

TIPS AND INFORMATION NEWSLETTER

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Benefits for Staff Members in Same Sex Relationships: ILOAT Rules PACS under French Law Equivalent to Marriage

This past July in Judgment No. 2860 the ILOAT reviewed its ruling issued in February 2003 (Judgment No. 2193) which held that the same sex partners of staff members in Civil Solidarity Pacts (PACS) under French law could not be considered as having the status of spouse in the Staff Regulations and Rules since the rights conferred by PACS were not very substantial as compared to civil marriages. In Judgment No. 2860 (FAO), a French national in 2005 claimed benefits for his same sex partner based on a PAC he entered into in 2000. The FAO denied them on the basis of Judgment No. 2193, and that its hands were tied since the issue was being considered by the Governing Bodies. FICSA submitted an *amicus curiae* brief in support of the staff member.

The Tribunal noted that the French law had profoundly changed since its earlier ruling (based on French law in 1999) and the similarities between PACS and civil marriages are now minimal. Since the term spouse was not defined under the Staff Regulations and Rules, the “principle of non-discrimination requires that for the purposes of dependency benefits the term ‘spouse’ be interpreted as applicable to a relationship of mutual dependence under the relevant national law.”

In a dissenting opinion it was argued that the issue should be left to the Governing Bodies of the FAO to decide. The Tribunal has ruled that if an organization’s staff regulations and rules define the status of spouse as flowing from a marriage between a man and a woman, it would constitute legal grounds for denying same sex benefits. Given the general movement toward recognition of entitlements for the same sex partners of staff members (whether in marriages, domestic partnerships or other type of legal arrangements provided under national law) led by the United Nations, it is highly unlikely the Governing Bodies of any organization would amend the staff regulations to preclude such rights if they do not provide a definition of spouse. It also seems that the Tribunal by this latest Judgment, despite the dissenting opinion, may be moving toward finding a general principle of law (non-discrimination) in favour of recognizing such rights that could nullify any legislation (from the Governing Bodies) denying such rights.

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