UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2020-UNAT-1004

Larriera

(Appellant)

v.

United Nations Joint Staff Pension Board

(Respondent)

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge Martha Halfeld Judge John Raymond Murphy
Case No.:	2019-1318
Date:	27 March 2020
Registrar:	Weicheng Lin

Counsel for Ms. Larriera:	George G. Irving
Counsel for UNJSPB:	Janice Dunn Lee

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Ms. Carolina Larriera appeals the decision of the Standing Committee of the United Nations Joint Staff Pension Board (Board or UNJSPB), which upheld the decision of the Secretary/Chief Executive Officer of the United Nations Joint Staff Pension Fund (Fund or UNJSPF), not to recognize her as the surviving spouse of Mr. M under Article 34 of the Fund's Regulations on the basis that Mr. M was married to another person. Now on appeal before the United Nations Appeals Tribunal (Appeals Tribunal), we dismiss the appeal and uphold the decision of the Board.

Facts and Procedure

2. Mr. M, a national of Brazil, participated in the Fund from 1 March 1970 until his death in service on 19 August 2003. In 1973, Mr. M married Ms. M, a national of France. They were married in France and had two children born in 1978 and 1980. From the time of his marriage until his death, neither Mr. M nor the United Nations reported to the Fund any other person as Mr. M's spouse.

3. Ms. Larriera, the Appellant, is a national of Italy and a former United Nations staff member. She participated in the Fund from 2 March 1998 until 14 March 2008. Ms. Larriera was originally reported to the Fund as married to someone other than Mr. M and was later reported as divorced. Neither she nor the United Nations had reported her to the Fund as married or in an equivalent relationship to Mr. M.

4. In January 2003, Mr. M initiated divorce proceedings against Ms. M in France. On 23 May 2003 a French court issued an order allowing the parties to live separately and authorized them to file an application for divorce. The court did not dissolve their marriage. The court noted that if either party had not filed a suit for divorce within six months, then the provisional measure would lapse. Less than three months following the order, Mr. M died, on 19 August 2003. By order dated 14 April 2005, the court decreed that the provisional measure had lapsed. The French Civil Registry issued a certificate on 27 March 2012 confirming their marriage without notation of a divorce.

5. Following Mr. M's death, the Fund confirmed with Ms. M that they were married at the time of his death and placed into payment a widow's benefit under Article 34 of the Fund's Regulations effective 20 August 2003.

6. On 17 May 2018, Ms. Larriera sent a letter to the Fund requesting a widow's benefit. She supplied to the Fund a Judgment[1] dated 7 December 2016 issued by a court in Brazil which became executable on 22 March 2017. The Judgment concluded that Mr. M was in a "stable union" under Brazilian law from March 2001 until Mr. M's death. Ms. Larriera asserted before the Fund that she had lived with Mr. M for over two years at the time of his death and that Mr. M's intention to proceed with the divorce was thwarted by his untimely death. She asserted that she received a United Nations issued death certificate dated 22 August 2003 through the office of the Foreign Minister of Brazil and was present at the time the death certificate was drawn up, as his next of kin. She claimed that a revised death certificate was submitted by Ms. M to the Fund indicating she was next of kin. Ms. Larriera claimed this was a forged document not authenticated by an apostille and not valid internationally and was not issued by the United Nations nor the Brazilian authorities. The only official death certificate recognized by Brazilian authorities is the final one issued by the Brazilian government on 3 October 2004.

7. On 3 December 2018, the Fund informed Ms. Larriera that her request for a widow's benefit was denied as she had not met the requirements of Article 34 of the Fund's Regulations. On 14 February 2019, Ms. Larriera requested a review of this decision by the Standing Committee per Section K.2 of the Fund's Administrative Rules. Ms. M's counsel submitted comments to the Fund for consideration by the Standing Committee since the matter had potential impact to her own widow's benefits.

8. Ms. M's comments provided to the Fund indicated that she contested any and all facts retained by the Brazilian court. She asserted that her husband never domiciled or lived with Ms. Larriera. At the request of Mr. M, Ms. M was under the benefit of a Swiss Identity Card for Diplomats which was valid from 2002 through 2007. The French Civil Register issued a death certificate that also indicated his wife was Ms. M.

9. On 14 February 2019, Ms. Larriera appealed the decision to the Standing Committee. On 18 July 2019, at its 202nd meeting, the Standing Committee upheld the decision, which it communicated to Ms. Larriera on 22 July 2019. The decision stated in pertinent part:

[1] The Brazilian Judgment arose from a lawsuit Ms. Larriera filed against Mr. M's estate and his two sons. Ms. M was not a party to the lawsuit. On 23 January 2019, the Permanent Mission of Brazil to the United Nations confirmed by way of *Note Verbale* to the United Nations that the Judgment was subject to appeal.

> The Committee noted that for purposes of benefits payable under the Fund's Regulations following his marriage in France in 1973, Mr. [M] at the time of his death was married to Ms. [M], who was the only spouse ever reported to the Fund. The Committee noted that, while the judgment dated 7 December 2016 of the Ninth Family Court of the Capital District, Rio de Janeiro, Brazil, found that under Brazilian law you were in a stable union with Mr. M at the time of his death, the Fund is governed by its own legal and administrative framework [...]
>
> In that regards, the Committee took note of ... *El-Zaim v. United Nations Joint Staff Pension Board* ... which confirmed that a participant who enters into a marriage under a law other than that of his or her nationality cannot subsequently choose to change his or her marital status under a different legal regime, ignoring the place and procedures of the marriage. In the case of Mr. M, the Committee concluded that since he had married Ms. M in France under French law and never divorced her, and since French law does not recognize polygamy, the Fund could not recognize you as Mr. M's surviving spouse for the purpose of the Fund's Regulations.

10. On 8 October 2019, Ms. Larriera filed an appeal before the Appeals Tribunal. On 29 November 2019, the Fund filed an answer.

11. On 18 February 2020, Ms. Larriera filed a motion for leave to submit additional evidence. On 26 February 2020, the Fund filed comments on the motion. On 15 March 2020, by way of Order No. 369 (2020), the Appeals Tribunal granted Ms. Larriera's motion.

Submissions

Ms. Larriera's Appeal

12. Ms. Larriera requests the Appeals Tribunal to rescind the decision and order payments of a widow's benefit under Article 34 of the Fund's Regulations, with interest calculated at eight per cent. She requests two years' net base salary for moral damages, and on account of the Fund not seeking independent legal interpretation from France, which she claims amounts to an abuse of process, Ms. Larriera seeks USD 5,000 in costs.

13. In support thereof, Ms. Larriera argues that she was domiciled with Mr. M for over two years at the time of his death. Due to his rushed reassignment to Iraq and his untimely death, he was unable to conclude the divorce proceedings. She has obtained a Judgment from Brazilian court authorities confirming that she and Mr. M were in a stable union at the

time of his death. She contends that, contrary to the Fund's assertion, Mr. M was not married but was legally separated at the time of his death.

14. Ms. Larriera also argues that the Standing Committee erred in law and failed to seek an authoritative opinion from the French Authorities. The Fund did not cite to any Regulations or Rules in support of the conclusion that only French law was applicable in this case as opposed to the law of the nationality of the Fund participant, which is Brazil. ST/SGB/2004/4 on determining personal status for United Nations benefits and entitlements indicates that family status for the purpose of entitlements under the United Nations Staff Regulations and Rules should be determined on the basis of the law of nationality of the staff member concerned. Further, no evidence has been presented to show that the Fund requested the French Government to confirm the interpretation of its Civil Code with regard to Mr. M's marital status. The Standing Committee has upheld a decision of the CEO which was an *ad hoc* interpretation of the French Civil Code and should not override the legal determination of the Brazilian court. While, under French law, Mr. M's first marriage supposedly remained valid, it was qualified by a decree of judicial separation from the Divorce Chamber of the Superior Court of Justice on 23 May 2003. It is also true that, under Brazilian law, she and Mr. M had a civil union at the time of his death which is recognized in Brazil as equivalent to marriage. The Fund has not provided any legal basis for its determination that Brazilian law has no application outside of Brazil.

15. Ms. Larriera further argues that the Fund's interpretation of the French Civil Code[2] is erroneous. Article 3 of the Code indicates that it applies to French nationals. Article 202-1 provides that the conditions to enter into a marriage are governed for each spouse by his personal law. Article 202-2 indicates that a marriage is validly celebrated if it has been celebrated according to the formalities contemplated by the law of the State within which the celebration has occurred. With respect to dissolution of a marriage, Article 309 states that "divorce and judicial separation are governed by French law, where both spouses are of French nationality; where both spouses have their domicile on French territory; where no foreign law considers it should govern …". In this situation, both spouses were not French and Mr. M did not maintain a residence in France and was in fact legally separated at his death. As a result, Ms. Larriera argues that foreign law in fact governs this case since nationality is recognized as determinative of personal status and judicial determination was

[2] Cass. Civ. 21 jui 1987 n. 84-14354.

made under Brazilian law. As for French law, it even recognizes polygamous marriages celebrated abroad and grants concurrent surviving spouse pension benefits.

16. In the *Al Abani*[3] case, the Appeals Tribunal did not consider the place of marriage to determine one's personal status. In the instant matter, the Brazilian courts determined with finality that there was no impediment, including prior marriage, to the recognition of her stable union with Mr. M. The Fund's own Guidelines updated on 1 January 2018 lists Brazil as a country recognized by the Fund as having non-traditional unions/partnerships equal to civil marriage and recognized for purposes of survivor benefits under the Fund's Regulations. The Fund under Article 34 also provides for the possibility of more than one surviving spouse being recognized for purposes of receiving survivor's benefits. The Brazilian judicial system in the country of nationality of the participant has determined, however, that she and Mr. M were in a non-polygamous stable union at the time of Mr. M's death, which carries with it the corresponding legal consequences that the Fund is not empowered to ignore.

17. The Respondent also erred in law in its interpretation of the Appeals Tribunal's jurisprudence. In *El-Zaim*, there was never any judicial determination of the validity of the multiple marriages under the staff member's national law. In the instant matter, there has been a proper judicial determination of a stable union in existence. On the question of marital status, the principle is to rely upon the law of the staff member's nationality.[4] *El-Zaim* does not stand for the proposition that a French marriage can only be dissolved in France or under French law or for a strict prohibition against polygamy for non-French nationals. In *El-Zaim*, the matter was not brought before a Judge to pronounce on the competence of the second marriage. The Judgment assumed that a divorce in Yemen or Syria would have terminated a French marriage as the French Civil Code recognized this right as long as the process respected the French Cour de Cassation rulings on Article 5 of Protocol 7 to the European Convention on Human Rights. The Fund's decision also references *Tebeyene*,[5] which is distinguished from the instant situation since, in the instant case, there was a judicial determination that the stable union existed, and the prior marriage was not in existence. The Fund considered the French Court's statement of 14 April 2005

[3] *Al Abani v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-663, para. 30.
[4] *El-Zaim v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-007, para. 22, citing former Administrative Tribunal Judgment No. 1183, Adrian (2004), para. II.
[5] *Tebeyene v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-016.

that the divorce proceeding was lapsed. However, this was issued two years after Mr. M had died.

18. The impugned decision also suggested that Ms. Larriera was not a designated beneficiary and the Fund's Administrative Rule B.3 precluded any changes. Article 34 of the Fund's Regulations, however, may not be circumvented by subordinate rules. Administrative Rule B.3 does not override Article 34. It applies to staff members whereas Article 34 applies to spouses making a claim. The argument that marital records may not be changed after separation is inapplicable to survivor's benefits per the *Sidell*[6] case, which says that the record may be changed to acknowledge a valid marriage that occurred before the separation.

The Fund's Answer

19. The Fund argues that the appeal is not receivable as the Fund's Administrative Rule K.5 stipulates a 90-day deadline to submit a request for review to the Standing Committee following notification of a disputed decision. Ms. Larriera knew in 2003 that she was not recognized as the spouse, yet she only contacted the Fund regarding her claim in 2018 and not in the intervening 15 years since Mr. M's death.

20. Should the appeal be received, the Fund requests the Appeals Tribunal to reject the appeal in its entirety. Because Mr. M married in France, his marriage was subject to French law for purposes of determining spousal benefits regardless of his country of nationality. He, thus, could not change his marital status in a different jurisdiction other than where he entered into the marriage. If he wanted another individual recognized as his spouse, he was required to first divorce either in France or in a foreign jurisdiction in a manner compatible with, and recognized by, French law. This position is consistent with the Appeals Tribunal's jurisprudence in *El-Zaim* and *Tebeyene* wherein the participant was a Syrian national who married his wife in France and purported to have divorced her under Sharia law in Yemen and married another woman under Sharia law in Yemen. The Fund paid a widow's benefit to the first wife on the basis that the Yemeni divorce was not recognized in France (being the place of the first marriage) and therefore neither the divorce nor the marriage in Yemen could be recognized by the Fund, regardless of the nationality of the participant. In the instant matter, Mr. M married under French law and neither he nor the Appellant could subsequently choose to change his marital status even if it was under the law of his

[6] *Sidell v. United Nations Joint Staff Pension Board*, Judgment No. 2013-UNAT-348.

nationality and ignore the place and procedures of the marriage. Likewise, a Brazilian court could not change his marital status unless his marriage under French law was dissolved to the satisfaction of the French authorities.

21. The Fund's conclusion also comports with *Tebeyene*. A Cameroonian participant married in the United States and subsequently purported to divorce his wife in Cameroon where he married his second wife. He also commenced divorce proceedings in the USA. However, the divorce was not granted at the time of his death. The Fund recognized the first wife as it was questionable whether the Cameroonian divorce was recognized in the USA. Thus, in the instant matter, the fact that Brazil, Mr. M's country of nationality, has recognized a different marital status posthumously over 13 years since his death is irrelevant. Since Mr. M subjected his marriage to French law and never divorced his wife in any jurisdiction, the Fund cannot recognize him as having entered into another marriage-like relationship. In addition, Ms. Larriera's reliance on the former Secretary-General's Bulletin ST/SGB/2004/4 on determining personal status for United Nations benefits and entitlements is irrelevant. It applies to staff related benefits, not the benefits under the Fund.

22. Mr. M did not have the capacity to enter into a marriage-like relationship with the Appellant because he remained married at all times to his wife. His death put an end to any divorce proceedings and therefore they remained married under French law. The French Civil Registry had issued certificates on 27 March 2012 and on 2 May 2019, which did not have any annotations of a divorce. Although Brazilian law permits one to enter into a stable union while still married, French law does not permit this. Further, French law stipulates that legal separation does not amount to dissolution of the marriage and that one does not have capacity to remarry unless and until the divorce is pronounced. The fact that Mr. M was legally separated is not relevant under French law to his marital status nor is it relevant under the Fund's Regulations. The Appellant has not provided any basis to call into question the Fund's plain reading of the applicable French law.

23. Neither the Appellant nor Mr. M ever reported the Appellant to the Fund as Mr. M's spouse. The Appellant is a participant in the Fund herself and she also never reported Mr. M as her spouse. The Fund's Administrative Rule B.1 provides that each employing organization is responsible for furnishing personal information regarding its staff members to the Fund, including the names of spouses. Administrative Rule B.3 imposes an obligation on participants to report the names and birth dates of spouses and prospective beneficiaries.

Administrative Rule B.3 restricts changes to the report of prospective beneficiaries after a participant's separation from service, as this late addition imposes additional costs on the Fund.

24. Lastly, the Fund argues that the Appellant's request for remedies should be denied as there is no legal basis to award her a widow's benefit under the Fund's Regulations. The Appellant incorrectly argues that Article 34 of the Fund's Regulations allows for the division of spousal benefits when there are multiple spouses. This is possible only when there are multiple spouses who ae legally entitled to a benefit, which occurs when there is legal polygamy.

25. The Appeals Tribunal should reject Ms. Larriera's request for damages with interest as Article 44 of the Fund's Regulations provides that the Fund is not liable for any interest on any due but unpaid benefit. Her request for costs should be similarly rejected as the Fund has not abused the process when it reached the decision in accordance with its Regulations and in good faith. Likewise, the Appellant's request for two years' net base salary for moral damages should be rejected as she has not provided sufficient evidence in support of this claim.

Considerations

Receivability

26. The Fund avers that Ms. Larriera was cognizant since 2003 that she was not recognized as Mr. M's widow by the Fund, yet the first time she contacted the Fund in respect of her claim was in 2018. Never in the intervening 15 years since Mr. M's death did she make a request to the Fund for a survivor's benefit. The Fund contends that consequently, her appeal, filed on 8 October 2019, is not receivable, as her request to the Standing Committee was submitted on 14 February 2019, to wit, way beyond the 90-day deadline stipulated in the Fund's Administrative Rule K.5. We do not find merit in this averment for the following reasons.

27. The issue whether Ms. Larriera's claim regarding her entitlement to the relevant widow's benefit is receivable relates to the matter of jurisdiction. The relevant jurisdiction of the Appeals Tribunal is defined by Article 2, paragraph 9, of the Appeals Tribunal's Statute as comprising the competence to hear and pass judgment on an appeal of a decision of the

Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, alleging nonobservance of the regulations of the United Nations Joint Staff Pension Fund, submitted by:

> (a) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Appeals Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon his or her death;
>
> (b) Any other person who can show that he or she is entitled to rights under the regulations of the Pension Fund by virtue of the participation in the Fund of a staff member of such member organization.

28. Our jurisprudence holds that a staff member is required to clearly identify the contested administrative decision.[7] The need to identify a specific administrative decision is obviously necessary for the purpose of determining when the 90-day time limit for requesting review in terms of the Fund's Administrative Rule K.5 has commenced.

29. As per the settled jurisprudence, an appealable administrative decision is a decision whereby its key characteristic is the capacity to produce direct legal consequences affecting a staff member's terms and conditions of appointment. Further, the date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine.[8]

30. Deciding what is and what is not a decision of an administrative nature may be difficult and must be done on a case-by-case basis and will depend on the circumstances, taking into account the variety and different contexts of decision-making in the Organization. The nature of the decision, the legal framework under which the decision was made, and the consequences of the decision are key determinants of whether the decision in question is an administrative decision.[9] What matters is not so much the functionary who takes the decision

[7] *Argyrou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-969, para. 32; *Haydar v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-821, para. 13.
[8] *Olowo-Okello v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-967, para. 31; *Farzin v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-917, para. 36.
[9] *Olowo-Okello v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-967, para. 32; *Lloret Alcañiz et al. v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-840, para. 62, citing to *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 50.

as the nature of the function performed or the power exercised. The question is whether the task itself is administrative or not.

31. In the present case, some 15 years after Mr. M's death, on 19 August 2003, Ms. Larriera requested the Fund, by letter dated 17 May 2018, to pay her a widow's benefit, on the basis of a Judgment dated 7 December 2016, issued by the Ninth Family Court of the Capital District, Rio de Janeiro, Brazil, — which allegedly became final and executable on 22 March 2017— acknowledging that Ms. Larriera and Mr. M were in a "stable union", under Brazilian law, from March 2001 until the latter's death. The negative response of the Secretary/Chief Executive Officer of the Fund to Ms. Larriera's claim on 3 December 2018, *i.e.* that she did not meet the requirements for a survivor's benefit under Article 34 of the Fund's Regulations, having a direct adverse impact on the individual situation of Ms. Larriera, constitutes an appealable administrative decision for the purpose of Article 2, paragraph 9, of the Appeals Tribunal's Statute.

32. Therefore, Ms. Larriera's appeal on 8 October 2019 against the decision of the Standing Committee of the UNJSPB of 18 July 2019, conveyed to her by letter dated 22 July 2019, that rejected her request for review of the Secretary/Chief Executive Officer's decision, is receivable *ratione temporis* as it was filed within the 90-day deadline of receipt of the Board's decision as prescribed by Article 7, paragraph 2, of the Appeals Tribunal's Statute. The same goes for Ms. Larriera's request for review on 14 February 2019, which was timely made within the prescribed 90-day deadline. Besides, this request for review is receivable *ratione materiae* as the challenged decision of the Secretary/Chief Executive Officer qualifies as an appealable decision within the meaning of Article 2, paragraph 9, of the Appeals Tribunal's Statute.

33. The Fund's contention that Ms. Larriera has known since 2003 that she was not recognized as Mr. M's widow by the Fund, interpreted as having the meaning that she should have timely filed her request for review to the Standing Committee and subsequently her appeal to the Appeals Tribunal at this time is without merit.

34. As the Appeals Tribunal has consistently held the absence of a response to a claim or a complaint can in certain circumstances constitute an appealable administrative decision where it has direct legal consequences.[10] This jurisprudence does find application in the case at bar. It is not in dispute that Ms. Larriera neither raised a claim to the Fund before pertaining to her entitlement to the widow's benefit nor was she ever communicated a decision by the Administration denying her such an entitlement. In the absence of an explicit decision by the Administration on this issue, Ms. Larriera could not and ought not be expected to presume that such a decision was taken when the Fund, following Mr. M's death, confirmed that Ms. M was married to him at the time of his death and put into payment a widow's benefit under Article 34 of the Fund's Regulations, with effect from 20 August 2003. The existence of the latter, to wit, the decision to award Ms. M a widow's benefit, was not communicated to Ms. Larriera by the Administration. Thus, it cannot, of itself, be perceived as an implied administrative decision affecting her entitlement to the widow's benefit and conferring jurisdiction.

35. In any case, before it can be found that there was an implied administrative decision, there must be evidence that it was challenged by a specific request to desist and a refusal or failure by the Administration to desist or an implied decision in the form of a failure to take any decision in that regard.[11] As stated, there is no evidence that a specific request of Ms. Larriera to an appropriate official of the Fund to be granted a widow's benefit was refused or ignored within the 90 days prior to the request for review on 14 February 2019.

Merits

36. The conditions for payment of a widow's benefit are set out in Article 34 of the UNJSPF's Regulations, as follows:

> WIDOW'S BENEFIT
>
> (a) A widow's benefit shall … be payable to the surviving female spouse of a participant who was entitled to a retirement, early retirement, deferred retirement or disability benefit at the date of his death, or who died in service, if she was married to him at the

[10] *Olowo-Okello v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-967, para. 36; *Cohen v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-716, para. 37, citing *Survo v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-644, paras. 25-27 and *Tabari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2011-UNAT-177, para. 21.

[11] *Argyrou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-969, para. 33.

> date of his death in service or, if he was separated prior to his death, she was married to him at the date of separation and remained married to him until his death.

37. At the outset, the Fund submits that the Administrative Rules make clear the obligation on the part of an employing organization and a participant under Administrative Rules B.2 and B.3 to report his or her dependents and Administrative Rule B.3 goes on to state that there can be no change to the record after separation from service. Mr. M never reported Ms. Larriera to the United Nations or to the Fund as his spouse. He only ever reported his wife, Ms. M. Even Ms. Larriera, who herself was a participant in the Fund from 2 March 1998 to 14 March 2008, never reported Mr. M as her spouse. So, Mr. M was required, but failed, to report his marriage to the Fund to have his record and marital status amended, before his death in 2003.

38. The UNJSPF Administrative Rules B.2 and B.3 provide:

> B.2 The information shall normally include the name of the participant and the date of commencement of participation, date of birth, sex and marital status, and, as the case may be, the names and dates of birth of the participant's spouse, children under the age of 21, and secondary dependents; the organization shall verify, to the extent possible, the accuracy of the information furnished.
>
> B.3 The participant shall be responsible for providing the information in rule B.2 above and for notifying the organization of any changes which occur therein; the participant may be required to submit documentary or other proof of such information to the organization or the secretary of the committee. No change in the records relating to the date of birth of a participant or his or her prospective beneficiaries shall be accepted after the date of the participant's separation.

39. As we have found in *Sidell*,[12] the prohibition of a change in the records after separation is specifically limited to the date of birth of the participant or his or her prospective beneficiaries, and nothing else. Further, the Appeals Tribunal finds that the language of B.3 neither prevents a participant from changing his or her record to acknowledge a valid marriage that occurred before separation,[13] nor does it prevent a spouse from reporting his/her alleged marriage to the Fund after separation from service.[14] Otherwise this mere formality, which is envisaged by a provision subordinate to Article 34 of the UNJSPF's Regulations mainly on account of internal structural arrangements, would

[12] *Sidell v. United Nations Joint Staff Pension Board*, Judgment No. 2013-UNAT-348, paras. 23-25.
[13] *Id.*
[14] See *Tebeyene v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT 016, para. 39.

result in the participant's spouse, who was validly married at the time of separation from service but was never reported to the Fund by the participant or the employing authority, being precluded from recognizing his/her marital status and exercising his/her lawful right to receive and enjoy his/her entitlement to a widow's benefit. Therefore, we reject the Fund's contentions to the contrary as baseless.

40. So, the remaining primary question for determination is whether Mr. M's marriage to Ms. M was valid and Ms. Larriera's "stable union" to Mr. M was legally invalid, for the purpose of disposing this appeal, at the time of Mr. M's death on 19 August 2003.

41. As we stated in *El-Zaim*[15] and *Al Abani*,[16] the reference to the law of the staff member's nationality in the area of marital status allowed the United Nations 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.

42. We have also found in these cases that the principle of determining personal status by reference to the law of the staff member's nationality could only apply to a staff member who concluded a marriage or entered into another partnership recognized under his or her national law, and not to a staff member who chose to enter into a marriage or partnership under a law other than that of his or her nationality.

43. In the present case, Mr. M's marriage to Ms. M was not concluded under Brazilian law. Mr. Mand his wife chose to conclude a marriage under French law. Thus, the marriage was governed by French law and their marital status could not have been unilaterally changed under Brazilian law, the law of his nationality, ignoring the place and procedures of the marriage.

44. Ms. Larriera argues that the Fund is obliged to follow the nationality principle in deciding the personal status of the staff member as this policy is envisaged in former Secretary-General Bulletin ST/SGB/2004/4, in which it is stated that "family status for the purposes of entitlements under the United Nations Staff Regulations and Rules should be

[15] *El-Zaim v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT 007, para. 22, citing former Administrative Tribunal Judgment No. 1183, *Adrian* (2004), para. II.
[16] *Al Abani v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-663, para. 30.

determined in all cases on the basis of the long-established principle that matters of personal status are determined by reference to the law of nationality of the staff member concerned".

45. Nevertheless, irrespective of the issue as to whether the United Nations Secretary-General, who promulgated ST/SGB/2004/4, has any authority to administer the UNJSPF or to make, amend or interpret administrative issuances concerning the UNJSPF benefits, the relevant text, as per the plain reading of it, explicitly refers to "United Nations entitlements" and to the practice of the Organization when determining the personal status of staff members for the purpose of entitlements under the United Nations Staff Regulations and Rules. Hence, ST/SGB/2004/4, which governs recognition of personal status for United Nations employment benefit purposes and not for UNJSPF pension benefit purposes, as is the case in the present appeal, is not applicable to the present issue.

46. Additionally, as already held, Mr. M voluntarily subjected his marriage to the laws of France. Thus, even if former ST/SGB/2004/4 applied to the UNJSPF, which it does not, it would not provide a legal basis on which Ms. Larriera could change Mr. M's marital status, after his death, by invoking the law of his nationality.

47. As per the documents on file, Mr. M's marriage to Ms. M never came to an end or dissolved before his death on 19 August 2003. While it is true that in January 2003 Mr. M initiated divorce proceedings against Ms. M in France, and that on 23 May 2003, the Tribunal De Grande Instance De Thonon Les Bains issued an order allowing the parties to live separately, and authorized them to file an application for divorce, this proceeding never ever resulted in a divorce. Actually, as the Fund correctly contends, the French Court did not dissolve this marriage but simply noted that, in accordance with French law, if the husband did not file suit for divorce within three months, then the wife could, within a further period of three months, file such a suit herself, and that if neither spouse made such a filing within six months then the provisional measures would lapse.[17] No such filings were made, and by order dated 14 April 2005, the court decreed that the provisional measures had lapsed. Therefore, Mr. M remained married to Ms. M until his death on 19 August 2003. This fact is also confirmed by a marriage certificate issued by the French Civil Registry of

17 The order provides as follows: *"Rappelons aux époux les dispositions de l'article 1113 du Nouveau Code de Procédure Civile, lesquelles prevoient: «Si l'époux n'a pas usé de l'autorisation d'assigner dans les trois mois du prononcé de l'ordonnance, son conjoint pourra dans un nouveau délai de trois mois, l'assigner lui-même et requérir un jugement sur le fond. Si l'un ou l'autre des époux n'a pas saisi le Tribunal à l'expiration des six mois, les mesures provisoires seront caduques.»"*

Ville De Thonon Les Bains on 2 May 2019, which bears no annotation of divorce. Similarly, the French Civil Registry of Ville D'Albertville also issued a certificate on 27 March 2012, confirming that Ms. M's birth certificate bore no marginal mention of a divorce, which would have been the case had she and Mr. M divorced.

48. Consequently, the evidence discloses that, for the marriage of Mr. M to Ms. M, although it had been the subject of legal proceedings for a divorce, this divorce has not been granted as these proceedings had not concluded at the time of Mr. M's death, and hence it remained a valid marriage extant at the date Mr. M died. The marriage was and is legally recognized by the competent authorities of France. Hence, we reject, as without merit, Ms. Larriera's argument that, while under French law, Mr. M's marriage to Ms. M apparently remained valid, it was also qualified by the aforementioned French Court's decision.

49. Next, Ms. Larriera contends that her right to a survivor's benefit is based on the judgment issued by the 9th Family Court of the Capital District, State of Rio de Janeiro, Brazil, on 7 December 2016, declaring that a stable union or "uniao estavel" existed between her and Mr. M for two and a half years prior to, and at the time of, Mr. M's death. Specifically, Ms. Larriera submits that the laws of Brazil recognize such stable unions as fully equivalent to marriage, that in so deciding, the Brazilian Court also found that Mr. M's prior marriage concluded in France was no longer viable and therefore had come to an end as of March 2001, and that under Brazilian law, his French marriage was no longer an impediment to recognizing the stable union; the Court also declared that even in the absence of a final divorce decree and notwithstanding the existence of the marriage in the eyes of French law, a common-law marriage or stable union with the Appellant could be judicially recognized under the laws of Brazil.

50. We do not find merit in these submissions either. As already held, Mr. M's marriage to Ms. M was celebrated in France. Therefore, in accordance with general principles of private international law, their marital status must be assessed and determined in accordance with the *lex loci celebrationis*, which, in the instant matter, is the law of France.[18] Mr. M's marital status could not subsequently be changed for UNJSPF purposes, even if it was under the law of his nationality, ignoring the place and procedures of the marriage. Nor could Ms. Larriera infer that the Brazilian court could be competent, under French law, to change Mr. M's

[18] *Clemente v. United Nations Joint Staff Pension Board*, Judgment No. 2019-UNAT-912, para. 25.

marital status for UNJSPF purposes, ignoring the place and procedures of the marriage. Since Mr. M married Ms. M in France, he could not acquire a different marital status for UNJSPF purposes unless and until his marriage with Ms. M was properly dissolved to the satisfaction of the applicable French law, which never occurred. Consequently, to no avail Ms. Larriera invokes the law of Brazil, being the law of Mr. M's nationality, as the determinative law in the instant case in order to assess the validity of Mr. M's marriage to Ms. M.

51. On the same footing, the Appeals Tribunal finds as misplaced Ms. Larriera's argument that the Judgment of the Brazilian Court on 7 December 2016 had terminated Mr. M's marriage to Ms. M, as per the Brazilian law. First, it does not transpire from the content of this Judgment that it announced the termination of the like marriage. Second, the alleged fact that Brazil, Mr. M's country of nationality, recognizes a different marital status, is irrelevant for the purposes of determining Ms. Larriera's entitlement to a survivor's benefit under the UNJSPF's Regulations. A juridical act may be void for one purpose and valid for another, or it may be void against one person but valid against another.[19] Thus, while, pursuant to Brazilian law, "stable unions" may be fully equivalent to marriage and the Judgment of the Brazilian Court may offer Ms. Larriera a different civil status under it for the purposes of her inheritance or other legal entitlements, it does not have the same legal consequences under the UNJSPF's Regulations in terms of the survivor's benefit.

52. Further, we agree with the Fund that the applicable French law does not allow any possibility of a person entering into a "stable union" (uniao estȧvel) despite being already married.

53. The relevant Articles of the French Civil Code read:

> Article 147:
>
> No one may contract a second marriage before the dissolution of the first.
>
> Article 299:
>
> Judicial separation does not dissolve marriage but it puts an end to the duty of cohabitation.

[19] See *Clemente v. United Nations Joint Staff Pension Board*, Judgment No. 2019-UNAT-912, para. 38, citing Wade: Administrative Law 7 Ed. at page 342-4; C Forsyth: "The Metaphysics of Nullity: Invalidity, Conceptual Reasoning and the Rule of Law" in Essays on Public Law in Honour of Sir William Wade QC (Clarendon) Press 141.

> Article 301:
>
> In case of death of one of the judicially separated spouses, the other spouse shall keep the rights which the law grants to a surviving spouse.
>
> Article 515-2:
>
> On pain of nullity, there may not be a civil covenant of solidarity:
>
> 1. Between ascendants and descendants in direct line, between relatives by marriage in direct line and between collaterals until the third degree inclusive;
> 2. Between two persons of whom one at least is bound by the bonds of marriage;
> 3. Between two persons of whom one at least is already bound by a civil covenant of solidarity.

54. As per the plain reading of these provisions, construed in combination, a marriage subsequently contracted during the lifetime of the first spouse is illegal unless the first marriage was dissolved, and the same applies with reference to a civil covenant of solidarity. Further, judicial separation does not dissolve a marriage nor does it capacitate the legally separated spouse to remarry or to enter a civil covenant of solidarity, while in the event of the death of a spouse during a separation but prior to divorce, the surviving separated spouse retains all the rights that accrue to a surviving spouse.

55. Therefore, under French law, Mr. M's separation from Ms. M did not amount to a divorce; nor did it capacitate him to enter into a marriage or marriage-like relationship with Ms. Larriera. Concomitantly, contrary to Ms. Larriera's arguments, Mr. M could not acquire a different marital status without first divorcing Ms. M.

56. It ensues that, from the perspective of *lex loci celebationis*, Mr. M's stable union to Ms. Larriera was not valid at the time of its celebration, due to the existence of his valid marriage which had been concluded under French law. Since under Article 34 of the Fund's Regulations, a surviving female spouse is only entitled to a widow's benefit if she was married to the Fund participant from the time he separated from the Organization until his death, the Fund correctly held that Ms. Larriera was not entitled to a widow's benefit. Finally, Ms. Larriera submits that France recognizes the effects of a polygamous marriage celebrated abroad in certain cases and that in the event of conflicting legal opinions as to the validity of the marriages in question and conflicts of law as to which jurisdiction should prevail, Article 3 of the UNJSPF's Regulations provides for the possibility of more than one surviving spouse being recognized by the Fund for the purpose of the widow's benefit.

57. However, this submission must be rejected as it is predicated on the erroneous factual basis that Mr. M had validly entered into a polygamous marital status, which is not the case here, as already held in this Judgment.[20] As correctly put forward by the Fund, Mr. M never entered into a polygamous marriage with Ms. M or with anyone else, nor has the Brazilian Court found that Mr. M and Ms. M and Ms. Larriera were in a polygamous union. Be that as it may, even assuming *arguendo* that the applicable law accepted polygamous marriages where they are legally recognized in the jurisdiction where they were celebrated, this does not stand in this case.

58. Given that we do not reverse the UNJSPF's decision, it is unnecessary to address the issue of legal fees sought by Ms. Larriera. We also find that no questions of further relief for the Appellant arise. Specifically, our conclusion that the decision of the Fund to not grant Ms. Larriera a widow's benefit is lawful precludes the Appeals Tribunal from awarding compensation. Since no illegality was found, there is no justification for the award of any compensation. As this Tribunal stated before, "compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair".[21]

59. For the forgoing reasons, the appeal fails.

[20] In the present context, the celebration of a second marriage while a first still subsists will sustain a criminal charge of bigamy in the French law (French Penal Code, Article 433-20 Modifié par Ordonnance n°2000-916 du 19 septembre 2000 - art. 3 (V) JORF 22 septembre 2000 en vigueur le 1er janvier 2002) and in the Brazilian law (Brazil Penal Code, Article 235).

[21] *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 34; *Kucherov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-669, para. 33, citing *Wishah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-537, para. 40 and citations therein; see also *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-508, para. 27; *Oummih v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-420, para. 20; *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-095, para. 23.

Judgment

60. The appeal is dismissed. The decision of the UNJSPB is upheld.

Original and Authoritative Version: English

Dated this 27th day of March 2020.

(Signed)	*(Signed)*	*(Signed)*
Judge Raikos, Presiding Athens, Greece	Judge Halfeld Bournemouth, United Kingdom	Judge Murphy Cape Town, South Africa

Entered in the Register on this 19th day of June 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar