

*Registry's translation,
the French text alone
being authoritative.*

112th Session

Judgment No. 3100

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr K.M. G. against the International Labour Organization (ILO) on 4 February 2010 and corrected on 9 February, the Organization's reply of 17 May, the complainant's rejoinder of 21 June and the ILO's surrejoinder dated 23 September 2010;

Considering Article II, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Article 3.16(b) of the Staff Regulations of the International Labour Office, the ILO's secretariat, concerns deductions and reads as follows:

“The Director-General may provide for the deduction from the total monthly payment due to an official of the amount ordered by a national court to which the official is subject, to be paid to spouses, former spouses or dependent children. Such a deduction shall be provided for only where the national court order is enforceable under the national law and where the official has been given a reasonable period of notice and opportunity to discuss with the relevant services the forthcoming deduction.”

The complainant, a Togolese national, joined the Organization in 1982 and retired in 2011. In March 1996 he had a child by a national

of Burkina Faso whom he married in that country in August of the same year. He was subsequently transferred to the ILO's headquarters in Geneva, Switzerland, and the couple settled in France. In 2001 the complainant was appointed Director of the East Africa Multidisciplinary Advisory Team in Addis Ababa, Ethiopia.

On 1 March 2006 his wife lodged a divorce petition with the Court of First Instance (*Tribunal de Grande Instance*) in Bourg-en-Bresse, France. On 27 March 2006 he in turn filed a divorce petition with the Court of First Instance (*Tribunal de première instance de première classe*) (class 1) in Lomé, Togo. The matrimonial causes judge of the latter court gave the complainant custody of the child by an order of 14 July 2006, the execution of which was stayed on 21 July at his wife's request.

In the meantime, by an order of 20 June 2006, the family division judge of the court in Bourg-en-Bresse had declared the petition for divorce submitted by the complainant's wife to be irreceivable and had referred the parties to the courts in Togo. On 13 February 2007 this order was quashed by the Lyons Court of Appeal (*Cour d'appel*), which held that the French courts indisputably had jurisdiction over the divorce proceedings, since the matrimonial home was in France. The Lyons Court of Appeal therefore referred the parties back to the family division judge of the court in Bourg-en-Bresse.

In a *pendente lite* order of 29 May 2007 the judge decided that the minor would normally reside at his mother's home and that the complainant must pay his wife 2,000 euros alimony a month and make a monthly contribution of 1,000 euros towards the cost of the child's maintenance and education. The judge stipulated that these sums were to be reassessed on 1 January every year and that the order would be provisionally enforceable notwithstanding any appeal.

On 15 May 2008 the first civil chamber of the French Supreme Court (*Cour de cassation*) declared the complainant's appeal against the decision of 13 February 2007 inadmissible.

Through a letter of 9 June 2008 from a French bailiff, the complainant's wife asked the Director-General to make a deduction

from her husband's monthly salary, pursuant to the above-mentioned *pendente lite* order and Article 3.16(b) of the Staff Regulations. On 17 June 2008 the Director of the Human Resources Development Department (HRD) forwarded a copy of this letter to the complainant and invited him to provide his written comments together with any information or document which he regarded as relevant within eight working days, in order that the Director-General might take a decision on his wife's request. The complainant's counsel replied in a letter of 23 June that, for the purposes of applying Article 3.16, his client "[wa]s subject solely to Togolese jurisdiction" and that it was therefore not possible to "attach his monthly earnings" pursuant to any decision of the French courts. On 4 July 2008 the Director of HRD asked the Financial Services Department to execute the Director-General's decision to have the sum of 3,051.58 euros deducted forthwith from the complainant's monthly salary and paid directly into his wife's bank account.

By a decision of 23 October 2008 the Lyons Court of Appeal upheld the order of 29 May 2007 to the extent that it concerned the payment of alimony and a contribution to the child's maintenance and education costs.

In a grievance submitted to the Director of HRD on 10 March 2009 the complainant requested the cancellation of the decision to make a deduction from his monthly salary. Having received no reply, on 30 June he filed a grievance with the Joint Advisory Appeals Board requesting *inter alia* the cancellation of the above-mentioned decision and reimbursement of the sums deducted since 1 July 2008. In its report of 11 November 2009 the Board considered that the Office had acted reasonably in considering that the complainant was subject to the French courts in respect of the divorce proceedings. It concluded that the decision to make a deduction complied with Article 3.16(b) of the Staff Regulations and it therefore recommended that the grievance should be dismissed. On 17 December 2009 the Executive Director of the Management and Administration Sector informed the complainant that the Director-General had decided to endorse that recommendation. That is the impugned decision.

B. The complainant submits that the deduction from his salary is unlawful, as in making this deduction the Organization did not comply with the terms of Article 3.16(b) of the Staff Regulations. He contends that the fact that he is Togolese and that he married a national of Burkina Faso in that country means that he is not subject to the jurisdiction of a French court. In his opinion, pursuant to the Togolese Civil Code and the Judicial Convention between the Government of the French Republic and the Government of the Togolese Republic, the *pendente lite* order of 29 May 2007 may not be enforced in Togo without an *exequatur* and is therefore not “applicable” under Togolese law. He also asserts that he was never formally notified of the decision to make a deduction from his monthly salary.

He adds that, according to paragraph 5 of Circular No. 15 (Rev.38), Series 6, the Office should have determined his personal status by reference to Togolese law.

He also contends that the Joint Advisory Appeals Board committed an error of law in concluding that he was subject to the jurisdiction of the French courts. Furthermore he expresses surprise that, although he informed the Organization of the Togolese courts’ decisions, it ignored them. In his view, this is a “blatant example of contempt [...], bias and abuse of authority”.

In addition, he complains of the fact that the Staff Union Assistance Fund, which had been contacted by the Office’s Staff Welfare Officer, gave assistance to his wife and that the Director of HRD criticised him for his alleged failure to honour his matrimonial obligations. In his opinion, the Organization thus interfered in a strictly private matter.

The complainant asks the Tribunal to find that the Court of First Instance (class 1) in Lomé is the “national court to which [he] is subject” within the meaning of Article 3.16(b) of the Staff Regulations, to set aside the decision to make a deduction from his monthly salary and to order the reimbursement of the sums deducted since 1 July 2008. He also seeks an undertaking from the Organization that it will refrain from all interference in the pending divorce proceedings and

officially retract the vexatious, defamatory allegations which, he says, were made against him by the Director of HRD.

C. In its reply the ILO considers that the complainant's claims that it should be ordered to refrain from any interference in the divorce proceedings and retract certain vexatious, defamatory allegations are irreceivable, because the Tribunal is not competent to issue such orders. In addition, it states that these claims are groundless, since the Organization merely reminded the complainant that he had a duty to uphold the Standards of Conduct for the International Civil Service.

The defendant submits that the conditions for applying Article 3.16(b) of the Staff Regulations were met, because in matters connected with his divorce the complainant is indeed subject to the jurisdiction of the French courts, which have in fact upheld their jurisdiction. Furthermore, the order of 29 May 2007 was enforceable under French law, and there was no need for it to be enforceable under the law of the country of the complainant's nationality. The Organization draws attention to the fact that on 17 June 2008 it invited him to comment on the request to have deductions made from his salary. As his comments were unconvincing, the Director-General decided that the deduction should be made.

The Organization argues that the complainant's argument based on paragraph 5 of Circular No. 15 (Rev.38), Series 6, is of no avail, because the purpose of that paragraph is to determine the personal status of an official "for the purpose of entitlements under the Staff Regulations", and not for the enforcement of a court decision ordering an official to pay alimony.

D. In his rejoinder the complainant maintains that the Organization has been guilty of interference because, in his view, the Staff Union Assistance Fund assisted his wife without any "lawful legal framework".

E. In its surrejoinder the Organization reiterates its position.

CONSIDERATIONS

1. The complainant impugns the decision of 17 December 2009 by which the Director-General of the International Labour Office, endorsing a recommendation of the Joint Advisory Appeals Board, dismissed the grievance which the complainant had submitted in order to contest the decision to deduct 3,051.58 euros from his salary every month, as from 1 July 2008, in pursuance of a decision delivered by a French court in a dispute between him and his wife.

2. The facts relevant to this case may be summarised as follows.

In August 1996 the complainant, who is Togolese, married a national of Burkina Faso in that country after having a child by her.

In March 2006 the complainant lodged a divorce petition with the Court of First Instance (class 1) in Lomé, Togo; his wife, who was then living in France, filed a divorce petition with the Court of First Instance in Bourg-en-Bresse. On 29 May 2007 the family division judge of the latter court issued a *pendente lite* order and decided inter alia that:

- the complainant, who had a duty to support his wife, must pay her monthly alimony in the amount of 2,000 euros backdated to 1 March 2006 and that sum should be reassessed on 1 January every year,
- the child would normally reside at his mother’s home,
- the complainant must contribute 1,000 euros per month to the child’s maintenance and education and that sum should be reassessed on 1 January every year, and
- the order would be provisionally enforceable notwithstanding any appeal.

By a decision of 23 October 2008 the Lyons Court of Appeal confirmed that the merits of the divorce case and proceedings were subject to French law, reversed part of the *pendente lite* order of 29 May 2007, but upheld the part concerning the complainant’s duty to

support his wife and contribute to the child's maintenance and education.

3. Through a letter of 9 June 2008 from a French bailiff, the Organization was informed that the complainant's wife was requesting the enforcement of the above-mentioned order on the basis of Article 3.16(b) of the Staff Regulations of the International Labour Office, which concerns deductions.

A copy of the bailiff's letter was forwarded to the complainant under cover of a letter of 17 June 2008. This letter of 17 June referred expressly to Article 3.16(b) quoted above and invited the complainant to provide his written comments together with any information or document which he regarded as relevant within eight working days, in order that the Director-General might take a decision on the request. The complainant replied through his counsel on 23 June 2008 that he was not subject to the jurisdiction of the French courts and that it was not possible "to attach his monthly earnings" pursuant to any decision of those courts.

The ILO decided, however, to deduct the sums awarded by the order of 29 May 2007 from the complainant's monthly salary and to pay them into his wife's bank account as from July 2008.

4. On 10 March 2009 the complainant submitted a grievance to HRD contesting the decision to make a deduction from his monthly salary. As he received no reply within the specified period, on 30 June 2009 he referred the matter to the Joint Advisory Appeals Board, which recommended that the Director-General dismiss the grievance.

5. The complainant asks the Tribunal:

- “(i) to find that the court of first instance in Lomé (Togo) is the ‘national court to which [he] is subject’ within the meaning of Article 3.16(b) of the Staff Regulations of the International Labour Office;
- (ii) immediately to set aside the decision to make deductions from [his] salary;

- (iii) to repay into [his] account the sums already deducted from [his] salary from 1 July 2008 until now;
- (iv) to secure an undertaking from the Office that it will henceforth refrain from all unsolicited interference in the pending judicial proceedings; and lastly
- (v) to require the Administration officially to retract the vexatious, defamatory allegations made [...] against [him by] the Director of HRD”.

6. The defendant, which does not contest the receivability of the complaint, considers that the impugned decision is perfectly lawful and asks the Tribunal to dismiss the complaint as groundless.

7. The Tribunal notes that the Organization’s decision to make a deduction from the complainant’s monthly salary in pursuance of a court decision is based on Article 3.16(b) of the Staff Regulations, which permits the Director-General to deduct from the total monthly payment due to an official the amount ordered by a national court to which the official is subject, to be paid to spouses, former spouses or dependent children. According to this provision, this deduction may be made only when the court order “is enforceable under the national law and where the official has been given a reasonable period of notice and opportunity to discuss with the relevant services the forthcoming deduction”.

The question which must be addressed is therefore whether the conditions required by the text quoted above were met in the instant case.

8. The complainant points out that the sums to be deducted must be “ordered by a national court to which the official is subject”. He asserts that as a Togolese national who has married a national of Burkina Faso in that country, he cannot be subject in any way to the jurisdiction of a French court, let alone to French law.

9. The Tribunal considers that the complainant is mistaken in referring to his Togolese nationality, the place of his marriage and his wife’s nationality in order to challenge the jurisdiction of the French

courts and the applicability of French law to the dispute between him and his wife. Indeed, the expression “national court to which the official is subject” does not necessarily mean a court of the official’s home country, but any court which has jurisdiction to hear a case involving the official.

Since he had received a request for the execution of a judgment delivered by a national court which, having upheld its jurisdiction to hear the case, had ordered the payment of certain sums of money, the Director-General of the Office, who is not competent to examine the merits of a national court’s decision regarding its jurisdiction, was entitled to have the deduction made from the complainant’s salary. The Tribunal finds that the French courts’ decisions in this case did not manifestly contradict the general principles governing the jurisdiction of national courts in matters connected with family disputes.

10. The complainant also submits that, according to the relevant provisions of the Togolese Civil Code and the Judicial Convention between the Government of the French Republic and the Government of the Togolese Republic, the decision of a French court on which his wife relies, and which has not been shown to be final, may not be enforced in Togo without an *exequatur*.

However, the Tribunal finds that, on the one hand, the decision in question is not to be executed in Togo and that, on the other, although it is not final, it is provisionally enforceable notwithstanding any appeal. This decision could therefore be executed immediately by the Organization’s Administration at the request of the complainant’s wife.

Contrary to the complainant’s submissions, the relevant text, in other words Article 3.16(b) of the Staff Regulations, does not require that the decision in question be “applicable” under the law of the official’s country of nationality, but that the order be enforceable under the national law applied by the court which has issued it. The Tribunal notes in passing that the term “*applicable*” in the French version of this article is a solecism; it would have been more accurate to use the term “*exécutoire*” (enforceable) in relation to a court decision.

11. The complainant maintains that he never received formal notification of the decision to make a deduction from his monthly salary whereas, according to Article 3.16(b), an official must have been “given a reasonable period of notice” of the forthcoming deduction in order that he/she has an opportunity to “discuss [it] with the relevant services”.

In this connection the Tribunal observes that by a letter of 17 June 2008 the Organization had forwarded to the complainant his wife’s request that the necessary measures be taken to enforce the *pendente lite* order of 29 May 2007 and that it had invited him to provide his written comments together with any information or document which he regarded as relevant within eight working days, in order that the Director-General might take a decision. The only reply it received was the letter of 23 June 2008 from the complainant’s counsel stating that his client was not subject to the French courts and that it was not possible to “attach his monthly salary” pursuant to any decision of those courts.

The Tribunal considers that, as the complainant was given an opportunity to submit his comments and possibly to discuss the forthcoming deduction from his salary with the relevant services, the applicable provision was in fact respected.

12. The complainant’s reference to paragraph 5 of Circular No. 15 (Rev.38), Series 6, is to no avail, since in this case his personal status was not being determined “for the purpose of entitlements under the Staff Regulations” but for the enforcement of a court decision ordering him to pay sums of money for the maintenance of his wife and son.

13. It follows from the foregoing that all the pleas entered by the complainant are unfounded.

14. Since the claim for the impugned decision to be set aside fails, there is no reason to reimburse the sums deducted from the complainant’s salary since 1 July 2008.

15. The complainant asks the Tribunal to order the Office “to refrain henceforth from all unsolicited interference in the pending judicial proceedings” and “[o]fficially to retract the vexatious, defamatory allegations made [...] against [him] [by] the Director of HRD”. The Tribunal is not competent to issue such orders.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 18 November 2011, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 February 2012.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet