

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

(CASE No: OSCE PoA 43/2019)

*Proceedings*

1. The Chairperson of the Panel of Adjudicators (PoA) of the OSCE received on 17 July 2019 a letter from the Chairperson of the Permanent Council of the OSCE transmitting an external appeal by [REDACTED] (Applicant) who was a 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 22 July 2019 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 22 August 2019. The Respondent forwarded his reply on 22 August 2019, which was transmitted to the Applicant on 28 August 2019, advising [REDACTED] that [REDACTED] has a right to file a response by 16 September 2019. On [REDACTED] request, leave was granted until 8 October 2019 when the Applicant filed [REDACTED] response. Further, the Applicant filed various submissions at various dates which were shared with the Respondent.
3. In accordance with Article VI of the Terms of Reference of the Panel, the Chairperson of the Panel convened the Panel on 16 and 17 March 2020 at the Hofburg premises at Vienna to examine the appeal. Travel restrictions in relation to a viral pandemic prevented the Panel from meeting in person. Due to the expiration of the term of a Panel member, the respective Panel member had to be replaced. Following consultations with the parties, the Panel held deliberations via video-conference on 11, 13 and 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 18 October 2018 to re-assign [REDACTED] from the [REDACTED]. As relief, the Applicant claims that the transfer should be cancelled, that disciplinary and administrative action should be taken

against those who are responsible for the redeployment, and that [REDACTED] be financially compensated for additional costs of the transfer.

5. The Respondent, pursuant to his reply, holds the view that the re-assignment was based on the internal rules of the OSCE and the Applicant's individual Terms of Assignment. Therefore, the Respondent submits that the case should be dismissed.

### *Summary of facts*

6. From 7 May 2014 on, the Applicant was assigned to the [REDACTED] as a seconded staff member. In November 2016, a new [REDACTED] arrived, and in March 2017, a new [REDACTED] arrived.
7. After the arrival of the new [REDACTED], tensions arose, followed by a complaint letter from 5 [REDACTED], handed over to the [REDACTED] in early August 2017. On 22 October 2017, the Applicant filed a formal complaint, as provided for in Staff Instruction 21/Rev. 1 – OSCE Policy on the Professional Working Environment (SI 21). This complaint alleged harassment, discrimination and retaliation against the [REDACTED], as well as harassment and retaliation against the [REDACTED]. The allegations were predicated on five different incidents between 2 August 2017 and 22 September 2017. Having received an investigation report, the [REDACTED] decided to fully exonerate the alleged offenders. This decision is under review of the Panel in case No. OSCE PoA 42/2019.
8. On 19 October 2018, the Applicant was notified of the decision to redeploy [REDACTED] from [REDACTED] for operational reasons. The redeployment memorandum is signed by the [REDACTED]; further it is also sent by the Applicant's former [REDACTED] in [REDACTED] capacity as [REDACTED]. It is undisputed that the Applicant's seconding country was not consulted. As part of the same decision, the [REDACTED] was redeployed from [REDACTED]. Also, as indicated, the [REDACTED] had been redeployed at an earlier stage.
9. On 4 November 2018, the Applicant submitted a request for internal review. After establishing an Internal Review Board (IRB), the Applicant and the [REDACTED] sent statements to the IRB which, on 12 March 2019, submitted its report. The [REDACTED]

IRB found that, in contradiction to Regulation 3.12 of the Staff Regulations and Staff Rules (SRSR), the Applicant's seconding country had not been consulted. Further, the IRB found that the facts and findings support a prima facie case of retaliation, also because the former [REDACTED] might have been involved in the process of decision-making resulting in the contested decision.

10. However, on 11 April 2019, the [REDACTED], disagreed with the recommendations of the IRB and upheld the decision of 18 October 2019.

11. On 31 May 2019, the Applicant submitted a request for external review by electronic means.

#### *Contentions of parties*

12. The Applicant's contentions are various; some of [REDACTED] (nine) pleas relate to incidents that have not been part of the present administrative process, like problems with the duration of [REDACTED] contract or a case of alleged sexual harassment. [REDACTED] major relevant contentions are:

- The re-assignment decision was not taken in line with the obligation to consult with the seconding country;
- [REDACTED] was subject to retaliation by [REDACTED] supervisors;
- The re-deployment was a disciplinary measure.

13. The Respondent's major contentions are:

- The contested decision was taken in line with a special condition of the Applicant's terms of assignment;
- The terms of assignment do not contradict the provisions of the SRSR;
- The decision for the transfer did not derive from retaliation.

## *Considerations*

### *Procedural issues*

#### *Scope of the application*

14. The Panel reiterates that the OSCE's internal justice system does not grant an appeals procedure against each type of measures taken. With respect to the limits of its jurisdiction, the Panel has held in its decision of 14 July 2017, OSCE PoA 1/2017:

“14. Pursuant to Staff Regulation 10.01, OSCE's internal appeals procedure for staff/mission members relates to and is limited to “administrative decisions concerning alleged non-observance of their letter of appointment or terms of assignment, or of any provisions governing their working conditions”. Accordingly, Staff Regulation 10.02 provides for “a right of final appeal to a Panel of Adjudicators against an administrative decision directly affecting him/her”. These limits of jurisdiction are repeated in Article 1 paragraph 1 of the Terms of Reference of the Panel of Adjudicators, stating that the Panel shall be competent to decide on final appeals “against administrative decisions”.

15. Pursuant to an established tradition in international administrative law, an administrative decision may be defined as a unilateral decision taken by the administration in a precise individual case which produces direct legal consequences to the legal order.”

15. Further, it follows from Rule 10.02.2 (d) (i) of the SRSR that a request for external appeal is normally only admissible unless, *inter alia*, the applicant has exhausted the internal appeals procedures. For the case at stake, it follows that it is not for the Panel, e.g., to “establish why (the Applicant) was offered just a 3 months contract” nor to “establish if all retaliatory actions (the Applicant was) being object to, have to do with (the Applicant's) good faith reports, especially with the report of sexual harassment”. As a matter of law, the only administrative decision which is properly presented before the Panel in the present case is the decision of 18 October 2018 to redeploy the Applicant, as clearly indicated in the Applicant's request for internal review dated 31 May 2019. With this request the Applicant has defined - and limited – the scope of the present case, and the Panel has no jurisdiction to deal with any other matter.

### *Timeliness of the external appeal*

16. Pursuant to Rule 10.02.2 (d) (ii) of the SRSR, an application for external appeal must have been filed within sixty days from the date of notification to the applicant of the decision rejecting his/her request for internal review.
17. The Panel notes that the Applicant was notified on 11 April 2019. Further, the Panel is satisfied that the Applicant filed [REDACTED] present application via email on 31 May 2019, i.e. well within the time-line stated above.

### *Merits*

#### *Lack of consultation*

18. Rule 3.12.1 of the SRSR defines ‘transfer’ as “the appointment or assignment of a staff/mission member to another post”. Only a ‘transfer’ in this sense, pursuant to Regulation 3.12 (c) of the SRSR shall be decided in and calls for “agreement with the seconding country and the Secretary General”.
19. Pursuant to the Applicant’s latest Terms of Assignment (ToA), dated 31 March 2018, the Applicant holds the ‘Function’ of a [REDACTED] at the [REDACTED] OSCE [REDACTED]. The ToA do not specify any duty station or other dates regarding a specific post. Rather, at para. 12 (c), the ToA provide that the respective staff member may be assigned and re-assigned “to any location within the Mission area...”. To these ToA, the Applicant’s seconding country as well as the Applicant [REDACTED] had agreed.
20. It follows from the above that, geographically speaking, the Applicant’s post allowed for an assignment in the whole mission area without entering into a formal transfer procedure. The Applicant’s official duties, rank and payment remained unchanged. By re-deploying [REDACTED] inside the mission area, no transfer in the legal sense took place. Therefore, it was not necessary to ask for the agreement of the Applicant’s seconding country when [REDACTED] was sent from [REDACTED]

*Retaliation*

21. Considering the unfortunate overall situation at [REDACTED] after the outbreak of the tensions between the Applicant and [REDACTED] supervisors, there is no doubt that the Applicant's re-assignment was part of the Organisation's attempt to settle the conflict. In the Panel's view, the re-assignment of both the Applicant and [REDACTED] supervisors were legitimate measures to strengthen [REDACTED] with a view to a new and fresh start, rather than an act of retaliation directed only against the Applicant in a one-sided manner. As such, re-assignment is part of the Organisation's discretionary power regarding the deployment of its personnel, as reflected in Regulation 3.12 (a) of the SRSR.
22. There are no sufficient indications for an inappropriate participation at the level of decision making. The fact alone that the Applicant's former [REDACTED] is listed among the senders of the deployment memorandum of 18 October 2018 does not prove that [REDACTED] was involved in the contested decision which is signed only by the then [REDACTED].

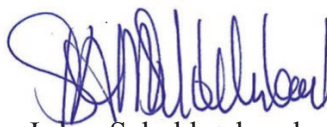
*Disciplinary measure*

23. Staff Regulation 9.04 entails a conclusive list of disciplinary measures. The Panel notes that re-deployment, other than transfer to another post of lower level (see Regulation 9.04 (a) (vii) of the SRSR, is not part of this conclusive list. Therefore, the application regarding an alleged disciplinary measure is baseless.
24. In light of the above, the application is rejected in its entirety.

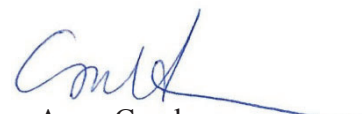
15 May 2020



Thomas Laker  
Chairperson



Jenny Schokkenbroek  
Deputy Chairperson



Anna Csorba  
Member