

# CONSEIL DE L'EUROPE—— ——COUNCIL OF EUROPE

## COMMISSION DE RECOURS APPEALS BOARD

### Appeal No. 46/1978 (X v. Secretary General)

The Appeals Board, sitting in private in Strasbourg, on 30 March 1979, under the chairmanship of Mr H. DELVAUX and in the presence of:

Mr H. KITSCHENBERG, Deputy Chairman, and  
Mr S. CANTONO DI CEVA,

assisted by:

Mr A. PLATE, Secretary, and  
Miss D. COIN, Substitute Secretary,

Having deliberated.

### PROCEDURE

Mrs X. lodged her appeal by letter of 7 June 1978. The appeal was registered on 8 June 1978 under file number 46/1978.

By letter of 10 August 1978, Mrs Y., represented by Maître BAUMANN, Barrister at Strasbourg and former “Bâtonnier”, submitted to the Chairman of the Appeals Board a request to intervene in the proceedings instituted by Mrs X.

The Secretary General of the Council of Europe, represented by Mr HARREMOES, Deputy Director of Legal Affairs, presented his observations on 30 August 1978.

On 10 October 1978, Mrs X. submitted a memorial in reply both to the Secretary General's observations and to Mrs Y.'s request to intervene in the proceedings.

By an order of 18 October 1978, the Chairman of the Appeals Board agreed to Mrs Y.'s request.

Mrs Y. presented a memorial on 28 November 1978. Subsequently, on 30 December 1978, Mrs X. submitted a memorial in reply.

The parties made their submissions orally at a private hearing in Strasbourg on 29 March 1979.

The Appeals Board subsequently deliberated.

## THE FACTS

The facts presented by the parties which are not in dispute, may be summarised as follows:

Mrs X. married Mr Z. in Toulon (France) on 4 June 1955. The marriage was dissolved by a divorce decree pronounced by the Paris Court of First Instance on 31 October 1962. Mrs X. did not remarry subsequently, whereas Mr Z. contracted a further marriage with Mrs Y. at Erstein (France) on 1 April 1969.

Mr Z. died on 28 December 1977.

On 15 March 1978, Mrs X. applied to the Director General of Administration and Finance for the pension provided for in the Pension Scheme Rules in their provisions concerning entitlement to a survivor's pension. She referred in particular to Article 22 of the Rules, relating to the rights of a divorced wife.

On 28 March 1978, the Director General of Administration and Finance rejected the claim on the ground that it did not satisfy the conditions prescribed in Article 22 of the Pension Scheme Rules.

Mrs X. then applied to the Secretary General in accordance with Article 32 of the Staff Regulations, asking him to refer her claim to the Advisory Committee on Disputes for an opinion. On 11 May 1978 the Advisory Committee on Disputes delivered its opinion, to the effect that Mrs X.'s claim was not justified.

## SUBMISSIONS OF THE PARTIES

I. The appellant's submissions may be summarised as follows:

Relying on Italian legislation which did not recognise divorce until 1970, the **appellant** maintains that the divorce decree pronounced by a French court in 1960 should be considered null and void, as well as Mr Z.'s second marriage. She therefore considers herself justified in claiming a survivor's pension as a widow in accordance with Articles 18 and 19 of the Pension Scheme Rules.

Furthermore, in her position as a divorced wife, she claims the divorced wife's survivor's pension provided for in Article 22 of the Pension Scheme Rules.

This Article stipulates as follows:

"The former wife of a non-remarried staff member shall, on his death, be entitled to a survivor's pension, provided the staff member was, by virtue of a court decision, which has become final and binding, under an obligation to pay her maintenance for her own use at the time of his death but the survivor's pension shall not exceed the amount of such maintenance.

This entitlement shall not arise if the former wife remarried before her former husband died. If she remarries after his death, the provisions of Article 21 shall apply.”

In support of her claim, the appellant refers to the fact that during the divorce proceedings, Mr Z. paid her an allowance of 1 200 FF a month, which he subsequently novated by assigning to her a flat which was intended to provide her with an income equivalent to 1 200 FF a month.

Moreover, she points out that, in French law, a wife who has successfully petitioned for a divorce may at any time ask the court to award her maintenance.

II. The Secretary General’s submissions may be summarised as follows:

The **Secretary General** points out that the Pension Scheme Rules form part of the organisation’s internal law in the light of which rights are assessed.

The organisation’s internal law accepts as valid evidence any instrument properly drawn up under a national legal system. This is a general principle of international civil service law, as is clear from the jurisprudence of the Administrative Tribunal of the United Nations (see its Judgement No. 126 of 13 May 1969 in the *Salvinelli* (Case)).

It follows that Mrs X. was divorced from Mr Z. She does not therefore fulfill the conditions of Article 18. Nor does she satisfy the requirements of Article 22, since no court had made a maintenance award in the favour by the time of death.

III. The submissions of the intervening party may be summarised as follows:

In the opinion of the intervening party, not only is Mrs X. validly divorced in the eyes of French law, but she has also been validly divorced in Italy since the entry into force of the Act of 1 December 1970 by which divorce was instituted in that country. In support of this view, she refers to Italian case-law concerning the recognition by Italian courts of divorce decrees pronounced abroad, even before 1 December 1970.

As a divorced wife, Mrs X. can rely only on Article 22 of the Pension Scheme Rules. However, no court had awarded her maintenance by the time of Mr Z.’s death. There is therefore no reason to grant her the survivor’s pension claimed by her. Moreover, even if she had applied to a court for maintenance during Mr Z.’s lifetime, the court would undoubtedly have been unable to award her any because of her income.

## **APPLICATIONS OF THE PARTIES**

The appellant asks the Appeals Board:

- to set aside the decision of 28 March 1978 by which she was refused a survivor’s pension;
- to order the Council of Europe to pay her a survivor’s pension.

## THE LAW

The appellant claims a survivor's pension on the basis of Article 18 of the Pension Scheme Rules, concerning the conditions of a widow's entitlement to a survivor's pension. She also relies on Article 22 of the Rules, governing the rights of a divorced wife.

As to the claim based on Article 18 of the Pension Scheme Rules:

For this claim to be admissible, it would have to be acknowledged that, as the appellant maintains, the divorce decree pronounced by the Paris Court of First Instance on 31 October 1962 was null and void on the grounds that Mr Z. was an Italian subject and divorces were not recognised in Italy until 1 December 1970.

The Appeals Board, in accordance with a general principle of international civil service law, considers that it is not for it to query the validity of a judgement delivered by a state's court concerning the application of that state's domestic law (see the United Nations Administrative Tribunal's Judgement No. 126 of 13 May 1969 in the Salvinelli Case).

Furthermore, the Appeals Board notes that it was the appellant herself who petitioned for the divorce decree and had it entered on the marriage certificate, thus clearly establishing her status as a divorced wife.

The divorce decree, which is therefore valid from the standpoint of French law, could also be valid from the standpoint of Italian law, particularly as a result of the entry into force of Act No. 898 of 1 December 1970 whereby divorce was instituted in Italy.

In this connection, it may be observed that, by judgement No. 154 of 12 January 1977, the Italian Court of Cassation decided that a divorce decree pronounced abroad, even before 1 December 1970, could be effective in Italy once it had become final in the state in which it had been pronounced. Moreover, Mrs Y. has furnished evidence that her marriage to Mr Z. was entered in the public records at Montignoso (Italy).

Consequently, the appellant does not satisfy the conditions laid down in Article 18 of the Pension Scheme Regulations for entitlement to a survivor's pension.

As to the claim based on Article 22 of the Pension Scheme Regulations, the Appeals Board observes that paragraph 2 of this article provides as follows: "Where a staff member dies leaving a widow entitled to a survivor's pension and a non-remarried former wife fulfilling the conditions laid down in paragraph 1 above, the whole of the survivor's pension shall be divided between the before-mentioned persons in proportion to the duration of their marriages."

Paragraph 1 lays down the condition that, at the time of his death, the staff member was, by virtue of a court decision which has become final and binding, under an obligation to pay maintenance to his non-remarried former wife, adding that the survivor's pension shall not exceed the amount of such maintenance.

In the present case, however, no court has awarded maintenance to the appellant, and even though she alleges that she was entitled to apply for maintenance and obtain it, she did not do so during Mr Z.'s lifetime.

Moreover, it is impossible to equate with maintenance the allowance which Mr Z. paid the appellant during the divorce proceedings and which was subsequently replaced by the donation of a flat intended to provide her with an income.

The Appeals Board deduces from the foregoing that the appellant does not meet the requirements of Article 22 for receiving a survivor's pension either.

Now, therefore, the Appeals Board:

1. Declares the appeal ill-founded and rejects its;
2. Decides that the parties shall each bear their own costs.

Done in French at Strasbourg on 30 March 1979.

The Chairman of the  
Appeals Board

H. DELVAUX

The Secretary to the  
Appeals Board

A. PLATE