

**DECISION OF THE PANEL OF ADJUDICATORS OF THE OSCE WITH
REGARD TO THE EXTERNAL APPEAL BY ██████████**

(CASE No: OSCE PoA 3/2016)

1. The Chairperson of the Panel of Adjudicators of the OSCE (Panel) received on 16 June 2016 a letter dated 6 June 2016 from the Chairperson of the Permanent Council the OSCE transmitting an external appeal by ██████████ (Applicant), who had worked ██████████ in the OSCE ██████████ from 1 February to 31 October 2015.
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 16 June 2016 of the constitution of the Panel (see para.3 below) 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 16 July 2016. The Respondent forwarded his reply on 15 July 2016 which was transmitted to the Applicant, advising ██████████ that ██████████ had a right to file a rebuttal no later than 6 August 2016 as per Article 5 of the Rules of Procedure of the Panel of Adjudicators. In addition to the communication of 17 June 2016, the Applicant filed such rebuttal on 19 July 2016 which was transmitted to the Respondent for information. The written pleadings were thus completed.
3. In accordance with Article VI (2) of the Terms of Reference of the Panel the Chairperson of the Panel has decided to constitute the Panel of Adjudicators to include Deputy Chairperson Mr. Gennady Kuzmin, Amb. Andrei Popkov and Ms. Jenny Schokkenbroek. All parties were properly and timely informed of the composition of the Panel. Mr. Thomas Pichler continued to act as the Executive Secretary of the Panel.
4. All the documentation mentioned above was transmitted through the Executive Secretary of the Panel to the members of the Panel as they were received. _____
5. In accordance with Article VI of the Terms of Reference of the Panel, the Panel was convened on 18 – 19 October 2016 at the Hofburg premises at Vienna to deliberate and adjudicate the appeal. The Panel was composed of Mr. Gennady Kuzmin, Deputy Chairperson (presiding), Amb. Andrei Popkov and Ms. Jenny Schokkenbroek, members of the Panel.
6. After examining all the documents submitted to it, the Panel noted that the Applicant's claims include the following, as stated by ██████████:
 - a) "Quashing the challenged decision – revert to a verbal warning – *as every single other person received,*
 - b) Reinstatement back to full status,
 - c) Restitution of back hazard pay,
 - d) Restitution for all hotels, food, apartment ██████████,
 - e) Restitution for all medical fees for problems on duty, and psychological counseling fees as a result of continued vindictive actions,
 - f) Restitution of all R and R vacation lost,
 - g) Restitution for all travel expenses back ██████████

- h) Restitution for loss of all OSCE pay since November 1, 2015,
- i) Restitution for loss of all [REDACTED] pay since November 1, 2015,
- j) Moral damages and restitution for psychological, emotional, and physical loss for whistle blowing and resulting PTSD,
- k) Material damages pertaining to costs involved with combatting wrongful termination abroad and at home,
- l) Consideration at the highest level for the [REDACTED] position [REDACTED] – especially since not one single [REDACTED] is in a contract position–maintain nationality balance.”

The Applicant declared additionally that [REDACTED] could accept two years’ salary restitution as appropriate compensation.

By email dated 5 June 2016 the Applicant requested to withdraw two of [REDACTED] claims enumerated above under b) and l) subparagraphs.

- 7. In reply to the application the Respondent denied all allegations and statements made against it and rejected all the Applicant’s claims.
- 8. The Panel noted the Terms of Reference of the Panel, which stipulates that the Panel is competent to decide on final appeals against administrative decisions affecting fixed-term staff/mission members.
- 9. The Panel further concluded that the Applicant’s appeal is in essence challenging the final administrative decision of the [REDACTED] dated 12 February 2016 (“Impugned Decision”).
- 10. The Panel then addressed the arguments and contentions of the Applicant as well as those of the Respondent. As to the factual circumstances of the case, the Panel noted the conclusions of the Disciplinary Committee (DC) along with the concurring Report of the Internal Review Board (IRB), followed by the admission of the Applicant [REDACTED] that [REDACTED] had not returned to the hotel before the prescribed curfew, with which [REDACTED] had been found in breach of the OSCE Code of Conduct, Article 10 - Safety and Security.
- 11. The overall security situation in the place of the Applicant’s duty station [REDACTED] – was at the time of events very unstable and dangerous. This situation highlights the importance of strict adherence to the applicable instructions regarding safety and security matters. It also requires serious and professional perception and observance of all applicable rules by mission members. Failing to comply with [REDACTED] security policies and instructions, being absent during the curfew, undoubtedly constitutes under the circumstances misconduct to warrant disciplinary action.
- 12. Among other things, the Applicant has challenged the disciplinary measure imposed on [REDACTED] – separation from service - as disproportional (*see 6 a) above – request “to revert to a verbal warning”*). Staff Rule 9.04.1 says “Any disciplinary measure imposed on a staff/mission member shall be proportionate to the gravity of the misconduct”. In this case the Applicant asserted, although in a muddled manner, that the misbehavior in question had occurred in the circumstances beyond [REDACTED] control due to a health problem. According to the Applicant the health problems arose and deteriorated in the course of the evening. Considering the dangerous circumstances under which the [REDACTED] is operating, mission members are expected to act as professionals and to avoid unnecessary risks. Not returning to the mission accommodation with a

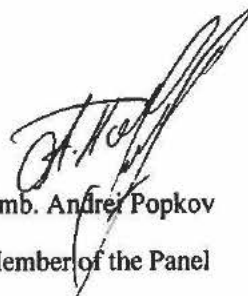
deteriorated health condition is considered by the Panel as an improper increase of risk. In the situation the Applicant was supposed to return to the mission accommodation or report of [REDACTED] deteriorated health condition to the Officer on Duty. Therefore the Panel does not consider this call on health problems as a valid excuse for the violation of the safety and security regulations.

13. Making its way through dozens of pages and email strings, the Panel found no credible evidence that the impugned decision was motivated by vindictive intentions, as alleged by the Applicant, and amounted to discrimination and/or whistle blower suppression. Sequence of events does not reveal any bad faith or reprehensible conduct by the Administration. The Panel is far from thinking that such factors as [REDACTED] nationality, race, age, sex etc. were of relevance for the impugned decision. Treating someone differently is not necessarily unlawful discrimination.
14. Concerning the alleged death threats launched by [REDACTED] as communicated by [REDACTED] the Panel is of the opinion that this aspect goes beyond the competence of this Panel since these circumstances did not exist at the moment of issuance of the impugned decision.
15. Although it is outside the competence of the Panel, nevertheless it considers this case as a serious signal for the OSCE to redouble its efforts, including through the process of careful recruiting and supervising, to absolutely minimize occurrences which may infringe safety and security of personnel, especially involved in zones of conflict, and damage the reputation of the Organization.
16. In view of the foregoing, the Panel finds that the application filed by [REDACTED] must be respectfully rejected. The Panel therefore saw no need to address the plea of the Applicant on provision of damages.

Done in Vienna, on 19 October 2016



Gennady Kuzmin
Deputy Chairperson of the Panel
Presiding



Amb. Andrei Popkov
Member of the Panel



Jenny Schokkenbroek
Member of the Panel