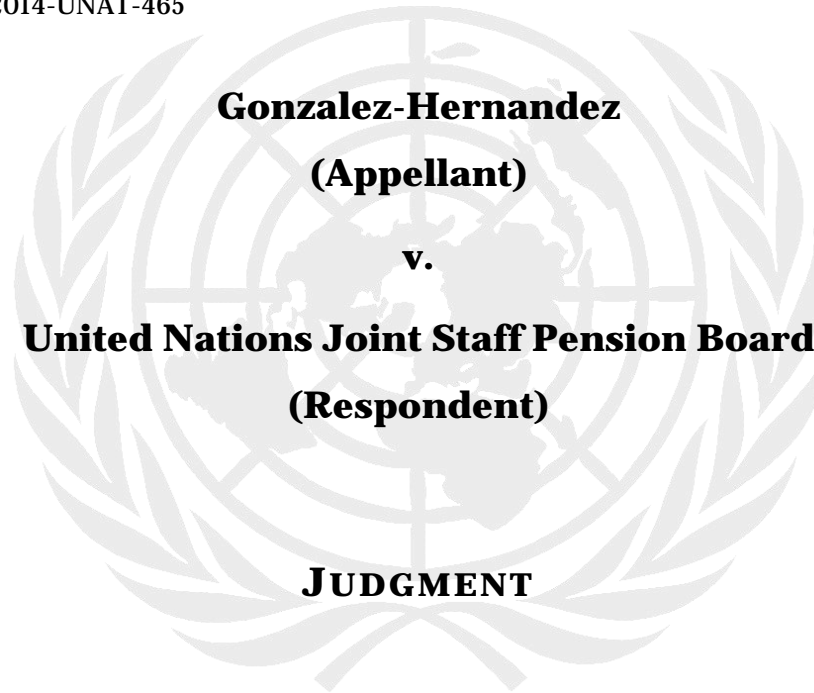




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2014-UNAT-465



**Gonzalez-Hernandez
(Appellant)**

v.

**United Nations Joint Staff Pension Board
(Respondent)**

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Richard Lussick Judge Mary Faherty
Case No.:	2013-536
Date:	17 October 2014
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Sergio B. Arvizú

JUDGE LUIS MARÍA SIMÓN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Oscar Gonzalez-Hernandez against the decision of the Standing Committee of the United Nations Joint Staff Pension Board (UNJSPB or Pension Board) taken on 17 July 2013 to uphold the decision of the Chief Executive Officer (CEO) of the United Nations Joint Staff Pension Fund (UNJSPF or the Fund) to deduct 50 per cent of his monthly pension benefit for payment directly to his former spouse, in accordance with Article 45 of the Fund's Regulations. Mr. Gonzalez-Hernandez appealed on 25 October 2013 and the UNJSPB answered on 13 December 2013.

Facts and Procedure

2. Mr. Gonzalez-Hernandez, a national of Portugal, retired from the United Nations Industrial Development Organization (UNIDO) in Vienna on 31 October 1999 after 32 years of service. He opted for a reduced retirement benefit, taking out a lump-sum.

3. Upon his retirement, Mr. Gonzalez-Hernandez did not return to Portugal but stayed in Vienna with his wife and two sons. In 2001, his wife, whom he had married in Austria in 1992, sued unsuccessfully for divorce.

4. In April 2003, Mr. Gonzalez-Hernandez' wife and children moved from Vienna to Germany. In April 2004, Mr. Gonzalez-Hernandez moved to Portugal. According to Mr. Gonzalez-Hernandez, in 2005, his wife and children returned to Austria and changed their nationalities to Austrian. Ms. Gonzalez-Hernandez subsequently sued Mr. Gonzalez-Hernandez for alimony and for sole custody of the children. She won her cases before the Viennese courts.

5. In 2005, Mrs. Gonzalez-Hernandez contacted the Fund to request the application of Article 45 of the UNJSPF Regulations on the basis of a judgment by an Austrian trial court, providing for spousal support. Since this judgment was under appeal, no action was taken by the Fund at that point. The Fund continued to correspond with Mr. Gonzalez-Hernandez and his spouse with respect to the application of Article 45, while proceedings in Austrian courts were still ongoing. According to the Fund, Mr. Gonzalez-Hernandez participated in all court proceedings through a legal counsel thereby accepting the jurisdiction of the courts of Austria.

6. On 3 March 2011, Mr. Gonzalez-Hernandez obtained a divorce in Portugal at the Lisbon family court, with no alimony to be paid to his former wife. The divorce sentence was communicated to the Viennese courts, with the request that the Viennese court order for alimony be cancelled. According to Mr. Gonzalez-Hernandez, the Viennese courts ignored his request.

7. On 17 June 2011, the Fund received a request for enforcement of two judgments endorsed by the Austrian Trial Court.

8. On 23 February 2012, the Fund informed Ms. Gonzalez-Hernandez that in order to maintain her request for application of Article 45, she should provide the Fund with an update on the judicial proceedings and copies of all relevant judicial decisions.

9. On 13 May 2012, Ms. Gonzalez-Hernandez provided the Fund with a copy of a final and executable judgment from the Austrian Appeals Court, which upheld a judgment of the Austrian Trial Court ordering Mr. Gonzalez-Hernandez to pay, in addition to child support, spousal support in the amount of EUR 4,212 per month (57.21 per cent of his monthly gross pension benefit) as of the beginning of January 2009 for an undetermined period.

10. On 23 February and 14 June 2012, the Fund informed Mr. Gonzalez-Hernandez of the request for execution of the Austrian court judgments, clarified that it could not ignore those judgments, and requested an update on the proceedings with respect to the claim for spousal support. Although Mr. Gonzalez-Hernandez claimed that he was no longer subject to the Austrian court judgments, the copy of the Portuguese divorce judgment which he provided to the Fund clearly stated that the law of Austria applied in the divorce as it “is the law of the country in which the couple had their famil[y] life more connected to”, and that “the parental responsibilities in relation to both sons are regulated by the sentence of the district court of Vienna”.¹

11. On 17 December 2012, the Fund’s CEO concluded that the documents on file fully established that Mr. Gonzalez-Hernandez had a legal obligation to pay spousal and child support and decided to apply Article 45 in this case. Thus, 50 per cent of his monthly gross pension benefit would be paid directly to his ex-spouse, on a prospective basis only. The decision was communicated to Mr. Gonzalez-Hernandez in a letter dated 19 December 2012.

¹ English translation of the divorce decree issued by the Second Court of Lisbon for Family and Minors, provided by Mr. Gonzalez-Hernandez as an annex to his appeal.

12. On 27 December 2012, Mr. Gonzalez-Hernandez provided the Fund with a copy of a letter from his lawyer to the Austrian court which stated that, following the receipt of the divorce judgment from Portugal, the “conditions underlying the judgments issued by the Austrian courts have ceased”.

13. In its reply of 7 January 2013, the Fund explained the reasons that led the Fund’s CEO to apply Article 45 in his case, and clarified that the CEO could not ignore the Austrian court judgments, which were final and executable. The Fund also informed Mr. Gonzalez-Hernandez that the CEO’s decision could be reviewed and a new decision to alter or discontinue payments could be made, if satisfactory evidence was provided based on a new court order.

14. On 25 March 2013, Mr. Gonzalez-Hernandez appealed the decision to apply Article 45 in his case to the Standing Committee of the Pension Board.

Procedure

15. At its 195th meeting held on 17 July 2013, the Standing Committee affirmed the decision of the Fund’s CEO.

16. The Standing Committee noted that

(a) The Portuguese court in pronouncing the divorce did not address any financial or property matters, including alimony and child support;

(b) The Portuguese court took note of the decrees of the Austrian court in regard to these matters, and limited itself to only pronouncing the divorce;

(c) The Portuguese court held that Mr. Gonzalez-Hernandez and his former spouse had their family life in Austria, and concluded, therefore, that Austria was the country to which they were more closely connected, and that the applicable law of the marriage was Austrian law; and

(d) The Austrian courts noted the divorce proceedings in Portugal and limited their jurisdiction to determinations on child support and alimony.

17. The Standing Committee also took notice of the fact that Mr. Gonzalez-Hernandez was legally represented in the proceedings in Austria, including at the appellate level, and that he had been informed that a new decision to alter or discontinue payments could be made if the circumstances changed. Meanwhile, the judgments of the Austrian courts remained valid and executable.

18. Lastly, the Standing Committee noted that the CEO's decision was reasonable as no more than 50 per cent of Mr. Gonzalez-Hernandez's UNJSPF monthly pension benefit was deducted.

19. On 24 July 2013, Mr. Gonzalez-Hernandez was advised of the decision of the Standing Committee.

Submissions

Mr. Gonzalez-Hernandez's Appeal

20. Mr. Gonzalez-Hernandez submits that the evidence he submitted to the Fund, in particular the Portuguese divorce decree, raises more than reasonable doubts about the validity of the Vienna court decision and its execution was not properly taken into account by the Fund. The CEO limited himself to applying the court order at face value and failed to provide detailed information or reasons in support of his decision.

21. The Standing Committee similarly failed to provide detailed information or reasons for its endorsement of the CEO's decision.

22. Mr. Gonzalez-Hernandez submits that his legal obligations ceased with his divorce and that the Viennese court order is no longer valid.

23. He requests that the UNJSPF pension to which he is entitled be reinstated from January 2013, when it was reduced in half, in gross terms; payment of legal costs; as well as compensation for moral injury at the Appeals Tribunal's discretion.

The Pension Board's Answer

24. The request for the application of Article 45 in the current case was supported by a judgment of the Austrian Trial Court, which established the legal obligation on the part of Mr. Gonzalez-Hernandez to pay spousal support, which was upheld on appeal. Austria was the

place of the marriage, as well as the residence of Mr. Gonzalez-Hernandez during the life of the marriage until 2004, when he left the family in Austria and moved to Portugal. Both he and his former spouse were fully represented in the proceedings in Austria leading to the court judgments.

25. The Portuguese divorce judgment did not invalidate the Austrian court judgments, as the Portuguese court only issued a divorce decree between Mr. and Ms. Gonzalez-Hernandez. The Portuguese court explicitly stated that the applicable law to the divorce was Austrian law and did not address financial matters, alimony payments or custody.

26. The Fund's CEO agreed to consider the request made by Ms. Gonzalez-Hernandez for the application of Article 45 only after he was satisfied that the legal process was final and the obligation for spousal support was clearly established.

27. As the decision whether to remit a portion of Mr. Gonzalez-Hernandez' monthly pension benefit is discretionary, the Fund's CEO properly limited the deduction from the beneficiary's monthly gross benefit to 50 per cent. The said decision was reasonable in the circumstances and accorded to the UNJSPF's usual practice.

28. Mr. Gonzalez-Hernandez has the onus of proving that the requirements for the application of Article 45 in his case were not met.

29. The Respondent requests the Appeals Tribunal to dismiss the appeal and uphold the decision of the Standing Committee.

Considerations

30. The requested oral hearing was not granted since the issues for decision were already clearly defined by the parties' written submissions.

31. An appeal before this Tribunal, submitted against a decision adopted by the Standing Committee of the Pension Board, can only succeed if it is found that the Regulations of the Fund were not observed, in accordance with Article 2(9) of our Statute.

32. The Appellant bears the burden of satisfying the Appeals Tribunal that the impugned decision is defective.

33. This Court finds no error of law or fact such as to vitiate the contested decision, which established the deduction of 50 per cent of Mr. Gonzalez-Hernandez's monthly pension benefit and the payment of that amount directly to his former spouse.

34. In particular, the Fund correctly applied Article 45 of the Regulations of the UNJSPF and relied on an internationally binding judgment about spousal and child support, issued by an Austrian court, which was not contradicted by the divorce decree issued by the Portuguese court.

35. There is no basis for Mr. Gonzalez-Hernandez to question the validity of the Austrian court judgment or the binding obligations imposed on him by order of the Austrian court.

36. In all the circumstances, the Fund acted properly and within its statutory remit after obtaining the necessary information and adopted a reasoned and well-founded decision, which we uphold.

Judgment

37. The appeal is dismissed in its entirety.

Original and Authoritative Version: English

Dated this 17th day of October 2014 in New York.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Faherty

Entered in the Register on this 22nd day of December 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar