



**Administrative Tribunal**

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1041

Case No. 1061: CONDE ESTUA

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Mayer Gabay, President; Mr. Spyridon Flogaitis; Ms. Brigitte  
Stern;

Whereas, on 26 January 1999, Maria Lydia Hayde Conde Estua, ex-wife of  
Mohamed Ahmed Awad, former staff member of the Office of the United Nations High  
Commissioner for Refugees (hereinafter referred to as UNHCR) and a participant of the  
United Nations Joint Staff Pension Fund, filed an application that did not fulfil all the formal  
requirements of article 7 of the Rules of the Tribunal;

Whereas, on 5 July 1999, the Applicant, after making the necessary corrections,  
again filed an Application containing the following pleas:

"(a) The Applicant requests the Tribunal to order the production by UNHCR of  
the opinion of the United Nations Office of Legal Affairs in New York, which  
served as the basis for the decision contained in the letter dated 29 May 1998 from  
Ms. Mary J. Murphy, Director, Division of Human Resources Management,  
UNHCR, to continue to recognize Ms. Pizurki as Mr. Awad's surviving spouse,  
thereby rejecting the applicant's claim.

The Applicant further requests the Tribunal to authorize oral proceedings in  
accordance with article 15 of its Statute. The Applicant and her representative

request to supplement their written application with an oral deposition with the assistance of Professor Isabel Garcia Rodriguez, an expert in Islamic law.

(b) The Applicant requests the Tribunal to quash the Office's decision of 29 May 1998 and requests UNHCR to recognize her as Mr. Awad's only lawfully wedded surviving spouse.

(c) The Applicant asks, as Mr. Awad's only lawfully wedded surviving spouse, to be entitled to all the benefits owed by UNHCR in that regard, including her participation in the United Nations Staff Mutual Insurance Society against Sickness and Accident, with payment of interest due for the delay with which these payments will be made relative to the date on which the entitlements should have been recognized. These benefits comprise, inter alia, the amount due, pursuant to United Nations staff rule 109.10, to the 'surviving spouse and dependent children', which comes to about \$40,000 (...).

...

(e) The Applicant requests reimbursement of the costs which she was forced to incur as a result of submitting her case to the internal bodies of UNHCR and to the Tribunal."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 December 1999, and periodically thereafter until 31 January 2001;

Whereas, on 8 June 2000, Helena Berinda Pizurki-Awad, widow of Mohamed Ahmed Awad, filed an Application for intervention in the case in accordance with article 19 of the Rules of the Tribunal, in which she requests the Tribunal "to reject the claims of Ms. Condé Estua and to maintain the decision taken by UNHCR to continue to recognize me as 'Mr. Awad's dependent spouse as from 26 November 1989 (...) and the surviving spouse of Mr. Awad (...) after his death on 30 March 1995.'"

Whereas the Respondent filed his Answer on 10 January 2001;

Whereas the Applicant filed Written Observations on 20 April 2001;

Whereas, on 22 and 24 October 2001, the Respondent submitted additional documents;

Whereas, on 29 November 2001, the Tribunal ruled that no oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

Mr. Mohamed Ahmed Awad joined UNHCR on 11 February 1979 and served with the Organization at various duty stations until his death in Geneva, in active service, on 30 March 1995.

Mr. Awad was married for the first time on 12 December 1963 to a German national, with whom he had a son. He repudiated his first wife in Cairo, before the *Bureau de Notariat du Caire*, on 7 May 1967.

On 22 August 1967, Mr. Awad married the Applicant in a civil ceremony, before the *Bureau de Notariat du Caire*, and subsequently in a religious ceremony. In two documents submitted by the Applicant, Mr. Awad was stated to be single at the time of his second marriage. Another son was born of this union. Subsequently, the spouses decided to live separately, although they did not make the separation official

On 26 November 1989, Mr. Awad divorced the Applicant, in her absence and without her being notified, by act of repudiation (*talaq*), and without paying her the stipulated monetary award. On the same day, Mr. Awad married the Intervener, a United States national residing in Geneva, who converted to Islam, before the Cadi (religious judge) of Djibouti.

On 18 September 1990, Mr. Awad and the Intervener adopted a baby girl, who was subsequently recognized by UNHCR as the staff member's legally adopted child.

On 5 December 1994, Mr. Awad amended the P-2 form, "Designation, Change, or Revocation of Beneficiary" substituting the Intervener's name for that of the Applicant. On 30 March 1995, Mr. Awad died at his Geneva residence without leaving a will.

In a letter dated 28 April 1995, the Chief Personnel Officer, UNHCR, informed Mr. Rouvinet, an attorney for the Applicant, that, in accordance with the United Nations Staff Rules, "all amounts standing to the staff member's credit will be paid to his or her nominated beneficiary or beneficiaries, subject to application of the Staff Rules and of the Joint Staff Pension Fund Regulations".

On 8 May 1995, Mr. Rouvinet informed the Senior Legal Advisor, Division of Human resources Management (DHRM), UNHCR, that the Applicant disputed that the Intervener was the lawfully wedded spouse of the late Mr. Awad.

On 25 September 1995, Ms. Carron, an attorney at the Bar of Geneva, informed UNHCR that by a decision of 25 August 1995, the Geneva Guardianship Division had designated her as administrator ex officio of Mr. Awad's estate. It fell to Ms. Carron to safeguard all the property of the estate until a decision was taken or an arrangement made as to the exact and final determination of the various heirs.

On 5 October 1995, the Senior Legal Advisor, DHRM, advised Mr. Ducrest, who replaced Mr. Rouvinet that his client could not pursue her claim before a Swiss court, but that they should submit it to the United Nations Joint Appeals Board. She further stated that the case would be transmitted to the United Nations Office of Legal Affairs in New York, for advice on the validity of Mr. Awad's marriages and divorces in accordance with the practice of the Organization.

On 7 November 1995, the Senior Legal Advisor, DHRM, replied to Ms. Carron. She drew attention to United Nations staff rule 112.5 (b) concerning the beneficiaries nominated by the deceased. She explained that such nomination applied only to benefits other than those paid by the Pension Fund and those paid, pursuant to staff rule 109.10, to the "surviving spouse and dependent children". It remained to be determined by the Organization which of the two women would be considered as the "surviving spouse". The Pension Fund Secretariat had informed her that if the Organization should recognize that Mr. Awad had two spouses at the time of his death, the pension would be divided.

On 8 May 1996, the Senior Legal Advisor, DHRM, informed the Applicant that, in accordance with United Nations practice, the validity of the divorce and of the marriage(s) should be examined under the law of the State of which the staff member concerned was a national (hence, in the present case, Somali law). Nevertheless, as the United Nations currently did not recognize any Somali governmental authority, the Office of Legal Affairs was not able to transmit the case to the Permanent Mission of Somalia to the United Nations or to the Ministry of Foreign Affairs of that country. Nor, for the same reason, could the Office accept as proof the attestation dated 11 December 1995, supplied by the consular section of the Permanent Mission of Somalia in Geneva, which the Intervener had transmitted to it. In order to break the impasse, she proposed that the amount owed to the surviving spouse, namely, about \$40,000, should be shared with the Intervener.

On 22 July 1996, Ms. Carron informed the Senior Legal Advisor, DHRM, *inter alia*, that neither she nor the Applicant was opposed to a compromise with UNHCR, on condition, however, that it settled all the outstanding issues, not only the issue of the benefit to be paid to the surviving spouse.

On 24 September 1996, the Senior Legal Advisor, DHRM, informed Ms. Carron that the sum of \$23,400 had been divided between the persons designated by Mr. Awad. The amount owed under staff rule 109.10 to "the surviving spouse and dependent children" totalling about \$40,000, had not yet been paid, as there was no agreement between the two persons concerned.

On 29 May 1998, the Director, DHRM, informed the Applicant that "UNHCR ascertained that Mr. Awad's divorce and remarriage, which took place in the Republic of Djibouti, are legally valid in that State" and that UNHCR had decided to continue to recognize the Intervener as the surviving spouse of the deceased.

On 30 July 1998, the Applicant filed a request for review of the above-mentioned decision.

On 1 October 1998, the Applicant was informed that the Secretary-General agreed that her case should be submitted directly to the Tribunal

On 5 July 1999, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the facts particular to the Intervener are as follows:

The Intervener married Mr. Awad on 29 November 1989, the same day his divorce from the Applicant was pronounced, and the day the Intervener converted to Islam. As evidenced by the relevant P.5 action forms, Mr. Awad duly informed the Personnel Administration, UNHCR, of his divorce and remarriage, and of the adoption of a daughter. On 26 November 1989, and on 16 January 1990, respectively, the Intervener and the daughter were recognized as dependents of Mr. Awad.

About two weeks after Mr. Award's death, the Senior Legal Advisor, DHRM, informed the Intervener by telephone that the Applicant challenged the validity of her

divorce in Djibouti and of the Intervener's marriage to Mr. Awad. The Applicant claimed to be Mr. Awad's sole surviving spouse.

On 8 June 2000, the Intervener filed the above-referenced request to intervene.

Whereas the Applicant's principal contentions are:

1. The Applicant is Mr. Awad's sole surviving spouse.
2. The unilateral repudiation by Mr. Awad, of which the Applicant was not informed either before or after, is invalid. Accordingly, the marriage between Mr. Awad and the Intervener was null and void.

3. As the United Nations did not, at the material time, recognize any Somali governmental authority, UNHCR could not transmit the case to the Permanent Mission of Somalia to the United Nations or to the Ministry of Foreign Affairs for advice. Consequently, it should not accept as proof the attestation supplied by the Permanent Mission of Somalia, which the Intervener had transmitted to it.

3. The Respondent's assertion that "Mr. Awad's divorce and remarriage, which took place in the Republic of Djibouti, are legally valid in that State" is without substance, and inconsistent with his position taken with regard to ascertaining the validity of the divorce and subsequent marriage under Somali law.

Whereas the Respondent's principal contentions are:

1. Positions taken by UNHCR were not inconsistent. The fact that, in the absence of recognized Somali authorities, no authoritative determination on the validity of the divorce and remarriage could be obtained, did not preclude UNHCR from analysing the facts of the case based on the existing documentation in light of the applicable laws, and from drawing its conclusions.

2. Under United Nations policy, reference is not made to the national law of the spouse, but only to that of the staff member, as it is the staff member's status that determines the relationship of the Organization to that individual and any dependents.

3. The Tribunal is not the appropriate forum for litigation challenging the conformity of any national legislation with international conventions and international law.

Whereas the Intervener's principal contentions are:

1. As Mr. Awad's divorce from his first wife did not become effective until 4 May 1971, he was neither single nor divorced at the time he married the Applicant.
2. The validity of the divorce and remarriage in Djibouti should not be brought into question on the grounds of alleged "forum shopping".
3. As Mr. Awad had formally notified UNHCR of his divorce and remarriage, the Applicant's assertion that she was unaware of either is implausible and unrealistic.

The Tribunal, having deliberated from 5 to 30 November 2001, now pronounces the following judgement:

- I. This case involves two women, both of whom claim to be the surviving spouse of a United Nations staff member who died intestate in 1995, with a view to receiving certain sums of money to be paid by the Organization following this death.
- II. Staff rule 112.5 (b) states that "in the event of the death of a staff member, all amounts standing to the staff member's credit will be paid to his or her nominated beneficiary or beneficiaries, subject to application of the Staff Rules and of the Joint Staff Pension Fund Regulations". Mr. Awad changed the nomination of beneficiaries soon after his repudiation of the applicant and his marriage to the intervenor, as follows: Ms. Pizurki-Awad (90 per cent) and his three children: Ms. Zoulayene Pizurki-Awad (5 per cent), whom he adopted with the intervenor; the child of the Applicant, Mr. Antonio Awad Mohamed (2.5 per cent); and the child of the German first spouse of the deceased staff member, Mr. Ismaël Awad Mohamed (2.5 per cent). There is thus no dispute concerning this first payment. A sum of 23,400 francs was thus distributed in September 1996 in accordance with the distribution scheme envisaged.

III. However, the aforementioned nomination applies only to benefits other than those paid by the Pension Fund and those paid to dependent children and the surviving spouse pursuant to staff rule 109.10.

IV. With regard to the benefits paid by the Pension Fund and, in particular, the widow's benefit due to the "surviving spouse", the Pension Fund indicated in a letter dated 7 November 1995 that if the deceased staff member had two spouses, the benefit would be divided. For the moment, however, this issue is not before the Tribunal, since direct submission of the case was agreed to only by the Secretary-General and not by the Pension Fund; accordingly, the case should first be submitted to the Pension Board or to the Standing Committee before any submission can be made to the Tribunal.

V. The only issue before the Tribunal, therefore, is who should be considered to be the surviving spouse for the purposes of staff rule 109.10. With regard to the benefits to be paid to the dependent children and the surviving spouse pursuant to that rule, the Applicant's two sons are no longer dependents and we are therefore concerned here only with Mr. Awad's young adopted daughter and the "surviving spouse". The sum in question comes to around \$40,000. The respondent indicates in its reply of 10 January 2001 that the rule in question permits only one widow to be recognized:

"... contrary to the United Nations Joint Staff Pension Fund (UNJSPF) which may recognize two widows - the Staff Rules (Rule 109.10 (a) (i)) do only permit one surviving spouse of a staff member."

Staff rule 109.10 concerns the moment when, upon separation from service, a staff member loses his entitlement to salary, allowances and other benefits. Special rules apply when separation from service results from the death of a staff member on active duty who has dependent children and a surviving spouse. In that case, the date on which payments cease is deferred, in a manner proportional to the years of service, in order to avoid a sudden loss of income and other benefits. Thus, for nine years of service in the Organization, those whom the staff member leaves without a salary at the time of his death are entitled to receive the



salary - and the other allowances and benefits - for a further nine months following the death. It is therefore in keeping with this rule that the sums received in this regard should be paid to a sole surviving spouse who is recognized by the United Nations and whose lifestyle is abruptly altered by the death of her or his spouse.

VI. The question which the Tribunal must resolve is which of the two women, the applicant or the Intervener, should be considered in law to be the surviving spouse.

VII. The Tribunal wishes to state clearly that it is not within its competence to settle the complex issues of private international law raised in this case. Indeed, the determination of the validity of the applicant's marriage and repudiation, and of the Intervener's marriage, involves: the determination of the applicable choice-of-law rules pursuant to private international law; the interpretation of Shariah (Muslim religious law), taking into account the various schools of interpretation, particularly the Sunni school and the Shafii school, on which the Tribunal has received expert opinions; the possible application of the Hague Convention on the Recognition of Divorces and Legal Separations, of 1 June 1970, pursuant to which the existence of a legal link to the State in which the marriage is performed is a condition for the recognition of divorce; an assessment of the effect of the diplomatic attestation obtained by the Intervener from the Permanent Mission of Somalia to the United Nations Office at Geneva (pursuant to which the applicant's repudiation might appear to be valid, as the Intervener's marriage would be), since it is not a judgement having the force of *res judicata*, which the Tribunal would be required to respect; and the Tribunal's independent interpretation of Somali law (which is applicable, in accordance with United Nations practice, to personal questions concerning Mr. Awad), particularly the Somali law of 11 January 1975. This law, adopted to protect women against unilateral repudiation, requires the man to obtain authorization from a court before he can pronounce a repudiation by *talaq*. This condition clearly was not fulfilled, raising the question of whether the aforementioned attestation took this law into account. The mere non-exhaustive enumeration of the questions raised by the effort to determine the validity of the various matrimonial acts accomplished by

Mr. Awad during his lifetime shows clearly that they do not fall within the purview of the Tribunal.

VIII. Nevertheless, for administrative purposes, the United Nations takes family relations into consideration and, in particular, considers that only one woman may be entitled to United Nations allowances and benefits. There is no question that the Organization's practice with regard to the law applicable to personal questions concerning a United Nations staff member is personal law, that is, the law of the State of which the staff member is a national. In this case, the law to be applied in considering the applicant's replacement by the Intervener as Mr. Awad's spouse in 1989 is Somali law.

IX. The Tribunal will examine the respondent's action with regard to the change in his marital status which Mr. Awad announced in 1989. The Respondent took note in 1989 of the applicant's replacement by the Intervener as Mr. Awad's spouse, referring to the certificates of repudiation and marriage issued by the authorities in Djibouti, which were transmitted to it by the now deceased staff member. The Respondent acted in good faith, on the basis of properly transmitted official documents. There was no reason for the respondent to cast doubt on these documents. The Administration's assessment in this regard seems *prima facie* to be confirmed retroactively by the diplomatic attestation obtained subsequently by the Intervener.

X. However, one of the determining factors which, in the Tribunal's view, confirms the correctness of the position taken by the Administration when it treated the Intervener as Mr. Awad's spouse from 1989 on is that it simultaneously treated the applicant as the divorced spouse, and this elicited no reaction on the applicant's part. In particular, on a very specific level, as a result of this replacement, the applicant lost her entitlement to the Organization's health insurance. If, however, she had considered at the time that she was still Mr. Awad's official spouse, even though she knew that he was conjugally cohabiting with another woman, there is no doubt that she would have protested and insisted at that time on being considered the sole lawful spouse. This is an especially crucial point since her

children, for their part, continued to be covered by the United Nations health insurance scheme, which must certainly have drawn her attention to the fact that their situation was not the same as hers and that, accordingly, her legal relationship to her husband had changed.

XI. The Tribunal believes, therefore, that there is no reason to call into question the treatment of the Intervener as the surviving spouse for the purposes of staff rule 109.10. It follows that the sums due pursuant to staff rule 109.10 should be paid to the surviving spouse who was living with the staff member at the time of his death, which is fully in keeping with the purpose of the provisions of this rule, as highlighted in paragraph V.

XII. In taking this decision for administrative purposes and payment of the sums of money due pursuant to a specific provision of the Staff Rules, the Tribunal does not claim to rule on the respective rights of the applicant and the Intervener concerning other aspects of Mr. Awad's estate that are in dispute.

XIII. Lastly, the Tribunal believes that, in view of the particular complexities of the case, as underscored in paragraph VII of its judgement, it seems appropriate to make an exception to its general practice of not granting reimbursement of legal and procedural costs, especially to the losing party. This policy, set forth in document A/CN.5/R.2 of 18 December 1950, was based on the simplicity of proceedings before the Tribunal, but it also provided for exceptions to the general rule. The Tribunal believes that this case is one of the exceptional cases, and therefore awards costs to the losing party, as it has already done in earlier cases (see Judgements No. 237, *Powell*, 1979, and No. 665, *Gonzales de German et al.*, (1994)).

XIV. In the light of the foregoing, the Tribunal:

1. Declares that the Intervener should be considered to be the "surviving spouse" for the purposes of staff rule 109.10;
2. Awards to the Applicant, as costs, a sum of \$5,000, in view of the particular difficulties of the case, which it considers to be exceptional circumstances.

3. Rejects all other requests.

(Signatures)

Mayer GABAY  
President

Spyridon FLOGAITIS  
Member

Brigitte STERN  
Member

New York, 30 November 2001

Maritza STRUYVENBERG  
Executive Secretary