

**DECISION OF THE PANEL OF ADJUDICATORS OF THE OSCE WITH REGARD  
TO THE REQUEST FOR REVISION BY ██████████**

(CASE No: OSCE PoA 3/2017)

*Proceedings*

1. The Chairperson of the Panel of Adjudicators (PoA) of the OSCE received on 11 September 2017 a request under Article IX of the Terms of Reference of the PoA from ██████████ (Applicant), according to which the Applicant requests the PoA to revise its adjudication decision in case No. OSCE PoA 1/2017 of 14 July 2017.
2. Having received hardcopies of the request on 18 September 2017, the Chairperson of the Panel, through the Executive Secretary of the Panel, informed the Secretary General of the OSCE (Respondent) and the Applicant on the same day of the constitution of the Panel and asked them to forward any further communication to the Panel as per analogous application of Article 5 of the Rules of Procedure of the Panel to reach the Panel no later than 18 October 2017. In addition, the Chairperson of the Permanent Council of the OSCE was informed about the request. The Respondent forwarded his reply on 18 October 2017 which was transmitted to the Applicant, advising ██████████ that ██████████ has a right to file a rebuttal by 7 November 2017 which ██████████ did.
3. In analogous application of Article VI of the Terms of Reference of the Panel, the Chairperson of the Panel convened the Panel on 25 and 26 January 2018 at the Hofburg premises at Vienna to examine the request. The Panel was composed of its Chairperson, Mr. Thomas Laker, Ms. Anna Csorba, and Ms. Jenny Schokkenbroek, members of the Panel.
4. After examining all the documents submitted to it, the Panel noted that the Applicant requests to revise the Panel's decision of 14 July 2017 and to proceed to decide case no. OSCE PoA 1/2017 on the merits. The Respondent, pursuant to his reply, holds the view that there are no reasons to set aside the decision of 14 July 2017, and, implicitly, asks the panel to reject the request.

## *Summary of facts*

5. On 14 July 2017, the adjudication decision in case no. OSCE 1/2017 was rendered. In this case, the Applicant had challenged a decision not to select ■■■ for a position ■■■ had applied for. In its crucial parts, the adjudication decision reads:

*20. Pursuant to Staff Regulation 10.01 (c), to be considered an appeal shall be lodged within thirty days from the date of the notification. It is obvious that the crucial administrative decision had been taken on or before 30 June 2016, since the selected candidate was appointed on 1 July 2016.*

*21. The Panel is aware of the fact that the Applicant had never been notified about the outcome of the selection process at stake in writing or by other specific individual message. Notwithstanding this absence of formal information, the Panel is satisfied that the Applicant had access to sufficient information about the outcome of the selection procedure. Due to the participation in OSCE's online application system, the Applicant had the opportunity to learn about the status of ■■■ application on a day to day basis. In principle, it is appropriate for candidates who have submitted their candidature via the online application system only to be informed via the same venue. The Organization fulfilled her legal obligation to inform candidates about the outcome of the selection procedure (see Paragraph 8.10.8 of Staff Instruction No.17/Rev. 1 on Standard Recruitment Procedures of 22 July 2014) by updating the respective data.*

*22. It follows from the above that the Applicant was notified about ■■■ non-selection on 30 June 2016 when the online application system showed that ■■■ respective application had been rejected. From that date on, the time limit to request an internal review started.*

*23. In addition, the Panel notes that the Applicant was aware of ■■■ exclusion from the selection process at latest in August 2016: First, ■■■ had already – in ■■■ words – “sometime in August” 2016 been informed by ■■■ Human Resources that ■■■ was not long-listed, and second, in ■■■ written query of 30 August 2016 ■■■ wants to know “how it happened that my file did not make the long lists”, thus admitting positive knowledge of the failure of ■■■ candidatures.*

*24. Against this background, with respect to the only relevant administrative decision of 30 June 2016, the Panel cannot but determine that the Applicant's request for internal review of 18 October 2016 does not meet the 30 day time limit established in Staff Regulation 10.01 (c)."*

6. With respect to the functioning of OSCE's online application system, the above decision was based on additional information the Panel had received from the Respondent on 7 July 2017. In its relevant part, this information reads:

*" (ii) As a matter of policy and long-standing practice, the OSCE [REDACTED] only formally notifies candidates who are short-listed and invited for an interview of the outcome of the selection process. In this case, as the Applicant was not shortlisted or invited for an interview for the position at issue, [REDACTED] was not formally notified of the selection outcome for the position.*

*(ii) However, it is noted that applicants for the position at issue were instructed in the Vacancy Notice to apply through the OSCE's online application system. As stated in [REDACTED] external appeal Application, the Applicant complied with these instructions ... Applicants who submit their applications through the OSCE's online application system, as the Applicant did, may log in at anytime to see the status of their application, i.e., whether their application is "Active", "Under consideration", "Not successful", etc., as reflected in the system.*

*(iii) In this case, after the final decision on the selection was made, the recruitment process was closed in the OSCE's online application system by the Mission as of 30 June 2016. From this date, had the Applicant logged in and checked the status of [REDACTED] application, [REDACTED] would have seen that it had changed from "Active Application" to "Rejected by Mission/Institution". "*

7. Due to an administrative error, this above information was shared with the Applicant only on 21 July 2017, i.e. after the final decision of 14 July 2017 had been rendered.
8. The Applicant, upon receipt of the Respondent's description of the electronic management of OSCE's application system, found this description to be erroneous and

misleading. ■ holds the view that the Respondent's description might have had a decisive influence on the Panel's decision of 14 July 2017.

### *Contentions of parties*

9. The Applicant's major contentions are:

- Nowhere are staff/mission members advised to check the status of recruitment processes by proceeding past the "messages" box, past the listed notifications, and past the page with the entries in the "Vacancies Applied For" table; they are not told and are not aware that there are process entries at the end of the vacancy notice,
- There never was a notation in the "notifications" space under the "Messages" heading on the Applicant's online home page,
- The Applicant did indeed log in and check the state of ■ file regularly, especially the box entitled "Messages". There was no message or notification in that space,
- Since there never was an entry concerning the recruitment at stake in the Applicant's notifications, the Respondent did not use the online application system to notify the Applicant of the contested decision. There was no notification prior to 19 September 2017,
- The information that, in the online application system, the status of Applicant's candidature changed from "*active application*" to "*Rejected by Mission/Institution*" is incorrect,
- The Applicant infers that the Panel took that affirmation from the Respondent's submission of 7 July 2017. It might have had a decisive influence on the adjudication decision of 14 July 2017.

10. The Respondent concedes that the notation "*Rejected by Mission/Institution*" is only seen internally by OSCE staff with administrative access to the system. The corresponding notation visible to the Applicant is "*Not successful*".

The Respondent's major contentions are:

- There are two ways an applicant can see the full list of applications he or she has submitted online. The applicant must either (i) click on the "Full List" button under the "Vacancies Applied For" field in the middle of the homepage, or (ii) click on the "Applications to OSCE" tab at the top of the homepage window. In this case, if the Applicant had clicked on either the "Full List" button or the "Applications to OSCE" tab on the homepage, ■ would have seen the additional applications ■ has submitted to the OSCE, including for the subject vacancy. Further, if the Applicant had done this any time after 30 June 2016, ■ would have seen that the application status for the subject vacancy had changed to indicate that ■ application was "*Not successful*",
- The Panel's decision that the Applicant's appeal was untimely was reached on a second independent basis. As found by the Panel in its 14 July 2017 decision, the Applicant by ■ own account knew that a selection had been made for the subject vacancy by "sometime in August" 2016, and ■ was aware that ■ had not been long listed for the position by that time. Accordingly, even if the Applicant did not click on the correct tab or button to see the application status update for the subject vacancy ■ nonetheless knew that ■ had not been long listed or selected for the position by 30 August 2016, and ■ appeal filed on 18 October 2016 was therefore untimely filed as determined by the Panel.

## *Considerations*

### *Procedural Issues*

#### *Request for revision*

11. The proceedings of “request for revision” are not part of Article X of the OSCE’s Staff Regulations and Staff Rules which, under the heading “Appeals”, deals with the general appeals procedure for staff against administrative decisions. Instead, Article IX of the Terms of Reference of the Panel of Adjudicators (ToR) provides for an opportunity for the parties to request the Panel to revise its own adjudication decision. Since no specific procedural provisions for this type of proceedings have been included, the Panel decided to apply the procedural provisions of Article X of OSCE’s Staff Rules and Regulations as well as of the Panel’s Rules of Procedure of the Panel *cum grano salis* to the proceedings of request for revision in an analogous way.

#### *Timeliness of the request*

12. Pursuant to Article IX of the ToR, the request for revision shall be made within two months of the applying party acquiring knowledge of the fact the request is based upon, but not later than six months of the date of the decision. In the present case, the Applicant became aware of the crucial Respondent’s additional information only on 21 July 2017, after the Panel had rendered its decision of 14 July 2017. ■ submitted ■ request for revision on 11 September 2017, i.e. well within the two month time-limit, and not later than six months of the date of the initial adjudication decision.

#### *Merits*

13. Pursuant to Article IX of the ToR, the revision of an adjudication decision is only allowed (1) in the event of the discovery of a fact that, (2) by its nature might have a decisive influence on the adjudication decision and (3) was unknown to the Panel and to the party/parties concerned at the time the adjudication decision was delivered.

14. In the present case, there are already serious doubts whether the submissions in the request indicate a new “fact” within the meaning of Article IX ToR. With respect to the crucial question whether and when a notification about the non-selection of the Applicant took place, the only novelty is that the change of status for the subject vacancy from “Active Application” to “Rejected by Mission/Institution” was not visible for the Applicant, as stated in the Respondent’s submission of 7 July 2017.
15. Instead, the notation visible to the Applicant was “Not successful”. As demonstrated by the Respondent, the Applicant had access to this crucial information, although it was not explicitly sent to ■■■ by individual message. The Panel notes that this information could only be discovered by scrolling down a number of screens. Also, in the Panel’s view, all users of the online application system should be provided with clear and precise information about the handling of this system. Nevertheless, as the Panel has held in its decision of 14 July 2017 at para. 21: *“In principle, it is appropriate for candidates who have submitted their candidature via the online application system only to be informed via the same venue. The Organization fulfilled her legal obligation to inform candidates about the outcome of the selection procedure (see Paragraph 8.10.8 of Staff Instruction No.17/Rev. 1 on Standard Recruitment Procedures of 22 July 2014) by updating the respective data.”* Therefore, the Panel is of the opinion that the request for revision is not based on a new fact.
16. Further, even if the shortcomings of the electronic notification were to be accepted as a new fact unknown to the Panel and the party concerned, this fact had no decisive influence on the adjudication decision. In this respect, the Panel reiterates that the Applicant, according to ■■■ own submission, had been informed about the unsuccessfulness of ■■■ application by ■■■ Human Resources in August 2016, and, in ■■■ email of 30 August 2016 had admitted to have knowledge of ■■■ non-selection, as emphasized in para. 23 of the initial adjudication quoted above. It follows that the Applicant’s request for internal review of 18 October 2016 did not meet the 30 day time limit established in Staff Regulation 10.01 (c) anyway. Therefore, even if the notification via the online application system should be disregarded, the adjudication decision of 14 July 2017 would not have had any other outcome.

17. It follows from the above that the request for revision does not meet the prerequisites of Article IX of the ToR and, therefore, must be rejected.

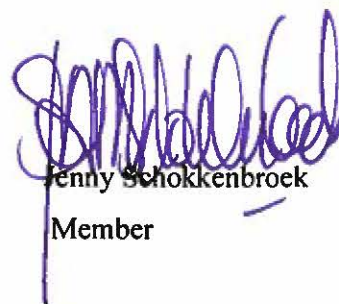
Done in Vienna, on 26 January 2018



Thomas Laker  
Chairperson



Anna Csorba  
Member



Jenny Schokkenbroek  
Member