

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

(CASE No: OSCE PoA 21/2019)

*Proceedings*

1. The Chairperson of the Panel of Adjudicators (PoA) of the OSCE received on 21 May 2019 a letter dated 20 May 2019 from the Chairperson of the Permanent Council of the OSCE transmitting an external appeal by [REDACTED] (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 24 May 2019 of the constitution of the Panel. The Respondent was asked 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 24 June 2019. The Respondent filed a reply on 24 June 2019, which was transmitted to the Applicant, advising [REDACTED] that [REDACTED] has a right to file a rebuttal by 15 July 2019. On 15 July 2019, the Applicant informed the Panel that [REDACTED] maintains [REDACTED] legal point of view as elaborated in the appeal as well as in the documents submitted in the course of the internal procedure. This notification was transmitted to the Respondent for information.
3. In accordance with Article VI of the Terms of Reference of the Panel, the Chairperson of the Panel convened the Panel on 12 and 13 December 2019 at the Hofburg premises at Vienna to examine the appeal. The Panel was composed of its Chairperson, Mr. Thomas Laker, Ms. Jenny Schokkenbroek and Ms. Catherine Quidenus.

*Summary of facts*

4. The Applicant is a former international mission member on secondment, serving in the period [REDACTED]. The Applicant was deployed to [REDACTED], located [REDACTED].

5. In the period from January 2016 to June 2017, the Applicant requested conversion of [REDACTED] Annual Leave Days (ALD) into Certified Sick Leave (CSL) on seven occasions. On each occasion, the Applicant was on leave in [REDACTED] home country.
6. On 26 June 2017, a meeting took place attended by the management of [REDACTED] and the Applicant. In the meeting, the repeated conversion of ALD into CSL was discussed. The record of this meeting includes the following paragraphs:

[REDACTED] explained that it had been noted that [REDACTED] had, on 7 separate occasions, during the period January 2016 to June 2017, converted [REDACTED] leave to Certified Sick Leave. This amounted to a total of 39 days Leave converted to Certified Sick Leave. On each occasion, [REDACTED] was on leave in [REDACTED] native country (...).

[REDACTED] replied that, as this conversation was taking place between colleagues, [REDACTED] had nothing to hide. [REDACTED] stated that this situation had arisen in order that [REDACTED] could attend consultations for medical issues in [REDACTED] native country; and that 12 days in November and December 2016 were taken in relation to [REDACTED] serious illness. [REDACTED] stated that the number of days Certified Sick Leave taken was within the limits set by [REDACTED] contractual obligations.

[REDACTED] explained that, as [REDACTED], [REDACTED] has a duty of care for [REDACTED] staff and would thus notify [REDACTED] health issues in order that, where possible, the [REDACTED] could provide assistance. [REDACTED] stated that [REDACTED] Seconding Authorities would also be notified. [REDACTED] replied that [REDACTED] did not understand on what basis [REDACTED] Seconding Authorities needed to be involved.

[REDACTED] asked if [REDACTED] had sought assistance from [REDACTED] resident Doctor, [REDACTED]. [REDACTED] replied that [REDACTED] had provided [REDACTED] and [REDACTED] with Doctors' Notes [in accordance with Request, Approval and Tracking System protocol]. However, [REDACTED] informed that [REDACTED] had not consulted Doctor [REDACTED] about [REDACTED] health issues and preferred to seek treatment in [REDACTED] native country.

[REDACTED] stated that [REDACTED] would take personal interest in [REDACTED] well-being. [REDACTED] requested that [REDACTED] discuss [REDACTED] health issues with Doctor [REDACTED] and notify [REDACTED] in advance of [REDACTED] intent to attend medical consultations or treatments during Leave periods in the future.

The record of this meeting is signed by all persons present in this meeting.

7. During and after this meeting, the Applicant addressed the management of the [REDACTED] with questions about the meeting. According to the Applicant, [REDACTED] never received an answer to [REDACTED] questions.
8. On 26 August 2017, the Applicant addressed [REDACTED] with similar questions. On 28 August 2017, [REDACTED] replied and provided the Applicant with general information about the management of sick leave and the duty of care.
9. On 20 September 2017, the Applicant submitted a complaint against [REDACTED] and [REDACTED] for harassment and discrimination and a complaint against [REDACTED] for discrimination.
10. By letter dated 1 February 2018, the [REDACTED] informed the Applicant that [REDACTED] has determined that the allegations for harassment and discrimination were *prima facie* unsubstantiated (impugned decision).
11. On 28 February 2018, the Applicant filed an appeal against the impugned decision.
12. Consequently, an Internal Review Board (IRB) was established on 24 April 2018 by the [REDACTED]. By report of 31 December 2018, the IRB recommended to dismiss the Applicant's claims.
13. By letter dated 4 February 2019, the [REDACTED] informed the Applicant to uphold the impugned decision. This message was communicated to the Applicant on 6 February 2019.
14. On Monday 8 April 2019, the Applicant submitted [REDACTED] request for external appeal.

### *Contentions of parties*

15. The Applicant's major contentions are:
  - The meeting on 26 June 2017 was unnecessary and inappropriate;
  - The questions posed and the topics raised during this meeting constitutes harassment and discrimination;
  - The communication from [REDACTED], constitutes discrimination;
  - The impugned decision should be invalidated;
  - The Applicant claims compensation for moral damage.

16. The Respondent's major contentions are:

- Both [REDACTED] acted in full compliance with the applicable OSCE regulations and instructions for management of absenteeism for medical reasons;
- The communication by [REDACTED] was professional and correct;
- Seconding authorities are routinely informed about leave-related matters due to the nature of the triangular employment relationship of seconded staff members;
- The impugned decision is in compliance with OSCE Staff Regulations and Staff Rules;
- The OSCE did not act unlawful, so there is no legal ground for a claim for compensation. Furthermore, the Applicant has failed to provide any evidence for a causal link between act and injury and the allegedly suffered damage.

#### *Considerations*

#### *Procedural issues*

#### *Scope of the application*

17. Pursuant to Staff Regulation 10.02, staff members shall have a right of final appeal against an administrative decision directly affecting him/her in accordance with the Terms of Reference set force in Appendix 2 of the Staff Regulations and Rules. The Panel notes that the decision of 1 February 2018, i.e. the decision not to further investigate the Applicant's allegations of harassment and discrimination, is the only decision in the sense of Staff Regulation 10.02. It is not for the Panel to answer other questions the Applicant has raised.
18. Further, the Panel takes note that the Applicant filed [REDACTED] formal complaint of harassment and discrimination only on 20 September 2017, with respect to events that had taken place on 26 and 27 June 2017, i.e. the meeting and the signature of its record. Para. 8.4 of Staff Instruction No. 21/Rev.1 on the OSCE Policy on the Professional Working Environment (SI 21), however, stipulates a time-limit of 30 days from the date of the last incident of alleged harassment and discrimination to file a complaint. In the Applicant's favor, it is assumed that [REDACTED] complaint also covers the period of time up to 28 August 2017, when [REDACTED] received an answer to [REDACTED] questions by email.



## Merits

19. Pursuant to para. 6.9 of SI 21, the OSCE employs a standard based on reasonableness in assessing behavior. Officials must have reasonable grounds before making a complaint under SI 21. Whether conduct constitutes inappropriate behavior will be based on an assessment of the facts and circumstances in which they occur.
20. Based on this standard, the Panel, having carefully considered the material presented by the Applicant, including the email exchange between [REDACTED] and the Administration, holds the view that allegations of harassment and discrimination were indeed *prima facie* unsubstantiated.

### Decision related to [REDACTED]

21. It follows from the record that [REDACTED] were only involved in the meeting of 26 June 2017. The Panel cannot but state that the allegations with respect to these persons were not submitted within the 30-day time-limit of para. 8.4 of SI 21.
22. Even assuming, again in the Applicant's favor, that an implicit extension of this time-limit was granted by the competent authority, there are no grounds for rescinding the respective parts of the impugned decision. Both persons acted in accordance with the Organization's internal provisions, as clearly and sufficiently explained in the impugned decision. As compliance with the law never constitutes harassment, it was rightfully determined that the allegations of harassment and discrimination were *prima facie* unsubstantiated.

### Decision related to [REDACTED]

23. Pursuant to the file, the only relevant participation of [REDACTED] was to answer the Applicant's email of 26 August 2018 by email of 28 August 2018. In this email, explanations on the management of sick leave matters and on the duty of care are provided. It does not include any word or part that could constitute discrimination as defined in para. 6.5 of SI 21, i.e. "any unfair treatment or arbitrary distinction that may be presented in the forms of an improper use of a position of influence, power or authority by an OSCE official, on the basis of gender, race, religion or belief, nationality ethnic or social origin, age, sexual orientation, marital status, disability or other aspects of personal status." Therefore, the impugned decision is upheld also in this respect.

## Delay

24. The Panel notes with concern that about one and a half years passed by from the Applicant's initial complaint to the receipt of [REDACTED] request for external review.
25. Pursuant to para. 8.1 of SI 21, complaints shall be taken seriously and, *inter alia*, shall be dealt with promptly. The Panel notes that it took the Respondent more than four months from the receipt of the Applicant's formal complaint on 20 September 2017 to the issuance of the impugned decisions of 1 February 2018. On the other hand, efforts were made to resolve the matter informally which the Applicant apparently rejected on 20 November 2018.
26. Further, pursuant to Article II para. 1 (a) of the Internal Appeals Procedure (Appendix 12 to the Staff Regulations and Staff Rules), an IRB shall be composed within seven days from the decision not to overrule the impugned decision. In the present case, nearly two months passed between the Applicant's request for internal review and the composition of an IRB.
27. In addition, pursuant to Article V para. 7 of the Internal Appeals Procedure, to the extent possible, the IRB shall submit its report within sixty days upon receipt of the Administration's reply to the Applicant's request and/or written statement. In the case at hand, the reply was received on 23 August 2018, whereas the report of the IRB was submitted only on 11 January 2019.
28. Finally, the Applicant filed [REDACTED] request for external review on 8 April 2019. It was only after six weeks that this request was transmitted to the Panel on 21 May 2019.
29. However, the Panel holds the view that, given the circumstances of this case, there is no excessive delay in these proceedings which would warrant compensation (cf. decision of 6 April 2017, OSCE PoA 4/2016, para. 29; decision of 23 November 2018, OSCE PoA 1/2018, para. 20).
30. In light of the above, the application is rejected in its totality.

Done in Vienna, on 13 December 2019



Thomas Laker  
Chairperson of the Panel



Jenny Schokkenbroek  
Member of the Panel



Catherine Quidenus  
Member of the Panel