

**B.**  
**v.**  
**ITU**

**139th Session**

**Judgment No. 4931**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr C. B. against the International Telecommunications Union (ITU) on 28 February 2023, ITU's reply of 3 May 2023, the complainant's rejoinder of 9 June 2023, ITU's surrejoinder of 8 August 2023, the complainant's additional submissions of 25 July 2024 and ITU's final comments thereon of 7 August 2024;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

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

The complainant challenges the decision not to recognise his same-sex marriage for the purpose of dependency benefits entitlements.

The complainant joined ITU in September 2012 as a sales assistant at the G.5 level. In May 2018, he got married with his same-sex partner in France. In September 2019, the United Nations Joint Staff Pension Fund (UNJSPF) informed him that his marriage certificate was accepted and that his union was recognised for the purpose of UNJSPF benefit entitlements under Articles 34 and 35 of its Regulations.

The complainant subsequently wrote to the United Nations Staff Mutual Insurance Society Against Sickness and Accident (UNSMIS) seeking information about the possibility to insure his spouse as from

1 January 2020, a benefit made available by ITU to its staff members' spouses. UNSMIS replied that its regulations required ITU's recognition of his spouse as his legal spouse before the requested coverage could be granted. The complainant met with the Chief of the Human Resources Management Department (HRMD) in May 2021 and was informed that ITU was trying to change its Staff Regulations and Staff Rules to recognise same-sex marriage and domestic partnerships. The complainant requested further information in June 2021 and was informed, in September 2021, that the Administration's proposed changes had not been accepted by the ITU Council.

On 7 October 2021, the complainant requested the Secretary-General to exceptionally recognise his same-sex marriage and to grant his spouse the benefits applicable to married couples. He stressed that his marital status had been recognised by UNJSPF. On 17 January 2022, he was informed that his request could not be granted as long as the ITU Staff Regulations remained as they were.

On 1 March 2022, he filed an "official and formal" request for review of ITU's decision to refuse to recognise his same-sex marriage for the determination of dependency benefits. The Secretary-General rejected his request that same day explaining that ITU's management had presented the issue to the ITU Council in the past to no avail. He added that ITU's management had no power to take action against the ITU Council but would bring the matter again for its consideration. On 27 April 2022, the complainant filed an appeal with the Appeal Board against the Secretary-General's decision asking, in particular, that the contested decision be set aside, that he be granted benefits in respect of his dependent spouse from the date of their marriage in May 2018, moral damages, costs and interest. He also asked that the matter be referred to the ITU Council to amend the relevant discriminatory provisions of the Staff Regulations and that, in the meantime, the Secretary-General made the necessary amendment to the Staff Rules.

In its report on 16 September 2022, the Appeal Board found that the French version of the Staff Regulations and Staff Rules prevailed. The term spouse in French ("conjoint") was gender neutral and could allow for a broader and more inclusive interpretation of the Staff

Regulations. It stressed that the lack of consensus in the last Council session was in relation to the concept of “domestic partnership” and not in relation to the concept of “spouse”. According to the Appeal Board, depriving a staff member of the recognition of same-sex marriage and domestic partnership for the purpose of dependency allowance entitlements was an act of discrimination; however, it found no violation of ITU’s duty of care as the Administration had indicated its intention to continue its efforts to have the rules modified to recognise same-sex spouses and domestic partners. It added that the personal status of a staff member for the purpose of dependency allowance entitlements under the Staff Regulations and Staff Rules should be determined by reference to the law of the competent authority under which the personal status had been established, as per the United Nations’ practice. The Appeal Board therefore recommended that the Secretary-General make the necessary editorial modifications to the English version of the ITU Staff Regulations and Staff Rules, as well as to other official languages, to be aligned on the French version in order to reflect an accurate translation of the term “conjoint” (spouse) before the 2023 session of the Council, and that he continued his efforts to have the ITU Council recognise a domestic partnership, in a gender-neutral manner, when this union had legally been recognised by ITU’s Member States, for the purposes of dependency allowance entitlements, as done in other United Nations agencies. It also recommended to recognise the complainant’s spouse for the purposes of dependency allowance entitlements as his marriage was recognised under French law and was in line with the French version of the Staff Regulations and Staff Rules.

By a letter of 22 December 2022, the complainant was notified that the Secretary-General had rejected his appeal explaining that there was no consensus amongst Member States regarding the modifications of the Staff Regulations and Staff Rules proposed to the ITU Council in 2022. He asserted that the linguistic difference between the French and English version of the rules should be decided by the Council as it was an issue of principle and not a mere editorial modification. Regarding the meaning of the term “spouse”, he stated that, in Judgment 2643, the Tribunal had considered that the ITU Staff Regulations and Staff Rules

explicitly defined “spouse” as denoting husband and wife in a large number of provisions, and that ITU did not recognise lawful same-sex marriages and domestic partnerships for the purpose of determining entitlements. The Secretary-General therefore could not accede to the complainant’s request to give a broad interpretation of the term spouse. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, to grant him – with retroactive effect – all benefits, emoluments or other entitlements due and payable in respect of his dependent legal spouse, including but not limited to dependency allowances. He also seeks reimbursement, from the date of his marriage in May 2018 through the date of the issuance of the judgment, of all medical expenses incurred by his spouse and which would have been reimbursed by ITU if his spouse had been properly recognised under the ITU Staff Regulations and to pay him the difference between the cost of his spouse’s private health insurance policy and that paid by ITU to the spouses of its staff members. He further claims exemplary damages for undue delay in recognising his same-sex marriage, moral damages, costs and interest on all amounts granted to him at the rate of 5 per cent per annum from May 2018 to the date all granted redress is paid in full. He further asks the Tribunal to order that the matter is referred to the ITU Council to amend the relevant discriminatory provisions of the Staff Regulations, and that in the meantime the Secretary-General makes the necessary amendment to the English version of the “Staff Rules” to align them with the current French version of the “Staff Rules”, which provides for the granting of benefits to spouses of the ITU staff members irrespective of their sex and that of their spouses, as set out above and as requested by the complainant. Lastly, he seeks any such other relief that is necessary, just and fair.

ITU asks the Tribunal to reject the complaint as irreceivable insofar as he asks the Tribunal to order that the rules be modified. The complaint is otherwise unfounded.

## CONSIDERATIONS

1. The complainant applies for oral proceedings. He does not list witnesses. The parties have presented ample written submissions and documents to permit the Tribunal to reach an informed and just decision on the case. The request for oral proceedings is, therefore, rejected.

2. The complainant is a member of the staff of ITU. He is in a same-sex relationship and married his partner in France under French law in May 2018. The background facts are already set out earlier in this judgment. Suffice it to note that the complainant has sought to establish that he was entitled to receive, under the ITU Staff Regulations and Staff Rules, dependency allowances with respect to his partner to whom he is married.

3. Ultimately the answer to this general question will depend on the terms of any particular provision which might arguably confer a benefit on a same-sex partner to whom the staff member is married or confer a benefit on the staff member which is enjoyed by the same-sex partner. Consideration of this issue will ultimately involve the proper interpretation of the relevant provision. As a generalization, the pleas of the parties, and the complainant's in particular, have not focused on the terms of particular provisions but rather addressed a more general question of whether the potentially applicable provisions of the Staff Regulations and Staff Rules do or do not apply generally in a situation such as the present.

4. Also, it should be added, the complainant has not provided the Tribunal with the full text of the grievance he submitted to the Administration for determination including the emails of 1 February 2022 and 1 March 2022. The grievance as submitted may (though may not) have provided particulars of the provisions said to confer a benefit in relation to the complainant's partner. It would not be appropriate for the Tribunal to make a pronouncement responsive to the general question referred to in consideration 2 above in the absence of not only the text of the likely multiplicity of provisions in which this controversy

arises but also an analysis by both of the parties of the terms of each provision (including what they mean) viewed in the context of the normative legal document in which they appear.

5. However, it is sufficiently obvious from the pleas of the parties and the material annexed to them that one clearly identifiable provision has attracted the debate between the parties about the scope of its operation. It is Staff Regulation 3.12.

6. The English version of Staff Regulation 3.12 relevantly provided:

“1. Staff members shall be entitled to receive non-pensionable dependency allowances for a dependent spouse, for a dependent child, for a disabled child and for a secondary dependant.

[...]

**Rule 3.12.1 Definition of dependency**

For the purpose of these Staff Regulations and Staff Rules:

a) A ‘dependent spouse’ shall be a spouse whose occupational earnings, if any, do not exceed the lowest entry level of the United Nations General Service gross salary scales in force on 1 January of the year concerned for the duty station in the country of the spouse’s place of work, provided that, in the case of staff in the Professional category or above, the amount shall not at any duty station be less than the equivalent of the lowest entry level at the base of the salary system (G.2, step I, for New York);

[...]

**Rule 3.12.2 Amount of the dependency allowances**

a) Subject to the conditions set out in Staff Regulation 3.12, and Staff Rule 3.12.1, dependency allowances shall be paid to eligible staff members as indicated under A and B below. If both husband and wife are staff members of the Union, the United Nations or a specialized agency, the one with the higher grade may claim, for all dependent children, under subparagraphs A. b) and/or d), or under subparagraphs B. a) and/or b); the other may claim only under A. e) or B. c) below, if otherwise entitled.

[...]”

7. The French version of Staff Regulation 3.12 relevantly provided:

**“Article 3.12 Indemnité pour personne à charge**

1. Les fonctionnaires ont droit à une indemnité pour personne à charge, non soumise à retenue pour pension, pour un conjoint à charge, un enfant à charge, pour un enfant handicapé ou pour une personne non directement à charge.

[...]

**Disposition 3.12.1 Définition des personnes à charge**

Aux fins des présents Statut et Règlement du personnel:

a) On entend par ‘conjoint à charge’ un conjoint dont les gains professionnels éventuels ne dépassent pas l’équivalent du traitement afférent à l’échelon le moins élevé de la classe de début selon le barème des traitements bruts des fonctionnaires de la catégorie des services généraux des Nations Unies qui est en vigueur le 1er janvier de l’année considérée au lieu d’affectation situé dans le pays où se trouve le lieu de travail du conjoint; toutefois, dans le cas des fonctionnaires des catégories professionnelle et supérieure, le montant en question ne doit, en aucun lieu d’affectation, être inférieur à l’équivalent du traitement afférent à l’échelon le moins élevé de la classe de début au lieu d’affectation de base aux fins de l’application du régime des traitements (G.2, échelon I, à New York).

[...]

**Disposition 3.12.2 Montant de l’indemnité pour personne à charge**

a) Sous réserve de l’Article 3.12 du Statut du personnel et de la Disposition 3.12.1 du Règlement du personnel, les indemnités pour personne à charge sont versées aux fonctionnaires remplissant les conditions requises comme indiqué aux parties A et B ci-après. Si les deux conjoints sont fonctionnaires de l’Union, de l’Organisation des Nations Unies ou d’une institution spécialisée, celui qui a le plus haut grade a droit à ces indemnités pour tous les enfants à charge, au titre des alinéas b) et/ou d) de la partie A ou a) et/ou b) de la partie B ci-après; l’autre conjoint ne peut demander le versement desdites indemnités qu’au titre des alinéas e) de la partie A ou c) de la partie B ci-après, s’il y a droit par ailleurs.

[...]”

8. It can be seen in the English version that there were repeated references to “spouse” and also a reference to “husband and wife”. There were no references to “husband and wife” in the French version which consistently used the word “conjoint”. That word is gender

neutral. Historically the expression “husband and wife” in English has been treated as a reference to the male in the marriage on the one hand, and the female in the marriage on the other. Whether in contemporary circumstances this remains the position is highly contestable given the widespread incidence of same-sex marriages in many countries sanctioned by laws of the state. However, for reasons which follow, it is unnecessary to focus on the English version of the provision and its scope.

9. In its pleas, ITU understandably relies on several judgments of the Tribunal as supporting a proposition that under the provisions of its Staff Regulations and Staff Rules, spousal benefits are to be enjoyed only by a spouse in a heterosexual relationship sanctified by marriage. The foundational judgment, concerning ITU’s then applicable provisions, is Judgment 2643. In that case, the complainant sought recognition of his partner as his dependent spouse for the purposes of dependency benefits, and retroactive payment of dependency benefits, including expenses incurred by him in relation to his travel on home leave, dependency allowance and health insurance coverage. The complainant argued he was entitled to this benefit as his partner, of the same sex, was an accompanying dependent. In that judgment the Tribunal concluded, by reference to the applicable provisions, that they “explicitly define the concept of spouses as denoting husband and wife” and that the Secretary-General “was barred from giving the term ‘spouse’ the broad interpretation requested”. That is to say, treating the word as a reference to a partner in a same-sex relationship. In that case, importantly, the complainant was not married but rather had entered a Civil Solidarity Contract under French law. Equally importantly, this judgment addressed only the English version of the relevant provisions in the ITU Staff Regulations and Staff Rules.

10. It is true that in Judgment 2643, consideration 6, there is a discussion that might be thought to embrace and establish the legal position in relation to both registered partnerships (the position then under consideration) and same-sex marriages. Even if, on a fair reading of that discussion it applied to both, which may be doubted, the

observations about same-sex marriages were clearly *obiter dicta*. That is to say, it is not a pronouncement of the law binding either ITU nor this Tribunal by operation of the principle of *stare decisis*. The other judgments also relied on by ITU are Judgments 3203 and 2826.

11. However, none of the judgments referred to above are decisive in resolving the present controversy. A convenient starting point is what the Tribunal decided in Judgment 2590. As the Tribunal noted, the complainant, “whose personal status is governed by Dutch law, validly contracted a same-sex marriage”. The Tribunal then observed:

“According to the Tribunal’s case law, ‘[a]s a general rule, and in the absence of a definition of the term, 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’ (see Judgment 1715, under 10); thus, ‘a link [is established] between the word “spouse” and the institution of marriage, whatever form it may take’ (see Judgment 2193, under 10). In the present case, the FAO’s Staff Rules and Regulations give no definition of the term spouse, apart from a passing reference to husband and wife in the English version of Staff Regulation 301.3.22, which cannot justify interpreting all the relevant texts as denying legally married, same-sex spouses any right to benefits.”

12. This reasoning is equally applicable to the present case. The complainant was married to his partner. An interpretation of Staff Regulation 3.12 cannot be justified which denies legally married, same-sex spouses any rights to benefits. Moreover, and this is common ground, by operation of Article 29 of the ITU Constitution, any discrepancy or dispute, relevantly between the English and French versions of the Staff Regulations and Staff Rules, the French text shall prevail. In the present case and notwithstanding what was decided in Judgment 2643 by reference to the English version of the applicable provisions, the French version should prevail and clearly, as mentioned earlier, it was gender neutral in relation to who is a spouse or “conjoint”.

13. In the result, the Tribunal is satisfied that on the proper construction of Staff Regulation 3.12, the complainant is entitled to receive non-pensionable dependency allowances for his partner to

whom he is married, if the partner is dependent on the complainant. No question arises, at least in this respect, about the exercise of the discretionary power (and its scope) of the Secretary-General under Staff Rule 12.1.2, which allowed him to amend or make exceptions to the Staff Rules, as argued by the complainant. On the evidence, and Annex 6 to the complaint in particular, it is not at all clear whether the complainant's spouse is or has been a dependent.

14. The Tribunal does not propose to embark upon a more wide-ranging consideration of other arguable benefits given, as discussed earlier, the absence of particulars of what they are and the legal framework in which they are said to arise. However, the Tribunal's conclusion in the preceding consideration should guide ITU in relation to other claims for benefits by the complainant in relation to his same-sex partner to whom he is married.

15. On the question of relief, the complainant is entitled to retroactive payment of the dependency allowances referred to in Staff Regulation 3.12 on and from the date he first claimed it (see Judgment 3080, considerations 19 and 20). It is not at all clear that this benefit was claimed at any point other than as part of a general exhortation to ITU to recognise his same-sex marriage. However, there may be some material which would establish that such a claim had been earlier made and, if so, the complainant is entitled to the retroactive payment to the date of the making of the claim. If not, the payment of the dependency allowances should be on and from the date of public delivery of this judgment. These observations concerning the complainant's entitlement under Staff Regulation 3.12 are subject to the proviso that he can provide cogent evidence to ITU that his same-sex partner was a dependent on and from that date. It is conceivable he was a dependent for part of that time though not all of it.

16. The complainant seeks moral damages and exemplary damages. The latter is sought on the basis that there was an inexcusable delay on the part of ITU to recognise the complainant's same-sex marriage under the existing French version of the Staff Regulations and

Staff Rules, attributable, so it is said, to some improper or irregular personal bias or malice on the part of senior ITU officials against staff members in same-sex marriages. Bias and malice are not proved (see Judgment 2860, consideration 23), and the position adopted by ITU was reasonable in all the circumstances having regard to the decision of the Tribunal in Judgment 2643. No moral injury caused by ITU's conduct is clearly proved and, accordingly, no moral damages should be awarded (see Judgments 4840, consideration 35, and 4801, consideration 7).

17. No occasion arises to require, as requested by the complainant, the ITU Council to consider amending the Staff Regulations on the basis they are discriminatory and, indeed, ordering it to amend them. It is beyond the Tribunal's power to make such an order (see Judgments 4551, consideration 15, and 4422, consideration 8).

18. The complainant has substantially succeeded and is entitled to costs assessed in the sum of 10,000 euros.

#### DECISION

For the above reasons,

1. ITU shall pay the complainant dependency allowances in accordance with consideration 15 above and subject to the qualifications in that consideration.
2. ITU shall pay the complainant 10,000 euros costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 22 October 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

MIRKA DREGER