A.

v.

CERN

141st Session **Judgment No. 5126**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr S. A. against the European Organization for Nuclear Research (CERN) on 2 August 2020 and corrected on 14 October 2020, CERN's reply of 19 April 2021, the complainant's rejoinder of 3 September 2021 and CERN's surrejoinder of 13 October 2021;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the decision to replace his annual internal tax certificate with a statement indicating the amount of subsistence allowance that he received during the fiscal year 2019.

Pursuant to Article S I 2.01 of CERN's Staff Rules and Regulations, CERN's personnel comprises of employed members of personnel (MPEs) and associated members of personnel (MPAs). MPEs are international civil servants linked to the Organization by a contract of employment. MPAs are researchers participating in the Organization's scientific projects on behalf of their Home Institutions, the research institutes and universities in which they are employed or enrolled. MPAs are linked to the Organization by a contract of association,

according to Article R I 2.03 of the Staff Rules and Regulations. MPAs may receive a subsistence allowance, which may be paid by CERN pursuant to Article R V 1.04 of the Staff Rules and Regulations, or paid by their Home Institution. If the payment derives from the Home Institution, it can either be paid directly by the Home Institution to the MPAs or be processed by CERN at the request of the Home Institution and against funds lodged at CERN by the Home Institution or the Collaboration project in which it participates. To process such payments, CERN uses a system of Third-Party Accounts.

Until 2018, CERN was issuing annually, to all MPEs and MPAs, a tax certificate setting out the internal tax base, the taxable amount and the amount of internal tax withheld the previous fiscal year, pursuant to Article R V 2.05 of the Staff Rules and Regulations. No distinction was made for this purpose between benefits paid by CERN and amounts it processed on behalf of third parties.

On 31 August 2017, the Head of the Finance and Administrative Processes Department wrote a memorandum to the Director-General, in which he observed that "[e]very year, [MPAs] receive an internal taxation certificate [...], similar to the one received by [MPEs], though their subsistence allowance is not subject to internal taxation. The internal tax base is the amount of subsistence received; the taxable amount and amount of internal tax is 0." He proposed to replace the tax certificates issued to MPAs by "a simpler certificate stating only the subsistence and benefits received by the [MPAs] during the year, and no longer be understood as an internal taxation certificate".

In 2018, the Internal Audit Service noted that CERN was issuing internal tax certificates that covered "subsistence payments paid outside the [Staff Rules and Regulations]". It recommended that CERN's legal framework applicable to subsistence allowance paid to MPAs through Third-Party Accounts be clarified and that the legal risks linked to the issuance of internal tax certificates be mitigated.

In October 2018, the Accounting Service and Legal Service highlighted that more than 75 per cent of the tax certificates issued in 2017 to MPAs were for individuals who had not received any financial or family benefits from CERN. It noted that the situation could facilitate

tax evasion and recommended issuing an annual tax certificate only to personnel who have a legal entitlement to financial and family benefits.

At the material time, the complainant was working as an MPA in the category of "Users" and was resident in France. On 11 February 2019, he received the following message:

> "The Organization wishes to inform you that, following contact with the tax authorities, a new approach to the annual internal tax certificates will be introduced as of 2020, i.e. in respect of the tax year 2019. From February 2020 onwards, Users, Cooperation Associates, Guest Professors and Visiting Scientists will thus receive statements showing the payments processed by CERN the previous year*, which they can use for income declaration purposes. This statement will no longer refer to internal taxation. You are receiving this e-mail because, given your last registered status at CERN in 2018, it is likely that this change will apply to you and may impact your personal tax position. Any changes to your registered status in 2019 could, however, result in a different outcome. Additional information will be published in the admin e-guide over the course of 2019.
>
> * Unless they are in the limited group who currently have a contract of association with CERN specifying that the Organization will pay them a monthly subsistence allowance."

The Advisory Committee of CERN Users held its 126th meeting on 3 December 2019, in which the following was discussed:

> "As of 2019, the Internal Taxation certificate for occasional (i.e. non-statutory) subsistence allowance processed through Third-Party Accounts has stopped. The last certificates were issued [i]n February 2019, for the year 2018. The taxable amount on the certificate was 0, whether the User received a subsistence or not.
>
> The Staff Rules and Regulations stipulates that CERN shall levy an internal tax on the financial and family benefits paid by CERN (not by Third-Parties). Occasional (i.e. non-statutory) subsistence processed by CERN on behalf of a Third-Party are not subject to internal taxation. This means that MPAs with status USER [...] who receive occasional subsistence are affected by the change. [...]
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> [...]
>
> Only Users who must fill a tax declaration according to French law are affected. [...]
>
> [...]

> The subsistence allowance is a taxable income in France if the User must fill a tax declaration as per French law and the subsistence allowance is not a taxable income in the 'origin' country. Taxable does not mean that the subsistence allowance is systematically taxed. Income tax may be due if the taxable income, after deduction of the professional costs, divided by the number of shares ('parts'), is higher than the threshold (was 9'964 € + 10% forfeit for 2018).
>
> CERN cannot answer the question if an individual User needs to pay taxes in France. Out of 12'675 Users, 2'215 (17%) have received a subsistence allowance in 2019, where 880 (7%) have received more than 12'200 CHF (9'964 € + 10% forfeit) and reached the threshold, but only 220 (1.7%) have a home address in France such that the subsistence allowance for these Users would be taxable in principle."

On 8 February 2020, the complainant received, instead of a tax certificate, a statement detailing the subsistence allowance he had received in 2019. The statement showed an amount of 53,807.00 United States dollars.

On 7 April 2020, the complainant filed an internal appeal against the statement received in February 2020, in which he requested "[t]hat the decision to replace [his] annual tax certificate by an annual statement of the amount received from CERN be declared null and void; and [t]o be provided with an annual tax certificate for the financial benefits received in 2019".

On 23 April 2020, the Head of the Finance and Administrative Processes Department addressed the following email to MPAs Users, including the complainant:

> "Dear all,
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> I write with reference to the financial certificates issued for 2019 to [MPAs].
>
> These certificates were issued following audit recommendations and exchanges with the tax authorities in the Host States regarding internal taxation.
>
> The Organization had intended, working together with the tax authorities, to have in place additional in-person information and support for filing this year's tax declarations, such as public meetings and a 'guichet' at CERN. In view of the crisis situation related to COVID-19, however, neither the Host State authorities nor CERN are able to provide this support in the current tax season.

> **Accordingly, for this reason, agreement has been reached with the tax authorities that a traditional internal taxation certificate will, exceptionally, be issued for 2019 to persons who received a financial certificate.** These persons will be notified imminently.
>
> [...]" (Original emphasis.)

Following questions received about the abovementioned email, CERN issued a FAQ. To the question "Does this message mean that the whole initiative is cancelled?" CERN replied "No. In view of the exceptional and unprecedented impact of the COVID-19 situation, CERN agreed with the tax authorities to postpone its implementation for one year".

On 5 May 2020, the Director-General rejected the complainant's internal appeal. The Director-General noted that the complainant's claims made in his appeal had been satisfied because he had been provided on 29 April 2020 with an internal tax certificate which cancelled and replaced the statement to which he objected. Accordingly, the Director-General considered that the internal appeal had been rendered moot and was irreceivable *ratione materiae*. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision as well as "[t]he general decision [...] to replace the Internal Taxation Certificate issued annually to the [c]omplainant [...] with a Certificate of Payment". In addition, he claims moral damages in the amount of 6,000 euros. He further seeks costs in the sum of 5,000 euros.

CERN asks the Tribunal to dismiss the complaint in its entirety and submits that the complaint is irreceivable for lack of cause of action.

CONSIDERATIONS

1. This complaint concerns an attempt by CERN to alter a pre-existing system whereby tax certificates were issued both to individuals who were staff employed by the Organization and individuals who worked in its facilities though employed by others. It is one of four complaints concerning this subject matter before the Tribunal this session.

2. A possible issue that needs to be addressed at the outset is whether these four complaints should be joined. It should be emphasized that no application for joinder was made by any of the complainants nor was such an application made by the defendant Organization. The significance of this factor will emerge shortly.

3. If an application for joinder is made, then it needs to be considered and determined in a principled way. The question of whether complaints should be joined and the principles guiding a decision concerning joinder have been addressed in several recent judgments. An illustration is found in Judgment 4822, consideration 4, quoting Judgment 4753, considerations 3 and 6:

> "The principles applied by the Tribunal on the general issue of joinder have developed over a period of more than 45 years [...]
>
> > 'Plainly the Tribunal can, and often does, consider related complaints at the same session and by the same panel of judges. The joinder of two complaints is a legal device deployed by the Tribunal in order that one judgment can be rendered, and orders then made disposing of the joined complaints. When considering the scope and purpose of a joinder, it must be borne in mind that while such an order can be made in relation to multiple complaints by one complainant, they can also be made in relation to complaints by two or more individuals who, in substance, raise the same grievance. This latter situation illustrates the need for such orders to be made only in quite explicit circumstances and to be guided by focused principles and not loosely expressed generalities. This is particularly important given the *res judicata* effect of the Tribunal's judgments. It would be wrong, in principle, to burden one individual with the legal outcome of proceedings where her or his complaint has been joined with the complaints of others in which legal issues have arisen and are resolved, but not legal issues raised by that individual.'
> >
> > [...]
> >
> > 'The question that arises is whether it is appropriate to join the [...] complaints. The touchstone for formal joinder has historically been that the complaints involve the same or, more recently, similar questions of fact and law, and it is not sufficient that they stem from the same continuum of events. [...]'"

4. The touchstone just referred to is ordinarily used to determine an application for joinder. The existence of the circumstances mentioned do not dictate that complaints should be joined even if no party seeks their joinder. It can be assumed that organisations which regularly litigate in the Tribunal, such as CERN, would be well aware of the option of seeking the joinder of complaints. Legally represented complainants are likely also to be aware of this option. There may be a variety of reasons why a decision is made not to seek joinder.

5. Joinder can have legal consequences with practical effect. While conceivably there may be occasional situations where a decision might be made by the Tribunal *ex officio* to join complaints in the absence of any application to join them, this should happen rarely. There is no justification for doing so in this case in the absence of any application for joinder.

6. This and the other three related complaints will be the subject of individual judgments though given the legal and factual links between them, much of what is said in this judgment will be repeated in the other three.

7. The complainant's complaint identifies the impugned decision as one given on 5 May 2020, received on 7 May 2020. The impugned decision addressed an internal appeal filed by the complainant on 7 April 2020. That is the date of the internal appeal. In his internal appeal, the complainant identified the subject of his appeal as "the decision to replace [his] annual tax certificate with an annual attestation". The subject matter was further particularized under a section headed "FACTS" in the following terms: "On 07 February 2020, I received, instead of the annual tax certificate, an attestation of the amount [re]ceived in 2019 as subsistence allowance. This is the individual decision I am challenging in this appeal." This appeal was unsuccessful.

8. The complainant's complaint was filed with the Tribunal on 2 August 2020. This is relevant because it is necessary to evaluate whether, at that date, the complainant had a cause of action (see Judgments 5046, consideration 4, and 4846, consideration 10). CERN argues he did not, and his complaint was not receivable. The factual foundation for this argument of CERN is that while the complainant was initially given an attestation on 7 February 2020, as earlier discussed in the facts, this was replaced by a tax certificate given to the complainant on 29 April 2020. That is to say, a tax certificate as had been provided in earlier years and was sought by the complainant. The explanation given by CERN was that this was a measure prompted by the "crisis situation related to COVID-19". However, CERN's position was that this was a temporary measure. This is apparent from the email of 23 April 2020 referred to earlier in this judgment and an answer given in a FAQ again referred to earlier.

9. Nonetheless, the action taken by CERN to replace the attestation with a tax certificate by the time the complaint was filed meant that the specific grievance of the complainant had been satisfied. He argues that there remains a live controversy about the abandonment of the mechanism of providing a tax certificate and cites Judgments 3740, consideration 11, and 2632, consideration 10. However, both of those cases concerned situations where a decision was made which did not immediately cause injury but was liable to do so in the future. This concept of "liable to cause injury" involves a measure of likelihood about the occurrence of the injury and certainly not just a remote possibility (see Judgments 5046, consideration 8, and 5040, consideration 8). In the present case, the information provided by CERN about future arrangements was conditional upon the continuation of an agreement with the tax authorities to "postpone [the] implementation [of the attestation] for one year". While it is not suggested that the agreement would necessarily alter, it nonetheless meant there could be no certainty about what would happen in the following year. This is not a case where a decision of general application had been made within CERN which required periodic implementation without any conditions.

10. The complainant, at the time he filed his complaint, did not have a cause of action and, accordingly, his complaint is irreceivable and should be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 16 October 2025, Mr Michael F. Moore, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.