UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

El-Zaim

(Appellant)

v.

United Nations Joint Staff Pension Board

(Respondent)

JUDGMENT

[NO. 2010-UNAT-007]

Before:	Judge Luis María Simón, Presiding Judge Jean Courtial Judge Sophia Adinyira
Case No.:	2009-008
Date:	30 March 2010
Registrar:	Weicheng Lin

Counsel for Appellant: Esther Shamash

Counsel for Respondent: Dulcie Mapondera

JUDGE LUIS MARÍA SIMÓN, Presiding.

Synopsis

1. This is a pension case. Former United Nations staff member Issam El-Zaim (El-Zaim), a Syrian national, married his first wife, also a Syrian national, in France in 1962. He obtained a questionable divorce from her under Sharia law in Yemen and married María del Carmen Arriola de El-Zaim (Arriola) also under Sharia law in Yemen in 1993. Following El-Zaim's death, Arriola claims a widow's benefit which the United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund) refuses to award. While we do not fully agree with UNJSPF's position, we are constrained to affirm its decision in El-Zaim's case.

Facts and Procedure

2. El-Zaim had three periods of participation in the UNJSPF, the last being from 31 May 1992 until 5 January 1998. When he began his first period of participation in the UNJSPF, he was married to Narwal Jacqueline Sama'an El-Zaim, also a Syrian national. This marriage was concluded in France, in January 1962.

3. In April 1993, El-Zaim entered into a marriage under Sharia law with Arriola, a Mexican national. This marriage was celebrated in Yemen and a marriage certificate was issued at the Syrian Embassy in Sana'a.

4. El-Zaim subsequently divorced his first wife under Sharia law at the Syrian Embassy in Sana'a, in April 1994.

5. El-Zaim reported this change in marital status to his employer, the United Nations Development Programme (UNDP), which noted in his Personnel Action Form that both his marriage and divorce occurred on 16 April 1994. Subsequently, UNDP revised El-Zaim's Personnel Action form to note the change in his marital status and the nomination of Arriola as his beneficiary.

6. Upon his return to Syria in 2000, El-Zaim discovered that neither his marriage to Arriola nor his divorce from his first wife had been registered in Syria by the Syrian Embassy in Yemen in 1993 and 1994, when these events had occurred. El-Zaim was advised to "re-initiate" the divorce and marriage proceedings under the established rules. This process resulted in El-Zaim's divorce being registered with the Civil Registry in

Aleppo on 5 September 2000, with a hand-written acknowledgement that the divorce had originally taken place on 16 April 1994. Because of Arriola's status as a foreigner, El-Zaim had to seek permission from the Ministry of the Interior to enter into a marriage. His request was granted on 15 July 2000, and the marriage with Arriola was registered on 5 September 2000.

7. On 22 January 2003, El-Zaim wrote to the UNJSPF stating that he had divorced his first wife after his first period of participation in the UNJSPF and had remarried. In this letter, he requested information on the procedure to follow to ensure that his current spouse (Arriola) would be entitled to benefits as a surviving spouse. In a letter dated 3 March 2004, the UNJSPF informed El-Zaim that Arriola would be entitled to benefits as a surviving spouse should he predecease her. This response was based on the information provided by El-Zaim and the information contained in El-Zaim's Personnel Action Forms submitted by UNDP, which indicated that El-Zaim had divorced and remarried in April 1994.

8. Following the death of El-Zaim on 14 December 2007, UNJSPF received a letter from El-Zaim's first wife dated 17 December 2007, requesting information on her entitlements with respect to El-Zaim's pension in her capacity as widow of the deceased. In January 2008, she submitted a form requesting a widow's benefit and providing payment instructions. At approximately the same time, UNJSPF received a similar form requesting a widow's benefit and payment instructions from Arriola.

9. Because UNJSPF had no copy of El-Zaim's marriage certificate on file, it requested it from UNDP and received it in August 2008. Due to the competing claims, UNJSPF wrote to Arriola on 3 November 2008, requesting clarification on the circumstances of the divorce and remarriage. El-Zaim's first wife also responded to a similar request by UNJSPF stating that she remained married to El-Zaim until his death, that she had never received notice of a divorce, and that her marriage is still registered in France.

10. UNJSPF determined that Arriola became the legal spouse of El-Zaim on 5 September 2000, following the "re-initiation" of the divorce and marriage and registration thereof with the Civil Registry in Aleppo, Syria. Because this date was after El-Zaim's separation from service with UNDP in January 1998, UNJSPF determined that Arriola was not entitled to a widow's benefit in accordance with UNJSPF's Regulations.

Submissions

Arriola's Appeal

11. Arriola argues that the UNJSPF erred in determining that her marriage to El-Zaim only became valid in September 2000; and that it erred in considering that the French law, the law under which El-Zaim and his first wife had married, prevailed in this case. She submits that pursuant to an Opinion of the Office of Legal Affairs dated 15 December 1981, the law of the staff member's home country determines a staff member's marital status for administrative purposes.

12. Arriola claims that her marriage was validly celebrated under Sharia law in Yemen and, having been registered by the Syrian Embassy in Yemen on 22 November 1993, it was recognized by Syria, the country of which El-Zaim was a national.

13. Moreover, Arriola contends that the couple relied in good faith and to its detriment on UNJSPF's representation that she would be entitled to a widow's benefit as the surviving spouse. She emphasizes that had the UNJSPF informed them correctly, they would have taken steps to rectify the situation before El-Zaim's death, either through the procedures necessary to prove to the Organization that the marriage was valid; or by providing that Arriola receive benefits pursuant to Article 35*ter* of the UNJSPF Regulations, which allows for the provision of benefits for the life of a spouse not married to the staff member at the time that the staff member separated from service.

14. In the alternative, Arriola maintains that her marriage to El-Zaim was valid under French law.

UNJSPF's Answer

15. UNJSPF submits that Arriola is not entitled to receive a widow's benefit pursuant to Article 34 of the UNJSPF Regulations, since she was not legally married to El-Zaim at the time of his separation from the Organization.

16. UNJSPF argues that El-Zaim was married under French Civil law, which does not recognize polygamy, so he was obliged to dissolve his marriage to his first wife prior to entering into another marriage, even if the second marriage was concluded under Sharia law, which recognizes polygamy.

17. UNJSPF further points out that El-Zaim, through a failure by the Syrian Embassy in Yemen, failed to comply with national registration and other requirements under Syrian law, which invalidated the divorce and the second marriage. UNJSPF contends that only in 2000, upon the registration of the marriage in Aleppo, it became legally valid. But El-Zaim had separated from the Organization prior to entering into a valid marriage with Arriola.

18. UNJSPF next contends that UNJSPF did not create a legal expectancy through its letter of 3 March 2004. UNJSPF relied upon the information that was on file from UNDP regarding the change in El-Zaim's marital status as of 16 April 1994. This was based upon the information provided to UNDP by the staff member, which did not accurately reflect the legal status of his divorce of his first wife or marriage to Arriola.

19. Finally, UNJSPF avers that Arriola's contention that it was to her detriment that she had relied on the 3 March 2004 letter from the UNJSPF since she and the late El-Zaim would have otherwise taken actions pursuant to Article 35*ter* of the Regulations are unfounded. Article 35*ter* requires that any request for purchase of an annuity under that Regulation be submitted within 6 months of the marriage. This would have been within 6 months of 5 September 2000—thus the staff member would not have been able to avail himself of the provisions of Article 35*ter* by the time he received the 3 March 2004 letter.

Considerations

20. The main issues before this Court are the following:

a) Was Arriola's marriage to the late El-Zaim legally valid at the time El-Zaim separated from the Organization in 1998?

b) Did the Organization create a legal expectancy of acknowledgement of benefits to Arriola?

21. In order to determine whether the marriage of the late El-Zaim and Arriola was valid at the time of El-Zaim's separation from the Organization, the Panel needs to first resolve which law determines the marital status of a staff member.

22. On this matter, this Court concurs with its predecessor, the United Nations Administrative Tribunal, that stated:

> [T]he importance of the principle on which the Organization bases itself in the area of questions on marital status, which is to refer to the law of the staff member's State of nationality: in this way it is possible to respect the various cultural and religious sensibilities existing in the world, as no general solution is imposed by the Organization, which simply tolerates and respects national choices... Reference to national law is the only method whereby the sovereignty of all States can be respected. UNAT Judgment No. 1183, *Adrian* (2004), para. II.

23. This long-standing principle has been reiterated and applied in the Secretary General's circulars and bulletins and has been upheld by the former Administrative Tribunal in several judgments (i.e. Judgments Nos. 1063 (2002) and 1041 (2001)). Accordingly, for the purposes of the Pension Fund, the civil status of a staff member will be determined by the law of the staff member's nationality.

24. However, this principle can only apply to a staff member who concludes a marriage or enters into another partnership relation under his or her national law and not to staff members who choose to enter into a marriage or partnership under a law other than the one of their nationality.

25. In the present case, El Zaim's first marriage was not concluded under Syrian or even Sharia law. El Zaim and his wife, a muslim, chose to conclude a marriage under French law. Thus, the marriage was governed by French law and El-Zaim could not subsequently choose to change their marital status under Sharia or Syrian law, ignoring the place and procedures of the marriage.

26. There is no evidence that this marriage came to an end before El-Zaim's death, or that he had entered into a legal marriage with Arriola.

27. In light of the above, this Court concludes that the first marriage of El-Zaim, celebrated in France, could not be terminated by a "divorce" in Yemen in 1994 or in Syria in 2000, because there is no evidence that the first wife had been at least notified of that administrative procedure before an Embassy or a Syrian Register. What is presented as a "divorce" in this case resembles a repudiation, which cannot terminate a marriage under French law.

28. Even if Sharia law were applicable, a valid second marriage under it requires a legal end to a previous marriage if the first one had been celebrated under a non-polygamy system.

29. Consequently, the alleged divorce is legally not valid, not only because it was not brought before a Judge, but mainly because the authorities pronouncing it were not competent and did not apply the law under which the marriage had been concluded.

30. Pursuant to the French *Cour de Cassation*, Article 5 of Protocol 7 to the European Convention of Human Rights (which is applicable to a divorce under French law, including a divorce of two citizens of a country which is not party to the Convention) both spouses enjoy equal rights and responsibilities with respect to the dissolution of a marriage; and accordingly, the dissolution of a marriage is legally not valid if the defendant has not been notified and if he or she has not been given an opportunity to respond.

31. It ensues that El-Zaim's second marriage to Arriola was not valid at the time of its celebration, due to the existence of his valid first marriage concluded under French law. Since under Article 34 of the Pension Fund Rules, a surviving female spouse is only entitled to a widow's benefit if she was married to the Pension Fund participant *from the time he separated from the Organization until his death*, the Pension Fund correctly held that Arriola was not entitled to a widow's benefit.

32. Finally, the Court turns to consider whether or not Arriola had an expectancy to receive a widow's benefit. The Organization was informed by El-Zaim that he had married Arriola and wanted her to receive the pension benefits after his death. In response to El-Zaim's request concerning Arriola's right to a widow's benefit, UNJSPF confirmed that she would be entitled to such benefit. However, it based its response on the information that El- Zaim had provided, namely that he had validly divorced his first wife and married Arriola. El-Zaim withheld information from UNJSPF and it was therefore misled and cannot be held responsible for the answer it gave on the basis of the incomplete information provided by El-Zaim himself.

33. El-Zaim's and his second wife's understanding that she would be the beneficiary of the pension after his death, was merely based upon their own interpretation of the facts. Arriola's argument that she had a legitimate expectancy cannot stand.

34. Because Arriola was not legally married to El-Zaim, this Court similarly rejects her contention regarding a possible application of Article 35*ter* of the Regulations.

Judgment

35. In view of the foregoing, the Appeal is dismissed in its entirety.

Judge Simón, Presiding

Judge Courtial

Judge Adinyira

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: English

Entered in the Register on this 26th day of April 2010 in New York, United States.

Weicheng Lin, Registrar, UNAT