

**DECISION OF THE PANEL OF ADJUDICATORS OF THE OSCE WITH REGARD
TO THE EXTERNAL APPEAL BY [REDACTED]**

(CASE No: OSCE PoA 1/2020)

Proceedings

1. The Chairperson of the Panel of Adjudicators (PoA) of the OSCE received on 10 February 2020 a letter from the Chairperson of the Permanent Council of the OSCE transmitting an external appeal by [REDACTED] (Applicant), a former staff member at the OSCE [REDACTED]
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 11 February 2020 of the constitution of the Panel, asking 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 12 March 2020. The Respondent forwarded his reply on 12 March 2020, which was transmitted to the Applicant, advising [REDACTED] that [REDACTED] has a right to file a response. On 2 April 2020, the Applicant filed [REDACTED] response.
3. Ongoing travel restrictions in relation to a viral pandemic prevented the Panel from meeting in person. Following consultations with the parties, the Panel held deliberations via video-conference on 14 May 2020. The Panel was composed of its Chairperson, Mr. Thomas Laker, its Deputy-Chairperson, Ms. Jenny Schokkenbroek, and its member, Ms. Anna Csorba.
4. After examining all the documents, the Panel noted that the Applicant contests the decision of 12 March 2018 to reject [REDACTED] request to retroactively grant [REDACTED] five days of special leave with pay for training purposes.
5. The Respondent, pursuant to his reply, holds the view that the Applicant did not file [REDACTED] request for internal review within the prescribed time-limit and submits that [REDACTED] request for external review should be considered as irreceivable.

Summary of facts

6. From 7 May 2014 to October 2018, the Applicant was assigned to [REDACTED]. From 26 February 2018 to 2 March 2018, the Applicant attended an “Advanced Course for Political Advisors in EU Missions and Operations” in [REDACTED] taking annual leave for this purpose.
7. After [REDACTED] return, the Applicant had an email exchange with Human Resources on how to amend [REDACTED] leave request with a view to special leave with pay for training purposes. On 14 August 2018, the Applicant submitted a respective request.
8. On 12 March 2019, the Applicant’s request was rejected.
9. On 13 March 2019, the Applicant asked for reconsideration, and, by separate e-message of the same day, stated that [REDACTED] was taking steps to appeal the decision.
10. On 16 May 2019, the Applicant asked in writing about the state of the matter, announcing that [REDACTED] will proceed with submitting an appeal “next week” which [REDACTED] did not.
11. On 17 June 2019, the Applicant submitted a request for internal review. An Internal Review Board (IRB) was established and, on 9 October 2019, declared the request as irreceivable since it was not submitted within the prescribed time – limits. On 30 October 2019, the Applicant was informed accordingly.
12. On 26 December 2019, the Applicant submitted an application for external review by electronic means.

Contentions of parties

13. The Applicant's contentions are various; some of pleas relate to incidents that have not been part of the present administrative process, like earlier periods of leave. ■■■ major relevant contentions are:

- ■■■ had valid reasons to submit ■■■ request for internal review only in June 2019;
- Special leave with pay for training purposes can be granted retroactively;
- ■■■ was subject to retaliation by ■■■ supervisors.

14. The Respondent's major contentions are:

- The scope of the Application should be limited to the issue of receivability;
- The request for internal review was untimely and, therefore, irreceivable, and the Applicant did not present legitimate reasons for the late submission of ■■■ request;
- The request for external review is irreceivable, since ■■■ did not exhaust the internal appeals procedure properly.

Considerations

Procedural issues

Timeliness of the internal appeal

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

16. The Panel takes note that the Applicant was notified of the rejection of ■■■ request to amend ■■■ leave on 12 March 2019. Since, on the next day, the Applicant asked to “reconsider” this decision, there is no doubt that the Applicant was well aware of the impact of the rejection. Accordingly, the Applicant, on 13 March 2019, announced to taking steps “to appeal the decision”. Further, in a message of 16 May 2019 ■■■ considered “to submit an appeal next week.”
17. Whatever the purposes of these (and other) messages were, the Panel notes that the Applicant submitted ■■■ request for internal review only on 17 June 2019, i.e. far beyond the 30 day time limit mentioned above.
18. Pursuant to established jurisprudence of the Panel, 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, e.g. Panel’s decisions of 24 November 2017, OSCE PoA 2/2017, para. 23; of 20 April 2018, OSCE PoA 4/2017, para. 25.)
19. 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”.
20. Pursuant to the Panel’s established jurisprudence, such an exception calls 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 (see e.g. decision of 20 April 2018, OSCE PoA 5/2017, para. 15).
21. In the present case, no legitimate reasons for not having submitted the request for internal review can be found. Neither the Applicant’s allegations that ■■■ was busy with preparing other appeals, nor the professional stress the Applicant allegedly was suffering during this time, nor the search for a flat amount to exceptional circumstances within the restrictive meaning as indicated above.

22. In light of the above, the Panel cannot but confirm the IRB’s finding that the request for internal review was delayed.


Request for external appeal

23. 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.
24. 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) and consequently not adjudicated for its merits, the Panel is prevented from entering into a discussion of the merits (see, e.g. Panel’s decisions of 14 July 2017, OSCE PoA 1/2017, and of 31 January 2020, OSCE PoA 40/2019; see also Appendix 12, Art. III 3. (b) regarding the procedure of the IRB).
25. In light of the above, the application is rejected in its entirety.

15 May 2020



Thomas Laker
Chairperson



Jenny Schokkenbroek
Deputy Chairperson



Anna Csorba
Member