

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

(CASE No: OSCE PoA 5/2020)

*Proceedings*

1. The Chairperson of the Panel of Adjudicators (PoA) of the OSCE received on 14 May 2020 a letter from the Chairperson of the Permanent Council of the OSCE transmitting an external appeal by [REDACTED] (Applicant) who is 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 19 May 2020 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 18 June 2020. On 18 June 2020, the Respondent made a request to suspend the proceedings since the [REDACTED] requested the OSCE Office of Internal Oversight (OIO) to conduct a new investigation into the allegations. The Applicant was invited to submit [REDACTED] views, which [REDACTED] did on 24 June 2020. Consequently, the Deputy Chairperson of the PoA granted a stay of the proceedings for a period of two months. On 2 September 2020, another request to extend the stay in proceedings till 16 November 2020 followed. On 16 November 2020, the Respondent submitted once more a request to extend the stay in the proceedings since the OIO investigation was only completed on 30 October 2020 and to allow parties to seek an amicable solution. A communication of the Applicant was submitted on 24 November 2020 including a request to supplement [REDACTED] application due to the findings contained in the OIO Investigation Report. The Deputy Chairperson allowed the Applicant to submit [REDACTED] amendments to the application until 4 January 2021, as [REDACTED] did on 3 January 2021. On 4 February 2021, the Respondent informed the Panel that parties were in the process of discussing a settlement by mutual agreement and requested leave to submit his reply (if needed) ultimately on 26 February 2021. The Panel was informed that no settlement was reached. The Respondent submitted his reply on 26 February 2021. The reply was transmitted to the Applicant on 1 March 2021, advising [REDACTED] that [REDACTED] has a right to file

a rejoinder ultimately by 29 March 2021. The Applicant filed [REDACTED] rejoinder on 29 March 2021, which was transmitted to the Respondent on 1 April 2021. The Respondent submitted, by email sent on 30 April 2021, his final remarks. This email was transmitted to the Applicant on 11 May 2021.

3. Circumstances related to the pandemic prevented the Panel from meeting in person, as foreseen in Article VI of the Terms of Reference of the Panel. Therefore, the Panel held deliberations via videoconference on 13 and 14 October 2021. The Panel was composed of its Deputy-Chairperson Ms. Jenny Schokkenbroek, and its members, Ambassador Andrei Popkov and Ms. Catherine Quidenus.
4. After examining all the documents to it, the Panel noted that the Applicant contests the decision of 2 April 2019 of the [REDACTED] to exonerate [REDACTED] from the allegation of sexual harassment (the impugned decision). As relief, the Applicant claims compensation for loss of income (\$ 32.000), compensation for damage (\$ 110.000), compensation for moral damages, to award [REDACTED] restorative compensation, to award [REDACTED] 24 leave days, as well as to award [REDACTED] costs for legal representation (\$ 5.000). The Applicant requests also a personal appearance in front of the PoA as well as leave to submit additional pleadings.
5. Furthermore, the Applicant requests, inter alia, that the Respondent will grant [REDACTED] the option to be transferred to a duty station of [REDACTED] choice, will enter a finding of sexual harassment against [REDACTED], modify [REDACTED] last performance appraisal and direct the OSCE to share this information with all future potential employers, enter a finding of failure to maintain a professional environment, enter a finding of failure to provide protection from retaliation and enter a finding of failure to implement the provisions of Staff Instruction 1-21/Rev.1 (SI 21) on the OSCE Policy on the Professional Working Environment. The Applicant's requests as well to direct the OSCE to provide the PoA with several documents, to direct the Secretary General to issue a letter of apology to the Applicant to be added to [REDACTED] personnel file, to order review of existing OSCE policies and regulations as well as to direct the OSCE to recuse itself from the handling of misconduct complaints.

6. The Respondent, pursuant to his reply, holds the view that the impugned decision is overruled by the decision of the ██████ dated 25 February 2021. Therefore, the Respondent submits that the addressing of the substantive points made by the Applicant about the impugned decision per se or the findings of the first investigation is now moot. The application is to be dismissed.

*Summary of facts*

7. The Applicant is an international mission member on secondment serving since 20 November 2016 in ██████. At the time material to this application, the Applicant was deployed as ██████.
8. On the morning of 4 October 2018, right after the morning brief, individual ██████ convened in separate meeting rooms to prepare for their ██████ for that day. The Applicant was already present in their meeting room: sitting and working on a computer. When ██████, also a ██████ member, entered their room, ██████ was approached by ██████ colleagues who congratulated ██████ since ██████ had just returned from an extended leave in which ██████ got married. The Applicant approached ██████ to welcome ██████, and a hug followed.
9. According to the Applicant, while hugging, ██████ cupped ██████ right hand around ██████ buttocks and squeezed and pulled ██████ closer. ██████ left hand fondled ██████ breast and moved down to ██████ buttocks.
10. According to ██████, ██████ greeted the Applicant. When ██████ noticed that ██████ wanted to give ██████ a hug, ██████ approached ██████ but then ██████ almost stepped on ██████ foot. ██████ raised ██████ foot and for a moment ██████ felt ██████ would lose body balance. Since ██████ had ██████ arm already under ██████ arm for a hug, ██████ touched ██████ on ██████ back under the shoulder to regain balance. According to ██████, the Applicant asked ██████ what ██████ was doing, and ██████ answered that ██████ almost stood on ██████ foot and while trying to regain balance ██████ touched ██████ back in a non-sexual manner.
11. Between 4 and 6 October 2018, a text message conversation between the Applicant and ██████ followed. This conversation did not result in an apology for intentionally grabbing Applicant's body parts, as requested by the Applicant.

12. On 23 October 2018 the Applicant filed a formal complaint for sexual harassment, as provided for in SI 21. Having received an investigation report issued on 18 February 2019, the [REDACTED] decided to exonerate [REDACTED] on 2 April 2019. This is the impugned decision.
13. On 30 April 2019, the Applicant submitted a request for internal review, including a request to waive the jurisdiction of the Internal Review Board (IRB) in order to appeal directly to the PoA. This last request was denied by a letter dated 17 May 2019 of the [REDACTED]. After establishing an IRB, the Applicant and the [REDACTED] sent statements to the IRB which, on 20 December 2019, submitted its report. The IRB recommended the [REDACTED] to have the case investigated by OSCE Head Quarters in Vienna by the competent authority.
14. On 20 January 2020 the [REDACTED] decided to uphold the decision dated 2 April 2019 and to refer the matter to the OIO.
15. On 23 March 2020, the Applicant submitted a request for external review.
16. After having received a preliminary assessment issued by the OIO, the [REDACTED] on 15 June 2020 decided, after consulting the Secretary General, to request the OIO to conduct a new investigation. The OIO issued its report on 30 October 2020. The OIO concluded that the complaint of sexual harassment was substantiated.
17. After the issuance of the report of the OIO the Applicant and the Respondent entered into negotiations.
18. On 18 February 2021, the Applicant informed the PoA that a settlement could not be reached.
19. On 25 February 2021, the [REDACTED] decided to overrule the impugned decision, to place a copy of the OIO Report in the file of [REDACTED] in the light of [REDACTED] resignation from the [REDACTED] and to grant the Applicant 30 days of annual leave.

### *Contentions of parties*

20. The Applicant challenges the decision to exonerate ██████████ from the allegation of sexual harassment. The Applicant's major contentions are:

- The investigation into the allegations of sexual harassment was flawed because the investigators were not professionally trained for this kind of investigations;
- ██████ should be granted 24 leave days, compensation for loss of income, for legal costs, for moral damages and several more claims as relief and other requests.

21. The Respondent's major contention is that the impugned decision has been overruled by the decision of the ██████████ dated 25 February 2021 and the Application is therefore moot and should be dismissed.

### *Considerations*

#### *Scope of the application*

22. The Panel takes note that the application is related to the decision dated 2 April 2019 to exonerate ██████████ from the allegations of sexual harassment.

#### *Procedural issues*

23. The application is admissible in accordance with Regulation 10.02.2 of the Staff Regulations and Rules.

24. Regarding the Applicant's requests mentioned under 5 it should be noted that these requests fall outside the scope of this application since it is restricted to the decision dated 2 April 2019 to exonerate ██████████ from the allegations of sexual harassment.

*Merits*

25. The decision of the ██████████ dated 25 February 2021 reads in part:

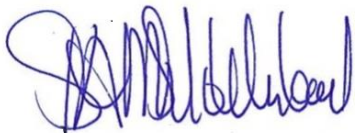
“In line of the finding of sexual harassment in the OIO Report, the decision communicated to you on 20 January 2020<sup>1</sup> cannot stand. In this regard, I have decided to overrule the Impugned Decision and to place a copy of the OIO Report in ██████████ personnel file.”.

26. Consequently, the Panel cannot but conclude that the impugned decision of 2 April 2019 has been overruled and that the application which is only related to the later overruled decision is therefore now moot. In this situation it is not for the Panel to go into the merits of the application.


27. Pursuant to Art. VIII para. 4 and 5 of the Panel’s Terms of Reference (Appendix 2 to the Staff Regulations and Staff Rules), legal costs and other claims for compensation can only be reimbursed to successful applicants. Therefore, compensation of such costs cannot be awarded in the present case.

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


14 October 2021



Jenny Schokkenbroek  
Deputy Chairperson



Andrei Popkov  
Member



Catherine Quidenus  
Member

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<sup>1</sup> This is the decision to uphold the impugned decision