

Decision No. 299

Bashkim Kopliku,  
Applicant

v.

International Finance Corporation,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on December 26, 2002, by Bashkim Kopliku against the International Finance Corporation (IFC). The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Francisco Orrego Vicuña (President of the Tribunal) as President, Robert A. Gorman and Jan Paulsson, Judges. The usual exchange of pleadings took place. The case was listed on May 29, 2003.

2. The Applicant challenges the Respondent's decision not to extend his Short-Term Consultancy contract with the IFC. He asserts that his performance was of high quality, and that the Respondent had given him assurances that, under such circumstances, his contract would be extended beyond its explicit termination date of June 2, 2001. He seeks reinstatement to his previous position or a comparable one, compensation for his time lost from work with the IFC, four years of salary in the event the Respondent chooses not to reinstate him, and costs. The Respondent, on the other hand, contends that no assurances were given to extend his Short-Term contract, that on the contrary the Applicant was explicitly told that his contract would end on June 2, 2001 as expressly provided therein, and that his contract of employment and terms of appointment have in no way been violated.

3. The Applicant, a former Deputy Prime Minister of Albania, was given a two-year appointment to serve the IFC in Albania as a Local Long-Term Consultant starting on April 21, 1998. The contract was extended until December 31, 2000. During this time, the Applicant was transferred to IFC, Small and Medium Enterprise Department (CSM), and worked with the newly created IFC, Southeast Europe and Enterprise Department (SEED). In September 2000, his work in SEED began to be supervised by the General Manager and the Investment Officer within that department. On November 30, 2000, the Applicant wrote to the General Manager requesting that she consider employing him under a "permanent" or Long-Term Regular contract.

4. Soon after, on December 6, 2000, the General Manager sent an e-mail to an IFC official in Washington, DC – with a copy to the Applicant – stating among other things that she planned at that time to issue the Applicant only a Short-Term contract "so that we can use his services as needed." On December 8, 2000, the General Manager sent an e-mail to the Applicant informing him that his new contract would be for a period of only 90 working days, "which can be extended upon mutual agreement, need and performance." On December 18, after having discussed his terms of reference (TOR) for his new Short-Term contract with the Investment Officer, the Applicant e-mailed the General Manager that "[w]hile I strongly disagree with the reasons behind this short-term contract, I accept it." Although the Applicant expressed his interest in a longer term of employment to follow upon the Short-Term contract, the General Manager proffered only the Short-Term contract, and stated that if the Applicant met the specific targets in his TOR, "we may wish to continue to use your services, but on an ad hoc, Short Term contract basis. . . . I do think that you can add value to the team based on your specific skills and experience, but we don't require that on a full time basis over the long term."

5. The Applicant signed his new Short-Term Consultancy contract on December 29, 2000. It was for 90 business days during the period from January 2, 2001 through June 2, 2001.

6. In response to a request from the Applicant in May 2001 that he might continue to work for SEED, the General Manager on May 19 wrote an e-mail in which she reiterated that SEED required “additional skills” beyond those possessed by the Applicant: “[B]ased on [the Department’s] needs, your skill set and past performance . . . SEED will not need you on a day to day basis and thus I do not plan to extend your current contract. Should we need your particular expertise, we will contact you and offer ad hoc contracts for specific assignments.” On May 25, 2001, the Applicant wrote to the General Manager, affirming that he “had not planned to ask you to extend my existing contract,” but seeking an explanation nonetheless as to why she thought him to lack the skill mix needed by SEED. The General Manager, the same day, wrote to the Applicant and stated that, although no formal evaluation of his performance was required “[s]ince you are not on staff,” she would review his performance. She acknowledged his “strong analytical skills,” but she also pointed out several specific respects in which the Applicant’s performance was deficient, which among other things resulted in the need for excessive supervision. She concluded that “it is not in SEED’s interest to continue a contract with you.” The Applicant responded to her at length, defending his skills and pointing out that the General Manager had never visited Albania to observe his work directly and that the Investment Officer had never informed him that he was falling short of satisfying his TOR.

7. The General Manager e-mailed the Applicant on May 30 to state that he had been provided with sufficient direction, and she reiterated that a “short term contract has no implicit or explicit obligation for IFC to continue to employ the consultant. Such is the case with your contract.” On June 2, 2001, the Applicant’s contract ended by its own terms.

8. The Applicant’s principal contention is that he is entitled – by virtue of statements made by his supervisors and his good job performance – to the renewal or extension of his contract as a Short-Term Consultant. He asserts, moreover, that the General Manager of SEED and the Investment Officer, his two supervisors, were biased against him because of his superior knowledge of economics, business and commercial practices in his home country of Albania. He also contends that he satisfied the conditions set forth in his TOR and that he was not given appropriate performance evaluations. The Respondent denies all of these allegations and urges that the application be dismissed.

9. The legal principles that govern this case have been well established in the jurisprudence of the Tribunal. A staff member appointed to serve for a fixed period is not entitled, absent unusual circumstances, to the extension or renewal of that appointment. Staff Rule 7.01, para. 3.01, states: “A staff member’s appointment shall expire on the completion of an appointment for a definite term, as specified in the staff member’s letter of appointment, or as otherwise amended.” As the Tribunal has held before, in *Mr. X*, Decision No. 16 [1984], para. 35: “A fixed-term contract is just what the expression says: it is a contract for a fixed period of time.” Accordingly, the Bank need not provide reasons for the non-reappointment of a person serving for a temporary and fixed term. “Absent unusual circumstances, the individual should be fully aware of the reason why his or her appointment does not continue beyond the stipulated date: because the parties so agreed and have stipulated to that effect in the employment contract.” *McKinney*, Decision No. 187 [1998], para. 10. Even so, the decision not to extend a Fixed-Term contract, like all decisions by the Bank, must be reached fairly and not in an arbitrary manner. As the Tribunal held in *Barnes*, Decision No. 176 [1997], para. 10: “[T]he 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.” It may not be based, as the Tribunal has stated as an example, “on considerations unrelated to the functioning of the institution, such as racial discrimination.” *Carter*, Decision No. 175 [1997], para. 15.

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.”

11. The principal question for the Tribunal, therefore, is whether the Respondent abused its discretion, or contravened any contractual assurances, when it decided not to extend the Applicant's Consultancy appointment at the end of its term on June 2, 2001. For the reasons given below, the Tribunal concludes that the rights of the Applicant have not been violated.

12. The Applicant points to no language or conduct that reasonably supports his contention that the IFC promised to extend the contract under which he functioned as a Short-Term Consultant between January 2, 2001 and June 2, 2001. The record shows no more than that the Applicant, on a few occasions, made plain to the General Manager that he wished or hoped for the contract extension, but that the General Manager, at least as often, stated explicitly and without ambiguity that the Applicant could not expect to get such an extension. What is particularly compelling is that the Applicant himself, with comparable clarity, is on the record with statements that demonstrate without doubt that he fully understood the position of the Respondent in this respect and the imminent termination of his Consultancy service.

13. The key statements by the General Manager were made both during the term of the 1998-2000 Long-Term Consultant contract and also during the term of the Short-Term contract covering the period January 2, 2001 to June 2, 2001.

14. Thus, as the earlier of the two contracts was coming to an end, the General Manager on December 6, 2000, as noted above, wrote to a colleague at IFC Headquarters, with a copy to the Applicant: “We do not plan to issue a term contract to Bashkim at this time. I discussed this with . . . [him] today. We would like to offer him a short term contract so that we can use his services as needed. We plan to use his services full time for the next three months (Jan-March) then once again *review the level of services required from him*” (emphasis added). Two days later, the General Manager wrote to the Applicant that “I propose a 90 working day contract which can be extended upon *mutual* agreement, need and performance” (emphasis added). On December 18, the Applicant wrote: “While I strongly disagree with the reasons behind this short-term contract, *I accept it. . . . I hope* that during the ‘90 business days’ that I will work with SEED, with this short-term assignment, you and the management of the SEED will appreciate my work and my skills, and you will be able to offer me a longer term employment” (emphasis added). On December 20, 2000, the General Manager wrote back: “[The Investment Officer] has set some very specific targets for your performance, if you meet them *we may wish* to continue to use your services, *but on an ad hoc, short term contract basis. . . .* I do think that you can add value to the team based on your specific skills and experience, but we don’t require that on a full time basis over the long term” (emphasis added).

15. Then, when the Short-Term Consultancy contract was proffered in late December 2000, it expressly provided: “We expect to need your services for about 90 business days during the period *from 01/02/2001 to 06/02/2001* in Tirana-Durres, Albania. . . . *Your appointment will terminate at the end of the period unless it is extended or a new appointment is made.* IFC will make every effort to give you as much notice as possible of any such change” (emphasis added). On May 17, 2001, the Applicant in an e-mail to the Investment Officer wrote, in part: “My current short term consultants [sic] contract with SEED *expires on 06/02/2001. I would like to continue* to work with SEED and with you. Please express to me your attitude towards this *wish* of mine” (emphasis added).

16. The Tribunal finds that the Respondent gave the Applicant no assurance or commitment, even a conditional one, that his Short-Term Consultancy contract with the IFC would be renewed. It is true here, as was true in earlier Tribunal cases, that “[n]othing whatsoever, prior to the date of expiry of his appointment . . . , may be reasonably understood as a promise of renewal, and no conduct of the Bank can be validly invoked as creating any kind of expectation in the mind of the Applicant that his contract would be renewed upon its date of expiry.” *Degiacomi*, Decision No. 213 [1999], para. 28. “[T]here is nothing in the facts of this case to support a finding that a promise was made to the Applicant about a future contract or that any more was offered to him than the possibility of a further contract. The Bank retained a discretion whether or not to grant the Applicant a further

contract.” *Visser*, Decision No. 217 [2000], para. 35.

17. Yet, the Applicant asserts that his non-renewal was indeed an abuse of discretion, being arbitrary and based on personal bias on the part of the General Manager and the Investment Officer. When the Applicant, on May 29, 2001, wrote to the General Manager to protest that his skills were strong and were needed in SEED, she responded on May 30 with an e-mail confirming her earlier appraisal, on May 25, of a number of perceived substantial weaknesses in the Applicant’s performance during his period of service with the IFC. On June 1, the day before his contract was to end, the Applicant sent an e-mail to the Executive Vice President, IFC, and to the “WB, IFC and SEED people I had the pleasure to work or to be in training with,” in which he went on at length about “being unjustly fired . . . a clear revenge for daring to be too good and too honest.”

18. Although by June 2001, the Applicant had clearly come to the conclusion that he was being unjustly dismissed, and that his supervisors had done so because of his superior intelligence and skills, there is no evidence of any kind in the record to support his claim of bias or of abuse of discretion. The General Manager, after consultation with the Investment Officer, concluded that the Applicant’s skills were inadequate to the developing needs of SEED, and that his Short-Term Consultancy should therefore not be extended or renewed. Although the record appears to lend considerable support to the Respondent’s criticisms of the Applicant’s performance, those criticisms are for the most part of no relevance. The record shows that the Applicant’s term of service was simply allowed to come to an end according to its own terms, for reasons relating to the efficient administration of the institution.

19. The Tribunal has given full consideration to the Applicant’s other contentions, both factual and legal, and concludes that they are either unfounded or immaterial.

## **Decision**

For the above reasons, the Tribunal decides to dismiss the application.

/S/ Francisco Orrego Vicuña  
Francisco Orrego Vicuña  
President

/S/ Nassib G. Ziadé  
Nassib G. Ziadé  
Executive Secretary

At Paris, France, July 19, 2003