legality against Additional Act No 04/2006 appointing Mr Jérôme Bro GREBE as a Member of the WAEMU Commission, adopted on 11 May 2006 by the Conference of Heads of State and Government of the WAEMU; This action seeks the annulment of the Additional Act n°04/2006 for violation of articles 17, 18, 19, 27 and 30 of the WAEMU Treaty.

By separate document dated 07 June 2006, registered at the Court Registry on the same day under No 02/2006, the applicant has, pursuant to Articles 72 et seq. of the Rules of Procedure of the WAEMU Court of Justice, applied for an order suspending the operation of Additional Act No 04/2006 pending a decision in the main proceedings on the grounds that it was clear that the Additional Act in question was in itself a threat to the continued existence of the Community institutions in that it constituted a highly worrying recurrence and a manifestly unlawful disturbance against the applicant; and

members of his family, disregarding the respect due to the Court's decisions and the erga omnes effect that these decisions have on everyone.

The defendants submitted written observations in a statement of defence dated 25 October 2006 seeking a declaration that Eugène YAÏ's application was inadmissible for lack of urgency or, at the very least, a dismissal of the application for a stay of execution as ill-founded on the grounds that in similar proceedings between the same parties, the presiding court had noted that "... even supposing that the alleged damage could not be fully made good, the interests which the applicant seeks to safeguard should be weighed against the interests of the Union in avoiding blocking the operation of a department of the European Union. even supposing that the damage alleged cannot be fully made good, the interests which the applicant seeks to safeguard must be weighed against the interests of the Union in avoiding blocking the operation of a department of a body of the Union ...".

Before examining the merits of the request for a stay, it is worth briefly reviewing the background to the dispute and the regulatory framework in which it is situated.

Article 27 paragraph 2 of the Treaty of 10 January 1994 establishing WAEMU stipulates that "The term of office of the Members of the Commission shall be four (4) years renewable. During their term of office, Members of the Commission are irrevocable except in the event of gross misconduct or incapacity". Article 30 paragraph 1^{er} of the same Treaty stipulates "The term of office of the Members of the Commission may be interrupted by resignation or dismissal. Removal from office shall be ordered by the Court of Justice at the request of the Council as a penalty for failure to comply with the duties attaching to the performance of the duties of a Member of the Commission".

It should be remembered that the same parties had already appeared before the Court of Appeal in similar proceedings concerning the Act.

Additional Act n°06/2004 of 15 November 2004, which was sanctioned respectively by Presidential Order n°12 of 03 December 2004 ordering the stay of execution of Additional Act n°06/2004 and Judgment n°03/2005 dated 27 April 2005 of the Court declaring the said Additional Act null and void and concerning Additional Act n°01/2005, dated in Niamey on 11 May 2005, the proceedings of which gave rise to Presidential Order n°05 of 2 June 2005 rejecting Mr Eugène YAÏ's request for a stay of proceedings and Judgment n°01/2006 of 05 April 2006 annulling the Additional Act in question.

By another Additional Act n°04/2006, adopted on 11 May 2006, the WAEMU Conference of Heads of State and Government appointed Mr Jérôme Bro GREBE as Member of the WAEMU Commission, replacing Mr Eugène YAÏ, previously appointed by Additional Act n°01/2003 dated 29 January 2003.

Additional Act No. 04/2006 was the subject of an application to the Court of Justice of the European Communities for an assessment of its legality with a view to its annulment.

Following that action, the applicant applied to the Court for a stay of execution of the contested Additional Act pending any decision on the main proceedings.

It should then be pointed out that, according to Article 72 paragraph 2 and the established case law of the Cour de Céans, the decision ordering interim measures is subject to the existence of circumstances establishing urgency as well as factual and legal grounds justifying, *prima facie*, the granting of the interim measures requested; moreover, the urgent nature of a request for interim measures must be assessed in relation to the need to give a provisional ruling in order to avoid prejudice to the interests of the parties.

and irreparable harm is caused to the party seeking interim relief.

The granting of interim measures, in particular a stay of execution, is a matter for the court's sovereign assessment of the facts of the case as to whether the conditions of urgency and the serious nature of the main action have been met; it is settled case-law that it is for the interim relief judge to assess the factors making it possible to establish, in the circumstances of each case, whether the immediate enforcement of the decisions in respect of which a stay of execution is sought would be such as to entail a risk of damage for the applicant which could not be made good, even if the decisions were to be set aside in the main proceedings, on the other hand.

In the present case, while it is clear that the application to assess the legality of a third Additional Act aimed at replacing Mr. Eugène YAÏ is serious, the same cannot be said with regard to the fulfilment of the condition of urgency, given the factual circumstances relating to the Certificate of Termination of Office dated Eugène YAÏ is serious, the same cannot be said with regard to the fulfilment of the condition of urgency, given the factual circumstances linked to the Certificate of Termination of Office dated 24 May 2005, the letter dated 30 May 2005 and the vacating of Mr YAÏ's office and its occupation by Mr Bro GREBE, evidence of which has been provided as attested by the aforementioned Order n°05 of 02 June 2005;

In addition, in law, it should be noted, **firstly**, that the applicant's interests are protected in the stay of execution procedure until the Presidential order is made by Article 72 of Regulation No 01/96/CM laying down the Rules of Procedure of the WAEMU Court of Justice, which provides that "... the service of the application endorsed by the President suspends execution, even if it has begun, of the act in question...", and secondly, that the Commissioner appointed by the additional act in question has taken the oath of office. Service of the application endorsed by the President suspends enforcement, even where it has begun, of the act complained of..." **then**, that the Commissioner appointed by the Additional Act in question has taken the following oath

He was sworn in before the Court of Justice and **finally** took office,
that the mandate deriving from the said Additional Act has come to an end.

In view of the foregoing, it must be held that there is no interest in granting Mr Eugène YAÏ's application for a stay of execution which, moreover, does not satisfy the condition of urgency. It should therefore be dismissed.

For these
reasons

Acting in matters of Community law,

The Chairman,

Order,

1. Mr Eugène YAÏ's application for a stay of execution is rejected;
2. Costs are reserved.

And signed by the Chairman and the Ad hoc Registrar.

Illegible signatures follow,

For a certified copy, Ouagadougou, 10 March 2008

The Ad hoc Registrar

Narcisse HOUNYO