

**EXTRACT FROM THE MINUTES OF THE  
REGISTRY**

**N° 05**  
**2 June 2005**

**UEMOA COURT OF JUSTICE - OUAGADOUGOU**  
**(BURKINA FASO)**

**ORDER**

In the year two  
thousand and five  
and on Thursday  
two June

**Mr Eugène YAÏ**  
(Maître Issouf BAADHIO)

C/

- 1. The WAEMU Conference of  
Heads of State and  
Government**
- 2. The UEMOA Commission**  
(Maître Harouna SAWADOGO  
and Maître Abdoul Wahab  
BERTHE)

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 ;

Assisted by Mr Raphaël Péyomon OUATTARA, Registrar of the Court ;

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,

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, Burkina Faso and Maître Abdoul Wahab BERTHE, Avocat à la Cour BP. 8025 BAMAKO, Mali,

on the other hand ;

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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 No. 01/2000/CDJ of 6 June 2000 repealing and replacing Regulation No. 1/96/CDJ on the Administrative Rules of the Court of Justice of the WAEMU;

**Having regard to** Additional Act n° 01/2001 renewing the term of office, appointing and ending the term of office of Members of the WAEMU Court of Justice and Additional Act n° 02/2001 appointing Mrs Paulette Badjo EZOUERHU as a Member of the Court of Justice;

**Having regard to** Minutes No 01/2004 on the appointment of the President and the allocation of functions within the WAEMU Court of Justice;

**Having regard to** the application of Mr Eugène YAÏ,<sup>3</sup>  
registered at the Court Registry on 24 May 2005 under No  
04/05 ;

HAVING REGARD TO the statement of defence of 31 May  
2005 by the Harouna SAWADOGO law firm, representing the  
defendants;

HAVING REGARD TO the applicant's reply of 2 June 2005;

heard Maître Zaliatou Aouba, substituting Maître Harouna  
SAWADOGO and Maître Abdoul Wahab BERTHE in their oral  
observations;

Orî Maître Seydou TRAORE and Idrissa A. BA, replacing  
Maître Issouf BAADHIO in their oral observations;

**Having regard to** the pleadings ;

Makes this order.

By application dated 23 May 2005, registered at the Court Registry on 24 May 2005 under No 03/05, Mr Eugène YAÏ, Commissioner to the WAEMU, brought through his Counsel, Maître Issouf BAADHIO, Avocat à la Cour in Ouagadougou, an action for assessment of legality against Additional Act n°01/2005 appointing Mr Jérôme Bro GREBE as Member of the WAEMU Commission, adopted on 11 May 2005 by the Conference of Heads of State and Government of the WAEMU; This action seeks the annulment of Additional Act No 01/2005 on the grounds that it violates Articles 16, 27, 28 and 30 of the WAEMU Treaty.

By separate document dated 24 May 2005, registered at the Court Registry on the same day under no. 04/05, the applicant, pursuant to Articles 72 et seq. of the Rules of Procedure of the Court of Justice of the WAEMU, requested that the execution of Additional Act no. 01/2005 be suspended pending a decision on the main proceedings in order to "prohibit" and "frustrate" the award of contracts between himself and Mr Jérôme Bro GREBE, which, in his view, would not only have irreversible consequences, but would also be contrary to the sound and proper administration of justice, having regard to the case law derived from Presidential Order no. 09 of 03 December 2004.

The defendants submitted written observations in a statement of defence dated 31 May 2005 and the applicant filed its reply on 02 June 2005. Both parties then made oral submissions.

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<sup>er</sup> 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".

By Additional Act n°01/2005 dated 11 May 2005 in Niamey, the WAEMU Conference of Heads of State and Government appointed Mr Jérôme Bro GREBE as Member of the WAEMU Commission, to replace Mr Eugène YAÏ, previously appointed by Additional Act n°01/2003 dated 29 January 2003, whose term of office is still running.

The Additional Act No 01/2005 was the subject of the above-mentioned application to the Court of Justice 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 be recalled that the same parties had already appeared before the Court of Cassation in similar proceedings concerning the Additional Act n°06/2004 of 15 November 2004, which were sanctioned respectively by Presidential Order n°12 of 03 December 2004 ordering the stay of execution of the 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.

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.

In this case, it is clear that the application to assess the legality of a second Additional Act aimed at replacing Mr Eugène YAÏ is serious.

But it is clear from the factual circumstances of the case that the will of the Conference of Heads of State and Government of WAEMU and of the Commission to replace Mr Eugène YAÏ in his functions as Commissioner is manifest; the proof of this is the certificate of cessation of functions 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.

It is settled case-law that it is for the interim relief judge to assess the factors relevant to establishing, in the circumstances of each case, whether the immediate enforcement of the decisions in respect of which suspension 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.

Moreover, even supposing that the alleged damage cannot be fully made good, the interests which the applicant seeks to safeguard must be weighed against the interests of the Union by avoiding blocking the operation of a department of a body of the Union.

Mr Eugène YAI's application for a stay of execution does not meet the condition of urgency. It should therefore be dismissed.

**For these**  
**reasons**

Acting in matters of Community law,

**The Chairman,**

Order,

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

And signed by the Chairman and the Registrar. Illegible signatures follow,

For a copy drawn up in Ouagadougou, on 3 June 2005

**Raphaël P. OUATTARA**