

Information on Supreme Court Judgment No. 1737/2022, of 21/12/2022 and its potential application to ICCAT

(submitted by the ICCAT Secretariat)

1. Background to the case

A retired United Nations employee received in 2016 the sum of €49,906 from the United Nations Joint Pension Fund.

She filed her income tax return and did not include this amount as income from work.

The Tax Authorities of Ibiza performed an inspection and concluded that she should have included the amount received as income from work.

The retired employee filed an initial administrative appeal with the Economic Administrative Court of the Balearic Islands, which dismissed the appeal and found in favour of the Tax Authorities, considering that “the status of employee of the Organisation ceases on retirement”.

The staff member filed a contentious-administrative appeal with the **High Court of Justice** of the Balearic Islands, which upheld the claim and found in favour of the employee on the following grounds:

1. The concept of “emoluments” referred to in the Convention on the Privileges and Immunities of the United Nations must be analysed. It establishes that officials shall “be exempt from taxation on the salaries and emoluments paid to them by the United Nations”. The concept of “**emoluments**”, which is distinct from “salaries”, is sufficiently broad to include those amounts received as a result of work performed as a UN official, as well as the pension received as a consequence of that activity carried out in the past.
2. UN General Assembly Resolution No. 160 of 20 November 1947, in plenary session 121a ([https://undocs.org/en/A/RES/160\(II\)](https://undocs.org/en/A/RES/160(II))) states that “in order to achieve both equity among the Member States and equality among the staff members of the Organization, Member States should exempt from national income taxation **salaries and allowances** paid by the United Nations”. The retirement pension can be considered to be an allowance.
3. There is a system of “tax equalization” whereby amounts exempted from national taxes are subject to a “direct personal contribution” in favour of the Organization, and these amounts are then reimbursed to States at rates which give them a credit.

Therefore, **the amounts that were deducted from the paychecks** and contributed to the pension fund were already taxed at that time according to this particular model.

2. Supreme Court judgment

The Tax Authorities filed an appeal in cassation with the Supreme Court. The Supreme Court upheld the appeal, finding in favour of the Tax Authorities on the following grounds:

1. The concept of “salaries and emoluments” is linked to **active service** and actual performance of duties.
2. As regards the “tax equalisation” system, it concludes that **pension contributions are not included**. The conclusion is based on a booklet published by the United Nations Joint Staff Pension Fund of Frequently Asked Questions (FAQs) by its affiliates.

Conclusion of the Supreme Court

Retirement pensions, including those received from the United Nations Joint Pension Fund, are subject to personal income tax as income from work.

Establishment of doctrine

This judgment is particularly important because it establishes a doctrine that all Spanish courts and tribunals must apply.

3. Application of this Supreme Court doctrine to ICCAT

Regard must be had to the ICCAT Agreement on Seat of 29 March 1971. Article 19 refers to ICCAT employees and states that “with regard to taxes on salaries and emoluments received from ICCAT, they shall enjoy the same exemptions as are accorded under identical circumstances to employees of the United Nations”. Therefore, as regards taxation, there is an equal treatment between ICCAT officials and those of the United Nations. This leads us to conclude that the interpretation of the Supreme Court in this ruling will be considered by the Spanish Tax Administration as applicable to retired ICCAT officials **with tax residence in Spain**.

It should also be taken into consideration that ICCAT officials do not receive their pension from the United Nations Joint Pension Fund, but from a private pension plan, currently contracted with CIGNA. This will not prevent the Tax Authorities from considering that the ruling is fully comparable to the ICCAT situation. And in view of the doctrine established in the judgment analysed, it is foreseeable that the Courts will also assume that the ICCAT case is remarkably similar to that of the UN official.