

**DECISION OF THE PANEL OF ADJUDICATORS OF THE OSCE WITH REGARD  
TO THE EXTERNAL APPEAL BY [REDACTED] AND 15 OTHER  
APPLICANTS**

(CASE Nos.: OSCE PoA 22/2019-OSCE PoA 30/2019;  
OSCE PoA 32/2019-OSCE 35/2019;  
OSCE 37/2019- OSCE 39/2019)

*Proceedings*

1. The Chairperson of the Panel of Adjudicators (PoA) of the OSCE received on 4 June 2019 an external appeal by [REDACTED] and 17 other current and former international mission members of the OSCE [REDACTED] (Applicants) from the Chairperson of the OSCE Permanent Council which had been forwarded to him on 30 May 2019.
2. Among the transmitted documents was the application of [REDACTED]. Since [REDACTED] had agreed to act as representative of a group of Applicants in a similar matter (see decision of 16 July 2019, OSCE PoA 2/2019 - OSCE PoA 19/2019), it was suggested that he would act as representative in the present bundle of cases as well. No objections were made. Subsequently, individual case numbers were assigned to 18 applications. From then on, the 18 external appeals were consolidated.
3. The Chairperson of the Panel, through the Executive Secretary of the Panel, informed the Secretary General of the OSCE (Respondent) and the Applicants on 12 June 2019 of the constitution of the Panel and asked 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 Respondent forwarded his reply on 12 July 2019 which was transmitted to the Applicants, advising them that they have a right to file a rebuttal by 7 August 2019. No reaction from the Applicants was received.

4. In accordance with Article VI of the Terms of Reference of the Panel, the Chairperson of the Panel convened the Panel on 5 and 6 September 2019 at the Hofburg premises at Vienna to examine the appeal. The Panel was composed of its Chairperson, Mr. Thomas Laker, and its members Ms. Anna Csorba and Ms. Jenny Schokkenbroek.
5. After examining all the documents submitted to it, the Panel noted that the Applicants contest the 'Board and Lodging Allowances' (BLA) methodology as announced by email of 23 February 2018. They ask for rescission of this decision; further they claim that rescission would entitle each of them to 1825 EUR. Should the contested decision not be rescinded, the Applicants request a further 1000 EUR.
6. The Respondent, pursuant to his reply, holds the view that 16 out of 18 applications were filed in contravention of the 60-day time limit, without providing legitimate reasons for the lateness.
7. The Panel decided to deal with the concerned 16 applications in this decision, whereas the applications of [REDACTED] (OSCE PoA 31/2019) and [REDACTED] [REDACTED] (OSCE PoA 36/2019) will be separately addressed in due course.

#### *Summary of facts*

8. The Applicants, a group of 16 current and former staff members, contest the calculation of BLA as provided for in Staff Regulation 5.13. Based on the approval of the OSCE's Permanent Council PC Decision No. 1288 of 15 February 2018 these allowances were reduced for [REDACTED] except the non-family duty area in [REDACTED]. Pursuant to an email of 23 February 2018 the application of the new rates came into effect as from 1 June 2018.
9. On 23 March 2018, the Applicants requested an internal review of this decision. An Internal Review Board (IRB) was established and submitted a final report on 25 January 2019, coming to the conclusion that the contested decision should be sustained.

10. By letter dated 25 February 2019, sent to each Applicant via email to the email addresses specified in the individual application, the Secretary General decided to sustain the impugned decision. The respective emails were sent on the same day.

11. On 10 May 2019, most of the requests for external review were submitted, one request was filed on 11 May 2019, and 3 requests were received on 13 May 2019.

### *Contentions of parties*

12. The Applicants' major contentions are:

- The BLA calculation is flawed, and neither transparent nor participatory;
- The BLA reduction is a violation of mission members' contract rights;
- The BLA system implies a contravention against the principle of equal pay for equal work.

13. The Respondent's major contention is:

- The 16 applications at stake were untimely filed and should be dismissed as inadmissible.

## *Considerations*

### *Procedural Issues*

#### *Timeliness of the external appeal*

14. Pursuant to Staff Rule 10.02.2 (d) (ii), 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.
15. The Panel notes that the Applicants were notified on 25 February 2019 of the decision rejecting their requests for internal review. Further, the Panel notes that the Applicants filed their present applications via email only on 10 May, on 11 May, and on 13 May 2019, respectively.
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. 21:f).
17. It follows from the above that the 60 day-time-line for the Applicants started to run on 26 February 2019, and accordingly ended on 26 April 2019. Therefore, all 16 applications were not filed within the statutory time frame.
18. 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).
19. 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 Internal Review Board shall admit a delayed appeal where the appellant had

"legitimate reasons for not having submitted his/her request within the prescribed time-limit".

20. In the Panel's view, 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 where 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).
21. In the present cases, no such legitimate reasons can be found. No Applicant has even seized the opportunity to submit such reasons for consideration. Therefore, the requests for external appeal were delayed.

#### *Merits*

22. 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 applications were not filed in line with this provision. Therefore, since the applications are not admissible, the Panel is prevented from entering into a discussion of their merits, as has already been held in the Panel's decisions of 14 July 2017 (OSCE PoA 1/2017, para. 26).
23. In light of the above, the applications are rejected in their totality.

Done in Vienna, on 6 September 2019

Thomas Lal(er)  
Chairperson

Anna Csorba  
Member

Jenny Schokkenbroek  
Member