



**World Bank Administrative Tribunal**

**2010**

**No. 441**

**Zeynep Zerrin Koçlar,  
Applicant**

**v.**

**International Bank for Reconstruction  
and Development,  
Respondent**

**World Bank Administrative Tribunal  
Office of the Executive Secretary**

**Zeynep Zerrin Koçlar,  
Applicant**

v.

**International Bank for Reconstruction  
and Development,  
Respondent**

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, composed of Jan Paulsson, (acting Vice President of the Tribunal) as President, and Judges Francis M. Ssekandi and Mónica Pinto.

2. The Application was received on 4 March 2010. The Applicant was not represented by counsel. The Bank was represented by David Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges the Bank's decision not to extend her contract of employment beyond its two-year term, or to provide her with a new contract of employment, alleging that the Bank abused its discretion and subjected her to unfair and arbitrary treatment.

**FACTUAL BACKGROUND**

4. The Applicant worked for the Bank on a two-year Term appointment from 12 March 2007 to 11 March 2009, when her appointment expired. A Turkish national, she joined the Bank's country office in Ankara as an engineer in the Sustainable Development Sector Unit, Europe and Central Asia ("ECSSD"), after having responded to a job vacancy announcement in her local newspaper worded as follows:

The World Bank Ankara Office is ... seeking an “Energy and Infrastructure Engineer” based in Ankara. This would initially be a 1 or 2 year term appointment with the possibility of extension.

5. The Applicant’s Letter of Appointment included the following clauses:

Your appointment is subject to local recruitment and is subject to the conditions of employment of the World Bank Group as at present in effect and as they may be amended from time to time.

In accordance with the World Bank Group policy, your appointment will be subject to a probationary period of up to one year.

*Your appointment will terminate at the end of this 2-year period unless it is extended or a new appointment is made.* The World Bank Group has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if agreed in writing at the time of the expiration of appointment. (Emphasis added.)

6. Upon taking up her appointment the Applicant asked for what she called the terms of reference for the job. The Applicant’s manager indicated that she would prepare a draft. According to the Applicant, she was never provided a copy of these terms of reference despite numerous reminders and complaints about lack of clarity regarding her duties.

7. On 27 September 2007, the Applicant’s first interim Overall Performance Evaluation (“First OPE”) was finalized. The Applicant received one “Superior” rating for “Municipal Service Project Supervision,” and was rated “Fully Successful” in all other areas of her Results Assessment.

8. From 2 January 2008, the Applicant reported to a new Sector Manager. It appears that, shortly after his arrival, the Sector Manager met with the Applicant to discuss her performance and to commence the process for the completion of the second interim Overall Performance Evaluation (“Second OPE”).

9. On 25 January 2008, the Bank agreed on a new Country Partnership Strategy with the Government of the Republic of Turkey for 2008-2011. The Bank explains that under this new Country Partnership Strategy, the focus of ECSSD's program shifted from the urban and water portfolio to an energy agenda and development policy lending.
10. On 7 April 2008, the Second OPE was finalized. The Applicant was rated "Fully Successful" in all areas of her Results Assessment. The Sector Manager wrote:

[The Applicant] is a solid water and sanitation engineer. She made good contribution to the tasks she is working on, especially in reviewing the technical specifications and site supervision on civil works contracts under the Municipal Services Project and Avian Flu project. She will provide cross support to the Central Asia team in this coming year. *Her challenge in the coming year is to broaden her contribution beyond the engineering work to enable her to cover broad operational aspects. Her ability to broaden her contribution will be an important factor in the decision on whether to extend her fixed term contract in March 2009.* (Emphasis added.)

In response, the Applicant stated:

My main concern now is that I not be put in a narrow channel by only considering my water and sanitation engineering abilities, without taking consideration of my senior professional experience in other areas. I am still looking forward to working with my colleagues in the ISMEP project ... education projects ... and energy projects ... which in their main objectives include important engineering works. I am still hopeful about my expectations to share all of my knowledge and skills for cooperative and efficient team work with my colleagues to lead to successful project results. This will be possible if and only if they ask me to join in their team and I seek management guidance on how to achieve this objective.

11. In and around April 2008, the Sector Manager commenced the process for preparing the annual OPE for all staff members under his purview. In so doing, he commenced the process for the Applicant's annual Overall Performance Evaluation ("Third OPE"). The Third OPE was signed on 7 and 9 July 2008 by the Country Director and the Sector Manager, respectively. The Applicant was rated "Fully Successful" in all areas of her Results Assessment. In it, the Sector Manager noted:

[The Applicant] has just finished her first year in the Bank. She was an active member of the Municipal Services Project where she is responsible for reviewing the engineering design of the water works contracts financed under the project. She often undertakes site supervision to ensure good quality of the construction. [The Applicant] also worked as an engineer on several other projects, including the Avian Flu and the health sector projects. [The Applicant] has a pleasant personality and is a good team player. While [the Applicant's] knowledge on the technical aspects of the water supply and sanitation is obvious, her contribution to the broader operational support has been limited. [The Applicant] will focus in the coming months on increasing her contribution to broader operational issues, and as appropriate on contributing more to documentation, including aide memoire and appraisal documents.

12. On 20 June 2008, the Applicant met with the Sector Manager and the Country Director to discuss her Third OPE. The Applicant was informed at that meeting that her contract of employment would not be extended. On 9 July 2008, the Sector Manager sent the Applicant an e-mail message in which he stated:

As [we] discussed with you during your OPE discussions, your contract will end as scheduled on March 12, 2009. We are giving you a long advanced noticed so that you have plenty of time to look for another job. After this date, and with the technical expertise and very pleasant personality you have, I expect that task team leaders may ask your help, as a Short Term Consultant, to support the various operations that require engineering skills. In the meantime, please let me know if there is anything we can do from our side to assist you in your search for a full time job.

13. On 15 August 2008, the Applicant wrote to the Sector Director requesting that he reconsider the decision not to extend her contract of employment or to provide her with a new contract of employment. On 2 September 2008, the Sector Director advised the Applicant that, having "looked into the matter again very carefully," the decision remained unchanged. The Sector Director then sought to "reiterate" the reasons for this decision:

The decision is based primarily on a change in the business needs of the ECSSD Turkey program. The work program and anticipated staffing needs have evolved significantly since the time of your recruitment. At

that time we expected an expanded work program in the municipal sector especially in water supply and sanitation. This, however, has not materialized. Furthermore, the intention in hiring a civil engineer was, in part, to be in a position to undertake especially intensive supervision of works during the first two years of the municipal services project. This project is now on track and continued supervision at the same high level of intensity is not required.

14. The Applicant filed a Statement of Appeal with the Appeals Committee on 30 October 2008, challenging the decision not to extend her contract of employment. By letter dated 23 October 2009, the Applicant was informed that the Vice President, Human Resources (“HRSVP”), had decided to accept the Appeals Committee’s recommendation to deny her appeal.

15. Before the Tribunal, the Applicant claims that she was subject to unfair and arbitrary treatment by the Bank, in violation of the Staff Rules, and alleges that the Bank abused its discretion. As relief, the Applicant seeks: (a) \$76,700 (i.e. the equivalent of one year’s salary) as compensation for the Appeals Committee process and its protracted duration; and (b) \$38,300 (i.e. the equivalent of six months’ salary) for the pain and suffering caused by the decision not to renew her Term appointment. The Applicant also seeks costs in the amount of \$20,487.28.

16. The Bank raised a preliminary objection on 26 March 2010. By order dated 11 May 2010, the Tribunal decided to join the Bank’s preliminary objection to the merits.

#### THE PARTIES’ CONTENTIONS ON THE PRELIMINARY OBJECTIONS

17. The Bank argues that the Tribunal should dismiss the Applicant’s allegations relating to decisions taken prior to 9 July 2008 (i.e. 90 days prior to the submission of the Applicant’s appeal before the Appeals Committee) as untimely. In particular, the Bank maintains that the Applicant’s allegations that the Bank failed to provide terms of reference for her position at the time she was hired in March 2007 are untimely.

18. The Bank also argues that the Applicant's claims relating to the Appeals Committee's procedure (i.e. that (i) she was not informed about changes in Staff Rule 9.03 pertaining to the grievance procedure; (ii) the Appeals procedure established under the previous Staff Rule "violated" her human rights by "not providing a judge according to General Principles of Law"; (iii) the Respondent "by forcing" the Applicant to follow the previous Staff Rule "violated" her human rights; and (iv) the Appeals Committee process was overly protracted in her case) are new and fall outside the Tribunal's subject-matter jurisdiction.

19. In response, the Applicant submits that her claims are timely. She argues that the Tribunal should consider her allegations as pertaining to a "period of time not an individual moment." The Applicant also argues that the Tribunal has jurisdiction to address her allegations relating to the Appeals Committee's procedure, in particular (i) the delays in the completion of her case, (ii) the arbitrary changes in the appeals system, (iii) the decision to review her appeal under the old appeals system, and (iv) improper and unfair treatment by the Appeals Committee officials.

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS ON THE PRELIMINARY OBJECTIONS

20. The Tribunal is unpersuaded by the Bank's challenge to the timeliness of the submission of the Applicant's claims. This objection, if accepted, would in effect bar staff from providing supporting evidence to prove legitimate claims against violations of their contracts of employment. In this case, the decision challenged was taken on 23 October 2009, when HRSVP accepted the Appeals Committee's recommendation. The recommendation included a finding that the decision not to renew the Applicant's Term appointment was a proper exercise of the Bank's discretion, was not arbitrary, did not

violate due process, and was generally fair. A staff member whose contract has not been renewed is entitled to submit and rely on all materially relevant facts pertaining to the decision taken by HRSVP. These include facts that support the staff member's claim that she was not treated fairly because her performance had not been assessed against a well-defined work program. Obviously such failure, if proved, could be pertinent and inseparable from the decision taken by the Bank not to renew her contract. The fact that the Applicant has chosen to use the expression "terms of reference" should not be held against her in a formalistic fashion. The issue is not whether the communications in which this expression was used ceased at a relatively early stage, or whether the Bank was required to produce something literally called "terms of reference." Staff members are entitled to evaluations; it is part of their entitlements and may be of benefit to them in the absolute, i.e. even if they leave the Bank. Whether they have been given this benefit must be considered as a matter of substance. Nor is it proper to dissect the evidence pertinent to the challenged decision and place time limits on individual actions taken by the Bank, which should be evaluated cumulatively to determine whether the staff member was treated unfairly or arbitrarily. It would be perverse to create incentives for a staff member to raise a grievance, merely to protect their position, before a materially adverse decision has been taken.

21. For these reasons, the Bank's jurisdictional objection over the timeliness of the Applicant's claims concerning the Bank's failure to provide her with an adequate job description is denied.

22. On the other hand, the allegations impugning the fairness of the Appeals Committee and challenging the Bank's adoption of new rules to govern the internal



recourse process do not survive the jurisdictional challenge. The Tribunal does not sit to review Bank management's policy choice to organize and promulgate rules to govern the institution. Equally, the Tribunal has consistently held that it will not readily review procedures followed by the Appeals Committee. In *de Raet*, Decision No. 85 [1989], para. 54, the Tribunal held that:

The proceedings before the Tribunal are entirely separate and independent despite the fact that recourse to the Appeals Committee is a condition precedent to the commencement of proceedings before the Tribunal. ... The function of the Appeals Committee ends with its recommendations, which the Bank may or may not accept.

Similarly, in *N*, Decision No. 356 [2006], para. 33, the Tribunal stated that it "has repeatedly emphasized that it does not sit as a court of appeals in respect of the proceedings, findings and recommendations of the Appeals Committee."

23. The Tribunal's decision on jurisdiction in this respect does not, however, mean that staff members have no recourse in cases of irregularities that result in a denial of justice. As the Tribunal stated in *Yoon (No. 11)*, Decision No. 433, para. 16, "decisions of the Appeals Committee should be subject to the Tribunal's review in the event that they resulted in violation of a staff member's rights, e.g. a refusal to deal with a complaint at all."

#### THE PARTIES' CONTENTIONS ON THE MERITS

24. The Applicant's primary contention is that the Bank abused its discretion when it decided not to extend her contract of employment beyond the two years which were originally envisaged. She claims that she was promised that the Bank would extend her contract of employment on the condition that she "broaden her contribution." The Applicant claims that she was treated unfairly as the Bank failed to provide her with terms of reference for her position which entailed that her performance was evaluated

arbitrarily, and thus the Bank denied her a genuine opportunity to satisfy this condition. The Applicant also contends that the Bank failed to give her a reason for its decision not to extend her contract of employment when she was initially informed of this decision by the Sector Manager, and that the Sector Director later adduced new reasons to support this decision. The Applicant also challenges the veracity of the reasons given by the Sector Director for the Bank's decision not to extend her contract.

25. In response, the Bank argues that its decision not to renew the Applicant's Term appointment was neither an abuse of discretion nor part of a pattern of discriminatory practices. The Bank contends that the Applicant accepted an offer of employment for a two-year period, which bore no guarantees of an extension and that she was never given any assurances or promises of an extension. The Bank submits that the decision not to renew the Applicant's appointment was based on legitimate business needs, which had been clearly communicated to her at an early stage.

26. The Bank further submits that it treated the Applicant fairly. In this regard, the Bank claims that it sought to involve the Applicant in every project available at the time in which her skills could be of use and to expose her to the professional challenges she requested. The Bank claims that it consistently recognized the Applicant's solid technical skills in all her OPEs, on the basis of which, it confirmed her Term appointment. The Bank claims that it provided the Applicant with a mentor and gave her ample opportunities to attend training sessions on a wide range of topics.

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS ON THE MERITS

27. The Applicant has set out her case in no less than 55 single-spaced pages in which it is not always easy to perceive causes of action with a clearly articulated legal basis.

Viewing her grievance in the most sympathetic light, it falls under three headings which could in principle entitle her to relief if the factual record so proves:

- (i) she was promised an extension or at least an extension on the condition that her work was of a sufficiently high standard;
- (ii) the decision not to extend was discriminatory and arbitrary; and
- (iii) she was not given a fair chance to demonstrate her potential.

28. The Applicant was employed on the basis of a Term contract which explicitly stated that it would be for the duration of two years and would terminate thereafter, unless it is extended or a new appointment is made. In *Mr. X*, Decision No. 16 [1984], para. 35, the Tribunal explained:

A fixed-term contract is just what the expression says: it is a contract for a fixed period of time .... Whatever may be the character of the work which a member of staff performs, his legal position is controlled by the terms of his appointment. The possibility exists, of course, that the character of the work may encourage a staff member to seek some formal amendment of his standing. But that is a matter of negotiation; such modification cannot come about automatically.

29. There may nevertheless be circumstances which lead to the creation of a right to renewal. As the Tribunal held in *Kopliku*, Decision No. 299 [2003], para. 10:

Another restriction upon the Bank arises when circumstances warrant the inference by a staff member that the Bank has indeed made a promise to extend or renew his or her appointment either expressly or by unmistakable implication. “[T]here may be something in the surrounding circumstances which creates a right to the renewal of a consultant appointment.” *Carter*, Decision No. 175 [1997], para. 13. But absent such assurances on the part of the Bank, simply performing to an expected level of performance does not entitle a staff member on a Fixed-Term contract to renewal or extension. As the Tribunal concluded in *McKinney*, Decision No. 187 [1998], para. 16: “Whenever a person is initially employed by the Bank, it is assumed that his or her performance will prove to be satisfactory. Performing at that level cannot reasonably give rise to an expectation of greater employment rights than those expressly provided in the contract of employment.”

30. The Applicant asserts that she was promised that her contract of employment would be extended beyond the initial two-year term. The Applicant claims that the Bank breached this promise when it decided not to extend her contract of employment. The Applicant adduces, as evidence of this promise, the statement from the Sector Manager in her Second OPE in which he advised that her ability to broaden her contributions beyond the engineering work “will be an important factor in the decision on whether to extend her fixed term contract in March 2009.”

31. The Tribunal is unable to discern from this statement, or from the record adduced by the parties, a promise made by the Bank, either expressly or by unmistakable implication, which would warrant an inference by the Applicant that she had a right to the renewal of her contract. Similarly, the Tribunal finds no evidence in the record of anything in the surrounding circumstances which would create such a right. The Sector Manager merely drew the Applicant’s attention to certain factors which might have an influence on the Bank’s decision to extend her contract of employment.

32. The Tribunal has noted that the Applicant was informed on 20 June 2008 that the Bank’s position had changed, in that it had already determined not to extend her employment in any event. Naturally the Applicant would have viewed this as disappointing and inconsistent, in the sense that she was first told that personal efforts might improve her chances only to learn twelve weeks thereafter that external factors excluded any extension of her employment with the Bank. On the other hand, it is not clear that she suffered any prejudice as a result. If she had been induced by this encouragement to make special efforts to make this “broader contribution,” it is hard to see how this was detrimental to her. There is no warrant for concluding that her

manager's comment to the effect that personal improvement would better her chances was uttered in bad faith.

33. The Applicant's second type of complaint concerns the legal propriety of the Bank's decision not to extend her employment (irrespective of the issue of promise). The decision to extend the Applicant's contract of employment falls within the Bank's discretion. A contract for a fixed period of time does not establish job security beyond that term; its very essence is precisely the contrary. Nor can there be a presumption of renewal in favor of the Applicant. The Bank could simply have let the contract lapse. The terms of appointment countersigned by the Applicant provide explicitly that either an extension or a new appointment would require an agreement "in writing" (see paragraph 5), thus giving clear indications that formal action would be required if the employment were not simply to lapse. It falls on the Applicant to prove that the non-extension was illicit; it is not for the Bank to prove that it acted, upon the expiry of the contract, according to its terms.

34. On the other hand, as the Tribunal held in *Barnes*, Decision No. 176 [1997], para. 10:

Although the Applicant did not have a right to either conversion or extension of her fixed-term contract, the decision not to convert or extend her contract was nonetheless a decision which, like any other exercise of discretion by the Respondent, must be reached fairly and not in an arbitrary manner. The Tribunal has held that even where the "circumstances of the case do not warrant any right to a renewal of a fixed-term contract, the Bank's decision not to renew the contract at the expiration of its predetermined term, however discretionary, is not absolute and may not be exercised in an arbitrary manner." (Citing *Carter*, para. 15)

The Tribunal will accordingly consider whether the Bank properly exercised its discretion in deciding that it would not extend the Applicant's contract of employment.

35. The Bank argues that there were legitimate business reasons underpinning its decision not to extend the Applicant's contract of employment. It submits that, when the Country Partnership Strategy for the Republic of Turkey for the period 2008-2011 was finalized, in and around January 2008, it became clearer that the anticipated large urban and water portfolio did not materialize as initially anticipated. The Applicant claims that the Bank recruited another engineer as an Extended Term Consultant at the same time as it was advising her that there was no further need for her particular skills. The Bank explains that this Extended Term Consultant, a Disaster Management Specialist, possessed qualifications that were different from the Applicant's, and was recruited to work on natural disaster issues. The Tribunal notes that the Appeals Committee examined this claim and found that "there [was] nothing in the work history of the [Applicant] that mirrors the non-disputed background possessed by [the Extended Term Consultant] in so-called Disaster Management." While the Applicant challenges the veracity of the Bank's assertions in this regard, the Tribunal has no cause to doubt, on the basis of the record before it, that there were changes to the Bank's Country Partnership Strategy which may have diminished the need for the Applicant's particular skills.

36. Nor does the Tribunal find merit in the Applicant's assertions that the Bank belatedly changed the reasons for its decision not to extend her contract of employment. In his e-mail message of 20 June 2008, the Sector Manager recalled the outcome of their previous discussions and stated that the Applicant's contract of employment would not be renewed. The Sector Manager did not, however, state the reasons for this decision in this message. When asked to reconsider this decision, the Sector Director proceeded to

explain the changes to the department's work program. The Tribunal finds no inconsistency here.

37. Principle 2.1(d) of the Bank's Principles of Staff Employment provides that the Bank shall "provide staff members security in their employment *consistent with the terms of their appointments*, their satisfactory performance and conduct, and the efficient administration of the Organizations." (Emphasis added.) There is no warrant for believing that the recurrent use of fixed-term appointments has somehow been transformed into a relationship involving security of ongoing employment beyond the term of the appointment. On 13 March 2009, the Bank's Managing Directors circulated an e-mail message to all Vice Presidents addressing "Flexibility in Staffing." In this e-mail message, the Managing Directors stated that they "expect business needs to dictate that we take more advantage of the flexibility provided by renewable term appointments," and that "the 'default option' is for new staff to be hired on term appointments, renewable based on business needs, and that creation of new open-ended appointments would be expected only in exceptional circumstances supported by a compelling business rationale." On 21 May 2009, Bank's senior management circulated an "Update on Renewable Term Appointments" which made clear that (i) term appointments were a favored tool "affording the organization the flexibility," but (ii) "open-ended assignments remain an option" and (iii) open-ended staff on field assignments of fixed duration do not lose their status. To declare that fixed-term appointments *per se* contain some element of extended security of employment beyond the duration of the contract would be to frustrate the Bank's policy. The Tribunal has no authority to do so. In any event, the recent changes to the Bank's policy resulting in

increased reliance on Term appointments has no bearing on the present case since the Applicant's contract of employment expired before the change of policy was announced. It is therefore hardly surprising that neither party here has sought to make the change of policy a part of this case.

38. Finally, there is no rule that would prevent the Bank from giving long advance notice of its intention not to renew. Indeed, if the Bank needs change, or if the staff member in question does not have the mix of skills which her work unit requires, it is better to tell her as soon as the decision has been made, rather than to keep the managerial determination secret and allow the staff member to entertain the illusion that there is a chance that her contract will be renewed, perhaps failing to pursue other opportunities in the meanwhile. Indeed, the Bank's guidelines provide that managers should inform staff members if their Term contracts will not be renewed at least 60 days before the expiry of the contract. In this case, she was told over eight months ahead.

39. The third and final category is the complaint that the Bank did not give the Applicant an adequate opportunity to prove herself and to be evaluated properly by reference to adequate task specifications. In *Visser*, Decision No. 217 [2000], para. 55, the Tribunal held that, on the facts of that case, the Bank should have provided the applicant with written terms of reference, yet concluded that

the absence of such terms does not appear to have had any significant effect in regard to the decision not to renew or extend his contract. The more important issue is whether the Bank's evaluation of his work was unfair and whether the lack of clear terms of reference or poor supervision contributed to this.

40. The issue for the Tribunal to address, therefore, is whether the Bank's evaluation of the Applicant's work was unfair and whether the lack of clear work program



deliverables or poor supervision contributed to the Bank's decision not to provide her with a new contract of employment.

41. The Tribunal finds no merit in the Applicant's specific complaint about the failure to provide terms of reference. Unlike consultants, Bank staff members, such as the Applicant, are not always provided terms of reference for their positions; but this does not mean they are provided no guidance on their expected deliverables. The staff member's performance is evaluated against deliverables that are established at the outset of the review period following a meeting with his or her supervisor.

42. The Applicant's First and Second OPEs were carried out during her probationary period and were, accordingly, governed by Staff Rule 4.02, paragraph 2.02, which provides in relevant part that:

During the probationary period, the Manager or Designated Supervisor shall: (a) as soon as practicable, meet with the staff member to establish the staff member's work program; (b) at the end of each six months of the probationary period, or earlier, share with the staff member a written assessment of the staff member's suitability and progress based on achievement of the work program, technical qualifications and professional behaviors ....

43. The Applicant's OPEs all reflect a set of criteria against which her performance would be adjudged. In her First OPE, for example, the Applicant's performance was assessed against tasks relating to (i) Municipal Service Project supervision; (ii) "ARIP Project" supervision; (iii) Avian Influenza Project supervision; and (iv) learning World Bank operations. In none of her OPEs did the Applicant give any indication of a lack of clarity over what tasks she was expected to undertake, and, by all accounts, the Applicant was considered to be a good performer.

44. Even with the changes to the Country Partnership Strategy, the Applicant's functions remained the same for the period of her tenure. The Applicant was never

assessed on the basis of these changed priorities. She was consistently rated positively with respect to the functions she was hired to undertake, and her contract of employment was not terminated; it expired on its own terms.

45. The changing demands of the Bank require that it adapt to meet evolving needs and circumstances; the Bank is free to make changes to its staffing needs in accordance with the Staff Rules. The Bank explains that it foresaw a diminished need for the Applicant's expertise *after* her two-year appointment. As the Tribunal has often stated, its role is not to re-examine the substance of the Bank's decision with a view to substituting the Tribunal's decision for the Bank's; "the duty of the Tribunal is to assess the Bank's decision – as to both its content and the manner in which it has been made – to determine whether it constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure." (*de Raet*, Decision No. 85 [1989], para. 56). Here too, the Tribunal will not review the wisdom of the Bank's assessment of its future staffing needs. Its review is confined to whether the Bank abused its discretion in arriving at its decision that it would not extend the Applicant's contract of employment or provide her with a new one.

46. The Tribunal finds, as it did in *Visser*, that the Bank's failure to provide the Applicant with the terms of reference she sought had no bearing on its decision not to offer her a new contract or extend her current one.

47. As an experienced engineer hired to assist in the supervision of projects, the Applicant hardly needed to be given a catalogue of tasks for individual field visits and the review of work ongoing on individual projects. Her manager's suggestion that it would be useful for her to use "broader operational skills" to engage in policy dialogue and

communications with the Turkish Government, obviously depended on the issues that may have arisen and could not be described in detail in advance. The Bank has provided a detailed description of the Applicant's tasks and team environment. It points out that all of the Applicant's managers sought to involve the Applicant in every project available and suitable for her skills. This account is plausible, since managers have a budgetary incentive to use available personnel; and this account has not been contradicted by the Applicant. Indeed, the Applicant does not contest the Bank's account of her manager successfully asking a team leader to reconsider the Applicant's exclusion from a project due to her lack of specialized seismic engineering skills. More generally, the Applicant's accusations of unfairness are not bolstered by her complaint that she did not enjoy sympathetic support from her managers, which ring hollow when one considers the various ways in which she was encouraged, e.g. by approving her requests to participate in workshops and training. (In fact the Bank has furnished uncontested proof that she was given approval for training on 18 occasions totaling more than 25 days, which is not inconsiderable for someone on a two-year contract.)

#### OTHER OBSERVATIONS

48. The Tribunal considers that some further observations are warranted. First, there is no basis to criticize the Bank for not having provided the Applicant with an unequivocal statement indicating whether or not she had been confirmed following the end of her initial one-year probationary period, given that the Applicant's manager wrote to her on 29 April 2008 as follows: "Your probation is not extended and you are confirmed." Indeed, it is not in dispute that the Applicant continued in her position, following her probationary period, until the contract expired on its own terms. Second,

the Applicant complains about her supervisor's reference to her, in her second OPE, as a "water and sanitation engineer" when she had been hired as an "energy and infrastructure engineer." In fact, the Applicant was given the title "Infrastructure Engineer" from the start of her appointment, and raised no issue that this was narrower than "energy and infrastructure engineer." "Infrastructure" includes "water and sanitation." The Applicant's complaint is, however, that this error did not give her credit for the full breadth of her capacities. Yet an incidental reference to what her supervisor thought the Applicant was doing can hardly rise to the level of an abuse, as the Applicant would have it; nor is it clear that the description was factually inaccurate. Third, it is difficult to find any basis to claim that the Bank is legally bound to give fixed-term appointees specifically organized opportunities to demonstrate their suitability for renewal of appointment.

#### DECISION

For the reasons given above, the Tribunal dismisses the Application.

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Judge Ssekandi appends a dissenting opinion to the judgment.

/S/ Jan Paulsson

Jan Paulsson  
President

/S/ Olufemi Elias

Olufemi Elias  
Executive Secretary

At Paris, France, 29 October 2010

## DISSENTING OPINION OF JUDGE SSEKANDI

1. I agree with the conclusions of the majority on the preliminary objections but with regret and for the reasons more particularly elaborated in this opinion, I do not accept that the Application should be dismissed entirely on the merits.

2. The Applicant's primary contention is that the Bank abused its discretion when it decided not to extend her contract of employment beyond the two year period which, by terms of the Letter of Appointment, was renewable. She also claims that she was promised that the Bank would extend her contract of employment on the condition that she "broadens her contribution." The Applicant claims that she was treated unfairly, as the Bank failed to provide her with terms of reference for her position, as a result of which her performance was evaluated arbitrarily, as the Bank denied her a genuine opportunity to perform according to a well-defined work plan and was given impossible targets to improve her performance. The Applicant also contends that the Bank provided different reasons for its failure to renew her contract. While in her OPEs she was given the impression that if she broadened her contributions she could be considered for an extension of contract, the decision not to extend the contract was taken almost simultaneously with the completion of the OPE and she was never told about the change of the Bank program in Turkey, which the Bank now relies on for its contested decision. The Applicant thus challenges the veracity of the reasons given by the Sector Director for the Bank's decision not to extend her contract.

3. In response, the Bank argues that its decision not to renew the Applicant's Term appointment was neither an abuse of discretion nor part of a pattern of discriminatory practices. The Bank contends that the Applicant accepted an offer of employment for a

two-year period, which bore no guarantees of an extension and she was never given any assurances or promises of an extension. The Bank submits that the decision not to renew the Applicant's appointment was based on legitimate business needs, which had been clearly communicated to her from an early stage.

4. The Staff Rules provide that a Term appointment may be offered for a minimum of one year or a maximum of five years. In this case, the job announcement, on the basis of which the Applicant applied for the job and was hired, provided that the appointment would be a "1 or 2 year term appointment with the possibility of extension." The Applicant was offered two years subject to a probationary period of one year. Under Staff Rule 2.02, the Manager or Supervisor is required to establish the staff member's work program "as soon as practicable" after appointment; and after six months to make a written assessment of the staff member's suitability and progress based on his or her achievement of the work program, technical qualifications and professional behaviors. At the end of the probationary period, the manager is required to complete a performance review consistent with the rules and to provide the staff member with "written notice of confirmation."

5. The Applicant has complained that she was not given any terms of reference on her appointment and her repeated requests were just met with promises that they would be provided, but none materialized. She has also complained that while promises were made to provide her a mentor, the official identified for this purpose was not on site and did not assume duty until her OPEs were completed.

6. As regards the terms of reference, there is evidence from a memorandum of 29 March 2007 that one of the officials in the Country Office wrote to the Country Manager

stating: “Zerrin came to see me today raising her concerns about not having received a copy of her [Terms of Reference]. She is beginning to feel a little out on a limb as she is not sure what it is she is exactly expected to do and on which projects she is supposed to be working.” In May 2007 her supervisor wrote to her: “I have prepared some draft TOR for you and am discussing it with them. We will sort things out, please don’t worry.” In June 2007, her supervisor sent her an email promising to talk some more and ended the email by stating: “I am confident that with Lee you will finalize your work program. It is likely to be something along the lines of: 15 weeks for municipal services; 6 weeks for Istanbul municipal; 6 weeks for Istanbul seismic risk; 6 weeks for renewable energy; 6 weeks for ARIP.”

7. The Staff Rules, as pointed out above, require that a work program be developed and provided to the staff member on assuming duty. Such work program is important and forms the basis of the periodic assessment of a staff member’s performance under the Staff Rules. There is no evidence here that at any stage during the contract a written work program was developed and provided to the Applicant. The draft outline which was made by her supervisor and not finalized was not, as indeed it turned out, a sufficient basis for future assessment of her work.

8. While a mere absence of a work program would be irrelevant where a fixed-term contract expires without being renewed on its terms, the circumstances in this case show that by virtue of the nature of the contract extended to the Applicant by the Bank, the Applicant’s performance is an issue in assessing the validity of the decision not to extend the contract. The Applicant was offered a renewable Term appointment and not a Short-Term Consultant contract. The Staff Rules require that staff on renewable Term



appointments be subject to periodic evaluation to assess their performance for future career prospects. In fact, by the terms of the Applicant's contract, she was subject to evaluation at least for purposes of confirmation after the period of probation and the Staff Rules require that an OPE also be prepared after the first six months. In such circumstances, the Tribunal is entitled to examine the non-renewal decision to ensure that the staff member was fairly treated, as required by Bank Principles of Staff Employment and the Staff Rules, and assure itself that the decision taken was not an abuse of discretion.

9. The Applicant was offered a renewable Term appointment without any suggestion that it was dependent on the approval of a proposed expansion of the Country Program. The Bank reserved the right to extend the appointment upon expiry of the term and although the letter of appointment stated that the Bank was not bound to extend the appointment "even if your performance is outstanding," it added that "it may do so if agreed in writing at the time of the expiration of appointment." In deciding to extend the appointment the Bank relies, *inter alia*, on the assessment of the staff member's performance as set out in the Staff Rules. For this reason, the staff member is equally entitled to expect that the assessment would be carried out in a fair manner, in accordance with the Staff Rules.

10. Furthermore, the Staff Rules require that, at the end of the probationary period, a staff member shall be given written notice of confirmation of her appointment. In the present case, while the staff member was evaluated after the first six-month period and at the end of the one year probationary period, as required by the Staff Rules, there is no evidence that she was given the written notice of confirmation. Indeed, this very issue

became part of the misunderstanding with her Sector Manager when, soon after completing the annual interim OPE, in April 2008, the Manager commenced preparations of yet another OPE covering the coming year, from 12 March 2008 to 11 March 2009. It is only when she asked if the OPE was needed because she had not been confirmed, that she was told rather casually that she had indeed been confirmed. The question then remains, if in fact she had been confirmed, then why was a new OPE necessary so soon after the annual OPE had been finalized. According to the rules, a written confirmation is required and should have accompanied the annual OPE with an unequivocal statement indicating whether or not the Applicant had or had not been confirmed and if not whether the probationary period was being extended and on what terms. This was apparently not done.

11. The purpose of the Staff Rule requiring that a staff member be assessed periodically, particularly during and after the end of the probationary period, is to ensure that the staff member is provided, on a regular basis, adequate assessment of her performance so as to have the chance to adjust accordingly and meet the required standards for further employment. In this case, the failure to clearly define her duties at the beginning of her contract beyond the general description of her job in the job announcement, and be provided a clear statement of her confirmation and, if not, the reasons for not being confirmed upon completion of her probationary period, was prejudicial to the Applicant. This is even more so since there was no evaluation of her performance for the remainder of her contract after the one year probationary period ended. Thus on paper, the Applicant's performance was satisfactory since she was confirmed after the first year of probation but her contract was not renewed. It is noted,

however, that comments on her first and second OPEs about her performance and future career prospects were ambiguous, to say the least, praising her performance on the one hand and informing her that her ability to broaden her contribution “would be an important factor in the decision on whether to extend her fixed term contract in March 2009” when, for all intents and purposes, a decision not to renew her contract had already been made. The record shows that the Applicant’s second OPE was concluded in April 2008 and, within a matter of days, discussions with her on a new OPE were initiated, only for her to be told in July 2008, on completion of the exercise, that her contract would not be renewed. In addition, presumably to strengthen the grounds for non-renewal, her supervisor wrongly described her as a “water and sanitation engineer,” which the Applicant strongly disputed. In fact, this was not consistent with her job title or the functions against which she had been hired. The vacancy announcement stated that the Bank wanted an “Energy and Infrastructure Engineer” to be a key member of the Bank’s energy and infrastructure program in Turkey: “S/he is expected to support the supervision of the energy and infrastructure sector operations under implementation, as well as the ongoing policy dialogue on energy and infrastructure sector reform.” The Applicant was then hired with the title “Infrastructure Engineer.” There is no evidence that she was informed then that her work would depend on the expansion of the municipal sector program.

12. The Applicant’s OPEs seem to suggest that the Applicant would be given opportunities to demonstrate her abilities, beyond water and sanitation, but no specific work program was outlined for her and she complained that she was shut out of many assignments. Barely a month after signing the annual interim OPE, in April 2008, the

supervisor commenced to prepare the final OPE for the end of the contract which was discussed with the Applicant in April and June and signed in July 2008, at which time she was advised that her contract would not be renewed. No doubt the Applicant was confused by the turn of events. In one e-mail message in April 2008, she wondered whether the purpose of the Third OPE meant that she would not be confirmed, but she was told that she had been confirmed, and the question was whether her contract would be extended beyond March 2009. The procedure followed in her case was clearly not in accordance with the requirements of the Staff Rules. (*See, in particular, Staff Rule 5.03, paragraph 2.02(c).*)

13. The reasons advanced for the non-renewal of the Applicant's contract were simply that the Country Program had changed. The letter from the Country Manager to the Applicant of 2 September 2008 stated:

The decision [not to renew the contract] is based primarily on a change in the business needs of the ECSSD Turkey program. The work program and anticipated staffing needs have evolved significantly since the time of your recruitment. At that time we expected an expanded work program in the municipal sector especially in water supply and sanitation. This, however, has not materialized. Furthermore, the intention in hiring a civil engineer was, in part, to be in a position to undertake especially intensive supervision of works during the first two years of the municipal services project. This project is now on track and continued supervision at the same high level of intensity is not required.

14. In the Applicant's case, the decision not to extend her contract was made in July 2008, almost nine months before her contract was to expire, on conclusion of the Third OPE. However, the Second OPE provided to the Applicant in April 2008 held out the hope for the Applicant that, if she was able to adjust and expand the scope of her work beyond water and sanitation, she could be extended when her contract expired.

15. The question arises, then, at what stage did the Bank know that the Turkey program had changed, and, even then, when did the Bank find out that the Applicant was unable to make the necessary adjustments to carry out work beyond water and sanitation engineering. These questions remain unanswered given that the decision not to renew her contract was taken almost nine months before the end of her contract and no assessment was made of her performance at the end of the contract. Paragraph 3.02(a) of Staff Rule 5.03 provides that “If a staff member’s performance is not satisfactory, the Manager or Designated Supervisor shall provide the staff member a period to improve performance in the staff member’s position,” and if there are good prospects of satisfactory performance, to consider a reassignment to another position. This was clearly not done in respect of the Applicant.

16. The Respondent insists that, according to the terms of the Applicant’s contract of employment, the Bank had no obligation to extend the appointment or to offer a new appointment, even if her performance “is outstanding.” It is worth noting, however, that the wording of the contract of appointment left the Bank ample discretion to extend the contract upon its expiry or to offer her a new appointment. Paragraph 10 of the Letter of Appointment states, in part:

Your appointment will terminate at the end of this 2-year period unless it is extended or a new appointment is made. The World Bank Group has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if agreed in writing at the time of the expiration of appointment.

The exercise of this discretion must obviously be based on valid grounds.

17. The Bank states that the decision not to renew the Applicant’s contract was due to changes in the Country Program, in January 2008, which necessitated the elimination of the Applicant’s functions as a civil engineer. However, on the basis of the evidence, this

decision and the reasons for the non-renewal were never made clear to the Applicant, until July 2008. It would also appear that at the same time as the Applicant's career prospects were being decided to her detriment, her supervisor was recruiting another civil engineer, more junior to her, to work in the same Unit. The reasons advanced by the Bank for this decision - that the new person was working on disaster relief - do not seem persuasive in the circumstances. The Applicant as a civil engineer was not limited to being a "water and sanitation" engineer as her supervisor wished to characterize her capabilities and she was not given ample opportunity to demonstrate her ability to assume additional functions.

#### *Conclusion*

18. In reviewing this case, it is worth noting that the Bank has adopted a new policy pursuant to which new staff members are now normally recruited on a fixed-term basis, and open-ended appointments are now exceptional. The jurisprudence of the Tribunal based on the distinction between open-ended appointments and fixed-term appointments do not any longer provide a sufficient guide in dealing with the implications of this new policy on recruitment. The renewable Term appointment which was offered to the Applicant, as described in the vacancy announcement, is distinguishable from ordinary fixed-term contracts, ordinarily used for posts of a short-term duration.

19. The Staff Rules provide an elaborate process for evaluation of staff on renewable Term appointments, essentially to give the Bank the opportunity to identify performing staff, whose professional competence the Bank values to retain in the interest of the institution. Equally, the process would immediately assist to identify non-performing staff members that may be separated at the end of the term without being restrained

solely by the nature of the appointment they hold. In doing all this, however, the Bank retained the essential principles enshrined in Principle 2.1 of the Bank's Principles of Staff Employment, through the evaluation process provided for in the Staff Rules. Short of a general retrenchment in the interest of the efficient administration of the Bank, staff members recruited on renewable Term appointments are entitled to be given a fair and objective evaluation of their professional abilities and suitability for continued employment.

20. In this case, the Applicant was given an expectation that her contract of employment could be extended when she was advised, in her Second OPE, that "her ability to broaden her contribution will be an important factor in the decision on whether to extend her fixed term contract in March 2009." However, she was not given the chance to do so, given that just over two months later, on 20 June 2008, she was told that the Bank's position had changed and her contract would not be extended after all.

21. It is my considered opinion, therefore, that the Bank had the obligation, in the circumstances of this case, to provide the Applicant with the means to demonstrate her suitability for continued employment and to assess her professional skills fairly and objectively against other similarly situated staff members.

22. I would thus allow the Application but, in lieu of rescission of the decision of non-renewal, award damages to the Applicant.

/S/ Francis M. Ssekandi  
Francis Ssekandi  
Judge

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Paris, France, 29 October 2010