

**DECISION OF THE PANEL OF ADJUDICATORS OF THE OSCE WITH REGARD  
TO THE EXTERNAL APPEAL BY ██████████**

(CASE No: OSCE PoA 5 /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 ██████████ (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, through ██████ Counsel, filed a submission on 7 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 30 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 of its members, Ms. Anna Csorba and Ms. Catherine Quidenus.
4. After examining all the documents submitted to it, the Panel noted that the Applicant's claims include the following:
  - a) Waiver of the time limit for filing an application;
  - b) Compensation for loss of salary or, alternatively, reinstatement in a suitable position within OSCE, or, alternatively other relief the Panel considers appropriate;
  - c) Compensation for costs for legal representation.

The Applicant also filed a request for an oral hearing which was rejected on 19 March 2018.

### *Summary of facts*

5. The Applicant, a former [REDACTED] [REDACTED] joined [REDACTED] in June 2016 and was assigned until 31 March 2017. [REDACTED] failed to pass a mandatory driving test using manual transmission in June, September, and on 5 October 2016.
6. On 6 October 2016, the Applicant was informed that [REDACTED] assignment, based on [REDACTED] inability to drive using manual transmission, was being terminated as of 5 November 2016.
7. On 3 November, the Applicant filed a request for internal review, and an Internal Review Board (IRB) was established on 12 December 2016. On 5 May 2017, the IRB issued its report, recommending that the appeal be dismissed. On 10 May 2017, the [REDACTED] endorsed said recommendations, and on the same day the Applicant was notified of this decision.
8. On 2 October 2017, the Applicant filed an application for external review.

### *Contentions of parties*

9. The Applicant's major contentions are:
  - [REDACTED] was unable to submit [REDACTED] application within the prescribed time-limit and a waiver should be granted due to (1) limited access to the internet in [REDACTED] current location, (2) the high level of attention that [REDACTED] new assignment in a dangerous area demanded, especially in the beginning, (3) the fact that the administration also missed deadlines routinely;
  - The driving tests took place under unfair conditions;
  - The failure was not the result of any incapacity but rather that of racial bias.

10. The Respondent's major contentions are:

- The request for external review was not submitted within the time-limits;
- No sufficient reasons for a waiver of time-limits were presented;
- Since ability to drive using manual transmission is part of minimum requirements for working with OSCE, the termination of the Applicant's assignment was in line with the applicable provisions;
- No proof of discriminatory treatment has been submitted.

### *Considerations*

### *Procedural Issues*

#### *Timeliness of the external appeal*

11. 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.
12. The Panel notes that the Applicant was informed by email dated 10 May 2017 that ■■■ request for internal appeal was rejected. Further the Panel notes that the Applicant filed the present application via email only on 2 October 2017, i.e. with a delay of nearly three months in view of the 60 day time-limit.
13. 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).
14. 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 note that for the internal appeals procedure, pursuant to Article III of Appendix 12 to the Staff Rules and Staff Regulations,

“should the appellant provide explanation for not having submitted his/her request within the prescribed time-limit”, 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”.

15. In the Panel’s view, both provisions, if read together, call for the application of restrictive standards when waiving legally prescribed time-limits. Therefore, such decisions may in general only be taken where the delay was caused by exceptional circumstances beyond an applicant’s control. Also, it is for an applicant to submit substantiated and precise information about the circumstances which prevented him or her from complying with the respective time-limits.
16. In the present case, no such legitimate reasons can be found. With respect to the Applicant’s argument that ■ new assignment with limited access to the internet prevented ■ from filing ■ application in a timely way (1), the Panel notes that access to the internet is not necessarily needed to file an external appeal and to submit the respective documents, neither is legal aid. Also, the high level of attention the Applicant may have had to pay to ■ new assignment (2) does not amount to exceptional circumstances. Finally, whether or not the Administration misses time lines (3), has no impact on the Applicant’s obligation to meet the prescribed deadlines.
17. It follows from the above that the Panel cannot but reject the request for a waiver of the applicable time-limit. Therefore, the request for external appeal has to be considered as delayed.

*Merits*

18. 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, as has already been held in the Panel’s decision of 14 July 2017 (case no. OSCE PoA 1/2017).

*Compensation for legal fees*

19. Pursuant to Article VIII para. 5 of the terms of references of the PoA the Panel may award costs to be reimbursed for legal fees only to a successful applicant. Since the application fails, no compensation for costs for legal representation can be awarded.
20. In light of the above, the application is rejected in its totality.

Done in Vienna, on 20 April 2018



Thomas Laker  
Chairperson



Anna Csorba  
Member



Catherine Quidenus  
Member