

---

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

---

**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

---

**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. ~~Mun~~ 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,

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





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.



