

**DECISION OF THE PANEL OF ADJUDICATORS OF THE OSCE WITH REGARD
TO THE REQUEST FOR REVISION BY ██████████
(CASE No: OSCE PoA 8/2020)**

Proceedings

1. On 9 October 2020, the Panel of Adjudicators (PoA) delivered its decision OSCE PoA 46/2019 regarding an application of ██████████ (Applicant).
2. On 15 November 2020, the Applicant sent an email to the PoA, including a “Cessation Appeal on the Final Decision of the OSCE Panel of Adjudicators with reference to External Appeal Case No. OSCE PoA 46/2019”.
3. By email of 16 November 2020, the Applicant was advised that pursuant to the OSCE’s internal law, adjudication decisions of the PoA shall be final, and that there is no option to file any further 'Appeal'. In addition, the Applicant was informed that a party may only request the Panel to ‘revise’ the adjudication decision, in the event of the discovery of a fact that, by its nature might have had a decisive influence on the adjudication decision and was unknown both to the Panel and to the party/parties concerned at the time the adjudication decision was delivered. The Applicant was requested to indicate on or before 30 November 2020 whether ██████████ submissions of 15 November 2020 were meant to be such a request for revision.
4. By message of 30 November 2020, the Applicant re-submitted an “Amended Cessation Appeal”, literally “applying for a cassation of the OSCE PoA final decision”.
5. The Chairperson of the Panel, through the Executive Secretary of the Panel, informed the Secretary General of the OSCE (Respondent) and the Applicant on 1 December 2020 that the Applicant’s submission was considered as a request for revision and asked them to forward any further communication to the Panel as per analogous application of Article 5 of the Rules of Procedure of the Panel to reach the Panel no later than 31 December 2020. The Respondent forwarded ██████████ reply on 21 December 2020 which was transmitted to the Applicant, advising ██████████ that ██████████ has a right to file a rebuttal which ██████████ did on 11 January 2021.

6. In analogous application of Article VI of the Terms of Reference of the Panel (ToR), the Chairperson of the Panel convened the Panel on 12 and 13 August 2021 at the Hofburg premises at Vienna to examine the request. The Panel was composed of its Chairperson, Mr. Thomas Laker, its Deputy Chairperson, Ms. Jenny Schokkenbroek, and its member Ms. Anna Csorba.
7. After examining all the documents submitted to it, the Panel noted that the Applicant requests to revise the Panel's decision of 9 October 2020 and asks for "full exoneration from OSCE [REDACTED] unproven allegations of improper conduct" as well as for "EUR 250.000 from the OSCE [REDACTED] as recompense ... for total incapacity to work ... as the result suffered injury in the performance of official duties." The Respondent, in his reply, holds the view that the application does not fulfill the criteria for a revision of the adjudication decision and asks to uphold the adjudication decision in OSCE PoA 46/2019.

Summary of facts

8. In case OSCE PoA 46/2019, the Applicant had asked, *inter alia*, for compensation for an incident while on duty, resulting in work incapacity. Further, [REDACTED] had contested [REDACTED] separation from service and the non-extension of [REDACTED] assignment. Also, [REDACTED] had complained about the OSCE's handling of allegations of inappropriate behavior against [REDACTED] and requested full exoneration.
9. In the decision of 9 October 2020, the PoA held with respect to these matters:

"...

Jurisdiction of the Panel

27. *It follows from Staff Regulation 10.02 that the Panel is competent to hear final appeals "against an administrative decision" directly affecting a staff/mission member.*
28. *The panel takes note that in all matters regarding [REDACTED] claim of disability resulting from the performance of official duties, the Applicant has been advised to address these claims to an insurance company that OSCE has contracted to provide compensation in case of respective incidents (see Staff Regulation 6.04 and Staff Rule 6.04.2 (b)).*

29. *The Panel notes further that, to the best of its knowledge, no administrative decision with respect to disability claims has been taken yet. As long as no such administrative decision has been taken, the Panel has no jurisdiction.*

Request for internal review

30. *Pursuant to Staff Rule 10.01.1 (b) and (c), a request for internal review shall be submitted in writing to the Secretary General or the head of institution/mission responsible for taking the impugned decision; further the request shall specify date and references of the impugned decision, the date of notification, the aspects of the decision that are challenged, and arguments for asking the review. Further, the request shall be submitted in accordance with the form set out in a Staff Instruction issued by the Secretary General. Finally, pursuant to Staff Regulation 10.01(c), to be considered, an appeal shall be lodged within thirty days from the date of the notification of the impugned decision.*

31. *For a request for internal review it is not sufficient to express some general disagreement. Also, statements that a potential applicant “would indeed like to appeal” (see Panel’s decision of 24 November 2017, OSCE PoA 2/2017, para. 16), or “would now like to initiate the appeal mechanism ... suggested to me” (see Panel’s decision of 25 August 2020, OSCE PoA 45/2019, para. 13) do not meet the requirements quoted above. Rather, the written submission has to reflect the substantial elements of Staff Rule 10.01.1, whereas the use of the prescribed form is a mere formality in order to ease the administrative process.*

...

Separation from service on 15 June 2018 and non-extension of appointment

35. *Pursuant to Staff Rule 4.01.1 (a), appointments shall expire automatically without notice on the expiration date specified in the letters of appointment or terms of assignment, unless they are extended under Staff Regulations 3.08 and 3.11. Further, pursuant to Staff Rule 7.05.5, the appointment of OSCE officials who have incurred illness or suffered injury in the performance of official duties shall be extended for the purpose of the additional sick leave.*

36. *The Panel takes note that the Applicant, in [REDACTED] messages of 13 June 2018 and of 24 June 2018, did not ask for an internal review of [REDACTED] separation from service that had been announced to [REDACTED] by email of 29 May 2018. In the email of 13 June 2018, the Applicant merely refers to an alleged promise for two STA extensions. In the email of 24 June 2018, the Applicant only asks for information about [REDACTED] legal status in reference to the allegations of misbehavior. None of these messages include the necessary elements of a request for internal review of the Applicant’s separation from service and/or the decision not to extend [REDACTED] STA, as described above.*

37. *The Panel further notes that in the request for internal review of 9 October 2018, neither the separation from service nor the non-extension of contract are mentioned.*

38. *Regarding the Applicant's rejoinder of 9 May 2019 in the procedure before the IRB, when the Applicant explicitly - and for the first time - referred to Staff Rule 7.05.5, the Panel notes that the thirty-day time line for lodging a request for internal review regarding the non-extension of contract had expired by far.*
39. *The Panel is aware of the fact that the Applicant was in poor health condition following the accident on 1 June 2018. However, [REDACTED] injury did not prevent [REDACTED] from writing the messages of 13 June 2018 and of 24 June 2018. Therefore, the Panel assumes that the Applicant was in a position to lodge a request for internal review for these decisions, i.e. the separation from service and the non-extension of appointment, within the prescribed time-limit, if [REDACTED] had wished to do so.*
40. *In light of the above, the Panel cannot but state that the Applicant's request for internal review regarding the non-extension of [REDACTED] appointment was delayed.*

Merits

Closure of the case of allegations of inappropriate behavior

41. *Pursuant to Staff Regulation 9.03, in disciplinary proceedings following the response of the staff/mission member to the allegation raised against him/her and the investigation if one has been conducted, the Secretary General or the respective head of institution/mission may take various courses of action, including full or partial exoneration from the allegations, submission of the case to a Disciplinary Committee, or dismissal.*
42. *The Panel notes that the Director of Administration and Finance, under the authority delegated to him, did not make use of any of the above options. Instead, he decided to close the case.*
43. *Taking into account the circumstances, this course of action cannot be considered illegal. The Panel recalls that the Applicant answered to the allegations on 13 June 2018, i.e. just two days before [REDACTED] separation from service on 15 June 2018. In [REDACTED] submission, [REDACTED] rejects the accusations in their totality. As the accusations were based on witness statements it would not have been possible to establish the facts in this case without further time - consuming investigations.*
44. *The Panel takes note that disciplinary measures can only be taken against contracted or seconded staff/mission members (see Staff Regulation 9.04 (a), (b)). Article IX of the Staff Regulations does not allow for disciplinary measures against former staff members. It follows that, in view of the Applicant's separation from service on 15 June 2018, no disciplinary measure could have been imposed upon [REDACTED] after this date.*

45. *The same follows from the catalogue of disciplinary measures, as provided for in Staff Regulation 9.04. None of the measures exhaustively listed therein may take any effect upon a person who is not or no longer a staff/mission member.*

46. *As no satisfactory investigation could have been completed before the Applicant's separation, the disciplinary procedure needed to be closed after this date without further action. In this situation, the Applicant's request for exoneration is not justified.*

... ”

Contentions of parties

10. The Applicant expresses ■■■ disagreement with the PoA's conclusions in case OSCE PoA 46/2019. ■■■ major contentions are:

- ■■■ substantive rights were violated through misinterpretation or misapplication of “OSCE SRSR, OSCE States law provisions Administrative, Civic, Labour”;
- In the contested ruling, the PoA breached the rules of procedure;
- The issuance of the contested ruling led to the violation of fundamental principles of the legal order of the OSCE Member States.

11. The Respondent's major contentions are:

- The Applicant's submissions do not contain new facts;
- Even if there were new facts, the Applicant does not show that such facts would have a decisive influence on the adjudication decision;
- All relevant facts were known to the parties and the Panel at the time the adjudication decision was taken.

Considerations

Scope of the application

12. At the outset, the Panel wishes to emphasize that in every national or international system of justice, the options to contest administrative or judicial decisions are defined and limited by these systems themselves. Pursuant to the respective provision of the OSCE's internal law, i.e. Art. VIII, para. 8 of the ToR (see Appendix 2 to the Staff Regulations and Staff Rules), its adjudication decisions shall be final, and binding within the OSCE. Therefore, there was and is no option to file a further appeal or - in the Applicant's words - 'cessation appeal' against the final decision in case OSCE PoA 46/2019 of 9 October 2020. From this perspective, the application is unreceivable *ab initio*.

13. Once an adjudication decision is rendered, pursuant to Art. IX of said ToR, a party may only request the Panel to revise its final and binding decision within strict limits, i.e. "in the event of the discovery of a fact that, by its nature might have had a decisive influence on the adjudication decision and was unknown both to the Panel and to the party/parties concerned at the time the adjudication decision was delivered". The entirety of these requirements needs to be fulfilled (see Panel's decision of 24 May 2019, OSCE PoA 1/2019, para. 15).

14. The proceedings of such 'request for revision' are not part of Article X of the OSCE's Staff Regulations and Staff Rules which, under the heading "Appeals", deals with the general appeals procedure for staff against administrative decisions. Instead, Article IX of the ToR provides for an opportunity for the parties to request the Panel to revise its own adjudication decision. Since no specific procedural provisions for this type of proceedings have been included, pursuant to the established jurisprudence of the Panel, it is appropriate to apply the procedural provisions of Article X of OSCE's Staff Rules and Regulations as well as of the Panel's Rules of Procedure of the Panel *cum grano salis* to the proceedings of a request for revision in an analogous way (see Panel's decisions of 26 January 2018, OSCE PoA 3/2017, para. 11; 24 May 2019, OSCE PoA 1/2019, para. 13).

15. As indicated above, the proceedings of revision presuppose the presentation of new and crucial facts that were previously unknown. In the Applicant's interest, the Panel decided to examine the Applicant's submissions in light of these conditions.

Request for revision

16. Pursuant to Article IX of the ToR, the revision of an adjudication decision is only allowed (1) in the event of the discovery of a fact that, (2) by its nature might have a decisive influence on the adjudication decision and (3) was unknown to the Panel and to the party/parties concerned at the time the adjudication decision was delivered.

17. In the present case, the Applicant – in ■ own words – “only firmly requests to re-examine important facts”. In addition, ■ “submits that there are fact(s) in the Applicant's request ... not properly consider(ed) by PoA and such innovations have been presented by the Applicant”. In ■ final conclusion, the Applicant expresses ■ conviction that “the obvious violation of law, the OSCE Staff Regulations and Staff Rules by OSCE ■ and the OSCE Secretary General creates explicit and direct conditions for ... also revision of OSCE PoA final decision issued in violation of the law and disregarding the relevant factual circumstances of the Applicant's case.”

18. The Panel takes note that the application does not contain a single (new) fact that might have a decisive influence on the adjudication decision and was unknown when the initial adjudication decision was delivered.

19. Regrettably, the Applicant's submissions demonstrate a fundamental misunderstanding of the preconditions and limits of the proceedings of revision. These proceedings are neither deemed to “re-examine” facts that were already known when the initial adjudication decision was delivered. Nor is it possible to re-assess facts that have allegedly been “not properly consider(ed)” by the PoA. Finally, even an alleged “obvious violation of law” does not pave the way to a revision when its specific preconditions as mentioned above (see para. 16) are not fulfilled.

20. It follows from the above that the request for revision does not meet the prerequisites of Article IX of the ToR and, therefore, must be rejected.

Done in Vienna, on 13 August 2021



Thomas Laker
Chairperson



Jenny Schekkenbroek
Deputy Chairperson



Anna Csorba
Member