

DECISION OF THE PANEL OF ADJUDICATORS OF THE OSCE
WITH REGARD TO THE EXTERNAL APPEAL BY [REDACTED]
(CASE No: OSCE PoA 41/2019)

Proceedings

1. The Chairperson of the Panel of Adjudicators (PoA) of the OSCE received on 11 June 2019 a letter from the Chairperson of the Permanent Council of the OSCE transmitting an external appeal by [REDACTED] (Applicant), a former 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 12 June 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 12 July 2019. The Applicant submitted further communication on 8 July 2019, and the Respondent forwarded his reply on 12 July 2019, which was transmitted to the Applicant, advising [REDACTED] that [REDACTED] has a right to file a response by 6 August 2019. Further, the Applicant was asked questions about the way and the date of filing [REDACTED] request for external review. The Applicant filed [REDACTED] response on 4 August 2019, and the Respondent filed, with the Panel's permission, comments on 9 September 2019. The Applicant filed, without leave from the Panel, further comments on 29 September 2019.
3. In accordance with Article VI of the Terms of Reference of the Panel, the Chairperson of the Panel convened the Panel on 30 and 31 January 2020 at the Hofburg premises at Vienna to examine the appeal. The Panel was composed of its Chairperson, Mr. Thomas Laker, and its members Ms. Catherine Quidenus and Ms. Jenny Schokkenbroek.
4. After examining all the documents submitted to it, the Panel noted that the Applicant contests the decision not to extend [REDACTED] appointment beyond 31 December 2018. [REDACTED] claims the extension of [REDACTED] contract for the year 2019 and the payment of salaries for this period of time.

5. The Respondent, pursuant to his reply, holds the view that the request for external review was filed after the prescribed deadline; further, he considers the application to be without merits. Therefore, the Respondent submits that the case should be dismissed.

Summary of facts

6. Based on respective recommendations, ██████ decided to abolish four out of eight posts of ██████ as of 1 January 2019.
7. In July 2018, an Inter Office Memorandum on “2019 Staff Retention Guidelines” was issued, outlining procedures for the implementation of the staff reduction. Since seven out of eight positions of ██████ were filled at that time, it was envisaged to establish a Review Panel (RP) in order to make recommendations to the Head of Mission (HoM) regarding the future incumbency of the retained posts.
8. In September 2018, the RP was established and started the review process, which included a written test and an interview. The RP’s recommendation were conveyed to the HoM, who, on 18 September 2018, issued a letter to the Applicant informing ██████ of the decision not to extend ██████ appointment beyond 31 December 2018.
9. Based on the Applicant’s request for internal review, an Internal Review Board (IRB) was established. In its report of 11 January 2019, the IRB recommended to uphold the decision to abolish the post held by the Applicant and not to extend ██████ appointment beyond 31 December 2018.
10. On 20 February 2019, the HoM agreed with the recommendation of the IRB and, in consultation with the Respondent, decided to reject the Applicant’s request for internal appeal.
11. In ██████ request for external appeal, dated 18 April 2019, the Applicant confirms that ██████ received the above decision on 20 February 2019. Pursuant to the copy of the respective document (“avis de réception”), the hard copy of the above request was addressed to “OSCE Secretariat, Wallnerstrasse 6, Vienna – Austria” and delivered at the ██████ post office on 18 April 2019. Said “avis de réception” further shows a stamp, reading that the hard copy was delivered to “Wien 1010, Zustellbasis 9” on 29 April 2019. The

cover letter to the request for external review, also dated 18 April 2019, bears a stamp from the “OSCE Secretariat” and the date “30. April 2019”. The request was submitted by said hard copy only.

Contentions of parties

12. The Applicant’s major contentions are:

- The non-extension of [REDACTED] appointment was based on retaliation and prejudice about the Applicant’s personal habits;
- Previous Performance Appraisal Reports (PAR) and successful professional performance were not taken into account;
- The non-extension is to be considered as retaliation of at least two of the RP’s members, based on a letter written by the Applicant which raised potential security risks in [REDACTED]
- An international mission member had a photograph on [REDACTED] office desk showing a person who is considered a World War criminal in [REDACTED]

13. The Respondent’s major contentions are:

- The request for external review was filed beyond the prescribed deadline and is inadmissible, therefore;
- The RP was composed of persons who were not biased, and acted in full compliance with the rules;
- There is no evidence that the non-extension was a reaction to the Applicant’s letter.

Considerations

Procedural issues

Timeliness of the external appeal

14. Pursuant to Staff Rule 10.02.2 (d) (ii), an application shall not be admissible unless it has been “filed within sixty days ...from the date of the notification to the applicant of the decision rejecting his/her request for internal review“.
15. The Panel takes note that the Applicant was notified of the decision rejecting [REDACTED] request for internal review on 20 February 2019. Further, it follows from the “avis de réception” that the Applicant delivered [REDACTED] request for external review to a post office in [REDACTED], on Thursday, 18 April 2019, as well as it was delivered to a “Zustellbasis“ in Vienna, Austria, on 29 April 2019. Finally, the Panel notes that the stamp from the OSCE bares the date of 30 April 2020.
16. 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 jurisprudence that the day of receipt of the notification is disregarded for such calculation (see Panel’s decision of 24 November 2017, OSCE PoA 2/2017, para. 21f; decision of 6 September 2019, OSCE PoA 22/19 et al., para. 16). Further, it is a general rule in most national and international legal systems that in case the last day of a time-frame is a Sunday or a national holiday, the time-limit ends on the next working day.
17. It follows from the above that the 60 day time-limit for the Applicant started to run on 21 February 2019, and accordingly ended on Sunday, 21 April 2019. As Monday, 22 April 2019, was a national holiday in Austria (Easter Monday) which was also observed by the OSCE (see Staff Circular No. 04/2018 on OSCE Official Holidays in 2019), the time-line to file the request ended on Tuesday, 23 April 2019.

18. The fact that the request for external appeal was delivered to a post office in [REDACTED] on 18 April 2019 has no bearing on the calculation at hand. As emphasized above, an appeal shall be “filed“ within the applicable deadline, rather than be “sent”. For a submission, pursuant to established legal tradition, only the date of its reception matters, whereas the date of dispatch is normally irrelevant. There may be national legal systems which – by way of explicit exception in their respective rules – focus on the dispatch by registered mail. However, as such exceptions are not included in the rules of the OSCE, they are not binding for the present case. Therefore, the Panel cannot but state that the request for external review was filed beyond the prescribed deadline of 23 April 2019.
19. 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 (see Panel’s decision of 24 November 2017, OSCE PoA 2/2017, para. 23). By dispatching the request at a post office in [REDACTED] home country, the Applicant could not expect and trust that it would be received by the OSCE in Austria within five days, among which several days were no working days.
20. Pursuant to Staff Rule 10.02.2 (d) (iv), the Panel may exceptionally decide to waive the time-limit mentioned above. No criteria or reasons for such an exception are recorded in the rules. The Panel takes notes that for the internal appeals procedure, Article III 3 (a) of Appendix 12 to the Staff Rules and Staff Regulations provides that the IRB shall admit a delayed appeal where the appellant had “legitimate reasons for not having submitted his/her request within the prescribed time-limit”.
21. In the Panels view, if read together, both provisions call for the application of strict standards in waiving legally prescribed time-limits. Therefore, exceptions based on such legitimate reasons should normally only be accepted were the delay was caused by exceptional circumstances beyond an applicant’s control. Also, it is for an applicant to submit substantiated and precise information about the circumstances which prevented him or her from complying with the respective time-limits (see Panel’s decision of 20 April 2018, OSCE PoA 5/2017, para. 15).

22. In the present case, no such legitimate reasons can be found. The Applicant has not even seized the opportunity to submit such reasons for consideration. The Panel does not share the view that the Applicant, not being a lawyer, was not obliged to know how the system works. Ignorance of law is no excuse, and the Applicant could have easily avoided the delay by either sending the hardcopy of [REDACTED] request at an earlier stage or by using other, e.g. electronic means for its transmission.

Merits

23. Pursuant to Staff Rule 10.02.2 (d), an application for external review shall not be admissible unless it complies with the time-line established in Staff Rule 10.02.2 (d) (ii). As demonstrated above, the application was not filed in line with this provision, and no waiver of time-limits can be granted. Therefore, since the application is not admissible, the Panel is prevented from entering into a discussion on the merits, as has already been held in the Panel's decision of 14 July 2017 (OSCE PoA 1/2017).

24. In light of the above, the application is rejected in its entirety.

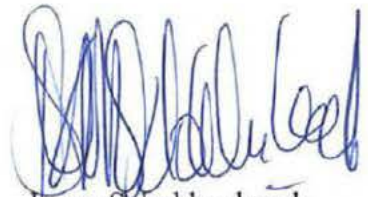
Done in Vienna, on 31 January 2020



Thomas Laker
Chairperson



Catherine Quidenus
Member



Jenny Schokkenbroek
Member