

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

(CASE No: OSCE PoA 1/2022)

*Proceedings*

1. The Chairperson of the Panel of Adjudicators (PoA) of the OSCE received on 20 April 2022 a letter from the Chairperson of the Permanent Council of the OSCE transmitting an external appeal which had been forwarded to ██████ on the same day. In this appeal, ██████ (Applicant), a former ██████ at the ██████ of the OSCE ██████, contests the decision not to appoint ██████ to a ██████ ██████ had applied for.

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 27 April 2022 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 27 May 2022. The Respondent forwarded ██████ reply on 27 May 2022, which was transmitted to the Applicant on the same day, advising ██████ that ██████ has a right to file a response. No response was filed. Upon the Panel's request, the Respondent submitted additional information.

3. In accordance with Article VI of the Terms of Reference of the Panel (ToR), the Chairperson of the Panel convened the Panel on 22 and 23 September 2022 at the Hofburg in Vienna. The Panel was composed of its Chairperson, Mr. Thomas Laker, its Deputy-Chairperson, Ms. Jenny Schokkenbroek, and its member, Ms. Catherine Quidenus.

4. After examining all the documents, the Panel noted that the Applicant requests the Panel to revise the fairness and impartiality of the contested decision as well as financial compensation for loss of professional reputation, moral and financial damage in the amount of 100.000 EUR.

5. The Respondent, pursuant to [REDACTED] reply, emphasizes that the review of the application should be limited. [REDACTED] holds the view that the Organization adhered to its recruitment procedures and that the Applicant's candidature was given due consideration.

*Summary of facts*

6. On 18 August 2019, the Applicant, employed as an [REDACTED], submitted [REDACTED] application for the Secretariat position of [REDACTED] (vacancy announcement [REDACTED]).

7. After being included in a long-list of candidates and having successfully passed a first interview, the Applicant was included in the short-list of candidates that were invited to take a written test and a competency-based interview. On 13 December 2019, the Applicant sat the test and completed the interview, together with five other candidates.

8. The Selection Board considered the Applicant suitable for the position. However, it assessed that other candidates had performed better. Therefore, the Applicant was not included in the list of three recommended candidates. The Board's top ranking candidate was appointed, approved by the Secretary General on 18 February 2020.

9. On 20 March 2020, the Applicant was informed that [REDACTED] application for the position was not successful.

10. On 19 April 2020, the Applicant filed a request for internal review. Upon the request of the Office of Legal Affairs (OLA), it was corrected and resubmitted on 3 May 2020.

11. On 7 May 2020, OLA informed the Applicant that the Department of Human Resources (DHR) would conduct a review of the recruitment process by a so-called 'Recruitment Review Panel'.

12. On 12 May 2020, the Applicant was informed about the composition of this panel which would conduct the "procedural review of the recruitment process". In its report

of 23 July 2020, the panel, consisting of the Deputy Director of DHR and a member of the Secretariat Staff Committee, found that some provisions of the recruitment process were only partially followed, but assessed that these deficiencies did not have a significant impact on the recruitment process.

13. On 18 August 2020, the Applicant submitted comments to the report, now including the allegation that ■ was discriminated against based “on the age factor”.

14. On 25 August 2020, OLA informed the Applicant that the appropriate avenue would be to follow the procedures for addressing formal allegations of violations of the Professional Working Environment, outlined in Annex 2 of Staff Instruction No.21/Rev. 1. Upon request, the Applicant provided documents on 27 August 2020.

15. In January 2021, the members of the Selection Board were invited to provide their reasons for the non-selection of the Applicant, also with respect to the issue of age. They did so in writing.

16. On 9 April 2021, the Secretary General decided to refer the matter to an Internal Review Board (IRB). After the replacement of one member in April 2021, the IRB submitted its report on 20 December 2021, recommending the rejection of the appeal.

17. On 14 January 2022, the Secretary General agreed with the IRB’s recommendation and decided to uphold the decision not to appoint the Applicant to the position at stake.

18. On 17 March 2022, the Applicant submitted the present request for external appeal.

### *Contentions of parties*

19. The Applicant’s contentions are various and will be addressed in detail below, where appropriate. In general, the Applicant argues that

- The internal appeal process was tainted by lack of competence and impartiality of the Selection Board members;

- The OSCE's recruitment procedures were not observed;
- The contested decision was unfair and tainted by discrimination based on age.

20. The Respondent's major contentions are:

- The review of the contested decision should be limited in scope;
- The Organization adhered to the internal recruitment procedures and due consideration was given to the Applicant's candidature;
- There is no proof for any discrimination based on age.

### *Considerations*

21. Pursuant to established international administrative law principles, international organizations have wide discretion in recruiting, appointing, or promoting staff. However, such discretion is not unfettered. Full and fair consideration must be given to candidatures. First of all, the internal rules on the requisite procedures have to be adhered to. Further, these rules and practices need to be in line with general principles of international administrative law. Accordingly, the Panel's review of the selection decision regarding the vacancy [REDACTED], a [REDACTED] [REDACTED], will apply these criteria in turn.

### *Adherence to the recruitment procedure*

22. The Panel takes note that, pursuant to Staff Regulation 3.01 (b), the paramount consideration in OSCE's employment policy "shall be the necessity of securing the highest standards of efficiency, competence, and integrity, taking full account of the principle of recruiting staff from all OSCE participating States on a fair basis and the importance of achieving gender balance in the Organization". Based upon general provisions, as established in Staff Rules 3.01.1 and 3.01.2, Staff Instruction

No.17/Rev.1 on Standard Recruitment Procedures (“SI/17”), provides for a set of detailed and specific rules regarding OSCE’s recruitment procedures.

23. The Panel is aware of the Applicant’s allegations of non-compliance with these rules during the recruitment procedure at stake. However, as the Respondent has explained in ■■■ reply of 27 May 2022, most of the provisions of SI/17 were strictly applied, namely,

- the vacancy announcement ■■■ included all necessary elements;
- the written test, where the Applicant scored no more than ■■■, placing ■■■ third out of six candidates, was established and assessed in line with SI/17 para. 8.5;
- the competency-based interview, where the Applicant again was ranked third, was conducted in application of SI/17 para. 8.6;
- the selection board was composed properly and had sufficient expertise, no relevant signs of conflict of interest could be found.

24. Having carefully studied additional documentation provided by the Respondent (and shared with the Applicant) - namely the Selection Board’s report on the performance of all six short-listed candidates - the Panel did not find any substantial mistakes in the selection procedure. In this respect, the Panel also notes that the Applicant did not contest any of the Respondent’s above statements, although ■■■ was given ample opportunity to file a response.

25. The Panel took note of the Applicant’s complaint about technical problems while preparing for the interview. As significant disturbances or irregularities can negatively impact a candidate’s performance, they may result in uneven conditions among the interviewed candidates. However, such concerns need to be raised immediately, i.e. before the respective part of the examination comes to an end, so that they can be addressed and remedies can be granted. To the Panel’s best knowledge, the Applicant did not do so.

26. The Respondent acknowledges that not each and all provisions of SI/17 have been fully applied to the recruitment process at stake. In addition to rare and minor delays in sharing lists and questions with its addressees, no reference checks of the candidates were carried out, although SI/17 para. 8.71 unmistakably provides that reference checks “are mandatory for the candidate recommended for appointment”. Whereas the relevant



provisions allow for different ways of providing references (see SI/17 para. 8.75), they do not permit to replace the mandatory reference check by a recourse to documents of previous internal performance appraisals, as it was done in the present case.

27. In the Panel's view, such course of action constitutes a relevant breach of rules of the recruitment procedure. Performance appraisals are normally limited to past achievements of a staff member, whereas reference checks as part of a recruitment process are conducted in order to figure out the respective candidate's suitability for future tasks. In view of differing purposes of these tools, internal performance appraisals may not substitute mandatory performance checks. Also, the renunciation of such checks for internal candidates is unfair to external candidates who have to undergo this check. Therefore, the critical "DHR/recruitment practice for internal candidates" of reverting to former performance appraisals should no longer be applied.

#### *Age discrimination*

28. Regarding the Applicant's allegation that ■■■ was discriminated against by age, the Panel could not find any evidence supporting this view. As a matter of fact, according to the documents, the age of candidates has never been addressed during the recruitment process. Further, one of the three recommended candidates was even older than the Applicant.

29. The Panel understands the Applicant's frustration of not being selected for a position "after almost ■■■ years of acting on it", often under difficult conditions. However, ■■■ professional experience does not necessarily guarantee to prevail in a multiple step recruitment process. As a matter of fact, the documents show that the recommended (and appointed) candidate showed better results in both the written test as well as in the interview. Therefore, the Panel cannot but confirm the legality of the decision not to appoint the Applicant to the position at stake.

#### *Internal appeals procedure*

30. Pursuant to SI/17 para. 11.2.2 "[i]ssues related to selection for a post as a result of a recruitment process which has complied with the standard procedures as described in

this Staff Instruction does not constitute a case for appeal.” This provision which intends to limit the access to the OSCE’s internal justice system is not in line with Staff Regulation 10.01, pursuant to which the OSCE’s appeal procedure is available “for staff/mission members against administrative decisions concerning alleged non-observance of ... any provision governing their working conditions”. As there is no doubt that the selection decision at the end of a recruitment process constitutes an administrative decision, such decision is open to internal (and external) review, regardless of the grounds the appeal is based upon. The Staff’s right to appeal is granted by the Staff Regulations which can only be revised, amended or suspended by the Permanent Council (see Staff Regulation 11.01 (a)), not by a lower ranking Staff Instruction.

31. Further, the Panel takes note with concern of the establishment and participation of a so-called ‘Recruitment Review Panel’ as part of the internal appeals procedure at stake. To the Panel’s best knowledge, the OSCE’s internal law does not provide for any such body. Also, there are no written rules about its composition and/or tasks. The Panel has no doubt about the Administration’s good intentions not “to deny *bona fide* appeals of administrative decisions”, thus establishing a ‘Recruitment Review Panel’ as a good faith effort “to afford the broadest possible recourse and allow *bona fide* complaints to move forward.” However, principles of international administrative law request a proper legal basis for institutions like a ‘Recruitment Review Panel’. It is for the OSCE’s lawmaking bodies to create all necessary institutions within the appeals process (including their members and fundamental procedural rules), rather than for the Administration to establish *ad hoc* bodies on its own.

### *Remedies*


32. As described above, in substance, the contested decision not to appoint the Applicant does not exceed the limits of the OSCE’s discretion. Further, the procedural flaws as such did not negatively impact the Applicant’s right to full and fair consideration of ■■■■ candidature. Therefore, neither rescission of the decision nor compensation for damages is justified.

33. However, the Panel notes a remarkable delay in the internal review proceedings. It took about 20 months from the Applicant's request for internal review in April 2020 until the Secretary General's decision to confirm the IRB's recommendation in January 2022. Part of this delay was caused by the participation of the 'Recruitment Review Panel': Nearly one year passed by from the information about the involvement of this institution in May 2020 until the establishment of an IRB in April 2021. Thus, a lot of time was spent on the participation of a body that is not foreseen in the Organization's internal law.


34. Pursuant to the Panel's established jurisprudence, excessive delay can amount to a violation of due process (see decisions of 6 April 2017, OSCE PoA 4/2016, para. 29; of 3 March 2022, OSCE PoA 2/2021, para. 41). However, as the Applicant does not base ■ requests on such delay, financial compensation is not warranted.

35. In light of the above, the application is rejected.

Done in Vienna on 23 September 2022

  
Thomas Laker  
Chairperson

  
Jenny Schokkenbroek  
Deputy-Chairperson

  
Catherine Quidenus  
Member