



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1332

Case No. 1409

Against: The United Nations
Joint Staff Pension Fund

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Dayendra Sena Wijewardane, Vice-President, presiding; Ms. Brigitte Stern; Mr. Goh Joon Seng;

Whereas, on 11 October 2004, the Applicant, the former spouse of a former participant in the United Nations Joint Staff Pension Fund (hereinafter referred to as UNJSPF or the Fund), filed an Application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 31 March 2005, the Applicant, after making the necessary corrections, again filed an Application requesting the Tribunal to, inter alia:

- “1. Recognize the validity of [her] marriage in Algeria.
2. Recognize [her] status as a widow under Algerian law.
3. Recognize the injury [she has] sustained for almost five years.”

Whereas the Respondent filed his Answer on 15 July 2005;

Whereas, on 21 November 2006, the Tribunal decided to postpone consideration of this case until its next session;

Whereas the facts of the case read as follows:

The Applicant’s former spouse (hereinafter, the deceased), who was born on 27 May 1940, became a UNJSPF participant as a United Nations staff member on 13 November 1969 and remained such until his retirement

from United Nations service on 30 November 1996. He was an Algerian citizen, residing in France, and he started to receive an early retirement benefit from UNJSPF on 1 December 1996. That monthly benefit remained payable to him until his death on 15 April 2000. At the time of his death, he was still a resident of France, where he had married a French national, on 18 September 1999.

The Applicant, a dual citizen of Algeria and France, had been married to the deceased in Algeria, on 12 April 1966. Their marriage was registered in France in 1979, as without such registration, the marriage would not have been legally recognized in France. Subsequently, and at the initiative of the deceased, a divorce decree was issued by a French court on 19 May 1994, in legal proceedings where both parties participated actively. The Applicant appealed against the divorce decree before a French appellate court. However, the decree was upheld by the Cour d'Appel de Paris, on 27 June 1997.

The second wife of the deceased was recognized in France as his legal widow. The deceased had provided the Fund with a copy of the information issued by the municipality of Dijon, France, on 21 September 1999, which stated that the former UNJSPF participant had divorced the Applicant.

The Applicant claims that she was still the legal spouse of the deceased at the time of his death on 15 April 2000, and thus entitled to a widow benefit under article 34 of the UNJSPF Regulations. However, as the Fund has recognized as valid the divorce decree issued by the competent French court in 1994. Thus, according to the Fund, the Applicant has been legally divorced from the deceased. The Applicant was subsequently advised to apply for a divorced surviving spouse's benefit, under article 35 *bis*.

On 19 April 2000, the Applicant received a letter from the UNJSPF, including a Certificate that she was not entitled to any benefits under article 34, as she was not the surviving widow. Further correspondence was exchanged between the Applicant and the UNJSPF, and on 12 February 2002, the Fund reaffirmed the right for the Applicant to claim benefits as the divorced surviving spouse, but not as a widow.

In her request before the Standing Committee of the UNJSPF, dated 17 March 2004, the Applicant maintained that she was a legal widow of the deceased. To support her claim, she argued that even if residing in France, the deceased did not have French citizenship and thus remained Algerian, and that Algeria is an Islamic country where polygamy is not illegal. She further produced a civil status record from the Algerian Consulate in Washington, D.C., indicating that she is not divorced. At its 187th meeting held on 21 July 2004, the Standing Committee decided that the Applicant request for review was time-barred. The Committee added that, had the case been considered on the merits, it would have upheld the UNJSPF decision regarding the marital status of the Applicant, recognizing the French divorce decree as legally binding.

On 31 March 2005, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. Under Algerian law, she is still married to the deceased.
2. Algerian law is the most relevant to the situation.
3. She is entitled to a widow's benefit under the UNJSPF Regulations.

Whereas the Respondent's principal contention is:

The request is time-barred.

The Tribunal, having deliberated from 3 November 2006 to 21 November 2006, in New York, and from 25 June to 22 July 2007, in Geneva, now pronounces the following Judgement:

I. On the issue of time-bar, the Tribunal cannot but find that the Applicant's case is not receivable. The Tribunal takes notice of the ongoing correspondence between the Applicant and the UNJSPF, until the letter of 5 January 2004, but finds that it does not raise any new issues as to the substance of this case, nor did the Administration's answers raise any new administrative decision which could have been contested. At all times, then, the material decision remained, at the latest, in the letter from 12 February 2002. Section K of Annex 1 of the UNJSPF Administrative Rules for "Review and Appeal" states that

"[a] review shall be initiated by delivery ... to the Secretary of the Board if the review is by the Standing Committee, within ninety days of receipt of notification of the disputed decision, of a notice in writing stating the points of facts or of law contained in the decision which are disputed, and the grounds upon which the request for the review is founded ..."

II. The request to the Standing Committee for review was made on 17 March 2004, almost two years after the rejection by the UNJSPF of the Applicant's claim for benefits payable to a widow under UNJSPF Regulation 34.

III. Among the correspondence placed before the Standing Committee and before the Tribunal is a copy of the letter from the UNJSPF to the Applicant dated 19 April 2000, following the death of her ex-spouse on 15 April. It referred to an earlier letter sent to the deceased on 6 October 1999, which explained that, as a divorced spouse, at that time, the Applicant was not entitled to receive any benefits. Attached to the 19 April letter was a Certificate from the UNJSPF, confirming that the Applicant would not be entitled to receive a widow's benefit.

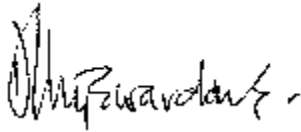
IV. However, as indicated in a letter dated 15 November 2001 to the Applicant, following the adoption UNJSPF Regulation 35 (bis), the Applicant was entitled to receive a divorced surviving spouse's benefit. This information was communicated to her several times. The 15 November letter states, in relevant part, "j'ai le plaisir de vous aviser que vous qualifierais pour [une pension en faveur du conjoint survivant divorcé], si vous nous faites parvenir [certains documents]" ("I have the pleasure to inform you that you will qualify for the [divorced surviving spouse's benefit], if you send us [certain documents]").

V. Strict enforcement of time limits has been stressed time and again by the Tribunal. (See Judgements No. 527, *Han* (1991); No. 549, *Renninger* (1992); and, No. 596, *Douville* (1993).) In Judgement No. 1046, *Diaz de Wessely* (2002), the Tribunal emphasised that:

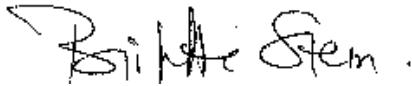
“In the Tribunal’s view, it is of the utmost importance that time limits should be respected because they have been established to protect the United Nations administration from tardy, unforeseeable requests that would otherwise hang like the sword of Damocles over the efficient operation of international organizations. Any other approach would endanger the mission of the international organizations, as the Tribunal has pointed out in the past: ‘Unless such staff rules [on timeliness] are observed by the Tribunal, the Organization will have been deprived of an imperative protection against stale claims that is of vital importance to its proper functioning’ (see Judgement No. 579, *Tarjouman* (1992) ...).”

VI. In view of the foregoing, the Application is rejected in its entirety.

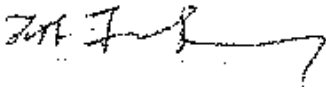
(Signatures)



Dayendra Sena **Wijewardane**
Vice-President

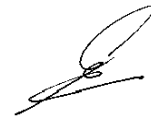


Brigitte **Stern**
Member



Goh Joon Seng
Member

Geneva, 27 July 2007



Maritza **Struyvenberg**
Executive Secretary