

**JUDGMENT
T NO.
005/2020
FROM 08 JULY 2020**

*Application No. 20 R002 of 22
January 2020, for implementation
of Article 14 of the Additional
Protocol
No. 1 on WAEMU supervisory bodies*
.....

The Commission of the West African
Economic and Monetary Union
(WAEMU)

Against

Decision no. 19-287 of 22 August
2019 of the Constitutional Court of
Benin

Composition of the Court :

- Mr Daniel Amagoïn TESSOUGUE,
Judge-Rapporteur, President ;
- Mr Salifou SAMPINBOGO, Judge,
- Mr Augusto MENDES, Judge ;
- Mr Bawa Yaya ABDOULAYE, 1^{er}
General Counsel ;

- Me Boubakar TAWEYE MAIDANDA,
Registrar.

EXTRACT FROM THE MINUTES OF THE REGISTRY

**COURT OF JUSTICE OF THE WEST
AFRICAN ECONOMIC AND
MONETARY UNION (WAEMU)**

PUBLIC HEARING ON 08 JULY 2020

The Court of Justice of the WAEMU, meeting
in open session on the eighth day of July in
the year two thousand and twenty, in which
were seated :

Mr Daniel Amagoïn TESSOUGUE, Judge-
Rapporteur, President; Mr Salifou
SAMPINBOGO, Judge; Mr Augusto MENDES,
Judge; in the presence of Mr BawaYaya
ABDOULAYE, 1^{er} Advocate General ;

with the assistance of Mr Boubakar TAWEYE
MAIDANDA, Registrar

delivered the following judgment:

The Commission of the West African Economic
and Monetary Union (UEMOA) represented by its
President, 380, Avenue Professeur Joseph KI-
ZERBO 01 BP 543 Ouagadougou
Burkina Faso, commission@uemoa.int; +226 25 31
88 73,
Plaintiff, on the one hand ;

AGAINST
Decision n°19-287 of 22 August 2019 of the
Constitutional Court of Benin;

on the other hand ;

THE COURT

VU the Treaty of the West African Economic and Monetary Union dated 10 January 1994, as amended on 29 January 2003;

HAVING REGARD TO Additional Protocol No. 1 on the supervisory bodies of the WAEMU ;

HAVING REGARD TO Additional Act No. 10/96 of 10 May 1996 on the Statutes of the Court of Justice of the WAEMU ;

HAVING REGARD TO Regulation No. 01/96/CM of 05 July 1996 on the Rules of Procedure of the Court of Justice of the WAEMU;

VU Regulation n°01/2012/CJ of 21 December 2012 on the Administrative Rules of the Court of Justice of the WAEMU;

VU Minutes No 02/2016/CJ of 26 May 2016 relating to the swearing-in and installation of the members of the WAEMU Court of Justice

VU Minutes No. 2019-08/AI/02 of 28 May 2019 on the appointment of the President of the Court and the distribution of functions within the Court;

VU Minutes n°2019-09/AP/07 of 03 June 2019 relating to the installation of the President of the WAEMU Court of Justice;

VU Order N°021/2019/CJ of 20 November 2019 fixing the days of the Assemblies of the WAEMU Court of Justice;

VU Order No 038/2020/CJ of 26 June 2020 fixing the period of the judicial holidays of the Court of Justice of the WAEMU for the year 2019-2020;

VU Order No 040 /2020/CJ of 26 June 2020 on the composition of the plenary session to sit in public session on 08 July 2020;

VU Application No 20 R002 of 22 January 2020, lodged by the WAEMU Commission, for implementation of Article 14 of Additional Protocol No 1 on the supervisory bodies of the WAEMU;

VU the documents in the file;

the Judge-Rapporteur in his report ;

SE the First Advocate General in his Opinion;

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Having deliberated in accordance with Community law :

I. INQUIRY

Whereas by letter dated 21 January 2020, the President of the WAEMU Commission referred the matter to the WAEMU Court of Justice for the purpose of implementing Article 14 of Additional Protocol No. 1 relating to the supervisory bodies of the WAEMU;

That he explains that his application follows Decision No. 19-287 handed down on 22 August 2019 by the Constitutional Court of Benin, in which manifestly erroneous interpretations of Community law were found concerning the application of the provisions of Regulation No. 5/CM/WAEMU of 25 September 2014 relating to the practice of the profession of lawyer;

That the application was registered at the Court Registry on 22 January 2020 under number 20R002 ;

Considering that in accordance with Article 26 in fine of Regulation n°10/96/CM/UEMOA on the Rules of Procedure of the Court of Justice of the UEMOA, the Commission is exempt from the deposit of security;

That by order n°006/2020/CJ of 03 February, Mr Daniel Amagoin TESSOUGUE was appointed Judge-Rapporteur.

II. FACTS AND SITUATION

Considering that the decision referred by the Commission to the Cour de céans is Decision No. 19-287 of 22 August 2018 of the Constitutional Court of Benin as follows:

"The Constitutional Court

Seised of a request dated in Cotonou on 18 December 2018 registered at its secretariat on 25 February 2019 under number 0466/092/REC by which Mr Éric DEWEDI, agrégé des facultés de droit, 03 BP 3591, lodges an appeal against the Conseil de l'Ordre des avocats for violation of the principle of equality;

HAVING REGARD TO the Constitution of 11 December 1990;

HAVING REGARD TO Act no. 91-009 of 04 March 1991 on the Constitutional Court, as amended by the Act of 31 May 2001;

HAVING REGARD TO the Rules of Procedure of the Constitutional Court; All the documents in the case file;

Heard Mr Joseph DJOGBENOU's report and the applicant's observations at the plenary hearing on 22 August 2019;

After deliberation;

Considering that the applicant states that he submitted an application for enrolment on the roll of the Bar which was rejected without his being heard as provided for in Article 17 paragraph 7 of Law no. 65-6 of 20 April 1965 instituting the Bar of the Republic of Benin; that this rejection is contrary to his right to equality insofar as other associate professors, before him, had their applications accepted by virtue of Article 20 of that law which institutes a derogatory route of access to the legal profession in Benin for associate professors, by exempting them from training; that under the provisions of Article 40 of that same law, there is no incompatibility between the profession of lawyer and that of professor or lecturer in a law faculty, especially as teachers in Benin's national universities enjoy independence in the exercise of their profession; that he therefore asks the Court, on the basis of Articles 26, 122 et seq. of the Constitution, to declare the rejection of his application contrary to the Constitution;

Considering that, in response, the President of the Bar Association stated that he had in fact received an application from the applicant to be admitted to the bar and not an application to be entered on the roll of the bar as he indicated in his application ; that the file assigned for study and character investigation on 3 November 2016, has not been the subject of a decision but has remained under investigation and that, contrary to the applicant's allegations, the law applicable to admission to the Benin Bar Association is no longer Law No 65-6 of 20 April 1965, but Regulation No 05/CM/UEMOA of 25 September 2014 which, by virtue of its Article 92, "repeals and replaces all previous provisions to the contrary" ; that it is this regulation relating to the harmonisation of the rules governing the profession of lawyer in the WAEMU area which introduces an exemption from the Certificate of Aptitude for the Profession of Lawyer (CAPA) for the benefit of magistrates and associate professors of law faculties whereas this certificate was required by Law No 65-6 of 20 April 1965 contrary to Mr DEWEDI's claims; that, however, associate professors no longer benefit from any exemption from training; that, as regards the violation of the principle of equality alleged by the applicant, the President of the Bar maintains that no associate professor of law in the same situation as Mr Eric DEWEDI was admitted under the current texts; that all the professors and associate professors, lawyers at the Benin Bar, were admitted on the basis of former texts;

that, moreover, by virtue of Article 35 of Regulation No 05/CM/UEMOA of 25 September 2014 and contrary to the applicant's allegations, the exercise of the profession of lawyer is compatible only with the function of temporary teachers and not with that of teachers who, like Éric DEWEDI, exercise by statute a permanent post in a grade, a civil service, or an administration at the disposal of the Head of Government; that there is therefore no discrimination against Mr Éric DEWEDI ;

Considering that, in reply to the observations of the President of the Bar, the applicant submits that even if the provisions of Regulation No 05/CM/UEMOA of 25 September 2014 have a higher value than that of domestic norms, on the other hand, Law No 65-6 of 20 April 1965 remains applicable in particular in its provisions which are not contrary to the UEMOA Regulation by virtue of Article 91 of the said Regulation itself; that, moreover, even under the WAEMU Regulation alone, his application for admission to the Benin Bar's list of trainees as an associate professor of law complies with Article 24(4) of the said Regulation, which exempts associate professors of law faculties and magistrates from the CAPA while subjecting them to courses in ethics and the professional practice of law for a period of at least six months; as evidence of this, he cites only the examples of Burkina Faso and Niger, where the Bars have admitted associate professors under the terms of Regulation No. 5 after subjecting them to a course in ethics and professional practice for at least six months;

Considering that, as regards the compatibility of practising as a lawyer with the status of part-time teacher provided for in Article 35 of the WAEMU Regulation, Mr DEWEDI maintains that the Community legislature has not defined the concept of part-time teacher; but that, according to Article 40(3) of Law No 65-6 of 20 April 1965, which is still in force, "the profession of lawyer (...) is, however, compatible with the duties of professor or lecturer in law in faculties and schools";

HAVING REGARD TO the Preamble, Articles 26, 122, 147 and Titles 2 and IX of the Constitution; Article 35 of Regulation No. 05/CM/WAEMU of 25 September 2014;

Whereas the statutory provisions relating to a professional organisation determine and lay down only the conditions of access to and practice of that profession; whereas they cannot in particular prescribe incompatibilities or restrictions relating to the practice of another profession.

That by providing, in Article 35, that, "the profession of lawyer is compatible with the profession of temporary teacher", Regulation No 05/CM/UEMOA of 25 September 2014 does no more than establish a statutory compatibility with regard to the Lawyer who is a candidate for the profession of higher education

teacher ;

that this text cannot be understood or accepted as a rule establishing an incompatibility in the exercise of the profession of higher education teacher, which is governed by the statutory provisions relating to this profession;

Considering, moreover, that it follows from the Preamble to the Constitution, from Title II thereof, together with Title IX, that it is not contrary to the Constitution for a national legislative provision to grant citizens rights which are more advantageous than those resulting from a Community or international standard; prior or subsequent Community law applies as long as it does not diminish or restrict the rights recognised by the Constitution and the laws in general in favour of individuals; this would only be otherwise if the provision contained in the prior or subsequent national legislation lays down obligations and imposes constraints that are more onerous than those conventions duly ratified by the Republic of Benin;

In the present case, Articles 5 paragraph 1 and 26 paragraph 2 of Law 65-6 of 20 April 1965 provide respectively: "No one may be entered on the roll of lawyers at the Cotonou Court of Appeal unless he or she is a Dahomean citizen, enjoys his or her civil rights, is at least twenty-three years old, actually practises within the jurisdiction of that Court and produces a certificate of training"; "Former members of the Supreme Court, former magistrates of the judiciary, all of whom have a law degree and have been in office for at least two years, professors and associate professors of law faculties, lawyers listed in the previous paragraph who have been registered for more than five years and solicitors with a law degree who have practised their profession for five years are exempt from the probationary period. "It [the profession of lawyer] is compatible with the duties of professor or lecturer in law in faculties or schools;".

That, on the other hand, Article 35 al. 1 of Regulation No 05/CM/UEMOA of 25 September 2014 on the harmonisation of the rules governing the profession of lawyer in the UEMOA area provides that "The profession of Lawyer is compatible with the functions of temporary teacher".

Considering that, therefore, the law on the bar, which grants lawyers aspiring to the position of higher education lecturer and associate lecturers in law faculties more advantageous rights than those granted by the WAEMU regulation in question, is not contrary to the Constitution and does not in any way breach the State's international commitments;

That it follows that the refusal by the Benin Bar Association to grant the applicant's request infringes that citizen's right to equality before the law as recognised by Article 26 of the Constitution;

AS A RESULT :

Article 1 - Declares that articles 5 paragraph 1, 26 paragraph 2 and 40 paragraph 3 of law 65-6 of 20 April 1965 are not contrary to the preamble or article 14 7 of the Constitution.

Article 2 - The Conseil de l'Ordre des avocats has breached article 26 of the Constitution.

This decision will be notified to Mr Eric DEWEDI, to the President of the Bar Association, to the Keeper of the Seals, Minister for Justice and Legislation and published in the Official Journal.

Seated in Cotonou on the twenty-second of August two

thousand and nine. Messrs:

- *Joseph DJOGBENOU, Chairman*
- *Razaki AMOUDA ISSIFOU, Vice-Chairman*
- *Rigobert A, AZON, Member*
- *André KATARY, Member*
- *Fassassi MOUSTAPHA, Member*
- *Sylvain M. NOUWATIN, Member "*

Considering that from the analysis of the above-mentioned decision, it appears that the Constitutional Council of Benin was seized on 18 December 2018 of a request from Mr Eric DEWEDI, agrégé of the faculties of law, who lodged an appeal against the council of the Bar Association for violation of the principle of equality;

That, in fact, the applicant had applied unsuccessfully for admission to the Bar; that, believing himself to be eligible on the basis of the provisions of Law No 65-6 of 20 April 1965 establishing the Bar of the Republic of Benin, he was opposed by the same Bar to the provisions of Regulation No 05/CM/UEMOA of 25 September 2014 relating to the exercise of the profession of lawyer, Article 92 of which "repeals and replaces all previous provisions to the contrary" ;

Considering that in its decision n°19-287 of 22 August 2019, the Constitutional Court of Benin considered that by providing, in its article 35, that "*the profession of lawyer is compatible with the profession of temporary teacher, the Regulation n°5/CM/UEMOA of 25 September 2014 only establishes a statutory compatibility with regard to the lawyer candidate to the profession of higher education teacher* ;

that this text cannot be understood or retained as a rule establishing an incompatibility of exercise of the profession of higher education teacher, the regime of which is governed by the statutory provisions relating to that profession;" that it added "that it follows from the Preamble to the Constitution, from Title II thereof, together with Title IX, that a national legislative provision which grants citizens more advantageous rights than those resulting from a Community or international standard is not contrary to the Constitution ; prior or subsequent Community law applying as long as it does not diminish or restrict the rights recognised by the Constitution and the laws in general in favour of individuals; that it would only be otherwise if the provision contained in the prior or subsequent national legislation set higher obligations or imposed greater constraints than those conventions duly ratified by the Republic of Benin." ;

Considering that, in line with this reasoning, the Constitutional Council handed down its decision excluding the application of the provisions of Regulation No 05/CM/UEMOA of 25 September 2014, to the specific context of the exercise of the profession of lawyer in Benin in favour of national law, in particular Law No 65-6 of 20 April 1965 referred to above, on the basis of certain constitutional provisions; this court held that these instruments would grant more advantageous rights to the applicant.

III. DISCUSSION

A. In form

Considering that the Commission's application was lodged on the basis of Article 14 of Additional Protocol No 1 on the supervisory bodies of the WAEMU; that this Article provides :*"If, at the request of the Commission, the Court of Justice finds that in a Member State the inadequate functioning of the preliminary ruling procedure allows the implementation of erroneous interpretations of the Union Treaty, of acts adopted by the organs of the Union or of the statutes of bodies set up by an act of the Council, it shall notify the highest court of the Member State of a judgment establishing the correct interpretations. These interpretations shall be binding on all administrative and judicial authorities in the Member State concerned.*

That in the present case, in accordance with the provisions of Article 12 of the aforementioned Protocol, the Constitutional Court of Benin, as the court of last resort, was obliged to refer the matter to the Community court, since a problem of interpretation of the Union Treaty, of the legality and interpretation of an act adopted by the organs of the Union, was submitted to it, in this case the provisions of Regulation No 5/CM/WAEMU of 25 September 2014 relating to the practice of the profession of lawyer in the WAEMU area ; That by risking an interpretation of the said provisions, the Commission is within its role in seeking the Court's review;

The Court of Cassation therefore has jurisdiction to give judgment on the basis of Articles 1 and 14 of Additional Protocol I.

The application is also admissible.

B. At the back

1. The obligation to make a reference for a preliminary ruling

Whereas Article 1 of Additional Protocol 1 on the supervisory bodies of the WAEMU mandates the Court of Justice to ensure "respect for the law in the interpretation and application of the Treaty of the Union";

That this supervisory function makes it the guarantor of compliance with Union law and hence of the unity of application of that law in the Community area; that there is consequently an organic link between the Community courts and the national courts to enable harmonious application and coherent development of Union law;

That this is why the judicial system of the Union does not only reside in the Community Court of Justice but also encompasses the courts of the Member States, it being understood that Union law is an integral part of the law in force in each Member State;

That notwithstanding this competence of principle recognised to the national courts, it seems obvious that to leave the control of the application and interpretation of Community texts to the national supreme courts would entail a risk of divergent interpretation; the mechanism of the preliminary reference was conceived to allow the Community court to ensure its function of objective interpretation of the law of the Union as well as of the validity of the institutional acts; that it is consequently up to the national court, to apply the law thus interpreted and assessed in the solution of the litigation of which it is seized;

Considering in this respect that the Constitutional Court of Benin, in its capacity as court of last resort, was obliged to make the reference for a preliminary ruling on the interpretation of the provisions of Regulation No 05/CM/WAEMU of 25 September 2014 relating to the practice of the profession of lawyer, when it was referred to it on 18 December 2018 by Mr Eric DEWEDI ; that this obligation resulting from the provisions of Article 12 of Additional Protocol No 1 is simply intended to provide an interpretation to serve as a basis for homogeneous applications of Community law by the national courts thus integrated into a cooperation process;

Accordingly, the Court finds that failure to comply with that requirement constitutes an infringement of the Community law referred to above; that such a course of action is also liable to give rise to the application of the provisions of Article 5 of Additional Protocol I referred to above relating to failure to fulfil obligations.

2. From meaning and of the scope of article 35 of Regulation n°5/CM/UEMOA of 25 September 2014

Considering that the Constitutional Court of Benin in its decision No. 19-287 of 22 August 2019 interpreted the provisions of Article 35 of Regulation No. 05 in the following terms:"that by providing, in Article 35 that *"the profession of lawyer is compatible with the profession of temporary teacher, Regulation No. 5/CM/WAEMU of 25 September 2014 merely establishes a statutory compatibility with regard to the lawyer candidate to the profession of higher education teacher; that this text cannot be understood or retained as a rule establishing an incompatibility of exercise of the profession of higher education teacher whose regime falls under the statutory provisions relating to this profession;"*

Whereas the aforementioned article 35 is part of Title IV of the Rules entitled *"The practice of the profession of lawyer"*, Chapter I of which, comprising articles 33 to 37, deals specifically with incompatibilities relating to the practice of the said profession;

That, moreover, the provisions of Article 33, whose articulations constitute a necessary sequel, provide that :

"The profession of lawyer is incompatible with the practice of any other profession, subject to specific legislative or regulatory provisions, and in particular:

With all commercial activities, whether carried out directly or through intermediaries;

with the functions of partner in a general partnership, general partner in a limited partnership, manager of a limited liability company, chairman of a simplified joint stock company, chairman of the board of directors, member of the management board or managing director of a public limited company, manager of a non-trading company unless, under the supervision of the council of the Ordre, which may request any necessary information, the purpose of the company is the management of family or professional interests;

More generally, with the exercise of any other profession or function involving a subordinate relationship".

Considering that article 35 states that: *"the profession of lawyer is compatible with the duties of temporary teacher.*

Lawyers may also be appointed as deputy magistrates, assessors of juvenile courts or joint rural lease tribunals, employment tribunals and members of social security courts, in accordance with the laws and regulations in force in each Member State.

Considering that a combined reading of Articles 33 and 35 of Regulation No 05 on the legal profession shows that the legal profession, a liberal and independent profession par excellence, has been regulated at Community level in order to prevent lawyers from finding themselves in legally irreconcilable situations;

That certain impediments or incompatibilities have been laid down in Article 33 and can be analysed as prohibitions on any candidate to the said profession from exercising the said listed activities cumulatively; that the effect of these prohibitions is not only to restrict access to the profession, but also to avoid the conflicts of interest that this could engender.

Whereas the last paragraph of Article 33 generalises this incompatibility by extending it to *"the exercise of any other profession or function involving a relationship of subordination"*, in other words, the exercise of any profession or permanent function the performance of which would be irreconcilable with the liberal and independent status of the lawyer;

That, on the other hand, the opening of the practice of the profession of lawyer to the functions referred to in article 35 does not entail any incompatibility; that these are temporary professions or functions with limited rights, the purpose of which is the execution of a precise mission or a specific act, corresponding to a specific need and generally remunerated by task or by session;

as set out in this register, the profession of temporary teacher is, within the meaning of the said regulation, compatible by virtue of its status and its system, with the practice of the profession of lawyer.

Considering that, in this respect, university teachers who have the status of civil servants and are governed by a special statute of the State civil service are generally subject to the same types of obligations as permanent State employees, in particular, the subordinate relationship that characterises the civil service. Regardless of their rank in the hierarchy, civil servants are responsible for carrying out the tasks entrusted to them; it is also in the name of this hierarchical subordination that civil servants are required to submit to the control of the competent superior authority and to be loyal in the performance of their duties;

By virtue of their status, civil servants are obliged to carry out orders given by their superiors, unless the order is manifestly illegal and is likely to seriously compromise the public interest; this explains why in the civil service, the principle of "duty of obedience" is used, which includes the obligation to respect laws and regulations of all kinds;

That, as he must devote his time exclusively to the administration, he is prohibited from engaging in any other private gainful activity of any kind whatsoever, with the exception of the production of scientific, literary or artistic works; that this general prohibition marks, in any event, an incompatibility between the status of a permanent executive in active service in a public administration and that of a professional lawyer in active service, a liberal and independent profession;

Considering, therefore, that a broad interpretation of the provisions of Article 35 of Rule No. 05 in correlation with the incompatibilities resulting from the exercise of public office, makes it possible to affirm that in the case in point, the university lecturer who is a candidate for registration on the Bar's list of trainees, in order to effectively enjoy the right of registration provided for exceptionally in Article 24 paragraph 4 of the same Rule, should not hold another status as a public official exercising a permanent public post; that he could fulfil the statutory characteristics of a temporary teacher at the time of his registration, in order to objectively guarantee his profile as a liberal and independent professional;

Considering that in its decision, the Constitutional Court of Benin affirms that the rejection of Mr Eric DEWEDI's application "is contrary to his right to equality insofar as other associate professors, before him, had their applications accepted...";

that this allegation is based on Law 65-6 of 20 April 1965 establishing the Bar of the Republic of Benin, that this is the application of a law which no longer applies in the present case, since Regulation 05/CM/UEMOA of 25 September 2014 repealed all provisions contrary to it, lays down the conditions of access to the profession of lawyer and at the same time regulates the litigation relating to registration; moreover, Regulation 05/CM/WAEMU of 25 September 2014 lays down the same conditions for any person deciding to join the bar; thus, there can be no question of any breach of the principle of equality.

3. The fundamental primacy of Union law

Considering that the erroneous interpretation which is also apparent from the decision of the Constitutional Court of Benin results from the relationship established between the domestic legal standard and that of the Community;

In fact, the Constitutional Court expressly characterised the link established between these two rules in the following terms: "*It follows from the Preamble to the Constitution and Title II thereof, together with Title IX, that a national legislative provision which grants citizens more advantageous rights than those resulting from a Community or international standard is not contrary to the Constitution; Community law, whether prior or subsequent, applies as long as it does not diminish or restrict the rights recognised by the Constitution and the laws in general in favour of individuals; that it would only be otherwise if the provision contained in the prior or subsequent national legislation laid down obligations or imposed greater constraints than those conventions duly ratified by the Republic of Benin [...]*

Considering that, therefore, the law on the bar, which grants lawyers aspiring to the post of higher education lecturer and associate lecturers in law faculties more advantageous rights than those granted by the UEMOA regulation in question, is not contrary to the Constitution and does not in any way breach the State's international commitments".

Whereas it is clear that the Court of First Instance cannot assess the legality or validity of a national rule, in this case the Constitution of Benin, but it remains competent to rule on the question of the place and importance of Union law in the national legal order of the Member States;

At the outset, it should be recalled that while the place of traditional international law in the domestic order is determined in most States by their constitutions, the same cannot be said of Union law, the primacy of which is enshrined in its constitutive treaty; that, unlike ordinary international treaties, the WAEMU treaty instituted its own legal order, integrated into the legal system of Member States when it entered into force and which is binding on their jurisdictions; that this particularity of WAEMU law is described in Article 6 of the treaty in the following terms: "*Acts adopted by the organs of the Union to achieve the objectives of this Treaty and in accordance with the rules and procedures established by it, shall be applied in each Member State notwithstanding any prior or subsequent national legislation to the contrary*".

Whereas the meaning and scope of this provision are established in the case law of the Court of Justice of the Union as follows: "*Primacy applies to all Community rules, whether primary or secondary, whether immediately applicable or not, and over all national administrative, legislative, judicial and even constitutional rules, because the Community legal order takes precedence in its entirety over national legal orders. States have a duty to ensure that a rule of national law that is incompatible with a rule of Community law that is in line with the commitments they have entered into cannot be validly invoked against the latter*";

That this obligation is the corollary of the superiority of the Community rule over the national rule; that, accordingly, the national court, in the event of a conflict between Community law and a rule of national law, must give precedence to the former over the latter by applying the former and disregarding the latter;

Moreover, pursuant to Article 43(1) of the WAEMU Treaty, "*regulations shall have general application. They shall be binding in their entirety and directly applicable in any Member State*"; that in any event, Regulation No 05/CM/WAEMU of 25 September 2014 given its intrinsic characteristics, is sufficient in itself and does not require any other conditionality to be applied in a preferential manner to any domestic standard...;

Whereas, moreover, Article 92 of the said Regulation "*repeals and replaces any earlier provisions to the contrary*"; whereas this express reference rightly recalls the non-invocable nature of provisions of earlier domestic law governing the same field, contrary to the analysis made by the Constitutional Court of Benin in its decision; that the principle of primacy requires that the Community rule be applied as soon as it enters into force, notwithstanding the existence of an earlier or later incompatible national law; that, in so doing, the incompatible national rule remains inapplicable and the national court is obliged to set it aside.

Whereas from the foregoing, the WAEMU Court of Justice finds that, in its decision No 19-287 of 22 August 2019, the Constitutional Court of Benin misinterpreted the relationship between the Community legal order and its own legal order, by deciding to give precedence to the latter over the former;

That, in addition to the legal provisions and case-law already referred to, for reasons relating to the unity and effectiveness of Community law, it is not permissible for a court or any other institution of a Member State to invoke, against Union law, considerations of a constitutional nature or simply relating to general principles or an alleged breach of the principle of equality; that in the present case, the decision of the Constitutional Court of Benin is in total contradiction with the objectives of the Treaty, which require the uniform application of Union law, without which there would be no integration;

That primacy therefore remains a sine qua non of Community law, which can only exist on condition that it cannot be overridden by the law of the Member States; that this principle implies, moreover, that the national court cannot review, even incidentally, the conformity of the provisions of Community law with national law.

**ON THESE
GROUNDS, THE
COURT,**

**RULING PUBLICLY, AT THE COMMISSION'S REQUEST, ON THE
INTERPRETATION OF ACTS ADOPTED BY BODIES OF THE UNION ;**

IN THE SHAPE

Declares itself competent ;

Declares the Commission's application admissible;

AT THE BOTTOM

SAYS THAT :

- **the Constitutional Court of Benin, as the court of last resort, was obliged to refer the matter to the WAEMU Court of Justice for a preliminary ruling on the interpretation of Regulation No 05/CM/WAEMU of 25 September 2014;**
- **the Court's interpretation of the meaning and scope of the provisions of Rule 35 of the Rules of Procedure is manifestly erroneous;**
- **Article 35 of the said regulation establishes a principle of compatibility between access to the legal profession and the position of temporary teacher, understood as a professional category whose system and status are legally compatible with the legal profession.**
- **the primacy of the Union legal order in its entirety over national legal orders implies that no administrative, legislative, judicial or even constitutional provision at national level may be used to override Community law;**

- In application of the provisions of Article 14 of the aforementioned Additional Protocol No. 1, which state that the interpretations made by the Court are binding on all administrative and jurisdictional authorities, it is the responsibility of the Constitutional Court of Benin to adopt the provisions of this judgment and to comply with them.

Thus made, judged and pronounced in public hearing in Ouagadougou on the day, month and year above.

Illegible signatures follow.
Ouagadougou, 09 July 2020

The Registrar

Boubakar TAWEYE MAIDANDA