

**DECISION OF THE PANEL OF ADJUDICATORS OF THE OSCE WITH
REGARD TO THE EXTERNAL APPEAL BY [REDACTED]
(CASE No: OSCE PoA 45/2019)**

Proceedings

1. The Chairperson of the Panel of Adjudicators (PoA) of the OSCE received on 20 November 2019 a letter dated 20 November 2019 from the Chairperson of the Permanent Council of the OSCE transmitting an external appeal by [REDACTED] (Applicant) which had been forwarded to him on 7 November 2019.
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 22 November 2019 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 23 December 2019. The Respondent forwarded his reply on 23 December 2019 which was transmitted to the Applicant, advising [REDACTED] that [REDACTED] has a right to file a rebuttal which [REDACTED] did on 13 January 2020. The Panel asked for additional information on 9 July, 30 July, and 7 August 2020.
3. Travel restrictions in relation to a viral pandemic prevented the Panel from meeting in person, as foreseen in Article VI of the Terms of Reference of the Panel. Following consultations with the parties, the Panel held deliberations via video-conference on 24 and 25 August 2020. The Panel was composed of its Chairperson, Mr. Thomas Laker, and its members, Ambassador Andrei Popkov and Ms. Catherine Quidenus.
4. After examining all the documents submitted to it, the Panel noted that the Applicant requests the quashing of the final decision in specific recruitment proceedings, material damages and moral damages.
5. The Respondent, pursuant to his reply, acknowledges that there might have been some shortcomings in one of the recruitment processes. However, the Respondent insists that there is no evidence of discrimination or retaliation, nor manipulation, and that the process has always been approached in good faith.

Summary of facts

6. The Applicant is a member of the OSCE [REDACTED] seconded [REDACTED] [REDACTED]. Since January 2016, [REDACTED] holds [REDACTED].
7. In March 2018, the position of the [REDACTED] became vacant. The Position was advertised in October 2017 [REDACTED]. The Applicant and six other candidates were shortlisted and went through a written assessment as well as an interview. However, no suitable candidate was found. The relevant national delegations were informed on 13 March 2018.
8. It was decided to re-advertise the position with an identical announcement [REDACTED] [REDACTED] on 14 March 2018. The Applicant applied, and again [REDACTED] was shortlisted, took a written test and was interviewed.. On 18 June 2018, [REDACTED] [REDACTED] was informed by email that – with respect to the Applicant’s nomination – “another candidate was selected”. As a matter of fact, again, no candidate had been selected.
9. On the same day, the above-mentioned email was forwarded to the Applicant who received it while being on leave. On 19 June 2018, the Applicant shared with the then [REDACTED] by email that [REDACTED] had been informed by [REDACTED] delegation about [REDACTED] “second unsuccessful application” for the position. On 25 June 2018, the Applicant returned to [REDACTED] office.
10. By email of 27 June 2018, directed to Human Resources [REDACTED], the Applicant alleged that [REDACTED] was being discriminated against. Among other things, [REDACTED] referred to the recruitment process, explaining that [REDACTED] had “just received notification that I was unsuccessful”. At the end of this message, the Applicant clarified that [REDACTED] complaint was “not about my rejection for the position of [REDACTED], but the lack of appropriate managerial processes and a culture of stigmatisation”. The Applicant wrote a similar email to the Office of Internal Oversight (OIO).
11. On the same day, the Applicant received an answer from the [REDACTED], advising [REDACTED] that “under our system of administration a dispute of an administrative decision would be

brought forward in the form of an appeal (in this case of the decision not to appoint you to the post)”.

12. The next day, on 28 June 2018, the Applicant answered to the [REDACTED]: “I think it would be appropriate for the Office of Internal Oversight to respond to my complaint before I initiate anything further. As I said in my first correspondence to you, it is not about my rejection for the position of [REDACTED].” The Applicant also received answers from OIO.
13. On 3 July 2018, the Applicant wrote an email to the [REDACTED] that [REDACTED] “would now like to initiate the appeal mechanism that you have suggested to me.” By further emails dated 6, 13 and 19 July 2018, the Applicant asked questions about the appeals process which were answered only by email of 20 July 2018.
14. On 24 July 2018, the Applicant submitted a request for internal review. Therein, the date of text of the contested decision was indicated as “25/06/2018”.
15. In the meantime, a third, identical announcement was issued [REDACTED]
[REDACTED] The Applicant did not participate in this recruitment process that resulted in the selection of a candidate who was appointed on 27 August 2018.
16. In September 2018, an Internal Review Board (IRB) was established. The IRB decided to “look into the recruitment process for the [...] two vacancy notices.” On 3 July 2019, the IRB submitted its final report with a number of general recommendations, but no clear assessment of the legality of the contested decision. The final report does not deal with the timeliness of the Applicant’s request.
17. On 30 July 2019, the Secretary General (SG) decided to uphold the contested decision. Further, he decided to compensate the Applicant with an *ex gratia* payment of 2,500 EUR in response to shortcomings of the recruitment process.
18. The Applicant filed [REDACTED] request for external review by email dated 23 September 2019.

Contentions of parties

19. The Applicant's major contentions are:

- ■ didn't receive timely guidance and clarification about the deadline and also non-guidance on how to file the complaint like structure it with the appropriate staff regulation;
- ■ was still on leave when receiving information about ■ non-selection;
- The decision not to appoint ■ was based on discrimination and retaliation against ■ for having raised issues of mismanagement in the office;
- Purported limitations of the IRB process resulted in difficulties to assess whether discrimination and/or retaliation were present in the recruitment process;
- The Mission's Human Resources submitted manipulated documents.

20. The Respondent concedes that extraneous information appears to have been considered in the second recruitment process. However, it is submitted that

- There is no evidence of either discrimination or retaliation in both recruitments;
- The process has been approached in good faith at all times by the Respondent;
- There was no manipulation of the recruitment processes by the Mission's Human Resources.

Considerations

Procedural Issues

Standing

21. Pursuant to Staff Regulation 10.02 (a), a fixed term staff/mission member shall have a right of final appeal to a PoA against an administrative decision directly affecting him or her. Although the contested decision was addressed to [REDACTED] and copied to [REDACTED] only, there is no doubt that the decision not to select the Applicant for the position at stake did directly affect [REDACTED]. Therefore, the Applicant is entitled to file an appeal to the Panel.

Scope of the application

22. The Panel takes note that, in [REDACTED] request for internal review, the Applicant alleges to “have been discriminated against as a qualified person in being denied a position twice”.

23. The Panel further notes that three recruitment processes took place in order to fill the vacancy of the position at stake, each based on specific vacancy notices [REDACTED], each resulting in separate decisions. Accordingly, these three individual administrative decisions have to be reviewed and assessed separately.

24. From this perspective, the Panel takes note that the decision taken in the third (and final) recruitment process has not been contested by the Applicant who had not participated as a candidate in this process. Therefore, only the administrative decisions completing the first and the second recruitment process are properly put before the Panel.

indicated that the Applicant's nomination had been unsuccessful. It follows from the Applicant's email of 19 June 2018, mentioning ■■■ "second unsuccessful application" for the position that the Applicant had understood the impact of this message as well.

32. It is of no concern whether or not the Applicant was on leave on 18 June 2018. As a matter of fact, ■■■ was notified about ■■■ non-selection on this day, and the time-line to take legal action started from then.
33. OSCE's internal rules are silent on the calculation of time-limits. Based on various national and international legal systems, it is the Panel's established view that the day of receipt of the notification is disregarded for such calculation (see, e.g., Panel's decision of 16 July 2019, OSCE PoA 2/2019 – OSCE PoA 19/2019, para. 17).
34. It follows that the time-line for filing the request for internal review started on 19 June 2018, and that the thirty-day time-limit had already expired when the Applicant lodged ■■■ request on 24 July 2018.
35. Pursuant to the Panel's established jurisprudence, 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. It was for the Applicant to ensure that ■■■ request for review reaches the addressee on time (see, e.g., decisions of 24 November 2017, OSCE PoA 2/2017, para.23; and of 31 January 2020, OSCE PoA 41/2019, para. 19).
36. It is not relevant that an IRB was established and, indeed, dealt with the substance of the Applicant's complaints. As, in ■■■ request for internal review, the Applicant had alleged to have been notified of the contested decision only on 25 June 2018, the IRB did not verify the compliance with the time-limit of the appeal set out under Staff Regulation 10.01.1 (c), entirely relying instead on the information provided. However, it is for the PoA to check *ex officio* whether an application meets the formal requirements as laid down in Staff Regulation 10.01.1 (c).

37. In the Panel's view, no legitimate reasons for not having submitted the request within the prescribed time-limit (cf. Art. III para. 3 of the Internal Appeals Procedure, Appendix 12 to the Staff Regulations and Staff Rules) have been asserted.
38. In this respect and as a general rule, staff members of international organizations – like their colleagues in national civil services - are expected to inform themselves about the relevant civil service law of their respective organization, including internal appeals mechanisms. The same applies to staff of the OSCE where easy access to the Staff Regulations and Staff Rules is provided via the internal electronic information system.
39. Further, it is not part of the OSCE's obligations or duty of care to provide legal advice to its staff. Of course, in case such advice is given, any information has to be correct and may not misguide the inquiring staff member. In the present case, in the [REDACTED] message of 27 June 2018, the Applicant was correctly, albeit briefly informed about the option of an appeal. In [REDACTED] initial messages, the Applicant then emphasized more than once that [REDACTED] complaint was not about [REDACTED] rejection for the position. When [REDACTED] changed [REDACTED] mind – pursuant to [REDACTED] email of 3 July 2018 -, [REDACTED] unfortunately did so without clarifying the date of notification of the contested decision. In these circumstances, the Applicant's concern about lack of guidance is without merit.
40. Based on the findings above, the Panel cannot but determine that the request for internal review was delayed.

Merits

41. 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.
42. Read together, pursuant to established jurisprudence of the Panel, 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 (see, e.g., decisions of 24 November 2017, OSCE PoA 2/2017, para 26; of 20 April 2018, OSCE PoA 4/2017, para. 29; of 14

September 2018, OSCE 3/2018, para. 30; of 15 May 2020, OSCE PoA 1/2020, para. 24). Since, in the present case, the initial appeal has not been lodged within the time-limit as established in Staff Regulation 10.01 (c), the Panel is prevented from entering into a discussion of the merits (see also Appendix 12, Art. III 3. (b) regarding the procedure of the IRB).

43. In view of the foregoing, the application is rejected in its entirety.

Done on 25 August 2020



Thomas Laker



Andrei Popkov



Catherine Quidenus