

**DECISION OF THE PANEL OF ADJUDICATORS OF THE OSCE WITH
REGARD TO THE EXTERNAL APPEAL BY [REDACTED]**
(Case No: OSCE PoA 1/2025)

Proceedings

1. The Chairperson of the Panel of Adjudicators (PoA) of the Organization for Security and Co-operation in Europe (OSCE) received on 23 January 2025 a letter from the Chairperson of the Permanent Council of the OSCE transmitting an external appeal by [REDACTED] (Applicant) which the former had received on 8 January 2025.
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 27 January 2025 of the constitution of the Panel and asked the Respondent to forward a response to the Panel as per Article 5 of the Rules of Procedure of the Panel to reach the Panel no later than 26 February 2025. The Respondent forwarded a response on 25 February 2025, and the Applicant was advised that [REDACTED] has a right to reply. [REDACTED] - revised - reply of 18 March 2025 was transmitted to the Respondent for information.
3. In accordance with Article VI of the Terms of Reference of the Panel (ToR), Appendix 2 to the Staff Regulations and Staff Rules (SRSR), the Chairperson of the Panel convened the Panel on 26 and 27 May 2025 at the Hofburg premises at Vienna to examine the appeal. The Panel was composed of its Chairperson, Mr. Thomas Laker, and its members, Ms. Anna Csorba and Ms. Catherine Quidenus.
4. After examining all the documents submitted to it, the Panel noted that the Applicant contests the decision to terminate [REDACTED] assignment due to unsatisfactory performance during [REDACTED] probationary period and requests to declare the probation period evaluation as invalid and to reinstate [REDACTED] to [REDACTED] former position. If the latter is not possible, the Applicant asks for compensation for material and moral damages, in particular 9.000 EUR for the delays in the present proceedings.

Summary of facts

5. The Applicant is a former staff member of [REDACTED] and began [REDACTED] assignment as [REDACTED] = [REDACTED] or [REDACTED]. Prior to that, [REDACTED] had held positions at [REDACTED] and at [REDACTED]. The Applicant's probationary period at [REDACTED] spanned from 1 March until 31 August 2021.
6. On 16 March 2021, the Applicant and the [REDACTED], who was [REDACTED] first-level supervisor at the time, discussed and agreed on [REDACTED] individual objectives.
7. On 8 May 2021, having identified alleged shortcomings in the Applicant's performance and behaviour during the first two months, the Applicant's supervisor provided written guidance. The Applicant was advised, e.g., to shift focus on concrete tasks in line with [REDACTED] job description over the course of the next months. Also, an in-person meeting was proposed to discuss the points.
8. In response, the Applicant refused to meet with [REDACTED] supervisor without the presence of witnesses, requested that all communication from that moment on be done exclusively via email, and challenged [REDACTED] supervisor's authority and decisions.
9. On 3 June 2021, the Applicant's supervisor sought advice from the [REDACTED], as the working relationship with the Applicant had, in [REDACTED] view, deteriorated to such a point that normal interactions proved exceedingly difficult. Subsequent efforts to start mediation failed.
10. From 28 June until 16 July 2021, the Applicant was on sick leave. From 19 July until 30 July 2021, and from 24 until 27 August 2021, respectively, the Applicant was on annual leave.
11. On 27 July 2021, the Applicant submitted a complaint (Complaint I) at the Secretariat under Staff Instruction No. 21 'OSCE Policy on the Professional Working

Environment' (SI 21/Rev.1) against ■ supervisor, alleging harassment and retaliation.

12. On 2 August 2021, the Applicant was requested to complete a self-assessment of the objectives that were set at the beginning of ■ probationary period. The Applicant subsequently refused to submit the correct version of the agreed objectives.
13. On 16 August 2021, the supervisor evaluated the Applicant's performance as "needs improvement", and, on the same day, ■ consulted the ■ on the termination of the Applicant's assignment.
14. On 17 August 2021, the Applicant submitted a second complaint at the Secretariat under SI 21/Rev. 1 (Complaint 2) against ■ supervisor, raising additional allegations of retaliation.
15. On 24 August 2021, and following completion of the required consultation process, the Applicant was notified in writing of the decision to terminate ■ assignment due to unsatisfactory performance during ■ probationary period. This is the impugned decision.
16. On 18 September 2021, the Applicant submitted a request for internal review (Request 1) of the impugned decision.
17. DHR viewed Complaints 1 and 2 and Request 1 as closely related, and, with the Applicant's consent, agreed to process them jointly as a hybrid process, based on Section 1 of Annex 2 of SI 21/Rev. 1.
18. However, subsequently, only Complaint 1 was processed as a standard SI 21/Rev.1 complaint. The Applicant's supervisor submitted ■ response to Complaint 1 on 4 July 2022. In contrast, Complaint 2 got lost, and no hybrid process took place at that time.
19. On 13 September 2022, the Secretary General (SG), notified the Applicant that the allegations raised in Complaint 1 were *prima facie* unsubstantiated and fell outside the scope of SI 21/Rev. 1.

20. On 14 November 2022, the Applicant submitted a second request for internal review (Request 2), challenging the decision of 13 September 2022. Subsequent efforts to resolve the whole matter amicably were not successful.
21. On 6 June 2023, in response to Request 2, the SG, with the Applicant's agreement, decided to overrule the decision of 13 September 2022, and to re-process Complaint 1, Complaint 2, and Request 1 in a single hybrid process. It was announced to establish an investigation team (IT), prior to the review of the matter by an internal review board (IRB), based on section 1.4 of Annex 2 of SI 21/Rev.1.
22. On 27 June 2023, the Applicant's supervisor was provided with a copy of Complaint 2 and Request 1, and ■■■ was invited to submit a response in writing. ■■■ submitted ■■■ responses on 9 and 10 July 2023, respectively.
23. On 25 September 2023, the parties were notified that an IT was established to determine if there was evidence supporting the Applicant's claims that the impugned decision derived from harassment and/or retaliation. On 12 January 2024, one IT member was replaced.
24. On 8 May 2024, the IT issued its report into the allegations set out in Complaints 1 and 2, and Request 1.
25. On 5 July 2024, an IRB was established to review Complaint 1, Complaint 2, Request 1, and the IT report.
26. On 7 September 2024, the IRB issued its report, recommending that the Applicant's claims be rejected.
27. On 8 October 2024, the new ■■■ notified the Applicant that ■■■ claims were rejected and the impugned decision was upheld. As a recognition of the procedural shortcomings resulting in processing delays, the Applicant was granted an *ex gratia* payment of 2.500 EUR.
28. On 7 December 2024, the Applicant submitted the present request for external review.

Contentions of the parties

29. The Applicant's major arguments are:

- The impugned decision failed to provide concrete reasons or specific evidence of unsatisfactory performance, and ■ was not given the opportunity to address the alleged shortcomings prior to ■ termination;
- The impugned decision was an act of retaliation due to the previously submitted Complaints 1 and 2 against ■ supervisor;
- The investigation was not conducted in an impartial, professional, or credible manner and ■ was denied the opportunity to review and respond to the draft investigation report;
- The processing of ■ appeal was extremely slow such that there was no realistic prospect of the impugned decision being overturned.

30. The Respondent's major arguments are:

- The impugned decision was taken in accordance with the Staff Regulations and Staff Rules ("SRSR") and applicable performance management procedures;
- There is no evidence that the impugned decision derived from or resulted from harassment and/or retaliation.

Considerations

Legal background

31. At the outset, the Panel recalls that the impugned decision concerns the termination of the Applicant's assignment at the end of ■ probationary period. Probation has as its purpose the determination whether the recruited staff member satisfies the conditions required for confirmation, including not only technical skills but also personal attributes (see decision of 5 December 2023, OSCE PoA 1/2023, para. 37). For the employee, probation is important to figure out whether the new position satisfies his or her own needs as well. If expectations are not met, the termination of contractual relations without difficulty is in the interest of both parties.
32. It is established within national and international civil service law that appointment decisions in general are within the discretionary power of the organization. This principle applies *a fortiori* with respect to confirmation at the end of a probationary period.
33. These circumstances are reflected in the OSCE's internal law insofar as the respective Staff Instruction on 'Performance Management in the OSCE' No. 15/2004 Rev.2 (SI 15) contains a specific set of rules on probation under its paragraph 10 which, therefore, are to be considered as *lex specialis* with respect to the other parts of SI 15.
34. Further, paragraph 1.1 of Annex 2 of SI 21/Rev.1 allows for a procedural combination of appeals against administrative decisions on the one hand, and of complaints about violations of the professional working environment on the other hand, *inter alia*, when a staff member has been notified of an administrative decision that he/she alleges derives from harassment or retaliation. The Panel takes note that such approach was intended in the present case, as the Applicant's appeal against the termination of ■ assignment was mainly based on allegations that ■ had been harassed and retaliated against.
35. The Panel will address both aspects of this case in turn.

Termination of the assignment

36. As mentioned above, confirmation or termination are discretionary decisions to be taken by the employing organization at the end of the probationary period. While discretion is not unfettered, pursuant to established principles of international administrative law, judicial review of respective decisions is limited to whether the decision was in line with the organization's relevant rules, was based on an error of fact or law, including an overlook of essential facts or a clearly mistaken conclusion was drawn from the facts. Also, in this regard it is not for a judicial body to replace an organization's assessment by its own views.
37. Pursuant to paragraph 10.4 (ii) of SI 15, if the performance is evaluated as "needs improvement" after a probationary period, it is one option that the assignment may be terminated during the probationary period by giving the mission member one month's notice in consultation with the Secretariat DHR.
38. In the present case, the Panel notes with regret that the working relation between the Applicant and [REDACTED] supervisor became difficult within a period of about two months from [REDACTED] assignment. As the Applicant states in complaint 2, [REDACTED] indeed had three to four in - person meetings with [REDACTED] supervisor. [REDACTED] also confirms to have "received feedback regarding [REDACTED] performance on 8 May 2021". In this written feedback, the Applicant was unmistakably informed by [REDACTED] supervisor about alleged shortcomings to which the Applicant replied, *inter alia*, that [REDACTED] was "sorry, but there will be no more my support for your stile of solving issues". A few days later, the Applicant expressly refused to meet with [REDACTED] supervisor in person without witnesses, complaining about [REDACTED] "negative attitude towards [REDACTED], ... micromanagement and attempts to keep [REDACTED] out of the loop ..."; further, the Applicant asked for "recording conversations ... until we re-establish mutual trust". In early June 2021, the Applicant closed an email to [REDACTED] supervisor with the words "This would be the last e-mail in this group regarding this issue. On your next feedback I will not replay."
39. Further, the Panel notes that the Applicant was on leave for more than a month from 28 June to 30 July 2021.

40. Considering these circumstances, it is difficult to see how and when the Applicant could have been given more opportunities to address the alleged shortcomings prior to ■ termination, as requested in ■ submission. Apparently, ■ was not willing to get in direct contact with ■ supervisor by way of meetings in person without witnesses. ■ overall attitude and language, as indicated above, raise doubts about ■ willingness to accept criticism. The Panel finds no violations of the provisions of paragraph 10 of SI 15. It was within the Organization's discretion to terminate the Applicant's assignment, rather than to extend the probationary period, as provided for in paragraph 10.4 (i) of SI 15.

Harassment and/or retaliation

41. The Panel notes that both parties agreed on processing the Applicant's Complaints 1 (dated 27 July 2021) and 2 (dated 17 August 2021) together with ■ Request 1 (dated 18 September 2021) as a hybrid process, as provided for in Section 1 of Annex 2 of SI 21/Rev.1.

42. Further it is noted with concern that, based on administrative shortcomings on the Respondent's side, the agreed combined process did not materialize before June 2023, i.e. nearly two years after the first complaint had been filed.

43. Pursuant to paragraph 8.1 of SI 21/Rev.1, formal complaints "shall be dealt with promptly". Further, the accused party needs to be notified "at the earliest practical time", whereas in the present case, the Applicant's supervisor was only notified in June of 2022 and submitted ■ response only on 4 July 2022, i.e. one year after Complaint 1 had been filed. Even worse, Complaint 2 was only transmitted to ■ on 27 June 2023, i.e. nearly two years after the filing of the respective complaint.

44. In this respect, the Panel shares the view of the IT report which, based on interviews of the Applicant and witnesses in March 2024, found that "[t]his constitutes a failure on the part of the Organization to give adequate and timely internal (administrative) recourse with significant damages incurred to both the complainant/appellant and the subject of the investigation...".

45. Regardless of the deplorable handling of the Applicant's complaints, the Panel does not find that the outcome of the delayed investigation supports the Applicant's claim that ■ has been harassed and/or retaliated against by ■ supervisor. Nor does the Panel see any grounds to believe that the termination decision itself was an act of retaliation, based on the fact that the Applicant had submitted complaints against ■ supervisor.
46. Regarding the termination decision of 24 August 2021, the Panel finds no evidence that the Applicant's supervisor was aware of complaints against ■ when ■ prepared the negative performance appraisal dated 16 August 2021. Due to the improper handling of the matter by the administration, both complaints were officially notified to ■ only much later, i.e. in June 2022 (Complaint 1) and in July 2023 (Complaint 2). The Applicant's view that ■ might have been informed otherwise at an earlier date is mere speculation.
47. Apart from the above, the Panel notes that Complaint 2 was submitted one day after the performance appraisal had been prepared. In Complaint 2, allegations of retaliation are exclusively connected to the Applicant's disagreement with ■ performance evaluation, holding that "it is definitely retaliation because I submitted earlier mentioned complaint". As indicated above, there is no proof for any such causal link.
48. In Complaint 1, the Applicant raises at length several issues which do not relate directly to ■ (issues 1, 2, and 6). Other issues (3 - lack of information, 4 - criticizing the Applicant in front of others, 5 - Covid related) were considered not to reach the level of harassment or retaliation by the investigation team, based on interviews of the Applicant and witnesses named by ■. The Panel joins the view of the IT report of May 2024 that there was no sufficient "evidence that would amount to intentional, targeted and improper conduct or practice on the part of the subject of the investigation towards the complainant beyond regular performance management."
49. It follows from the above that the termination decision is not illegal, nor are the Applicant's complaints about harassment or retaliation substantiated. However, serious delays occurred during the handling of the Applicant's complaints and requests.

Remedies

50. As termination was a legal option within the discretionary power of the administration, it is impossible to order the Applicant's reinstatement. Also, no material damages following the termination need to be compensated.
51. The Panel notes with concern more than one remarkable delay on the Respondent's side when handling and processing the Applicant's complaints and requests.
52. Firstly, Complaint 1, dated 17 June 2021, was forwarded to the alleged offender only in June 2022, i.e. after one year, although this should happen "at the earliest practical time" (paragraph 2.8 of Annex 2 of SI 21/Rev.1). The decision regarding this complaint was rendered on 13 September 2022, i.e. about 15 months after its submission, although complaints "shall be dealt with promptly" (paragraph 8.1 of Annex 2 of SI 21/ Rev.1).
53. Secondly, Complaint 2, dated 17 August 2021, got lost and was not taken care of for nearly two years. Even after the establishment of an IT in September 2023, it took about eight months until the IT report of 8 May 2024 was submitted. Two more months passed by before an IRB was established, although this should have happened within 14 days (see Article I, paragraph 1 of the Internal Appeals Procedure, Appendix 12 to the SRSR).
54. Thirdly, it took the administration from 18 September 2021 to 8 October 2024, i.e. more than three years, to take a final decision on the Applicant's request for internal review against the termination of ■ assignment on 24 August 2021. In the Panel's view, such a long period of time is unacceptable.
55. The Panel recalls its established practice to award compensation in cases of relevant procedural delays, since such delays unnecessarily prolong an applicant's stress and uncertainty regarding the outcome of his/her case (cf. decision of 3 July 2024, OSCE PoA 1/2024, para. 54; decision of 12 December 2024, OSCE PoA 2/2024, para. 40). In the present exceptional case, regrettably not only one but three specific delays are identified. In the Panel's view, the first and the third delay (see above para. 52 and

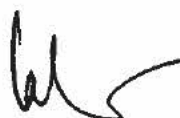
para. 54) should be compensated with 1.000 EUR each, whereas the second and most serious one (see above para. 53) needs to be compensated with 2.000 EUR, amounting to a totality of 4.000 EUR. Of course, the Panel takes into account that the Respondent has already awarded 2.500 EUR in this respect as an *ex gratia* payment.

Conclusion

Considering the above, the Panel recommends the Respondent to pay to the Applicant 1.500 EUR in addition to those 2.500 EUR already granted to ■ as an *ex gratia* payment.

All other claims are rejected.

Done in Vienna on 27 May 2025



Thomas Laker
Chairperson



Anna Csorba
Member



Catherine Quidenus
Member