

**DECISION OF THE PANEL OF ADJUDICATORS OF THE OSCE WITH REGARD  
TO THE EXTERNAL APPEAL BY [REDACTED]  
(CASE No: OSCE PoA 4/2017)**

*Proceedings*

1. The Chairperson of the Panel of Adjudicators (PoA) of the OSCE received on 6 November 2017 a letter from the Chairperson of the Permanent Council of the OSCE transmitting an external appeal by [REDACTED] (Applicant).
2. The Chairperson of the Panel, through the Executive Secretary of the Panel, informed the Secretary General of the OSCE (Respondent) and the Applicant on 8 November 2017 of the constitution of the Panel and asked them to forward any further communication to the Panel as per Article 5 of the Rules of Procedure of the Panel to reach the Panel no later than 8 December 2017. The Applicant filed a submission on 8 December 2017, and the Respondent forwarded his reply on 8 December 2017. Both documents were transmitted to the respective other party on 12 December 2017, advising them that they have a right to file a further statement by 31 December 2017. The Respondent did so on 28 December, and the Applicant sent a message via email on 31 December 2017.
3. In accordance with Article VI of the Terms of Reference of the Panel, the Chairperson of the Panel convened the Panel on 19 - 20 April 2018 at the Hofburg premises at Vienna to examine the appeal. The Panel was composed of its Chairperson, Mr. Thomas Laker, as well as Ms. Anna Csorba and Ms. Catherine Quidenus, members of the Panel.
4. After examining all the documents submitted to it, the Panel noted that the Applicant's claims include the following:
  - a) Revision of the decision on dismissal and specifically the date it enters into force to allow for a retroactive reinstatement until such moment when paternity leave is fully exhausted;
  - b) Compensation of full material damage caused by the decision not to grant paternity leave.

## *Summary of facts*

5. The Applicant, a former [REDACTED] at OSCE' [REDACTED] [REDACTED], was dismissed on 23 March 2017 with effect from 31 March 2017 following a disciplinary procedure; the Applicant is contesting this decision by separate appeal (OSCE PoA 2/2018) which has not yet been dealt with by the Panel.
6. At an earlier stage, i.e. by email of 10 March 2017, the Applicant had informed the Administration that [REDACTED] was born on [REDACTED]. By email of 24 March 2017, addressed to [REDACTED], the Applicant claimed to have accumulated entitlements prior to [REDACTED] dismissal, including paternity leave, "that cannot be exercised by 31 March".
7. By email of 3 April 2017, the Applicant was informed that the rules governing the extension of appointment would not apply to [REDACTED] case. In part, the message reads: "We will not be extending your appointment to enable you to use your paternity or accrued annual leave because that is not in line with Staff Regulations and Rules ...". At the bottom, the message indicates name and function of its author, the [REDACTED] [REDACTED] further it was sent from [REDACTED] email account.
8. On 25 April 2017, upon [REDACTED] respective request, the Applicant was informed that in light of the clarification in relation to [REDACTED] inquiry on paternity leave in the email of 3 April 2017, [REDACTED] would not receive "any other official/formal decisions in this regard".
9. On 9 May 2017, the Applicant lodged a request for internal review. One section of this request reads: "I am aware that its been more than 30 days since your email, but I believed that I would be receiving the formal written and signed decision in addition to your email, which [REDACTED] informed me would not be the case on 25 April".
10. On 18 July 2017, the Internal Review Board issued its report, rejecting the request as inadmissible due to not being filed on time. By email of 26 July 2018, [REDACTED] [REDACTED] informed the Applicant that [REDACTED] request was time-barred. On 28 July 2017, the Applicant acknowledged receipt of this decision.

11. On 29 September 2017, the Respondent submitted a request for external appeal via email.

*Contentions of parties*

12. The Applicant's major contentions are:

- An administrative decision needs to be signed physically to be valid; a simple email without actual pen/paper signature is not acceptable in administrative matters;
- In deeming the request for internal review as inadmissible, the Internal Review Board ignored the reality and perils of today's electronic communication;
- [REDACTED] was provided with the Panel's Rules of Procedure only two weeks after [REDACTED] request of 28 July 2017, therefore the sixty day deadline should not start running before 11 August;
- [REDACTED] is entitled to paternity leave because [REDACTED] had informed the administration about the birth of [REDACTED] weeks before the decision on dismissal was issued.

13. The Respondent's major contentions are:

- The request for internal review was not submitted within the time-limits;
- The request for external review was submitted out of time as well;
- The rules for extension of contract in case of paternity leave apply to cases of expiration of contract only, whereas the Applicant's appointment was terminated by dismissal.

## *Considerations*

### *Scope of the application*

14. Although the Applicant literally claims the “revision of the decision on dismissal” it follows from the totality of ■ submissions that, in the present case, ■ appeal is directed against and restricted to the administration’s refusal to grant paternity leave, as communicated in the email of 3 April 2017. It is this separate and distinguishable decision which forms the subject matter of the present appeal, whereas the Applicant’s concerns regarding ■ dismissal will be treated in case no. OSCE PoA 2/2018.

## *Procedural Issues*

### *Timeliness of the external appeal*

15. Pursuant to Staff Rule 10.02.2 (d) (ii), an application for external appeal must have been filed within sixty days from the date of notification to the applicant of the decision rejecting his/her request for internal review.
16. The Panel notes that the Applicant was informed by email dated 26 July 2017 that ■ request for internal appeal was rejected as not being timely filed and considered inadmissible. By email of 28 July 2017, the Applicant acknowledged receipt of this decision. Further, the Panel notes that the Applicant filed the present application via email only on 29 September 2017, i.e. with a delay of at least three days.
17. Pursuant to Staff Rule 10.02.2 (d) (iv), the Panel may exceptionally decide to waive the time limit mentioned above. No criteria or reasons for such an exception are recorded in the rules. The Panel takes notes that for the internal appeals procedure, Appendix 12 to the Staff Rules and Staff Regulations, Article III 3 (a) provides that the Internal Review Board shall admit a delayed appeal where the appellant had “legitimate reasons for not having submitted his/her request within the prescribed time-limit”.

18. In the present case, no such legitimate reasons have been raised or can be found otherwise. With respect to the Applicant's argument that [REDACTED] was not provided with the Panel's Rules of Procedure including the Application form before 11 August 2017, the Panel notes that the Applicant had ample time to file [REDACTED] appeal timely even after 11 August 2017.

19. It follows from the above that the request for external appeal is delayed.

*Timeliness of the internal appeal*

20. Pursuant to Staff Regulation 10.01 (c), which deals with the OSCE's internal appeals procedure, to be considered, an internal appeal shall be lodged within thirty days from the date of the notification of the impugned decision.

21. OSCE's rules and regulations do not contain a legal definition of an 'administrative decision' within the meaning of Staff Regulation 10.01 (a). Nevertheless, it is accepted by all administrative law systems, including international civil service law, that an administrative decision is a unilateral decision taken by the administration in a precise individual case, which produces direct legal consequences to the legal order (see Panel's decision of 14 July 2017, OSCE PoA 1/2017, para. 15).

22. The Panel takes note that the above definition does not include any elements related to formal requirements. Pursuant to general principles of administrative law, in general, it is not even necessary that an administrative decision be in writing to be valid. On the contrary, it is well known that an administrative decision can even be taken and notified orally. Further, it is not an essential element of an administrative decision in writing that it must bear the physical signature of its author. Some important administrative decisions like pay slips or tax assessments do not.

23. In the same vein, an administrative decision can be notified in various forms, including electronically, unless explicit provisions foresee a specific form. In the present case, the Applicant was notified of the impugned decision by an email. This message bears the name and function of its author, the [REDACTED], and it was sent from [REDACTED] email account. No doubts about the authenticity were raised or can

be perceived. It also includes all elements of an administrative decision pursuant to the definition above. Therefore, the notification of the impugned decision took place on the date of receipt of said email.

24. The Applicant concedes that ■■■ received this message on 3 April 2017, and that ■■■ missed the 30 day deadline when submitting ■■■ request for internal review only on 9 May 2018.
25. In the interest of justice and equal treatment, time limits are to be enforced strictly. Compliance with time-limits is among each party's responsibilities (see Panel's decision of 24 November 2017, OSCE PoA 2/2017, para. 23). It was for the Applicant to ensure that ■■■ request for review reaches the addressee on time.
26. No legitimate reasons for not having submitted the request within the prescribed time-limit (cf. Art. III para. 3 of the Internal Appeals Procedure) have been asserted. It is of no relevance in this case whether the Applicant thought ■■■ might receive a hard copy of the decision of 3 April 2017. Apart from that, the Applicant was explicitly informed on 25 April 2017 that ■■■ would not receive any other other/formal decision than the one of 3 April 2017. Therefore, even at that time the Applicant was in a position to file ■■■ request within the 30 day time limit.
27. Based on the findings above, the Panel cannot but determine that the request for internal review was delayed as well.

### *Merits*

28. Pursuant to Staff Rule 10.02.2 (d), an application for external review shall not be admissible unless it complies with the time line established in Staff Rule 10.02.2 (d) (ii). As demonstrated above, the application was not filed in line with this provision, and no waiver of time limits can be granted. Therefore, since the application is not admissible, the Panel is prevented from entering into a discussion of the merits (see Panel's decision of 14 July 2014, OSCE PoA 1/2017, para. 26).
29. In addition, pursuant to Staff Regulation 10.02, the right of final appeal to the PoA is granted "further to the procedure established in Regulation 10.01", i.e. the internal

appeals procedure. Further, Staff Rule 10.02.2 (d) (i) states that an application to the PoA shall not be admissible unless it complies with the requirements of the internal appeals procedure. Read together, it follows from these provisions that access to the PoA can only be granted where the formal requirements of the internal appeals procedure have been met. Since, in the present case, the initial appeal has not been lodged within the time-limit as established in Staff Regulation 10.01 (c), also for this reason the Panel is prevented from entering into a discussion of the merits (see Panel's decision of 24 November 2017, OSCE PoA 2/2017, para. 25).

30. In light of the above, the application with respect to the refusal to grant paternity leave is rejected.

Done in Vienna, on 20 April 2018



Thomas Laker  
Chairperson



Anna Csorba  
Member



Catherine Quidenus  
Member