

**CASE: NO: ECW/CCJ/APP/02/09
JUDGEMENT NO; ECW/CCJ/JUD/05/09**

**NATIONAL COORDINATION OF DEPARTMENTAL DELEGATES
OF THE COCOA COFFEE SECTOR (CNDD) AND REPUBLIC OF
COTE D'IVOIRE**

JUDGMENT OF 17 DECEMBER 2009

Legal personality of an association - Interpretation of Article 10 (d) of the Supplementary Protocol - right to just and equitable remuneration - the principle of equality of citizens in matters of taxation – burden of proof

SUMMARY OF FACTS

By application dated 16 January 2009, the National Coordination of Departmental Delegates of the Coffee Cocoa Sector in Côte d'Ivoire, a non-profit association with headquarter in Abidjan brought the Republic of Cote d'Ivoire before the ECOWAS Court of Justice seeking, a significant portion of revenues from the production of these commodities, while its producers, are among the poorest sector of the Ivorian society.

According to the applicant, in a report of the Director of Operations of the World Bank, the producers of coffee and cocoa in Cote d'Ivoire only receive 40% of the fixed price in the international market because of multiple levy, including those due under the sole right to exit "DUS".

They view themselves as disadvantaged compared to other producers of the same raw materials of the sub-region, particularly Ghana and Nigeria.

The coordination is asking that the Government of Cote d'Ivoire cease these violations and is claiming a total sum of 200 million CFA francs in damages to be paid to producers of coffee and cocoa. □

ARGUMENT OF PARTIES □

The applicant maintains that the situation is of serious human rights infringement to the rights of producers at two levels:

- A breach in an equitable remuneration under section 23.3 of the Universal Declaration of Human Rights which states that "*everyone who*

works has the right to just and favorable remuneration ensuring for himself and his family an existence consistent with human dignity and supplemented, if necessary, by other means of social protection " □

- A violation of the principle of equality of all citizens before the law. □

The defendant, in his defense raised the following objections: the lack of legal personality of the applicant to sue and the *Locus Standi*.

The violation of a provision of public order of the Ivorian positive law, the lack of jurisdiction of the Court and the rejection of the applicant's claims as unfounded. □

LEGAL ISSUES □

1. Does the National coordination of departmental delegates of the coffee cocoa Sector have legal personality? □
2. Can a corporate body come before the ECOWAS Court of Justice to argue violations of human right? □
3. Can the right to a fair and equitable compensation exist between two people who are not bound by any employment relationship? □
4. Is there any violation of the principle of equality of citizens before the law in matters of taxation, when the taxable products are not identical?

DECISION OF THE COURT

1. The Court rejected the plea of inadmissibility of the request raised by the Republic of Côte d'Ivoire in saying a simple presumption of existence of the legal personality of the association is established, given its detailed presentation, includes:

- the name of the association (National Coordination of departmental delegates of the coffee cocoa sector (CNDD));
- the legal basis of establishment (Ivorian law No. 60-315 of 21/09/1960);
- the type of association (non-profit making association);
- the address of its headquarters (Abidjan cocody II plateaux, vallons 28);
- postal address of the association (BP 398 Abidjan 28);
- the full name of legal representative of the association (Mr Zahi Monbohi Bonfils);

The Court noted that if the criminal burden of proof, under the

presumption of innocence is for the prosecution, whereas in civil matters good faith is presumed and it is for the party challenging it to prove otherwise.

2. That the Court finds that the provisions of Article 10.d taken together with those of Article 1h of Protocol A-SP1/12/01 of 21 December 2001 on democracy and good governance to give individual legal standing to sue for breach of human rights.

Article 10.d of the 2005 Supplementary Protocol does not distinguish between individual and legal entity and refers to "any victim".

3. The Court held that no employment relationship exist between the respondent state and the applicant to establish for the producers a right to just and equitable remuneration.

4. The Court finds no violation of the principle of equality of citizens before the law, the extent of which equality implies that equal treatment should be reserved for individuals in the same situation. This is not the case because the examples given by the applicant concerns States different from Cote d'Ivoire.

Accordingly, the Court rejects the applicants' claims, and claims purposes.