



THE PRESIDENT

***ORDONNANCE N°47/2023/CJ
du 16 novembre 2023***

The year two thousand and twenty-three (2023), And the sixteenth (16th) of November,

We, Mahawa Sémou DIOUF, President of the Court of Justice of the West African Economic and Monetary Union (WAEMU), sitting in our chambers at the seat of the said Court, further to the request of the State of Niger and seven (7) others for a stay of execution of the sanctions resulting from the communiqué of 30 July 2023, issued by the Conference of Heads of State and Government of WAEMU in Abuja against the State of Niger;

Assisted by Maître Hamidou **YAMEOGO**, Deputy Registrar of the Court; We have made the following order:

Between

1- The State of Niger, a legal person governed by public law and a High Contracting Party to the Treaty of the West African Economic and Monetary Union (WAEMU), represented by the State Judicial Agency, a public administrative institution and legal person governed by public law, whose registered office is located at Niamey, quartier Kouara Kano, BP 11.404, Tel: 00227 20.73.22.19, represented by its Director General, Mr OUMAROU Ibrahim, domiciled in this capacity at the said head office;

2- Docteur **MOUSSA** Fatimata, born on 20/09/1956 in Filingué, Independent Consultant, of Niger nationality, residing in Niamey, BP 12 905, Quartier Plateau, Rue 28, Villa U39, Cité ONAREN, Tel: +227 96 97 24 35, Email: moussafatimata3@gmail.com ;

3- Société Nigérienne **d'Electricité (NIGELEC)**, a semi-public limited company with capital of 76,448,810,000 CFA francs, whose registered office is at Niamey, BP 11 202,

registered in the RCCM NI-NIA-2017M-6589, Tel: +227 20 72 26 93, represented by its Managing Director;

4- The Chamber of Commerce and Industry of Niger, a public establishment of a professionnel, whose head office is located at Place de la Concertation-Niamey, BP: 209 Niamey-NIGER, Tel: +227 20 73 22 10 / 20 73 51 55; E-mail: info@ccinger.orgn, represented by its Chairman;

5- Le Conseil Nigérien des Utilisateurs des Transports publics (CNUT), Etablissement Public à caractère Industriel et Commercial, whose head office is located at Rue de la Libye, BP 11 048 Niamey NIGER, Tel: +227 20 73 51 85, Email: cnut.dg@gmail.com, represented by its Managing Director;

6- Le Conseil National de l'Ordre des Pharmaciens du Niger, whose head office is in Niamey, Tel: +227 82 00 13 13, Email: info@cnop-niger.org; represented by its President;

7- The Niger Chamber of Agriculture, based in Niamey / Niger, represented by its President, BP : 686 Niamey, Tel : 96 74 99 79 ;

8- Le Syndicat des Commerçants Importateurs du Niger, whose head office is in Niamey, represented by its President, BP: 10.367 Niamey / Niger;

With Councils :

- SCP YANKORI & ASSOCIES, a professional partnership of Lawyers, having its registered office at Niamey, 754, rue du Plateau, BP 13 938 Niamey-NIGER, Tel: +227 20 72 20 12, Fax: +227 20 72 58 06, E-mail: yankori.soul@gmail.com ;
- Me MOUNKAILA Yayé, Avocat à la Cour, Ancien Bâtonnier de l'Ordre de Avocats du Niger, BP: 11 972 Niamey, 72, Rue 114 Niamey Bas Terminus, Commune III, Tel: +227 20 73 82 43, Fax: 20 73 82 44, E-mail: mykla@intnet.ne, mvkla.cab@Email.com ;
- SCPA LBTI & PARTNERS, a Société Civile Professionnelle d'Avocats whose registered office is at is located at 86 Avenue du Diamangou Rue PL 34 BP 343 Niamey-NIGER, Tel: +227 20 73 32 70 / Fax: +227 20 73 38 02, Email: moussa_tambo@yahoo.fr ;
- Me MAMANE AMADOU Ahamed, Avocat à la Cour, cabinet sis à Niamey, Quartier Francophonie, Niamey-NIGER, Tel: +227 92 28 29 22; Email: cabahmed1105@gmail.com ;

All Lawyers at the Niger Bar, electing domicile, for the present and its consequences, at SCPA LBTI & PARTNERS, Société Civile Professionnelle d'Avocats whose head office is located at 86 Avenue du Diamangou Rue PL 34 BP 343 Niamey-NIGER, Tel: +227 20 73 32 70 / Fax: +227 20 73 38 02, Email: moussa_tambo@yahoo.fr ;

Plaintiff,

on the one hand ;

And

- The Conference of Heads of State and Government of the West African Economic and Monetary Union (WAEMU), in the person of its legal representative, 380, Avenue du Professeur Joseph KI-ZERBO, 01 BP 543 Ouagadougou 01 Burkina Faso Faso, tel. +226 25 31 88 72, having as Agent, Mr Alioune SENE, Director of Legal Affairs of the UEMOA Commission and as Counsel, Maitre Issa SAMA, Lawyer registered at the Bar of Burkina Faso, residing at Ouagadougou, 06 BP 10302 Ouagadougou 06, tel. (00226) 25 37 78 78,
Defendant,

on the other hand ;

THE PRESIDENT

HAVING REGARD TO the Treaty of 10 January 1994 creating the West African Economic and Monetary Union, as amended on 29 January 2003;

HAVING REGARD TO Additional Protocol No. I relating to the supervisory bodies of the WAEMU ;

Having regard to Additional Act No. 10/96 of 10 May 1996 on the Statute of the Court of Justice of the WAEMU ;

HAVING REGARD TO Additional Act n°01/2023/CCEG/UEMOA of 10 January 2023 renewing the term of office and appointing members of the Court of Justice of UEMOA ;

HAVING REGARD TO Regulation No. 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°01/2022/CJ of 15 April 2022 repealing and replacing Regulation n°01/2012/CJ of 21 December 2012 on the Administrative Rules of the Court of Justice of the WAEMU ;

HAVING REGARD TO Minute No. 2023-01/AP/01 dated Wednesday, February 2023 relating to the service of the members of the Court of Justice of the WAEMU ;

HAVING REGARD TO Minutes No. 2023-02/AI/01 of 1^{er} February 2023 concerning the appointment of the President of the Court and the distribution of functions within the said Court;

HAVING REGARD TO minutes n°2023-03/AP/02 of 02 February 2023 relating to the installation of the President of the WAEMU Court of Justice;

HAVING REGARD TO the application by the State of Niger and 7 others, registered at the Registry on 29 August 2023

of the Court of Justice of the WAEMU, under number 23 R003, seeking an assessment of the legality for the purposes of annulling the sanctions against the State of Niger adopted by the Conference of Heads of State and Government of the WAEMU at its extraordinary session held on 30 July 2023 in Abuja, Nigeria;

HAVING REGARD TO the application by the State of Niger and 7 others, registered at the Registry of the WAEMU Court of Justice on 29 August 2023, under number 23 R003.1, alleging that

subject of the suspension of the implementation of the sanctions resulting from the communiqué of 30 July 2023, adopted by the Conference of Heads of State and Government of the WAEMU in Abuja against the State of Niger;

HAVING REGARD to Order n°35/2023/CJ of 21 September 2023 setting the deadline for the legal representative of the WAEMU Conference of Heads of State and Government to present his observations on the application for a stay of execution;

HAVING REGARD TO Order No. 36/2023/CJ of 02 October 2023 setting the amount of the bond;

HAVING REGARD TO Order n°44/2023/CJ of 12 October 2023 extending the time limit granted to the legal representative of the Conference of Heads of State and Government of the WAEMU to submit his observations;

HAVING REGARD TO the letter of 21 September 2023 serving the application for a stay of execution on the defendant;

HAVING REGARD TO the statement of defence of the Conference of Heads of State and Government of WAEMU, lodged at the Court Registry on 26 October 2023 under number 23 R03.4 ;

HAVING REGARD TO the other documents in the file;

Considering that by petition dated 28 August 2023, registered on 29 August 2023, under number 23 R003 at the clerk's office of the court of this court, the State of Niger, Doctor Moussa Fatimata, the Société Nigérienne d'Electricité (NIGELEC), the Niger Chamber of Commerce and Industry, the Conseil Nigérien des Utilisateurs des Transporteurs Publics (CNU), the Conseil National de l'Ordre des Pharmacies du Niger, the Niger Chamber of Agriculture and the Syndicat des Commerçants Importateurs du Niger, all with SCP YANKORI et associés, Maître MOUNKAILE Yayé, SCPA LBTI et PARTNERS and Maître MAMANE Amadou Ahamed as counsel and SCPA LBTI et PARTNERS as their address for service, have referred to the WAEMU Court of Justice an action for assessment of legality for the purpose of annulling the sanctions, resulting from the communiqué of 30 July 2023, taken by the WAEMU Conference of Heads of State and Government in Abuja against the State of Niger;

Considering that by another application dated 28 August 2023, registered on 29 August 2023, under number 23 R003.1 at the Court Registry, the State of Niger, Dr Moussa Fatimata, the Société Nigérienne d'Electricité (NIGELEC), the Niger Chamber of Commerce and Industry, the Conseil Nigérien des Utilisateurs des Transporteurs publics (CNU), the Conseil National de l'Ordre des Pharmacies du Niger, la Chambre d'Agriculture du Niger et le Syndicat des Commerçants Importateurs du Niger, all with SCP YANKORI et associés, Maître MOUNKAILE Yayé, SCPA LBTI et PARTNERS and Maître MAMANE Amadou Ahamed as counsel, and with SCPA LBTI et PARTNERS as their address for service, have brought proceedings before the UEMOA Court of Justice for the following purposes

a stay of execution of the sanctions resulting from the communiqué of 30 July 2023, adopted by the Conference of Heads of State and Government of the WAEMU in Abuja, against the State of Niger;

Whereas, by letter of 21 September 2023, the Registrar notified the defendant of the application for a stay of execution;

Whereas the observations of the WAEMU Conference of Heads of State and Government were filed at the Court Registry on 26 October 2023 under number 23 R003.4 ;

Considering that, in their request for a stay, the applicants maintain that, during its extraordinary session of 30 July 2023, held in Abuja in the Federal Republic of Nigeria, the Conference of Heads of State and Government of ECOWAS, by Decision MSC.A/DEC.5/07/23, adopted sanctions against Niger, which were endorsed and ratified by the Conference of Heads of State and Government of WAEMU, held on the same day;

Let them specify that these sanctions result from the final communiqué of the session which states: "the following sanctions will be implemented with immediate effect:

- 1- The closure of land and air borders between Niger and WAEMU countries;
- 2- A ban on all commercial aircraft flying to or from Niger over the WAEMU area;
- 3- The suspension of all commercial and financial transactions between UEMOA countries and Niger, including those involving petroleum products, electricity, goods and services;
- 4- Suspension of all financial transactions between WAEMU countries and Niger;
- 5- The freezing of the financial and monetary assets of the State of Niger at the BCEAO and the commercial banks of the WAEMU countries;
- 6- The freezing of the financial and monetary assets of Niger's public and semi-public companies at the BCEAO and in the commercial banks of WAEMU countries;
- 7- Suspension of financial transactions between banks in Niger and banks in other WAEMU countries;
- 8- The suspension of all assistance and financial transactions in favour of Niger by WAEMU financing institutions, particularly BOAD;
- 9- A ban on travel within the WAEMU area for the perpetrators of this attempted coup d'état, the freezing of their financial assets and the confiscation of their property;
- 10- The ban on travel, the freezing of assets and the confiscation of property apply to all civilian or military persons who participate in institutions, bodies or governments that the

military personnel involved in the coup. They would also apply to the families of those involved, who would also be banned from entering WAEMU countries;

That the State of Niger and the 7 others state that the implementation of these sanctions, which were immediately put into effect by the suspension of the supply of electricity, the closure of borders, the freezing of the assets of the State of Niger and of public and semi-public companies held at the Central Bank and in commercial banks, the suspension of banking transactions and the ban on overflight of the WAEMU area by any aircraft flying to or from Niger, could, if continued, cause sufficiently serious and irreversible damage to the situation of the applicants and to the interests of the people of Niger, who are deprived of the slightest assistance;

That is why they are requesting the suspension of the implementation of these sanctions, arguing that the illegal nature of these measures has been amply explained in the main action for assessment of legality brought against the Communiqué of the Conference of Heads of State and Government;

They further submit that, in the present case, all the conditions have been met for ordering a stay of execution of the sanctions imposed on Niger, on the grounds that both the urgency and the existence of a prior remedy are beyond dispute;

On the question of urgency, the applicants submit that the implementation of the said sanctions will have harmful consequences on an unprecedented scale insofar as Niger is a landlocked country which maintains economic relations with all its neighbours, in particular through the use of its ports; the closure of land and air borders and the suspension of commercial and financial transactions between Member States are severing these relations, having a serious impact on the population, with the blocking of essential goods bound for Niger, and leading to the isolation of the country, This is in total opposition to the objectives of WAEMU as defined in the Preamble and in article 4C of the amended Treaty, and in violation of the fundamental principles of international law enshrined in particular in the Convention on the High Seas and the New York Convention of 8 January 1965 on the Transit Trade of Landlocked States;

With regard to the irreparable consequences, the applicants set out the fragile and vulnerable nature of the Niger economy and elaborated on the impact of the implementation of the contested sanctions on the economy, in particular on the sectors of industry, construction and public works, trade, transport and transit, health, tourism and the hotel industry as well as banking and finance; Considering that in its statement of defence, the Conference of Heads of State and Government of WAEMU seeks the rejection of the request for a stay of execution, pointing out three points

series of considerations relating to the admissibility of the application for a stay of execution, the alleged illegality of the sanctions imposed by the Conference and the fulfilment of the two conditions for obtaining a stay of execution, namely urgency and the risk of irreparable harm;

That on the first point, the Conference states that it has no objection to raise on admissibility ;

On the second point, it submits that the alleged illegality is unfounded on the grounds that, on the one hand, WAEMU has incorporated peace and security issues into its purpose, in particular through Additional Act No 04/2013/CCEG/UEMOA of 24 October 2013 instituting a common policy in the area of peace and security and the memorandum of understanding signed in 2018 between WAEMU and ECOWAS on crisis and conflict prevention ; that this broadening of its powers leads it to combat unconstitutional changes of government; that it develops that these provisions not only attest to the fact that WAEMU can deal with issues relating to peace and stability but also highlight the synchronisation of the actions of ECOWAS and the Union in an international context of consensus on the need to sanction unconstitutional changes of government resulting from the positions of the UN Security Council, the European Union and the African Union on coups d'état;

Secondly, the defendant states that there is no legal instrument preventing the imposition of sanctions, neither the WAEMU Treaty nor the New York Convention on Transit Trade of Landlocked States;

That the Conférence des Chefs d'Etat et de Gouvernement adds, with regard to the conditions for the stay, that the applicants' request disregards the purpose of interim measures by failing to demonstrate urgency and is not based on an up-to-date assessment of the legal and factual context; that it maintains that, in the present proceedings, it is a question of demonstrating how an imminent danger, with irreversible consequences, weighs on the interests of the applicant;

I. JURISDICTION OF THE PRESIDENT OF THE COURT OF JUSTICE OF UEMOA

Whereas under the terms of Article 3 of its founding Treaty, "*The Union shall respect in its action the fundamental rights set out in the Universal Declaration of Human Rights of 1948 and the African Charter on Human and Peoples' Rights of 1981*";

That it follows that the Court is empowered to review any action taken by its bodies on matters of law within its Community area;

Whereas, under the terms of Article 1 of Additional Protocol No. 1 on the supervisory bodies of WAEMU, "*The Court of Justice shall ensure that the law is observed in the interpretation and application of the Treaty of the Union*";

As such, it is responsible for ensuring compliance with the WAEMU Treaty Community acts referred to it;

Whereas Article 18 of Additional Protocol No. 1 stipulates that *"Actions brought before the Court of Justice shall not have suspensory effect. However, the Court may order the suspension of operation of acts contested before it"*;

That Article 44 of Additional Act No 10/96 of 10 May 1996 on the Statute of the Court of Justice of the WAEMU states that *"The President of the Court, or where appropriate the judge who replaces him, may rule by summary procedure by order on the submissions seeking a stay of proceedings"*;

That Article 72 of the Rules of Procedure of the WAEMU Court of Justice makes the procedure relating to the stay of execution a special procedure falling within the jurisdiction of the President of the Court;

Thus, in his capacity as a judge of summary proceedings, i.e. urgent proceedings, the Chairman may take measures of an essentially provisional nature without prejudicing the merits of the case and avoiding emptying the proceedings of their substance;

That, consequently, we should declare that we have

jurisdiction; II. THE ADMISSIBILITY OF THE

APPLICATION FOR A STAY OF PROCEEDINGS

Considering that under the terms of article 72 paragraph 1 of the Rules of Procedure of the

Court of Justice, *"an application for suspension of operation of an act of an institution is admissible only if the applicant has challenged that act in an action before the Court"*;

Considering that the sanctions taken on 30 July 2023 in extraordinary session by the Conference of Heads of State and Government, whose suspension is sought, are the subject of an application for assessment of legality for the purpose of annulment, lodged on 29 August 2023 under number 23 R003 ;

Accordingly, the application by the State of Niger and the 7 others for a stay of proceedings complies with Article 72 of the Rules of Procedure of the Court of Justice in that it was brought following their action for annulment brought before the Court of Justice of the European Communities against an act of a Community body;

It is therefore admissible in form;

III. FOUNDATIONS FOR THE STAY

Whereas, according to Article 72 of the Rules of Procedure of the Court of Justice, *"The application for a stay shall specify the subject matter of the dispute, the circumstances establishing the urgency, and the pleas of fact and law justifying at*

first sight the granting of the interim measure to which it refers;

It follows that the application for a stay is made by a separate document, in a manner that is comprehensible in itself, without there being any need to refer to the application in the main proceedings, which is not within the jurisdiction of the President's Court; However, the applicants stated in their application for a stay that "The unlawful nature of these measures was largely developed in the main action for assessment of legality brought against the Communiqué of the Conference of Heads of State and Government", thus confining itself to demonstrating the urgency of its request;

That the application for a stay thus lodged does not satisfy the condition relating to the requirement to present pleas of fact and law justifying *prima facie* the grant of the interim measures sought;

Considering, moreover, that the urgent nature of an application for interim measures must be assessed in relation to the need to give a provisional ruling in order to avoid serious and irreparable harm to the party seeking interim measures;

That urgency, understood objectively and comprehensively as a risk of sufficiently serious, immediate and irreparable harm, must not be assessed solely from the point of view of the applicants' situation but must result from a balancing of the interests involved;

Considering that the case file shows that the WAEMU Conference of Heads of State and Government, at its extraordinary session of 30 July 2023, adopted sanctions against the State of Niger; that these sanctions were applied immediately;

In this case, the sanctions were taken following a challenge to the constitutional order of a WAEMU Member State, leading to a reaction from the Community institution;

Whereas the balancing of these interests must reflect the concern to ensure legal certainty and the stability of democratic institutions within the Community ;

That this is even an absolute imperative which is postulated by free membership of a Community institution of this kind, whose enshrined rules reflect, by their very nature, the primacy of the general interest over particular interests;

Considering that, having been the source of the situation thus created, the authorities of the State of Niger are inadmissible for wishing to plead the irreversibility of the damage incurred since it is sufficient for them to put themselves in the perspective of a return to constitutional order in order to remove the spectre of irreparability;

It must therefore be held that the present application for a stay does not meet the requirements of urgency and irreversibility of the harmful consequences;

Considering that, in any event, the granting of a stay of execution is a matter for the judge's sovereign appreciation, which he draws from an analysis of the circumstances of each case; That it is appropriate to declare that there are no grounds to order a stay of execution of the sanctions pronounced by the Conference of Heads of State and Government of the WAEMU, against the State of Niger, at its extraordinary session held on 30 July 2023 in Abuja;

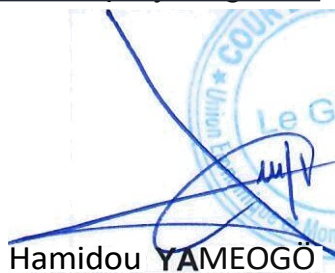
PARKS REASONS

- We hereby declare that ;
- Declare admissible the application for a stay of execution brought by the State of Niger, Dr Moussa Fatimata, the Société Nigérienne d'Electricité (NIGELEC), the Niger Chamber of Commerce and Industry, the Conseil Nigérien des Utilisateurs des Transporteurs Publics (CNUT), the Conseil National de l'Ordre des Pharmacies du Niger, the Niger Chamber of Agriculture and the Syndicat des Commerçants Importateurs du Niger;
- Declare that there are no grounds for ordering a stay of execution of the sanctions imposed by the Conference of Heads of State and Government of the WAEMU at its extraordinary session held on 30 July 2023 in Abuja;
- Costs reserved;
- Let's just say that it will be referred to us if necessary.

Signed in our chambers on 16 November 2023.

Illegible signatures follow.
Ouagadougou, 17 November 2023

For the Registrar
The Deputy Registrar



Hamidou YAMEOGO