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

(Case No: OSCE PoA 6/2026)

Proceedings

1. On 15 July 2026, the Chairperson of the Panel of Adjudicators (PoA) of the Organization for Security and Co-operation in Europe (OSCE) received a letter from the Chairperson of the Permanent Council of the OSCE transmitting an external appeal by [redacted] (Applicant) submitted on 2 June 2026.

2. The Chairperson of the PoA, through the Executive Secretary of the PoA, informed the Secretary General of the OSCE (Respondent) and the Applicant on 20 July 2026 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 (RoP) of the Panel to reach the Panel no later than 19 August 2026. The Respondent filed a response on 19 August 2026, and the Applicant exercised [redacted] right to reply on 27 August 2026. The Panel asked the Respondent for additional information on 29 September 2026, which the Respondent submitted on 7 October 2026.

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 from 15 to 16 October 2026 at the Hofburg premises in Vienna to examine the appeal. The Panel was composed of its Chairperson, Mr. Thomas Laker, its Deputy Chairperson, Ms. Jenny Schokkenbroek, and its member, Ms. Joan Powers.

4. The Applicant is challenging the administrative decision not to appoint [redacted] to the post of [redacted] (Impugned Decision), which was notified to [redacted] on 17 April 2025, and the final decision of the Secretary General, notified to [redacted] on 9 April 2026 following the conclusion of the internal review process, which upheld the Impugned Decision.

Summary of the facts

5. On [redacted], the OSCE posted a Vacancy Notice [redacted] for a [redacted]. The necessary qualifications for the post as set out in the Vacancy Notice listed, *inter alia*, a minimum of eight years of progressively responsible professional-level experience in the area of good economic government, of which at least six at international level.

6. The Applicant applied for the post and advanced through the recruitment process. The Applicant, along with three other candidates, was included in the short-list and was invited to make a presentation and be interviewed by an Evaluation Board on 9 October 2024. The Evaluation Board concluded that three of the candidates were suitable for the position and recommended the Applicant as its first choice for the post.

7. On 18 December 2024, the Chair of the Evaluation Board confirmed to the Applicant in writing that the selection process had been finalized.

8. On 17 April 2025, the Applicant was informed that the Secretary General had appointed another candidate to the post on 8 April 2025. The letter also informed [redacted] that an investigation against [redacted] was still ongoing.

9. On 9 May 2025, the Applicant lodged a Request for Internal Review, challenging the validity of the decision not to select [redacted] for the vacancy. An Internal Review Board (IRB) was established on 16 May 2025 to review the Applicant's Request.

10. The outcome of the fact-finding in the investigation in which the Applicant was the subject was communicated to [redacted] in September 2025.

11. The IRB issued its final Report (dated 3 March 2026) containing its conclusions and recommendations on 10 March 2026. The IRB agreed overall with the arguments made by the SG in response to the claims made by the Applicant, and thus recommended, in line with its findings and conclusions, that the SG uphold the contested decision.

12. On 9 April 2026, the Applicant was notified that the Secretary General (SG), had decided to uphold the Impugned Decision.

13. On 2 June 2026, the Applicant submitted an external appeal to the Panel of Adjudicators pursuant to Staff Regulation 10.02 and Staff Rule 10.02.2(a)(ii).

14. On 29 September 2026, the Chairperson of the PoA issued an Order requesting the Respondent to submit, *inter alia,* "...(d) any documents showing the basis on which the selected candidate was found to meet the mandatory requirements;..." In this respect, based on Article 8 of its RoP (case management), the PoA requested the Respondent "to explain in detail, how and on which basis the Organization determined that the selected candidate fulfilled the necessary qualification of 'a minimum of eight years of progressively professional-level experience in the area of good governance, of which at least six at international level' (emphasis added), as requested in the vacancy announcement of [redacted]. Data may be anonymized where appropriate."

15. The Respondent provided the requested explanation on 7 October 2026, along with a redacted copy of the application form of the selected candidate.

Summary of the parties' principal contentions

16. The Applicant alleges that a serious defect in the recruitment and selection process prevented [redacted] candidacy from receiving full and fair consideration. Although [redacted] acknowledges that the SG is the appointing authority and is not bound by the Evaluation Board's recommendation, [redacted] maintains that the SG's discretion is not unlimited. In particular, that discretion cannot justify disregarding mandatory vacancy criteria, relying on the pendency of an investigation against [redacted], withholding the reasons for the decision, or upholding a process whose central factual basis remains unclear.

17. The Respondent points out that recruitment decisions are subject to only limited review. It notes that the applicable principles have already been recognized by the PoA.[1] It cites Staff Instruction 17/Rev. 2 (SI), paragraph 13.7, for the proposition that the scope of review of a

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[1] In OSCE PoA 1/2022, para. 21, the PoA held that: "Pursuant to established international administrative law principles, international organizations have wide discretion in recruiting, appointing, or promoting staff. However, such discretion is not unfettered. Full and fair consideration must be given to candidatures. First of all, the internal rules on the requisite procedures have to be adhered to. Further, these rules and practices need to be in line with general principles of international administrative law."

recruitment appeal "will be limited to whether there has been a serious defect in the recruitment and selection process, which meant that the candidate's application was not given full and fair consideration, and is not intended to replace the remit of the discretionary authority in the selection of the applicants."

18. On this basis, the Respondent submits that the scope of review of the present Application should be limited to whether there was a serious defect in the recruitment and selection process such that the Applicant's candidacy was not given full and fair consideration, including whether the requisite procedures set out in SI 17 were followed, and whether the Impugned Decision was free from extraneous or improper considerations.

19. Moreover, given the presumption of regularity for administrative decisions, the burden of proof falls on the Applicant to prove through clear and convincing evidence that [redacted] was denied a fair chance of selection.

Applicable law

20. Staff Regulation 3.01 (Designation and Recruitment) ("*Recruitment shall be based on a transparent process, subject to open competition among nationals of participating States and without regard to gender, race, colour, religion and beliefs nor to ethic or social origin or to nationality.*")

21. Staff Rule 3.01.2(a)(b) (Screening and Evaluation of Candidates) *("The initial screening of candidates shall be based on the clear and objective criteria outlined in the vacancy notice and shall aim to identify thoe candidates who leet the necessary requirements laid down in the vacancy notice and to exclude those candidates that do not. . . . The qualifications and professional experience of candidates meeting the necessary requirement shall be further evaluated under the responsibility of the appointing authority. Further evaluation may be based on individual interviews, technical, linguistic tests and/or competitive examinations.*")

22. Staff Regulation 3.05(a) ("*The Secretary General shall appoint or assign all staff members of the Secretariat below Director level. . . .*")

23. Staff Instruction No. 17/Rev. 2, paragraph 13.7 (Standard Recruitment and Selection Procedure) ("*the scope of review on an appeal will be limited to whether there has been a*

serious defect in the recruitment and selection process, which meant that the candidate's application was not given full and fair consideration, and is not intended to replace the remit of the discretionary authority in the selection of the applicants.")

Assessment by the Panel

24. At the outset, in considering the merits of the Application, the Panel has taken note of certain well-established principles applicable to the selection of candidates for an advertised vacancy:

- First, the jurisprudence emphasizes that the selection of candidates is necessarily based on merit and requires a high degree of judgment on the part of those involved in the selection process. Accordingly, complainants must demonstrate that there was a serious defect in the selection process which prevented the full and fair consideration of their candidacy. It is not sufficient simply to assert that one is better qualified than the selected candidate.[2]

- Second, under the principle of *tu patere legem quam ipse fecisti*, an organization that fills a post through a competition must follow the rules it established for that competition.[3] In particular, it must adhere to the selection criteria announced at the outset and may not modify or disregard them during the process. Because a competition must afford all interested candidates an equal opportunity to compete, the organization must strictly comply with the rules announced in advance.

- Third, a recommendation or ranking by an evaluation or selection body does not bind the official with final appointing authority. Nevertheless, the appointing official must exercise that discretion lawfully and based on relevant considerations. If the official departs from the selection body's recommendation or ranking, a non-selected candidate may seek review of the decision. In that event, the reasons for rejecting the candidate must be provided to permit meaningful review. Those reasons need not accompany the

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2 *See* ILOAT Judgment 5155, consideration 2.

3 *See* ILOAT Judgment 2712, consideration 5.

initial decision and may instead be identified later, including during internal review proceedings. But such disclosure is considered necessary as a matter of due process.[4]

- Fourth, administrative tribunals have granted relief where a legal or procedural defect in the selection process could have affected the outcome, even without finding that the complainant was the strongest candidate. This principle applies where the organization appoints a candidate who lacks the required qualifications. In such cases, the issue is not whether the complainant should have been selected, but rather whether the successful candidate was lawfully eligible for appointment.

25. The PoA has therefore assessed the following issues raised by the Applicant in light of these broad principles:

(i) Did the selected candidate satisfy the mandatory qualifications in the Job Vacancy announcement;

(ii) Did the Secretary General disclose to the Applicant the reasons underlying the exercise of [redacted] discretionary authority in selecting another candidate instead of the Applicant; and

(iii) Was the selection decision improperly influenced by the fact that there was an ongoing investigation of the Applicant pending at the time.

Did the selected candidate satisfy the mandatory qualifications in the Job Vacancy announcement

26. The Applicant alleges that the selected candidate did not possess all of the mandatory criteria specified in the Job Vacancy. In particular, [redacted] claims that the selected candidate did not have "a minimum of eight years of progressively responsible professional-level experience in the area of good economic governance, of which at least six at international level."

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[4] *See* ILOAT Judgment 5148, consideration 17, *citing with approval* ILOAT Judgment 4683, consideration 12, Judgment 4467, consideration 7 and Judgment 2978, consideration 4).

27. In order to assess this allegation, the Panel ordered the Respondent to provide an explanation as to how and on what basis the Organization had determined that the selected candidate fulfilled the necessary qualification of "a minimum of eight years of progressively professional-level experience in the area of good governance, of which at least six at international level" (emphasis added), as requested in the Job Vacancy announcement. As noted above (see paragraph 14), this information was provided to the Panel on 7 October 2026.

28. The Panel reviewed the information in light of the necessary qualifications for the position. It concludes that the Organization's determination that the selected candidate fully met those qualifications, including its calculation of the years of [redacted] relevant professional experience in good governance, including at the international level, was not unreasonable and fell within its discretion. The Panel recalls that the vacancy announcement asked for professional experience "at international level". Such experience does not necessarily require working for an international organization. Rather, it is the contents of the work that has to be at international level. Therefore, it was within the Respondent's discretion to also accept appointments with a national government to be "at international level" if such appointments include work at this level.

Did the Secretary General provide the Applicant with the reasons underlying the non selection decision

29. The Applicant claims that the SG's final decision upholding [redacted] non-selection was "materially under-reasoned." The OSCE responds by emphasizing the wide discretion accorded to recruitment decisions. In its view, the review of the selection decision should be limited to whether the Applicant's candidacy received full and fair consideration and whether the requisite procedures were followed.

30. However, as noted above, there is a clear line of rulings by the Administrative Tribunal of the International Labor Organization (ILOAT) as well as the United Nations Appeals Tribunal (UNAT) that unsuccessful candidates who challenge their non-selection for a post are entitled to be informed of the reasons for the rejection of their candidacy. Those reasons need not accompany the initial notification of the non-selection decision and may instead be identified later, including during internal review proceedings. However, such disclosure

is considered essential to enable a meaningful legal challenge to and review of the motivation for the non-selection. A failure to provide a lawful and adequately documented rationale may justify the award of remedies to the unsuccessful candidate.[5]

Was the Impugned Decision improperly influenced by the fact that the Applicant was under investigation at the time

31. The Applicant claims that an extraneous and irrelevant factor—i.e., the fact that [redacted] was under investigation by the Organization for misconduct at the time of the competition—was used against [redacted], contrary to the principle of the presumption of innocence.

32. The Respondent does not dispute that the pending investigation formed part of the due diligence context considered before the appointment decision was taken. However, according to the Respondent, the pending investigation was not treated as a finding of misconduct and did not result in any disciplinary measure against the Applicant. The Respondent therefore rejects the Applicant's contention that the investigation amounted to an improper or unlawful consideration that tainted the recruitment decision.

33. The Panel considers that the allegation that the decision not to select [redacted] was due to the pendency of the investigation was not substantiated.

Conclusion

34. In sum, the Applicant has not demonstrated that the decision not to select [redacted] for the vacancy in question and to appoint another candidate who was considered suitable but ranked second by the Evaluation Board was unlawful. In the Panel's view, this decision fell within the organization's wide discretion in appointing staff.

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[5] *See, e.g.,* ILOAT Judgment 1235, consideration 3; Judgment 1355, considerations 4, 8, 10; Judgment 2834, consideration 13; Judgment 5148, consideration 14; *Blythe*, 2023-UNAT-1404, paragraph 66; and *Hosali*, 2025-UNAT-1523.

35. However, at no time before or during these proceedings has the SG provided the Applicant with the reasons for the rejection of [redacted] candidacy. As noted above, a non-selected candidate is entitled to know the reasons for [redacted] rejection, in order to permit meaningful review of the decision. The Panel considers the failure to do so in this case a serious procedural flaw that warrants the award of EUR 4,000 as reasonable compensation for moral damages to the Applicant.

Decision

36. The Panel orders the Respondent to pay compensation to the Applicant for moral damages in the amount of EUR 4,000.

37. All other claims are rejected.

Done in Vienna on 16 October 2026.

Thomas Laker	Jenny Schokkenbroek	Joan Powers
Chairperson	Deputy Chairperson	Member