The Administrative Tribunal,

Considering the second complaint filed by Mr A.S. against the International Labour Organization (ILO) on 7 March 2005, the ILO's reply of 20 May, the complainant's rejoinder of 7 June, and the Organization's surrejoinder of 20 July 2005;

Considering Articles II, paragraph 1, and VII 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. The complainant, a citizen of the Russian Federation, was born in 1947. He joined the International Labour Office – the ILO's secretariat – in 1986 and subsequently had a without-limit-of-time appointment at grade P.4. He took early retirement with effect from 31 August 2004, under a mutually agreed termination settlement.

On 3 December 1990 the Personnel Policy Branch issued Circular No. 451, of series 6. It was headed "Swiss matrimonial law" and concerned matrimonial property rights of persons who had married outside Switzerland. It reproduced, within quotation marks, information imparted to the ILO by the *Chambre des notaires* of Geneva. The gist of that body's statement was that, from 1 January 1989, the provisions of Swiss private international law governing matrimonial property rights of persons married outside Switzerland "without a marriage contract" had been amended. From that date, Switzerland was treating all persons married without entering into a marriage contract and domiciled in Switzerland, as coming under the Swiss regime of "joint ownership of property acquired after marriage" (*participation aux acquêts*). The circular indicated that the Geneva fiscal authorities would, up to 31 December 1990, allow persons married under a foreign matrimonial regime with no marriage contract to opt for a comparable matrimonial property regime under Swiss law. Beyond that date "the usual registration charges" would be levied. It also indicated that if persons married outside Switzerland without a marriage contract wished their matrimonial property rights to continue to be governed by their national law, they should consult a notary. Contact details were given in the circular.

On 3 December 2004 the complainant submitted a grievance to the Director-General, alleging unfair treatment resulting from the circular. The Organization responded to his grievance on 15 March 2005. Meanwhile, on 7 March, the complainant filed his complaint with the Tribunal.

B. The complainant submits that he has been "victimised" by what he terms the Organization's policy of receiving instructions from national governments. He objects in particular to Circular 451, on the grounds that, as from 1 January 1989, Switzerland started applying Swiss private law to ILO international civil servants residing in Switzerland who had married in another country without entering into a marriage contract.He considers that the ILO, in accordance with its Constitution, has to be free from any national influence as its functions are purely international. He believes that it has no right to expose serving officials to Swiss private law.

Referring to Circular 451, the complainant says that the ILO's acceptance of an instruction from an office of the Swiss Government caused him financial hardship as a result of a separation/divorce procedure that he went through in the Geneva courts. As stated in his internal grievance, it resulted in "deep moral suffering".

He claims the following redress. He wants the ILO: (1) to "recall Circular 451" and inform the Permanent Mission of Switzerland to the United Nations Office in Geneva of the necessity for Switzerland to conclude the required bilateral agreements with all other ILO Member States, if the Organization maintains its position of subjecting its officials to Swiss private law; (2) to submit to its Governing Body a report stating that Switzerland has so far "failed to conclude bilateral recognition agreements with the ILO Member States on the issues falling under the above Circular"; (3) to inform the United Nations Joint Staff Pension Fund (UNJSPF) of the need to abstain from enforcing Swiss court decisions when there is no "bilateral recognition agreement" between the official's home

country and Switzerland; and (4) to pay him compensation in respect of “undue moral and financial prejudice”, in an amount he specifies. Lastly, he asks the Tribunal to instruct the ILO to respect the independence of the international civil service within the Organization and guard it from “any national influence”.

C. In its reply the ILO submits that the complaint is irreceivable on several grounds and is also devoid of merit. It argues that the complaint was premature, as the complainant lodged it with the Tribunal before he had received the Organization’s reply on his internal grievance. It takes the view that the grievance itself showed no cause of action: in effect, it raised an issue of conflict of laws and did not relate to the terms and conditions of his employment at the ILO.

In further argument regarding receivability the ILO states that the complaint is unduly vague and does not provide sufficient information to enable the Organization to respond adequately. It is also unclear what decision, if any, the complainant is impugning. In any event, the complaint is time-barred, as he challenges Circular 451 and more than 14 years have elapsed since the publication of that circular. Moreover, Circular 451 cannot be deemed to have been applied to the complainant, as at no stage did he notify the Organization of a divorce. According to its records, he is still married. The ILO points out that the complainant’s service came to an end by a mutually agreed termination, and the letter he signed on 2 August 2004 stated that the payment agreed upon was in “full settlement” of all entitlements or claims under the Staff Regulations. Furthermore, if, as would appear from the complaint, the complainant wishes to challenge a decision taken by the UNJSPF, any appeal against such a decision would have to be lodged with the United Nations Administrative Tribunal.

On the merits, it considers that the complainant’s arguments with regard to Circular 451 are unfounded. That circular merely relayed information that had been communicated to the Organization by the *Chambre des notaires*. As indicated in their statement, officials could have an alternative legal regime applied to their marriage if they took the action specified in the circular. Swiss law would, therefore, only be applied by default. It points out that the complainant’s employment status could not be used by him as a “protective measure” to shield him in the event of divorce proceedings.

Given that the complainant does not challenge any decision relating to his employment relationship with the Organization, the ILO considers that there are no grounds for granting the relief he claims.

D. In his rejoinder the complainant develops his pleas. He states that the Organization’s reference to the UNJSPF constitutes a misinterpretation of his position, as he “has no legal dispute with the UNJSPF”.

E. In its surrejoinder the Organization considers that the case is worthy of summary dismissal, since the complaint remains “incomprehensible” and without foundation. It assumes, based on the comment regarding the UNJSPF in the complainant’s rejoinder, that he has now withdrawn his claim relating to that body.

CONSIDERATIONS

1. The complainant, who retired from the ILO in 2004, objects to what he terms the Organization’s policy of “receiving instructions from the national governments”. He takes issue with an ILO circular, No. 451, of series 6, published in 1990, which concerned matrimonial property rights. It informed foreign nationals, like himself, who were married outside Switzerland with no marriage contract, that Switzerland was treating such persons as subject to the Swiss regime of joint ownership of property acquired after marriage (*participation aux acquêts*). He holds that by accepting such “instructions” from the Swiss Government, the Organization caused him undue financial hardship and “deep moral suffering”.

2. It is difficult to understand the complaint. It is directed against Circular 451, but the complainant does not identify any subsequent decision by which the circular was applied to him, nor does he in any way relate it to the terms and conditions of his appointment. As both the title and the text of that document make clear, it is simply the transmission by the ILO to its staff members resident in Geneva of information received from the local “*Chambre des notaires*”. The text of the circular reads as follows:

“The Chambre des notaires of Geneva has informed us of the following:

‘Since 1 January 1989, the provisions of Swiss private international law governing the matrimonial property rights of persons married outside Switzerland without a marriage contract have been amended.

In determining the matrimonial property rights of foreign nationals in this position, Switzerland does not apply its national law.

Since 1 January 1989, Switzerland treats all persons married without a marriage contract and domiciled in Switzerland as subject to the Swiss régime of participation aux acquêts (joint ownership of property acquired after marriage).

The Geneva fiscal authorities have decided to allow persons married under a foreign legal régime without a marriage contract until 31 December 1990 to maintain the benefit of this régime by opting for a comparable matrimonial property régime under Swiss law (to the extent possible). After that date, the authorities will levy the usual registration charges.

It is therefore essential for persons married outside Switzerland without a marriage contract, and wishing their matrimonial property rights to continue to be governed by their national law, to consult a notary [...]'"

3. The complainant does not appear to have acted on the information contained in the circular.

4. The publication by an international organisation for its staff members of purely objective information of this sort relating to local private law is manifestly not a matter falling within the Tribunal's field of competence.

5. It would appear from the grievance filed by the complainant, which he attached to his submissions, that the true gravamen of his complaint is that he was sued for divorce before the local civil courts in Geneva and that they accepted jurisdiction although whether or not he objected to them doing so is not clear. In any event, that was a decision of the Swiss court in question and not one for which the ILO can in any respect be held responsible. Nor is it evident how a divorce suit in Geneva could possibly impact on the complainant's performance of his functions as an international civil servant so as to entitle him to claim immunity therefrom. In any case, he does not indicate that he ever sought such immunity and does not identify any decision of the ILO by which it would have been denied to him.

6. The complaint is irreceivable and should be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 October 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 1 February 2006.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2006.