

**C.**  
**v.**  
**ICC**

**123rd Session**

**Judgment No. 3728**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms D. C. against the International Criminal Court (ICC) on 3 March 2014 and corrected on 24 April, the ICC's reply of 18 August, the complainant's rejoinder of 16 December 2014 and the ICC's surrejoinder of 23 March 2015;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the abolition of her post and the non-renewal of her fixed-term contract.

The complainant joined the ICC on 2 November 2009 under a one-year fixed-term appointment as a Field Associate Legal Outreach Coordinator for Sudan in the Outreach Unit of the Public Information and Documentation Section (PIDS). Her appointment was subsequently extended several times and was due to expire on 31 May 2013.

On 20 May 2013 the complainant's supervisor notified her orally that her contract would not be extended as her post was being abolished. In an e-mail of 23 May she explained that she had made an error; the complainant's post would not be abolished but her contract would, however, be terminated.

By an internal memorandum of 31 May 2013 entitled “Notice of termination of appointment”, the complainant was informed by the Administration that, pursuant to Staff Regulation 9.1(b)(vi), in the interests of the Court, her appointment, which was due to expire that day, was terminated. Nevertheless, her appointment was extended for a period of ninety days to cover the notice period applicable to her contract. It was explained that, for the reasons that were set out in the memorandum, and based on the recommendation of the Chief of PIDS, the functions of her post were no longer required by the Court.

On 18 June the complainant asked the Registrar of the Court to review the decision of 31 May 2013. She requested that he suspend the decisions to terminate her contract and to abolish her post. She sought immediate reinstatement and she reserved the right to claim compensation for moral damages and to expand on and supplement her arguments in the event that the matter proceeded to an internal appeal. By an internal memorandum of 19 July the Registrar maintained the decision of 31 May. He stated that, as there was no continuing need for the functions of her post, the terms of section 2.2 of Administrative Instruction ICC/AI/2013/005 regarding the duration and extension of fixed-term appointments had been respected. Notwithstanding this, the Administration was directed to explore suitable opportunities for her elsewhere in the Court. In the event that these efforts proved unsuccessful, she would receive a termination indemnity in accordance with the applicable legal texts.

On 2 August 2013 the complainant filed an appeal with the Appeals Board in which she challenged the decision to abolish the functions of her post and the non-renewal of her contract. She sought a recommendation that the decisions be reversed, a three-year contract extension, recognition of the fact that the Court had failed to assist her to find a new post, the application of remedial measures as soon as reasonably possible, and suspension of action on the challenged decisions pending the decision on her appeal.

In its report of 18 November 2013 the Appeals Board unanimously dismissed the appeal. It found that the ICC had a verifiable objective justification to abolish the complainant’s post and that the complainant had failed to prove that that decision was not in the interests of the ICC.

In addition, she had failed to substantiate her allegations against her supervisors. The Board considered that the three-month extension of her appointment was adequate to compensate her for the short notice of non-extension, and that her request to have her appointment extended for three years was without merit. It noted that Administrative Instruction ICC/AI/2013/005 was not applicable to her case. Lastly, the Board found that the ICC had provided sufficient assistance to her with respect to her finding another post.

By a letter of 2 December 2013 the complainant was informed that the Registrar, after giving full consideration to the Appeals Board's report, had decided to accept the Board's conclusion. That is the impugned decision.

The complainant asks the Tribunal to declare that the ICC failed to follow its own procedures with respect to the renewal and/or extension of her contract, and to find that the ICC neglected its duty to make good faith efforts to find her suitable alternative employment. She also seeks compensation for moral and material damages, as deemed appropriate by the Tribunal.

The ICC asks the Tribunal to dismiss the complainant's claims for material damages as irreceivable *ratione materiae*, to dismiss the complaint in its entirety as unmeritorious, and to deny her the relief she seeks.

### CONSIDERATIONS

1. On 2 November 2009 the complainant commenced employment with the ICC as a Field Associate Legal Outreach Coordinator for Sudan on a fixed-term contract of one year. Shortly before her contract was to expire, issues arose about her performance appraisal. They were resolved, in the complainant's favour, in a Rebuttal Panel report dated 29 May 2012. In the intervening period, the complainant was employed on a succession of short-term contracts. On 1 June 2012 the complainant's contract was extended for one year. As the contract was about to expire, the complainant received an internal memorandum dated 31 May 2013 informing her that, for reasons given in the memorandum, "the functions of the Associate Legal Outreach Coordinator for Sudan [were] no longer required by the Court". The memorandum concluded:

“Pursuant to Staff Regulation 9.1(b)(vi), in the interests of the Court, your appointment with the Court which expires today, 31 May 2013, is hereby terminated. This notwithstanding, your appointment is hereby extended for a period of ninety (90) days to cover the notice period applicable to your contract.”

2. The complainant sought an administrative review of this decision which was rejected on 19 July 2013. On 2 August 2013 she lodged an internal appeal with the Appeals Board. In a report dated 18 November 2013, the Appeals Board recommended to the Registrar that the appeal be dismissed. The Registrar accepted this recommendation and, by a letter dated 2 December 2013, informed the complainant that her appeal was dismissed. This is the decision impugned in these proceedings.

3. During the internal appeal, the complainant contended that the decisions to abolish her post and to terminate her appointment involved an abuse of authority, but no such argument is advanced, as a discrete argument, in her brief in these proceedings. Rather, the complainant’s contentions are focused on two comparatively narrow issues. The first contention concerns procedural and other requirements about extensions and non-renewal of appointments and the second contention concerns whether steps should have been taken to assist her to find suitable alternative employment within the ICC. These two issues were the second and third issues raised in the internal appeal. The Tribunal notes that although the word “terminate” was used in various documents in the submissions, it appears that the complainant’s employment ended as a result of the expiry of her appointment.

4. The complainant’s first contention is based on Staff Rule 104 and Administrative Instruction ICC/AI/2013/005 and has two elements. The first element is whether she was given proper notice that her appointment was to be extended and the second element is whether it had to be extended for three years.

Staff Rule 104.4 required, in a case such as the present where the complainant’s final contract was for more than six months, that the staff member be given confirmation that the appointment will expire on the

day nominated in the letter of appointment and that this occur within the notice period applying to the contract.

Staff Rule 104.5 dealt with circumstances where there is an offer to extend the appointment and provided that, normally, this had to occur within a reasonable time before the expiration of the appointment.

Administrative Instruction ICC/AI/2013/005 detailed, in section 3, procedural rules for extending appointments. However it is clear, as the ICC argues in its reply, that this Administrative Instruction, insofar as it prescribed procedures for extension of appointments in section 3, did so in relation to appointments that would expire (absent an extension) on or after 5 October 2013. This is because section 1, paragraph 1.3 provided that the “timeframes described in section 3 can only be fully observed for appointments expiring after six months after this Administrative Instruction has entered into force”. Thus section 3 of Administrative Instruction ICC/AI/2013/005 had no relevant application to the complainant’s appointment in relation to procedures for extension.

5. The complainant appears to argue that the fact that she was informed on 31 May 2013 that her appointment was to be extended by a further three months also contravened Staff Rule 104.5. However that provision is cast in terms of what “normally” should occur by way of notification of an extension and thus accommodates exceptions. There was no contravention of this provision when the complainant was informed at the expiry of her appointment that it would be extended for a further three months. That extension was plainly intended to benefit the complainant (see, for example, Judgment 3582, consideration 12).

6. Administrative Instruction ICC/AI/2013/005 also provided, in section 2, that an initial fixed-term appointment “shall be extended for a period of three years, provided that there is a continuing need for the post of the staff member and that his or her performance continues to meet a satisfactory level”. It may be doubted that, as the ICC appears to argue, paragraph 1.3, referred to earlier, rendered section 2 inapplicable to the circumstances of the complainant. However the benefit of a three-year extension arose only if there was a continuing need for the post.

The complainant has not demonstrated there was such a need, particularly in the face of evidence furnished by the ICC suggesting that the need for an outreach programme in Sudan had diminished. The complainant's first contention is rejected.

7. The second contention concerns whether adequate steps were taken by the ICC to find another position for the complainant within the ICC. The Appeals Board concluded that adequate steps were taken, noting that the Administration had been instructed to explore suitable opportunities elsewhere in the ICC for placement of the complainant and that, in addition, she would be treated as an internal candidate for a period of one year in relation posts that might arise in the Registry. In her brief, the complainant disputes that any efforts were made to place her in another position and she submits that there were several vacant positions "requiring functions and qualifications similar to her abolished post" but to which she was not reassigned. In its reply the ICC asserts that while some posts were vacant in 2013, steps were taken to recruit for those positions only in 2014. This is not challenged by the complainant in her rejoinder. The complainant's second contention is rejected as unfounded.

8. In the result, the complaint should be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 31 October 2016,  
Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I,  
Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ