



The Bench

Newsletter of the World Bank Administrative Tribunal

Women Take Top Leadership Roles at Administrative Tribunal

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For the first time since its 1980 creation, the Tribunal’s president and the two vice presidents are women. Mahnoush H. Arsanjani, the Administrative Tribunal’s new president, brings with her more than three decades of international law experience in the United Nations Office of Legal Affairs.

Judge Arsanjani, from Iran, is only the second female elected to lead the Tribunal. Argentina’s Mónica Pinto served as president from 2016 to 2018, culminating a decade of service during which the Tribunal handed down notable rulings in cases addressing harassment, equal pay, discrimination, corruption, and whistleblowing.

“My hope is that ... the Tribunal will keep up with the progress that international law has been making in protecting human rights and combating all forms of discrimination, including racial, religious, ethnic, gender,” said Judge Arsanjani.

The new makeup of the Tribunal leadership includes Janice Bellace from the United States, who has joined the seven-member Tribunal’s leadership as a vice president. Marielle Cohen-Branche from France continues her current service as a vice president.

Judge Bellace is a professor of legal studies and business ethics and a professor of management in The Wharton School at the University of Pennsylvania. She recently stepped down from the presidency of the International Society for Labour and Social Security Law. Judge Cohen-Branche served at the French Cour de Cassation from 2003 to 2012 and was a member of The World Bank’s Sanctions Board from 2007 to 2012. She is currently ombudsman for the French Stock Exchange Regulator.

Much of Judge Arsanjani’s career in international law unfolded at the United Nations, where she was director of the Codification Division, secretary to the United Nations International Law Commission, and secretary of the Committee of the Whole of the Rome Conference on the Establishment of the

International Criminal Court. She was a member of the Bahrain Independent Commission of Enquiry, which was established in 2011 to report on the Bahraini uprising. She also was a special consultant to the panel that drafted the Charter of the International Energy Forum.

“As a teenager, I was attracted to politics as a means for bringing about social change. Studying law seemed to be the road to that end,” said Judge Arsanjani. “As a young adult, I realized that the focus for meaningful change had to be global, and international law was the indispensable tool for securing minimum order and human dignity.”

Judge Arsanjani has written extensively on international law topics, including treaty interpretation and the rising influence of expert bodies, international courts, and nongovernmental entities on international law-making. She has also examined the conflicting pressures faced by international criminal courts. She was the rapporteur of the Institut de Droit International Law on “Are there Limits to the Dynamic Interpretation of the Constitution and Statutes of International Organizations by the Internal Organs of such Organizations (with particular reference to the UN system)?”

When not at work, Judge Arsanjani might be found at a movie, tucked into a good science fiction novel or murder mystery, or roaming through a home goods store.

“I can spend hours in a good kitchen-utensil shop,” she said, “and usually can’t leave without a purchase.”

The Tribunal’s outgoing president, Andrew Burgess of Barbados, will continue to serve as a judge for the remainder of his term. He was instrumental in taking the Tribunal’s work online during the COVID-19 pandemic, marking the first time hearings were held virtually with judges participating from locations around the world.



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Voluntary Separation in IFC Reorganization Was Not Handled with Transparency, Tribunal Concludes

The voluntary separation process during an IFC reorganization was marked by irregularities, the Administrative Tribunal found in a trio of cases brought by employees whose applications for voluntary separation were rejected.

In nearly identical decisions in two cases—*GH v. IFC* and *GI v. IFC*— applicants contested the rejection of their requests for voluntary separation and asked the Tribunal to consider whether there were procedural flaws in the IFC’s determination of which employees were granted voluntary separation. The Tribunal found a lack of transparency and strongly criticized the IFC for failing to adequately document the selection criteria, process, and decisions.

“The Tribunal understands that it could be burdensome to require detailed documentation for every action of management. Still, without any relevant contemporaneous documentation, however minimal, it is difficult to ascertain whether managerial discretion was exercised fairly and transparently,” the judges wrote.

The IFC reorganization allowed staff to apply for voluntary separation based on the “business needs” of each Vice Presidential Unit (VPU). The applicants maintained that their VPU did not communicate its business needs nor make its selection criteria available in a timely fashion.

VPU Selection Committee members told the Peer Review Services (PRS) that they met to discuss the candidates for voluntary separation but did not finalize selection criteria at that time. The Tribunal ruling found that the delay in finalizing the criteria opened the door to the perception that the guidelines were tailored around specific candidates.

In addition, the judges questioned the IFC chief executive officer’s review of voluntary separation applications, saying the Bank’s best practices required an explanation given that a decision-making delegation had been created to handle the process.

The judges were also “deeply concerned” by the IFC’s statement that selection criteria were purposely not communicated so as to prevent staff from “argu[ing] their eligibility.” Stating further, “A decision to use overly broad selection criteria for the purpose of shortening the management decision-making process or shielding management from having to deal with staff competition for positions, coupled with a decision to not keep records that show how the selection criteria were applied, demonstrates a regrettable want of procedural fairness,” the Tribunal ruled. “Attempting to insulate managerial decisions from review is unacceptable.”

The Tribunal said both applicants failed to prove that the irregularities caused the rejection of their voluntary separation requests. However, because due process was not observed, the IFC was ordered to pay the applicants’ legal fees, costs, and six months’ salary, minus any amount they had already received through the PRS process.

“Attempting to insulate managerial decisions from review is unacceptable.”
- *GH*, Decision No. 659

Similar issues of fairness and transparency were raised in a third case involving a different VPU but the same reorganization. The applicant in *GG v. IFC*, cited process irregularities in the rejection of his request for voluntary separation. He contended that his mental health struggles were also grounds for making his position redundant.

In contrast with the *GH* and *GI* cases, the Tribunal found that the VPU in this case clearly communicated both its business needs and voluntary separation criteria, including through announcements, emails, FAQs, the Operations Workforce Planning website, live chats with IFC leadership, a recorded town hall meeting, and a human resources criteria checklist.

The applicant had been assigned to Vietnam but was allowed to telecommute from Australia. He maintained that he should be granted voluntary separation because his ongoing mental health care would be jeopardized by a scheduled relocation to Thailand. The Tribunal said the staff rules do not make a medical condition grounds for voluntary separation or redundancy.

Still, there were transparency problems, the Tribunal noted, again criticizing the IFC for a lack of documentation. The judges wrote that the large number of candidates involved in this unit’s downsizing increased the potential for casual reviews and heightened the importance of keeping records. The judges called contemporaneous documents “generally more reliable records of the decision-making process” because “memories fade and their belated explanations may be subject to reinterpretation in light of subsequent knowledge or facts.” The Tribunal ordered the IFC to pay the applicant two months’ salary and legal fees.

Failure to Cooperate with Internal Investigation Constituted Misconduct

The “particularly egregious” failure of a high-level World Bank advisor to cooperate with an administrative investigation—by stonewalling investigators and deleting data on a Bank-issued cell phone—constituted misconduct, the Administrative Tribunal ruled in *GK v. World Bank Group*. The case marked the first time the Tribunal looked at noncooperation as the sole form of misconduct.

“Administrative investigations into misconduct depend largely on staff cooperation, as the Bank has no power to issue subpoenas and does not enjoy the same range of investigative tools available to other investigative bodies. While the Bank has a duty to conduct procedurally fair investigations and to respect the right to the presumption of innocence, staff members also have a duty to the Bank, which is to cooperate with such investigations fully and truthfully,” the Tribunal found.

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- *GK*, Decision No. 665

The applicant in the case, an advisor to an executive director at the Bank, had challenged a misconduct finding that came out of an investigation into his alleged ties to a company in Africa. The investigation by the Integrity Vice Presidency was sparked by an anonymous complaint that the advisor enriched himself through consultancy contracts with the company. The advisor tampered with and deleted evidence relevant to INT’s investigation despite warnings from INT that doing so may result in a misconduct finding in and of itself.

The applicant’s employment with the Bank was terminated on January 15, 2021, as a result of the inquiry. He was barred from future work with the Bank, banned from all Bank Group properties, and a written censure was added to his personnel record.

The applicant had claimed he was denied a presumption of innocence when he failed to help with the investigation and that he was not guilty of misconduct since the inquiry was unable to substantiate the allegations against him. The Tribunal noted that, whereas every staff member enjoys the presumption of innocence, they are nevertheless obliged not to frustrate or deliberately impede a legitimate investigation into misconduct. Accordingly, the Tribunal found that the conclusion that the applicant committed misconduct in the form of noncooperation did not violate the applicant’s due process rights.

Upcoming Tribunal Session

The Tribunal’s next session will begin on May 30, 2022. Decisions will be posted on the Judgments and Orders tab of the Tribunal’s [website](#).

Essential Features of the Tribunal

- Judicial body established by the Board of Governors
- Composed of seven judges appointed by the Executive Directors
- Functions independently of management of the Bank Group
- Does not fall within any administrative unit of the Bank and is not part of the Internal Justice Services (IJS)
- The Executive Secretary is answerable solely to the Tribunal Judges, specifically, to the President of the Tribunal
- Tribunal judgments are final, binding, and public

Judgments Address Misattribution of STC Work, Workers' Compensation, Shortlisting, Retaliation, Among Other Issues

The World Bank Administrative Tribunal heard 13 cases in its November 2021 session. One case was withdrawn by the parties. Three cases involved preliminary objections, *EO (No. 3) v. IFC*, *GJ v. IBRD*, and *GL v. IBRD*. In *GJ*, the Bank's preliminary objections were upheld, and the application was dismissed. In *GL* and *EO (No. 3)*, the preliminary objections were partially and fully dismissed, respectively, and the cases will proceed to the merits phase during the Tribunal's next session.

In *de Vletter (No. 2)*, the Tribunal considered a claim of misattribution and found that the Bank's updated attribution to the publication in question fairly and accurately reflected the applicant's contributions, but the Tribunal also noted that the continued internal availability of the incorrect document caused the applicant, an STC, ongoing harm. The Tribunal also considered a claim of alleged blacklisting but dismissed this claim as the applicant failed to provide evidence to establish a *prima facie* case of retaliation.

In *ER (No. 3) v. IBRD*, the Tribunal upheld the decision of the Bank's Claims Administrator which denied the applicant's claim for workers' compensation. The Tribunal found that the medical evidence in the record did not demonstrate an illness or injury arising out of and in the course of the applicant's employment with the Bank.

In *Brar v. IBRD*, the applicant alleged that the Bank denied him due process by divesting him of his duties as Country Manager (CM) by placing him on leave and appointing an Acting CM following the publication of an online media article about him, and also raised non-shortlisting and non-feedback claims. The Tribunal found that the applicant was not divested of his duties, and the Bank's decision to appoint an Acting CM was reasonable and not an abuse of discretion. The Tribunal further found that the non-shortlisting decisions and non-feedback were proper and not an abuse of discretion.

In *Andriamilamina (No. 4) v. IFC*, the applicant contested the decision to make her position redundant, claiming that the decision was retaliatory. The Tribunal found that the applicant had successfully shown a *prima facie* case of retaliation based on evidence submitted in the form of a single email between IFC management and HR. The burden of proof then shifted to the IFC "to disprove the facts or to explain its conduct in some legally acceptable manner." The Tribunal found the IFC met its burden given the convincing explanations in the record of the efforts the IFC made to ensure the applicant was treated equally during the reassignment exercise. The Tribunal found "there are other clear and reasonable interpretations for the references to the Applicant besides improper motive." The judges said the IFC had demonstrated that the applicant's job had been made redundant in the interest of efficient administration, further explaining that "a position of an applicant is not guaranteed to be preserved from redundancy simply because that applicant has used the IJS or reported suspected misconduct."

The full text and summaries of all the Tribunal's judgments and orders may be found [here](#).