

179th Plenary Meeting

PC Journal No. 179, Agenda item 8

DECISION No. 248

The Permanent Council,

Acting in accordance with the relevant provisions of the Staff Regulations (PC.DEC/149 and DOC.PC/2/96) as approved by the Permanent Council on 19 December 1996,

- Approves the attached Terms of Reference for the Panel of Adjudicators foreseen under Staff Regulation 11.02; and
- Notes that the establishment and the proceedings of the Panel will not require additional financial resources in 1998.

OSCE ADJUDICATION

TERMS OF REFERENCE OF THE PANEL OF ADJUDICATORS

Article I

Competence of the Panel of Adjudicators

1. A panel of adjudicators consisting of three members (the Panel) shall decide on any application in which a member of the staff of the OSCE alleges non-observance of the terms of his/her appointment. For this purpose the words "terms of appointment" shall include all pertinent regulations and rules in force at the time of the alleged non-observance. The terms of appointment shall provide explicitly or by reference for the competence of the Panel with respect to such terms of appointment.

2. For the purpose of the present Terms of Reference the expression "member of the staff of the OSCE" shall mean any current or former member of the staff of the OSCE and any person who is entitled to claim upon the right of a member of the staff as a personal representative or by reason of the staff member's death.

Article II

Appointment of the Panel

3. From a roster of candidates nominated by participating States, the Chairman of the Permanent Council of the OSCE after discussion in the Permanent Council shall appoint, for a period of three years, nine persons from whom the members of the Panel shall be appointed pursuant to paragraph (4) below. The candidates shall possess competence and experience enabling them to decide upon the applications referred to in paragraph (1) above.

4. As soon as feasible after the Chairman of the Permanent Council has received an application pursuant to paragraph (6) below, he shall organize a drawing of lots in order to select the three members of the Panel and one alternate member of the Panel from those persons referred to in paragraph (3) above who have confirmed their readiness to serve as member of the Panel on the case in question. The Chairman of the Permanent Council shall subsequently appoint the persons so selected as members of the Panel and alternate member of the Panel, respectively. In the event that a member of the Panel is unable to serve as member of the Panel, the alternate member of the Panel shall replace the member concerned.

5. The Chairman of the Permanent Council shall designate the Chairperson of the Panel from the members of the Panel. The Chairperson of the Panel shall not be of the same nationality as the applicant.

Article III

Applications

6. Applications shall be filed with the Chairman of the Permanent Council, who shall transmit them to the Chairperson of the Panel upon the latter's nomination.
7. Applications shall be submitted together with supporting documents.
8. No application shall be admissible, except under special circumstances as decided by the Panel, unless:
 - (a) The applicant has exhausted all other remedies available within the OSCE, including the Internal Appeals Procedure, except if the applicant and the Head of Institution concerned have agreed to submit the application directly to adjudication; and
 - (b) the application is filed within one of the following time limits:
 - (i) forty days of the event giving rise to the application; or
 - (ii) where the applicant has exhausted the Internal Appeals Procedure and has received notice within thirty days that the relief asked for or recommended will not be granted - forty days after the receipt of the said notice; or
 - (iii) where the applicant has exhausted the Internal Appeals Procedure and has received notice within thirty days that the relief asked for or recommended will be granted, but without relief having been granted within thirty days of receipt of that notice - forty days after the expiry of the latter period of thirty days; or
 - (iv) where the applicant has exhausted the Internal Appeals Procedure and the Head of Institution concerned has failed to take action on the report of the Internal Review Board within thirty days - forty days after the expiry of the said period of thirty days.

In individual cases the Panel may decide to waive the time limit set forth above.

9. The filing of an application shall not have the effect of suspending execution of the decision contested.

Article IV

Agreed Settlement

10. Upon receipt of an application, the Chairperson of the Panel shall ascertain whether there exist prospects for an agreed settlement between the parties. If so, the Chairperson shall use his/her best efforts to assist the settlement of the case in that manner. Should the parties not be prepared to consider an agreed settlement or should the efforts by the Chairperson to facilitate such a settlement fail, adjudication shall commence without delay.

Article V

Competence and Activities

11. In the event of a dispute as to whether the Panel has competence, the matter shall be decided by the Panel.
12. In the discharge of their duties, members of the Panel shall be completely independent and guided solely by their independent judgement. They shall neither seek nor receive any instructions.
13. Adjudication sessions shall be held in Vienna.

Article VI

Administrative and Financial Arrangements

14. The Secretary General of the OSCE shall make all the administrative arrangements necessary for adjudication within the existing OSCE budget.
15. Members of the Panel shall serve without remuneration from the OSCE, but shall be entitled to reimbursement of travel expenses and payment of a subsistence allowance (if applicable) for the duration of the adjudication sessions.

Article VII

Adjudication Procedure

16. The Chairperson, in consultation with other members of the Panel, shall determine:
 - (a) the time limits for the presentation of the response by the OSCE to the application, and the submission of evidence and other relevant procedural matters;
 - (b) the procedure to be followed with regard to hearings of the Panel; and
 - (c) other matters relating to the adjudication, including whether oral hearings shall be held or whether the application shall be decided on the basis of the documents submitted only.

Article VIII

Adjudication decisions

17. The Panel shall use its best efforts to decide on the application by consensus. If, however, it is not possible to reach a consensus, the adjudication decision shall be taken by majority vote.
18. If the Panel finds that the application is well founded it shall recommend the rescission of the contested decision or the performance of the obligation invoked. The Panel shall also fix the amount of compensation to be paid to the applicant should the contested decision not be rescinded or the obligation invoked not be performed.
19. The compensation referred to in paragraph (18) above shall be limited to the actual loss of income from the OSCE suffered by the applicant, other payments which the OSCE

was obliged to make in favour of the applicant and damages suffered by the applicant as a result of such non-payment. The Panel may award costs to be reimbursed to a successful applicant for attorney's fees and expenses related to the application, not to exceed actual expenses at normal and customary rates.

20. The adjudication decisions pursuant to paragraph (18) above shall be final, and binding within the OSCE. Each decision shall state the reasons on which it is based.

21. Should the Panel find that the procedures and conditions prescribed in the OSCE Staff Regulations and Staff Rules for the submission of an application to the Panel have not been observed, it may, prior to determining of the merits of a case, remand the case for correction and fulfilment of the required procedures or conditions.

22. If the Panel finds that an application is obviously frivolous it may decide not to accept the application, or if the application was accepted, shall require the applicant to pay costs determined by the Panel.

23. Adjudication decisions shall be translated and made available in all official languages of the OSCE.

Article IX

Revision of an Adjudication Decision

24. A party to a case in which an adjudication decision has been delivered may request the Panel, through the Chairman of the Permanent Council, to revise the adjudication decision, in the event of the discovery of a fact that, by its nature might have had a decisive influence on the adjudication decision of the Panel and was unknown both to the Panel and to the party concerned at the time the adjudication decision was delivered. Such a request shall be made within two months of that party acquiring knowledge of such fact, but not later than six months of the date of the adjudication decision.

25. The request for revision of the adjudication decision shall contain the information necessary to show that the conditions laid down in paragraph (24) above have been complied with. It shall be accompanied by the original, or a copy, of all supporting documents.

Article X

Filing and Communication of the Adjudication Decision

26. The original of each adjudication decision shall be filed in the OSCE Secretariat. A copy of the adjudication decision shall be delivered to the applicant and to the Head of the OSCE Institution concerned.

Article XI

Amendments

27. Any possible amendment to the present Terms of Reference shall not affect applications pending.