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TIP OF THE MONTH

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The Tribunal Reaffirms Principle that Validly Contracted Same Sex Marriages Must Be Recognized By International Organizations

On 7 February 2007, the ILO Administrative Tribunal published its rulings for its 102nd session. Among the significant rulings was a claim by an FAO staff member for entitlements for his same sex spouse, with whom he had validly contracted a marriage under the laws of the Netherlands. The administration denied his request for spousal benefits on the grounds that a few of the staff rules employed the terms “husband and wife”, and thus the term spouse, which was undefined, could only apply to staff members who are married to persons of the opposite sex. It further argued that it could not provide any benefits to the staff member until the matter was referred to its governing body and an amendment to the staff regulations and rules adopted.

The Tribunal reiterated the principle, first stated in its Judgment No. 1715 issued in 1998, that in the absence of a definition of the term “spouse” in the staff regulations and rules, the status of spouse will flow from a marriage publicly performed and certified by an official of the State where the ceremony has taken place, such marriage being then proved by the production of an official certificate. Without expressly stating this it appears that the Tribunal also found significant that the FAO Council had already accepted the principle that the personal status of staff members for purposes of FAO’s entitlements is determined by reference to the law of the nationality of the staff member concerned, which is the general policy adopted by the UN. It rejected the argument that the decision was discriminatory since the issue was “controversial” in some member states and the FAO was acting properly in addressing those concerns. The Tribunal nonetheless awarded moral damages for the successive postponements.

In my view, the Tribunal did not stretch the law in this area any further. However, the Tribunal is not willing to find discrimination if the administration seeks prior approval from governing bodies. The question remains whether Judgment No. 2193 (rejecting the claim for a staff member’s same sex partner based on the French Civil Solidarity Contract) is still good law following the Tribunal’s Judgments 2449 and 2550 issued last summer, in which the Tribunal extended benefits to a staff members who had entered into a registered partnerships under Danish and German law.

In another significant case published last summer, which I review in my “Semi-Annual Review of ILOAT Cases” for the 101st session to be published soon, the Tribunal reiterated the principle that it is illegal to retaliate against staff members for exercising the right to appeal. Judgment No. 2540. The case is significant in that the Tribunal awarded exemplary (punitive) damages for the retaliation.

* I specialize in the representation of international civil servants, and serve as council to several staff unions/associations of international organizations, some of which are based in Vienna, Austria. For further information, please send me an e-mail or visit my website.