Registry's translation, the French text alone being authoritative.

100th Session **Judgment No. 2487**

The Administrative Tribunal,

Considering the second complaint filed by Mr S. A. against the European Organization for Nuclear Research (CERN) on 17 September 2004 and corrected on 21 December 2004, the Organization's reply of 29 April 2005, the complainant's rejoinder of 9 June and CERN's surrejoinder of 6 September 2005;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

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

A. In his first complaint filed on 6 September 2003, the complainant impugned the decision of the Director of Administration, who on behalf of the Director-General rejected his complaint alleging moral harassment. According to the defendant, the decision in question was not final within the meaning of Article VII of the Statute of the Tribunal because the complainant had not lodged an internal appeal against it within the prescribed time limit. In Judgment 2375, delivered on 2 February 2005, the Tribunal endorsed the Organization's pleas and dismissed the complaint on the grounds that internal remedies had not been exhausted.

While the proceedings were pending before the Tribunal, the complainant presented CERN on 13 January 2004 with a request for payment of 45,000 Swiss francs for injury incurred at work. The Director-General rejected the request by a letter of 8 March 2004. The complainant filed an internal appeal against that decision on 30 April. On 18 June 2004 the Director-General, recalling that a thorough inquiry had led to the conclusion that no harassment had taken place, informed the complainant that his request for payment on those grounds had to be deemed unfounded and authorised him, in order to avoid unnecessary proceedings, to refer his case directly to the Tribunal. That is the decision impugned in the present case.

B. As he did in his first complaint, the complainant contends that he was subjected to moral harassment by his supervisors and, more generally speaking, by CERN's management. In support of this accusation he mentions his transfer to the Division of Education and Technology Transfer (a division which, according to him, did not correspond to his field of expertise), the lack of communication, the refusal to draw up a job description, the defendant's total lack of interest in his work, the constant recurrence of purely vexatious and hurtful acts, his exclusion from information, the aim and effect of which was to isolate him completely, the public denigration to which he was exposed, an arbitrary and extremely negative appraisal report, the medical examination he had to attend at the request of his supervisors, and lastly the complete lack of any action by his employer to put an end to the harassment, although it had an obligation to do so according to the case law of the Tribunal. He adds that the duties he has been assigned since he returned from sick leave are at a much lower level of responsibility than he enjoyed previously and are completely unrelated to his skills and experience. In his view, therefore, the defendant is in blatant breach of its obligations towards him.

The complainant claims 45,000 francs in damages for moral injury, plus interest at the rate of 5 per cent per annum calculated from 12 May 2002, the date at which he lodged his complaint with the Equal Opportunities Advisory Panel, and costs.

C. In its reply the Organization states for its main plea that the complainant was not subjected to moral harassment. This is, in its view, an established fact because CERN's decision of 13 March 2003, endorsing the conclusion of the Equal Opportunities Advisory Panel that the complainant could not be said to have been subjected to harassment, was not contested by the complainant in accordance with the appropriate procedures and within the set time limits. The request for payment is therefore clearly unfounded.

Subsidiarily, the Organization submits that it followed the proper procedure with respect to the complaint for moral

harassment leading to the decision of 13 March 2003 and that the facts were correctly assessed on the basis of a detailed, reasoned report by the Advisory Panel, which attributed a share of the responsibility in the case to the Administration. Lastly, and very subsidiarily, it accuses the complainant of refusing to query his own conduct and to recognise some major shortcomings on his part.

D. In his rejoinder the complainant contends that the letter of 13 March 2003 is not a decision since the Advisory Panel delivered an opinion and not "a conclusion which could have been endorsed by a decision in the formal and material meaning of the term". Referring to Article 23 of Administrative Circular No. 32 on the principles and procedures governing complaints of harassment, he submits that the communication by the Panel of the findings of its inquiry to the Director-General ought to have led to the opening of a disciplinary procedure, at the conclusion of which an appealable decision should have been rendered. Moreover, as in his first complaint, he argues that Article 7 of the circular could be interpreted as meaning that he could initiate proceedings before the competent national courts, which was why he failed to file an internal appeal in good time. So even if the letter of 13 March 2003 were deemed to be a decision, it could not be argued that it was final.

He accuses the Organization of bad faith when it maintains that the letter in question can no longer be challenged on the grounds that it had informed the Permanent Mission of Switzerland to the United Nations Office and to the other international organisations in Geneva, by a letter of 2 September 2003, that "the claim in question [...] ha[d] never been submitted to CERN, but c[ould] still be submitted". He sees further evidence of bad faith in the distinction drawn by the defendant between the complaint for harassment and the request for payment.

The complainant deplores the Organization's "purely gratuitous and unnecessarily hurtful comments" concerning the quality of his work. He requests the disclosure of the report of the inquiry conducted by the Equal Opportunities Advisory Panel and the hearing of six witnesses.

E. In its surrejoinder the Organization expresses surprise at the "basic misunderstanding of the procedural aspects" on the part of an official who has spent most of his career in the Personnel Division. It maintains that the Director-General had to take a decision following the report of the Equal Opportunities Advisory Panel and points out that in Judgment 2375 the Tribunal held that the letter of 13 March 2003 did constitute a "decision". It recalls that it enjoys immunity from jurisdiction and that the possibility referred to in Circular No. 32 concerns only civil or penal proceedings instituted by a member of staff against the person responsible for the harassment and not against the Organization.

In response to the accusation of bad faith, CERN asserts that the letter of 2 September 2003 dealt only with the receivability of the request for payment and not with the merits. As for the distinction between the complaint for harassment and the request for payment, it points out that it was due to the proliferation of requests on the part of the complainant. Lastly, it refers again to the negative attitude of the complainant and the "fanciful image" he has of himself.

CONSIDERATIONS

1. The complainant, a Danish national born in 1942, has worked for CERN since 1 March 1970. On 12 May 2002 he filed a complaint for moral harassment with the Equal Opportunities Advisory Panel. On 13 March 2003 the Director of Administration rejected the complaint on behalf of the Director-General; in so doing he endorsed the opinion of the Advisory Panel, which considered that the alleged facts did not constitute moral harassment in the meaning of Administrative Circular No. 32 published in February 2000 by the Human Resources Division. The complainant then brought his case before the Labour Court (*Tribunal des prud'hommes*) of the Canton of Geneva seeking reparation for alleged harassment, but the Court declined to consider the case in view of CERN's immunity from jurisdiction.

On 6 September 2003 the complainant filed a complaint with the Tribunal asking for the decision of 13 March 2003 to be set aside and for CERN to be ordered to pay him the sum of 45,000 Swiss francs for having failed to honour its obligations towards him. In Judgment 2375, delivered on 2 February 2005, the Tribunal dismissed the complaint on the grounds that the complainant had not exhausted all available internal remedies, as required by Article VII, paragraph 1, of the Statute of the Tribunal.

Indeed, on 31 October 2003 the complainant had filed an internal appeal with the Director of Administration,

which he subsequently withdrew by a letter of 13 January 2004, where he requested payment of 45,000 francs for “injuries suffered in the course of his work, which had given rise to the complaint [...] of 12 May 2002”.

2. On 8 March 2004 the Director-General rejected the request for payment. He considered that the decision taken on 13 March 2003 could no longer be challenged since the complainant had withdrawn the internal appeal he had filed against it.

On 30 April 2004 the complainant submitted an appeal to the Director-General against the decision of 8 March. He argued that it was unlawful for the Organization to dismiss his claim without considering its merits and that it could not simply assert that the letter of 13 March 2003 had become a final decision. On 18 June 2004 the Director-General reiterated that the failure to challenge the decision of 13 March 2003 had created an “irreversible” situation and informed the complainant that his request for payment could not be considered well founded. In order to avoid unnecessary proceedings, he authorised the complainant, however, to submit his request for payment directly to the Tribunal.

Before the Tribunal the complainant impugns the letter of 18 June 2004.

3. In view of the circumstances of the case, the hearings requested by the complainant would not be justified.

4. The complaint is receivable insofar as the complainant claims the payment of compensation which he was denied by the impugned decision.

However, his claim in that respect rests on his challenge of the decision of 13 March 2003, by which the Director of Administration, acting on behalf of the Director-General, rejected his complaint for moral harassment, thereby endorsing the conclusions of the Advisory Panel. But that decision has taken effect, since the complainant has withdrawn the internal appeal he had filed against it.

It must be remembered that relations between the international organisations and their staff are governed by the principle of the stability of administrative decisions and legal situations, which is one aspect of the more general principle of legal certainty. According to this principle, it is not possible through a claim for damages to challenge a final decision which admits no fault by the Administration, when the claim for damages is precisely based on the existence of such a fault. The Tribunal is bound to observe that this principle is entirely applicable to the present case, in which the complainant’s claim for compensation aims to challenge the final decision of 13 March 2003 again.

5. The complaint is therefore unfounded and must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 9 November 2005, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 1 February 2006.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet

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