

Summary of facts

5. The Applicant was employed [REDACTED] at various positions from [REDACTED] to [REDACTED], finally holding the position of [REDACTED] of the [REDACTED] at the material time.
6. As from the Applicant's probation period in 2022 performance issues arose, and [REDACTED] performance was rated only "improvement required". In June 2023, a six month PIP was established. The Applicant was informed that in case of non-improvement termination or non-extension of [REDACTED] appointment would be considered.
7. At the end of the PIP, in November 2023, the respective assessment concluded that the Applicant had not demonstrated changes in [REDACTED] performance to the required level, and [REDACTED] was informed that the PIP was considered as "not successful".
8. On 13 December 2023, the Applicant was notified that [REDACTED] appointment would not be extended after its expiration on [REDACTED] 2024, due to unsatisfactory performance and the failure of the PIP. This is the contested decision.
9. On 15 December 2023, the Applicant met with the Organization's [REDACTED] [REDACTED] to discuss the options to challenge the contested decision.
10. Pursuant to an undisputed list of different types of leave (sick leave, annual leave), the Applicant mostly did not work between 13 December 2023 and 9 January 2024, and from 16 January to 27 March 2024. However, the record also indicates that he was not on any kind of leave from 10 to 15 January 2024.
11. On 29 March 2024 the Applicant raised concerns about the decision of 13 December 2023 when speaking with the [REDACTED] over the phone. In April and May 2024, an exchange in writing between the Permanent Representative of the Applicant's home State and the Secretary General with respect to the Applicant took place, in which the Secretary General clarified that the discontinuation of the Applicant's employment was based on the Organization's rules and regulations.

12. On 11 June 2024, the Applicant filed a request for internal review.
13. After the establishment of an Internal Review Board (IRB), the Applicant submitted objections against the nomination of one member which were rejected.
14. On 2 July 2024, the IRB concluded that the request was submitted beyond the prescribed deadline and that there were no legitimate reasons for the delay. Accordingly, on 11 July 2024, the Secretary General informed the Applicant that the merits of ■ request for internal review would not be considered.
15. On 9 September 2024, the Applicant submitted a request for external review in electronic form which was amended on 23 September and on 25 October 2024.

Contentions of the parties

16. The Applicant's major arguments are:

- In mid-November 2023, ■ received orally promises by the Organization that the matter would be resolved by assigning ■ to another post;
- ■ was misled not to submit a request for internal review;
- ■ had mental and physical health issues which prevented ■ from submitting the request for internal review timely;
- The PIP process was flawed.

17. The Respondents major arguments are:

- The IRB correctly declared the Applicant's request for internal review as irreceivable, as the Applicant did not present legitimate reasons for not having submitted ■ request within the prescribed time-limit;
- The scope of review of the application should be limited to the issue of receivability of the Applicant's request and not extended to the merits of the case.

Considerations

Legal background

18. Regarding the submission of a request for an internal appeal, pursuant to Staff Regulation 10.01 (c): “[t]o be considered, an appeal shall be lodged within thirty days from the date of the notification of the impugned decision.”

19. Article III of Appendix 12 of the Staff Regulations and Staff Rules (SRSR) on time-limit provides:
 - “1. In the event that the request for internal review is submitted beyond thirty days upon notification of the impugned decision in contravention to Regulation 10.10 (c), the Secretary General or the respective head of institution/mission shall inform the appellant that his/her appeal will not be considered.
 2. Should the appellant provide explanation for not having submitted his/her request within the prescribed time-limit, the appeal shall be transmitted to the Internal Review Board for it to decide on the receivability of the appeal.
 3. If, in the light of the explanation supplied by the appellant, the Board considers that:
 - (a) The appellant had legitimate reasons for not having submitted his/her request within the prescribed time-limit, the Board shall admit the appeal and give a ruling on the substance of the case; or
 - (b) The appellant did not have legitimate reasons for not having submitted his/her request within the prescribed time-limit, the Board shall declare the appeal irreceivable and dismiss the appeal without considering its substance.”

20. Regarding the admissibility of a request for external review, Staff Rule 10.02.2 (d) provides that an “applicant must have exhausted the internal appeals procedures, except if the jurisdiction of the Internal Review Board has been waived in accordance with Rule 10.02.1”.

Receivability

The request for internal appeal

21. The Panel takes note that the Applicant was notified of the contested decision on 13 December 2023. In light of the above rules, ■ should have submitted ■ request for internal review on 12 January 2024 at the latest. However, ■ did so only on 11 June 2024.
22. Pursuant to the provisions above, the Appellant's request for internal appeal could have been admitted by the IRB only if ■ had legitimate reasons for not having submitted ■ request within the prescribed time-limit.
23. The Panel recalls its established jurisprudence that 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. Therefore, the waiving of legally prescribed time-limits may in general only be appropriate where the delay was caused by exceptional circumstances beyond an applicant's control (see decision of 14 September 2018, OSCE PoA 3/2018, paras. 27 and 28; decision of 15 May 2020, OSCE PoA 1 /2020, para. 18; decision of 13 December 2024, OSCE PoA 3/2024, para. 22).
24. Further, it follows from the provisions above that respective decisions time waiver are based on explanations "supplied by the appellant". Therefore, it is for an applicant to provide evidence on relevant exceptional circumstances.
25. The Panel is aware of the stressful situation the Applicant was confronted with after the unsuccessful completion of the PIP, the non-renewal of ■ employment, and, with regard to ■ personal situation, health issues within ■ family. However, in the present case, no acceptable legitimate reasons for the delay within the meaning of exceptional circumstances beyond the Applicant's control can be found, as explained in detail below.

26. First of all, it follows from the Applicant's official leave plan, that ■ was not on any kind of leave during various days within the thirty day time-frame for submitting a request for internal review. Pursuant to this schedule, e.g., ■ was on duty from 15 December to 22 December 2023. Further, and more important, ■ was also working during the days from 5 to 12 January 2024, i.e. the last days of the crucial dead-line (with the exception of one day of uncertified sick leave on 9 January 2024). Thus, there is no evidence that the Applicant was prevented from filing a request for compelling health reasons.
27. Such evidence, secondly, does not follow from the certificates the Applicant presented. In a certificate of 3 June 2024, a psychologist confirms that the PIP process had been "quite a challenging period" and that "it is now crucial for ■ to recover". However, it was only in the (second) certificate of 16 December 2024, i.e. after the initiation of the present request for external review, that the same psychologist alleged that due to the Applicant's "condition, ■ could not submit the complaint or appeal during the mentioned thirty-day period (until mid-January)". This statement does not take into account the fact that the Applicant was able to perform ■ duties at the Organization during nearly two weeks out of the thirty-day timeframe.
28. Thirdly, no evidence supported the Applicant's allegation that ■ had been misled by the Organization regarding ■ options to make use of the options of its internal justice system. On the contrary, it is undisputed that the Applicant received full advice regarding these options when ■ met with the Organization's ■ on 15 December 2023, i.e. only two days after receipt of the contested decision. Pursuant to the minutes of this meeting it was explained to the Applicant "that, to appeal the decision of non-extension, ■ would need to submit a request for internal review in accordance with Article X of the SRSR ... [and] that, to be considered, the appeal must be submitted within 30 calendar days of the decision i.e., in [the Applicant's] case no later than 12 January 2024." In addition it follows from the minutes, "[d]uring the meeting, these redress mechanism and the associated timeframes were written down ... on a piece of paper and handed to [the Applicant] for ■ reference".

29. Fourthly, there is no evidence presented that the Appellant was deterred from filing a request by members of the Organization.
30. Finally, all other incidents the Applicant presents as explanation for the delay happened after the end of the time-line, i.e. after 12 January 2024. Therefore, they are irrelevant and cannot be taken into consideration.

The request for external appeal

31. As the Panel has constantly held, pursuant to Staff Regulation 10.02, the right of final appeal to the PoA is granted “further to the procedure established in Regulation 10.10.”, i.e. the internal appeals procedure. Further, Staff Rule 10.02.2 (d) states that an application to the PoA shall not be admissible unless it complies with the requirements of the internal appeals procedure. Read together, it follows that access to the PoA can only be granted where the formal requirements of the Internal Appeals Procedure have been met. Since, in the present case, the initial appeal has not been lodged within the time limit as established in Staff Regulation 10.10 (c), the Panel is prevented from considering its substance and merits (see decision of 15 May 2020, OSCE PoA 1/2020, para. 23 and 24; decision of 14 September 2018, OSCE PoA 3/2018, para. 30 and 31; decision of 2 November 2017, PoA 2/2017, para. 26).

Other claims

32. It follows from the above that the appeal against the contested decision of 13 December 2023 is inadmissible. Therefore, claims for compensation for material and/or moral damages must fail. Further, it is not within the jurisdiction of the Panel to render general binding recommendations on the establishment of investigation teams, whistle-blower protection and other amendments the Applicant requests. The Panel's competence is limited to decide on appeals against individual administrative decisions, as foreseen in Article I paragraph 1 of its ToR (see Appendix 2 to the SRSR).

Conclusion

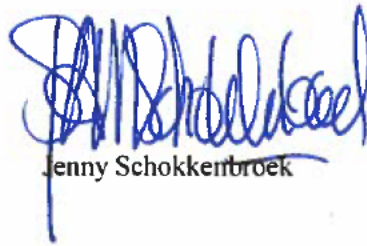
33. In light of the above, the appeal is rejected in its entirety.

Done in Vienna on 14 February 2025



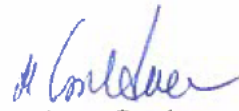
Thomas Laker

Chairperson



Jenny Schokkenbroek

Deputy – Chairperson



Anna Csorba

Member