UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2022-UNAT-1193

Carolina Larriera

(Applicant)

v.

United Nations Joint Staff Pension Board

(Respondent)

JUDGMENT ON APPLICATION FOR REVISION

Before:	Judge Dimitrios Raikos, Presiding Judge John Raymond Murphy Judge Martha Halfeld
Case No.:	2021-1538
Date:	18 March 2022
Registrar:	Weicheng Lin

Counsel for Applicant:	George G. Irving
Counsel for Respondent:	Rosemarie McClean

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Ms. Carolina Larriera has submitted an application for revision of Judgment No. 2020-UNAT-1004 that the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) issued on 27 March 2020. For the reasons set out below, we dismiss the application.

Facts and Procedure

2. In May 2018, Ms. Larriera wrote to the United Nations Joint Staff Pension Fund (Fund or UNJSPF) requesting a widow's benefit, on the ground that she had been in a "stable union" with Mr. M. for more than two years under the Brazilian law from March 2001 until his death on 19 August 2003. Mr. M., a national of Brazil, had been a Fund participant from 1 March 1970 until his death in service.

3. Mr. M. had a wife, Ms. M., a national of France, whom he married in 1973 in France. He reported Ms. M. to the Fund as his spouse, and this designation remained unchanged, even after he had initiated divorce proceedings against Ms. M. in France in January 2003.

4. On 23 May 2003, a French court issued an order allowing the parties to live separately and authorizing them to file an application for divorce within six months. As noted above, less than three months thereafter, on 19 August 2003, Mr. M. died without having filed a divorce application.

5. Following Mr. M.'s death, the Fund confirmed with Ms. M. that they were married at the time of Mr. M.'s death and began to pay Ms. M. a widow's benefit effective 20 August 2003.

6. On 3 December 2018, the Fund responded to Ms. Larriera's May 2018 request for a widow's benefit. It informed Ms. Larriera that her request had been denied as she had not met the requirements of Article 34 of the Fund's Regulations.

7. On 14 February 2019, Ms. Larriera requested a review of that decision by the Standing Committee. On 18 July 2019, the Standing Committee upheld the decision to not pay a widow's benefit to Ms. Larriera. The Standing Committee noted the judgment issued by a Brazilian family court dated 7 December 2016 declaring Ms. Larriera and Mr. M. to be in a stable union, but considered that the Fund was governed by its own legal and administrative framework. The Standing Committee informed Ms. Larriera that the Fund could not recognize her as

Mr. M.'s surviving spouse for the purpose of the Fund's Regulations, because, at the time of Mr. M.'s death, Ms. M., and not Ms. Larriera, was the only spouse ever reported to the Fund, Mr. M. had not divorced Ms. M., and French law did not recognize polygamy.

8. Ms. Larriera appealed the Standing Committee's decision to the Appeals Tribunal. In Judgment No. 2020-UNAT-1004 dated 27 March 2020, the Appeals Tribunal dismissed Ms. Larriera's appeal, finding that the Fund had correctly decided that she was not entitled to a widow's benefit pursuant to Article 34 of the Fund's Regulations. The UNAT recalled that Mr. M.'s marriage to Ms. M. had not been concluded under Brazilian law; it had been concluded in France under French law. The Appeals Tribunal also recalled that, despite the divorce proceedings that Mr. M. had initiated in January 2003, his marriage to Ms. M. had never come to an end or had been dissolved before his death. Consequently, he remained married to Ms. M. until his death. As that marriage was celebrated in France, Mr. M.'s marital status must be assessed and determined in accordance with *lex loci celebrationis*, i.e., the law of France, and that marital status could not subsequently be changed for the UNJSPF purposes, even if it was so changed under the law of his nationality. The Appeals Tribunal was of the view that Mr. M.'s legal separation from Ms. M. in May 2003 did not amount to divorce, nor did it capacitate him to enter into a marriage or marriage-like relationship with Ms. Larriera per the French Law. Concomitantly, Mr. M. could not enter into a different marriage without first divorcing Ms. M.

9. By application dated 26 March 2021, Ms. Larriera seeks revision of this Judgment. On 26 April 2021, the Fund filed comments on Ms. Larriera's application for revision.

Submissions

Ms. Larriera's Application for revision

10. Ms. Larriera requests that the Appeals Tribunal grant her application for revision.

11. Ms. Larriera states that the decisive fact supporting her application was a legal opinion provided on 25 March 2021 that had not been available at the time of the UNAT Judgment. She says that following the UNAT's ruling that she should refer to French law to be recognized as a surviving spouse, she consulted a French specialist to study the corresponding French jurisprudence. The resulting legal opinion confirms that the stable union is valid in France

and Brazil, that opinion having emerged from new decisive facts and documentation from the French Government.

12. According to Ms. Larriera, the Ministry of Europe and Foreign Affairs of France has endorsed the findings of the Brazilian courts with regard to Mr. M., leading to the actions by the Registrar of the Civil Registry of the Town of Massongy, France, to recognize the stable union between Mr. M. and her in France by inscribing an annotation of the stable union between Mr. M. and her in Mr. M.'s death certificate, on 5 February 2021.

13. Ms. Larriera submits that the UNAT reached its findings on the false argument made by the Fund that a stable union in Brazil is not valid under French law without a French divorce, which was grounded on superficial interpretation of the French Civil Code and UNAT's jurisprudence. Indeed, French law does not prohibit stable unions. And a stable union and a French marriage can coexist. As a result of the certification in the French Register of Civil Status, both Ms. Larriera and Ms. M. qualify as Mr. M.'s "surviving spouses" under French law.

14. Ms. Larriera also submits that the French legal expert made a thorough analysis by consulting vast bibliography. She concluded that the stable union is "legally valid" under Article 515-7-1 of the French Civil Code. She has also arrived at some conclusions including: i) French law refers to foreign law; French courts apply and recognize foreign law; ii) Favoring one spouse over another will be discriminatory under both the French Constitution of 1958 and the Brazilian Constitution of 1988; iii) The Appeals Tribunal has no jurisdiction to qualify the Brazilian stable union as illegal in respect of the provisions set forth in the French Civil Code; iv) Ms. Larriera has the status of wife in Brazilian law, which does not distinguish the type of family in matters of inheritance; and v) Under the French law regarding succession, for movable inheritance, the applicable law points to the law of Switzerland, being Mr. M.'s last domicile, and the Swiss law grants Ms. Larriera's rights.

The Respondent's Comments

15. The Fund requests that the Appeals Tribunal reject Ms. Larriera's application for revision in its entirety.

16. The Fund notes that Ms. Larriera's application suffers from procedural irregularities, in that she has both exceeded the applicable five-page page limit and submitted her application beyond the 30-day deadline provided for in the UNAT Statute. She seeks to incorporate by

reference a 27-page single-spaced legal opinion from an attorney in France as setting out the grounds for her application for revision. This is simply an attempt to re-argue the case while circumventing the page limit.

17. The Fund submits that Ms. Larriera has not disclosed any new fact that was unknown to her at the time the UNAT Judgment was rendered, other than through her own negligence. She could have acted to have the annotation added to Mr. M.'s death certificate following the issuance of the Brazilian Judgment on 7 December 2016. Moreover, nothing prevented her from requesting the annotation to be added prior to the issuance of the UNAT Judgment on 19 June 2020. The annotation was added at the request of Ms. Larriera's French attorney on 5 February 2021, apparently in response to the outcome of her appeal, thus creating the semblance of a new fact. This was not a new fact, but an action that Ms. Larriera could have taken earlier. Her application for revision thus falls outside the scope of Article 24 of the UNAT's Rules of Procedure and should be rejected.

18. The Fund also submits that Ms. Larriera does not have a valid reason for seeking a revision of the UNAT Judgment. She bases her application on a legal opinion that she obtained from her French attorney in March 2021. But nothing precluded her from seeking it prior to the issuance of the UNAT Judgment on 19 June 2020, as she knew since December 2018 of the reasons as to why the UNJSPF had denied her request for a widow's benefit. Contrary to Ms. Larriera's assertion, a legal argument is not evidence of any fact.

19. The Fund maintains that the information submitted by Ms. Larriera is neither decisive nor relevant. After Mr. M.'s death, Ms. Larriera obtained a declaration from a Brazilian court that she and Mr. M. had been in a stable union. That declaration, however, did not invalidate the marriage between Mr. M. and Ms. M., which subsisted at the time of Mr. M.'s death.

20. The Fund draws the attention of the Appeals Tribunal to the false claim about the French Government endorsing the findings of the Brazilian court with regard to Mr. M. There was no such endorsement as the Ministry of Europe and Foreign Affairs of France simply stated that her request to annotate Mr. M.'s death certificate should be directed to the Town of Massongy. Furthermore, there is nothing on record to suggest that any government or judicial entity in France considers that, at the time of Mr. M.'s death, he was divorced from Ms. M., or Ms. Larriera had acquired the status of Mr. M.'s spouse under French law.

21. The Fund also maintains that the some of the arguments raised in the application are irrelevant. Eligibility for a spousal benefit in the case of a death in service under Article 34 of the Fund's Regulations depends on the spouse having been legally married to the participant at the time of the participant's death, and not on his or her inheritance rights. Prior to his death, neither Mr. M. nor Ms. Larriera sought to have her recognized as Mr. M.'s spouse by the UNJSPF or by the United Nations. The present case is distinguishable from *Clemente*,[1] in that, in the present case, the participant only married once, and the declaration of the existence of a stable union was the result of a process that Ms. Larriera had initiated after Mr. M.'s death, whereas, in *Clemente*, the Fund participant had his first marriage annulled, but celebrated his second marriage prior to the annulment, which became final only some eight years later.

22. Lastly, the Fund wishes to reiterate the massive uncertainty that would be introduced into the UNJSPF's spousal benefits scheme if a person could invalidate and/or change a participant's marital status for the Fund's pension benefit purposes on the basis of actions initiated after the participant's death.

Considerations

23. We do not propose to reiterate the conclusions of, and reasoning in, the Judgment sought to be revised. It is recent, comprehensive and self-explanatory.

24. Applications for revision of judgment are governed by Article 11 of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal. By these provisions, an applicant must show or identify the decisive facts that at the time of the Appeals Tribunal Judgment were unknown to both the Appeals Tribunal and the party applying for revision; that such ignorance was not due to the negligence of the applicant; that the facts identified would have been decisive in reaching the decision;[2] and that the decisive facts existed at the time when the judgment was given and discovered subsequently. Facts which occur after a judgment has been given are not such facts within the meaning of Article 11 of the Statute and Article 24 of the

[1] *Clemente v. United Nations Joint Staff Pension Board*, Judgment No. 2019-UNAT-912.
[2] *Hasan Khalil Sirhan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1131, para. 31; *Mbaigolmem v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-890, para.12; *Walden v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-573, para. 16.

Rules of Procedure of the Appeals Tribunal. This remains the case irrespective of the legal consequences that such facts may have.[3]

25. The Appeals Tribunal has consistently held that "any application which, in fact, seeks a review of a final judgment rendered by the Appeals Tribunal can, irrespective of its title, only succeed if it fulfils the strict and exceptional criteria established by Article 11 of the Statute of the Appeals Tribunal".[4]

26. Thus, in order to succeed in her quest for revision, the Applicant must therefore prove that she has discovered a decisive fact that was unknown to both her and this Tribunal at the time of judgment and existed at the time when the judgment was given and discovered subsequently. The decisive fact which she maintains was unknown to her and the Appeals Tribunal was that the French Ministry of Europe and Foreign affairs "has recently [on 14 January 2021] endorsed the findings of the Brazilian courts" with regard to the stable union between Mr. M. and the Applicant, leading to addition of an annotation, on 5 February 2021, by the Town of Massogny to Mr. M.'s death certificate, referencing the Brazilian Judgment.

27. The Appeals Tribunal would begin by observing that, under the terms of Article 11(1) of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal, the application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement. In the case at hand, the "decisive fact" on which the Applicant relies, i.e., the addition of an annotation to Mr. M.'s death certificate by the Town of Massogny, occurred on 5 February 2021 and was communicated to her French attorney on the same date, as evidenced by the relevant e-mail of the Mairie de Massongy to said attorney. Therefore, as the Respondent correctly contends, the present application, which was filed on 26 March 2021, *to wit.*, beyond the statutory limit of 30 days of the discovery of the alleged fact, is non-receivable. On this ground alone, the application falls to be dismissed.

28. Be that as it may, the allegedly decisive facts occurred on 14 January 2021 and 5 February 2021, respectively, well after the 2020 Judgment. The Tribunal concludes, accordingly, that these facts cannot be regarded as "new facts" within the meaning of Article 11(1)

[3] *Comp. Application for Revision of the Judgment of 11 July 1996 in the Case concerning* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia), Preliminary Objections *(Yugoslavia v Bosnia and Herzegovina), Judgment, I C J. Reports 2003, p 7,* para. 67.

[4] *Hasan Khalil Sirhan* Judgment, *op cit.*, para. 32; *Mbaigolmem* Judgment, *op cit.*, para. 12; *Walden* Judgment, *op cit.*, para. 17.

of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal capable of founding a request for revision of that Judgment.

29. The Applicant claims that the actions of the Registrar of the Town of Massogny, i.e., the addition of an annotation to Mr. M.'s death certificate, on 5 February 2021, amount to official recognition of the stable union between her and Mr. M. and of the legal rights flowing therefrom; in other words, it refers to the primary question as to whether Mr. M.'s marriage to Ms. M. was valid and her stable union to Mr. M. was legally invalid, at the time of Mr. M.'s death on 19 August 2003. However, in advancing this claim, the Applicant does not rely on facts that existed on 27 March 2020. In reality, she bases her application for revision on the legal consequences which she seeks to draw from facts subsequent to the Judgment, of which she is seeking revision. Those consequences, even supposing them to be established, cannot be regarded as facts within the meaning of Article 11(1) of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal. The Applicant's argument cannot accordingly be upheld.

30. In addition, these facts are not even "decisive facts", within the meaning of same Articles 11(1) of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal. Indeed, as it is evident on the face of them, it is not accurate that the Brazilian judgment has been recognized in France by the French Ministry of Europe and Foreign Affairs, or that such recognition occurred through the annotation added to Mr. M.'s death certificate. What has happened is that the French Ministry of Europe and Foreign Affairs simply stated that the Applicant's request to annotate Mr. M.'s death certificate should be directed to the Town of Massogny ("*il convient d'adresser à la mairie précitée votre requête relative à la mise à jour de l'acte de décès*" *de M. M.*). Thereupon, namely upon the Applicant's request, the Town of Massogny added an annotation to Mr. M.'s death certificate that references the Brazilian judgment. However, the death certificate itself plainly states that Mr. M. was Ms. M.'s spouse ("*époux de Annie Renée PERSONNAZ*"). Consequently, there has neither been such recognition by the French government authorities, as asserted by the Applicant, nor is there anything on record to suggest that the French authorities consider that Mr. M. was divorced from Ms. M. at the time of his death, or that the Applicant had acquired the status of spouse under French law at the time of Mr. M.'s death.

31. Furthermore, the Applicant asserts that the Appeals Tribunal erred in its interpretation of the French Civil Code and jurisprudence, in terms of, *inter alia*, the validity and effects of her stable union with Mr. M., her status of wife in Brazilian law which does not distinguish the type of family in matters of inheritance, and the fact that Swiss law is applicable in her case. In this respect, the Applicant relies on an extensive legal opinion from an attorney in France, Eugenia Gentil, which is incorporated, by way of reference, in her application. However, irrespective of whether the application suffers from procedural irregularity in this respect, as it exceeds the five-page prohibition, mandated in Article 24 of the Rules of Procedure of the Appeals Tribunal, the interpretation, as well as the application of the law in each specific case by the Appeals Tribunal, even assuming *arguendo* it is not correct or in line with a previous or subsequent jurisprudence, does not constitute *per se* an unknown decisive fact, apt to support revision. In so far as the Applicant complains that the Appeals Tribunal erred in not having interpreted and applied the law in a proper way, such does not bring her application within the parameters of Article 11(1) of the Statute of the Appeals Tribunal. In view of the foregoing, the Applicant has failed to establish an unknown decisive fact that warrants revision of the Judgment and thus the application for revision falls to be dismissed.

32. In any event, we add that the Applicant's arguments focus on findings and conclusions of this Tribunal in its Judgment under revision concerning her entitlement to the relevant widow's benefit, as the surviving spouse of Mr. M. under Article 34 of the Fund's Regulations, with which she disagrees. These matters were, however, considered and rejected in that appeal, in which we found, *inter alia*, that,[5] "Mr. M's marriage to Ms. M never came to an end or dissolved before his death on 19 August 2003; that 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, was the law of France. 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; that the Judgment of the Brazilian Court on 7 December 2016 had not terminated Mr. M's marriage to Ms. M, as per the Brazilian law; and that 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

[5] See *Larriera v. United Nations Joint Staff Pension Board*, Judgment No. 2020-UNAT-1004, paras. 47, 50 & 51 (Emphases added).

void for one purpose and valid for another, or it may be void against one person but valid against another. 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*."

33. In the circumstances, the request filed by the Applicant does not fulfil the statutory requirements and constitutes, in fact, a disguised attempt to re-open the case. Her application is not receivable. The Appeals Tribunal is the final appellate body on such matters. An application for revision of a judgment, which does not meet the statutory prerequisites, cannot be a collateral means of attack on the judgment, nor can it be allowed to be a second right of final appeal.

Judgment

34. The application for revision of Judgment No. 2020-UNAT-1004 is dismissed.

Original and Authoritative Version: English

Dated this 18th day of March 2022.

(Signed)	*(Signed)*	*(Signed)*
Judge Raikos, Presiding Athens, Greece	Judge Murphy Cape Town, South Africa	Judge Halfeld Juiz de Fora, Brazil

Entered in the Register on this 14th day of April 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar