

## Decision No. 141

Bahman Abadian,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of A.K. Abul-Magd, President, E. Lauterpacht and R.A. Gorman, Vice Presidents, and F.K. Apaloo, F. Orrego Vicuña, Thio Su Mien, and P. Weil, Judges, has been seized of an application, received on April 18, 1994, by Bahman Abadian, against the International Bank for Reconstruction and Development. The Tribunal decided to transmit two affidavits with signatures submitted by the Applicant to the Respondent on the basis that the names of the signatories be kept confidential. There was the usual exchanges of pleadings. The case was listed on December 5, 1994.

The relevant facts:

2. The Applicant joined the Bank in 1966 as an Economist and retired in 1988. He was an Iranian national who became a U.S. citizen in 1990.

3. By letter, dated April 1969, to the Managing Director, Plan Organization of the Iranian government, the Vice President of the Respondent agreed to "release" the Applicant for a maximum period of two years to be attached to the Plan Organization of Iran, at the end of which time he was to return to the Bank. The Applicant consequently was appointed as Deputy Managing Director of the Plan Organization in charge of Planning and the Projects Department and served from 1969 to 1971. In 1978 he was sent on a mission by the Respondent for a period of about three months to assist the government of Iran in the preparation of the Sixth Development Plan.

4. Subsequently, by regulations issued by the Prime Minister's Office of the Provisional Government of Iran persons who had held positions at Director-General level (including Deputy Ministers) and above in the previous government were automatically blacklisted.

5. In a letter, dated June 30, 1992, to the President of the Bank, the Applicant complained that:

Because of technical assistance to the late Shah's government, IRI (the Islamic Republic of Iran) blacklisted me and once stopped me at Tehran Airport (April of 1980). I have not dared to go back to Iran over the past 12 years. I am now a U.S. citizen. Chiefly because of constraints on my ability to travel to Iran, I have lost the chance of recovering most of my Iranian assets.

He stated that his non-cash losses amounted to \$751,000 and his cash losses, owing to the rapidly depreciating rial, to \$120,000.

6. By letter, dated August 20, 1992, the Director, Personnel Management Department (PMD), advised the Applicant that "the Bank is not in a position to pursue claims involving personal assets with a member country, nor is there any basis for the Bank to, as you assert, share responsibility for resolving the difficulties you are having with the Iranian Government."

7. By letter, dated June 2, 1993, to the President, the Applicant repeated his earlier request that the President look into his case. The Director, PMD, responded in a letter, dated June 24, 1993, to the Applicant that the Bank could not intervene "in disputes between a member country and a private individual regarding personal assets, or act as an advocate for you either with the country you regard as the confiscator of assets, nor urge a

third country to intercede.”

8. By letter, dated September 7, 1993, to the Director, PMD, the Applicant’s lawyer requested administrative review of the Respondent’s decision not to provide assistance to the Applicant. By letter, dated September 29, 1993, to the Applicant’s lawyer, the Director, PMD, stated that the Applicant’s request did not raise an issue for which administrative review was provided under Staff Rule 9.01, and that the request was out of time. On November 3, 1993, the Applicant filed an appeal from this decision with the Appeals Committee. In its decision, dated January 14, 1994, the Appeals Committee stated that it would not take jurisdiction in the case because the Applicant’s request for administrative review had been filed late and the complaint did not relate to the Applicant’s terms of appointment or conditions of employment.

The Applicant’s main contentions:

9. The application has been filed in time. The Applicant took the necessary action to seek administrative review within ninety days of receiving the letter from the Director, PMD, dated June 24, 1993, which contained the relevant decision of the Respondent taken after the Applicant had presented all the facts when they had come to his knowledge.

10. The application states a claim upon which relief can be granted. The Applicant is claiming assistance from the Respondent in respect of an external assignment undertaken during his tenure as a staff member of the Bank, and at the behest of and in the interest of the Bank. The protection claimed is not in regard to a personal dispute with the Applicant’s government but in respect of his official functions. The Respondent’s failure to act is a breach of the Applicant’s conditions of employment.

11. The Applicant has clearly set forth the harm to his real and personal property that was directly caused by the action taken by the Iranian government. This action was causally connected to this employment with the Bank.

12. The Respondent has a duty to intervene with its good offices in order to protect the Applicant pursuant to Principle of Staff Employment 3.3, because the Applicant enjoys immunity from legal process in connection with official functions under the Articles of agreement and the immunity had not been waived. The proscription of the Applicant was a legal process connected with official functions, and the Respondent cannot at its discretion refuse to exercise such good offices where there has been such a breach of international law. The Respondent’s refusal is not an exercise of discretion that is not subject to appeal.

13. The Applicant’s request for a declaratory judgment is one which the Tribunal has the inherent power to grant. It is on his own behalf and not on behalf of other staff members.

14. The Applicant made the following pleas:

(i) a declaratory judgment that the Respondent has a duty to assert on behalf of the Applicant immunity from acts by a member State depriving him of his rights as a result of service for the Respondent in a member country and

(ii) alternatively, payment of compensation in lieu of the assertion of immunity.

The Respondent’s main contentions:

15. The application is inadmissible because the Applicant did not seek administrative review in time. The operative administrative decision was that of the Director, PMD, communicated to the Applicant by letter dated August 20, 1992. He failed to seek administrative review until more than a year later.

16. The Applicant fails to state a claim upon which relief can be granted because it is based on a personal dispute with the Applicant’s government which arose while he was not performing official functions for the Bank.

17. It is not entirely clear from the Application specifically what action the Applicant's government has taken with respect to his assets, or whether that action was caused solely by his governmental service.

18. Good offices are entirely at the discretion of the Respondent. The Respondent had no duty to assert immunity on the Applicant's behalf in the circumstances of this case because the acts complained of did not derive from his official capacity with the Bank. In any event, the immunity is the Bank's and may be waived.

19. The Applicant is seeking a general declaratory judgment which the Tribunal has no jurisdiction to give under the terms of its Statute. The Tribunal can order specific performance with the alternative of paying compensation in lieu thereof.

#### Considerations:

20. The Applicant, who joined the Bank in 1966, was given a two-year unpaid leave of absence in 1969-71 to serve in the Government of Iran as Deputy Managing Director of the Plan Organization. In 1978, the Applicant was sent on a mission by the Respondent for three months to assist the Government of Iran in the preparation of a development plan.

21. The Applicant asserts that, after the new government assumed power in Iran in 1979, he – as a former highly ranked official in the previous regime – was placed upon what he refers to as a blacklist. This has had the effect, he alleges, of preventing him from returning to Iran to administer substantial holdings in real estate and other assets, which have as a result deteriorated substantially in value.

22. The Applicant claims that it was not until 1992 (by which time he had retired from employment with the Bank), when the Bank resumed project lending to the Government of Iran, that the Applicant concluded that the Respondent was in a position to intervene on his behalf to induce that Government to compensate him for the injury resulting from the blacklist. His letter to that effect, written to the President of the Bank on June 30, 1992, was answered on August 20, 1992 by the Director, Personnel Management Department (PMD), who disclaimed Bank responsibility in unequivocal terms:

While I appreciate the difficulties you face in attempting to recover your Iranian assets, I must advise you that the Bank is not in a position to pursue claims involving personal assets with a member country, nor is there any basis for the Bank to, as you assert, share responsibility for resolving the difficulties you are having with the Iranian Government.

23. The Applicant wrote again to the President on August 24, and when that letter was unanswered, he wrote yet again on June 2, 1993. After the Director, PMD, responded on June 24, 1993, the Applicant's attorney on September 7, 1993, wrote a letter requesting administrative review. In a letter dated September 29, the Acting Vice President, Personnel and Administration (PA), rejected the request, citing both the Applicant's failure to raise any issue arising from his terms of appointment or conditions of employment and the fact that his request for review was untimely.

24. The Appeals Committee declined to assert jurisdiction over the Applicant's appeal for both those reasons, and the Respondent has asserted those same defences before the Tribunal.

25. Had the Applicant while in Iran in 1969 to 1971 been discharging duties on behalf of and in his capacity as a staff member of the Bank, and had this application been timely filed, the Tribunal would be required to define the precise scope of assistance and protection that the Respondent might have been obliged to afford him. The Tribunal is of the view, however, that the Applicant's application is not properly before the Tribunal, because of the failure of the Applicant in a timely manner to invoke administrative review of the action of the Director, PMD, on August 20, 1992, denying the Applicant's request for intervention with the Government of Iran.

26. Article II(2) of the Statute of the Tribunal provides, in pertinent part:

No such application shall be admissible, except under exceptional circumstances decided by the Tribunal, unless: (i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal....

In order to “exhaust all other remedies available within the Bank Group,” it was incumbent upon the Applicant to take timely steps to pursue administrative review of the August 20, 1992 decision of the Director, PMD. This has been the consistent interpretation of the Tribunal in several cases. (de Jong, Decision No. 89 [1990]; Steinke, Decision No. 79 [1989]; Dhillon, Decision No. 75 [1989])

27. Staff Rule 9.01 provides that administrative review must be requested within ninety calendar days of notice of the decision being appealed. Rather than seek administrative review before the end of November 1992, the Applicant reiterated his appeal to the President of the Bank in a letter of August 24, 1992 and yet again in a letter of June 2, 1993. It was not until September 7, 1993 that the Applicant’s counsel requested administrative review. This may have been within ninety days of the June 24, 1993 letter of the Director, PMD, but it was more than twelve months after the August 20, 1992 decision of the Director, PMD, that is being challenged here before the Tribunal.

28. As the Tribunal held in Agerschou, Decision No. 114 [1992], the ninety-day period for invoking administrative review cannot be extended by a staff member indefinitely and repeatedly by reiterating his claim or by asking for reconsideration after there has been a definitive decision made by the Respondent. The Tribunal stated there that to hold otherwise would make a mockery of the time limits contemplated by the Statute of the Tribunal upon the exhaustion of administrative remedies within the Bank.

29. There are only two circumstances contemplated by the Statute for relief from those time limits: exceptional circumstances or an agreement between the Applicant and the Respondent.

30. No exceptional circumstances have been alleged as such and the Tribunal finds none in the record. The Applicant does assert that he was unable to appreciate the full extent of his financial losses resulting from the blacklist until 1993, at which time he resumed his communication with the President of the Bank and promptly sought administrative review thereafter. But even in June 1992, when he first wrote to the President, he alleged confiscation of assets in the form of property losses amounting to more than \$870,000. In explaining his delay in writing again until the following year and invoking administrative review only then, the Applicant candidly acknowledges in his Reply: “Applicant was unaware of any time constraint applicable to his application.”

31. Nor has there been any agreement by the Respondent to waive the requirement of timely exhaustion of administrative review. Perhaps aware of the question of timeliness, counsel for the Applicant requested in October 1993 that the Respondent agree to place the matter before the Tribunal, but this request was denied.

32. The Tribunal therefore concludes that the Applicant did not exhaust internal remedies within the Bank in a timely manner, and consequently his application to the Tribunal is inadmissible.

Decision:

34. For these reasons the Tribunal decides that the application is inadmissible.

A.K. Abul-Magd

/S/ A.K. Abul-Magd  
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe  
Executive Secretary

At London, May 19, 1995