

**DECISION OF THE PANEL OF ADJUDICATORS OF THE OSCE WITH  
REGARD TO THE EXTERNAL APPEAL BY [REDACTED]  
(CASE No: OSCE PoA 2/2024)**

*Proceedings*

1. The Chairperson of the Panel of Adjudicators (PoA) of the Organization for Security and Co-operation in Europe (OSCE) received on 15 June 2024 a letter from the Chairperson of the Permanent Council of the OSCE transmitting an external appeal by [REDACTED] (Applicant) which the former had received on 10 June 2024.
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 18 June 2024 of the constitution of the Panel and asked the Respondent to forward a response to the Panel as per Article 5 of the Rules of Procedure of the Panel to reach the Panel no later than 18 July 2024. The Respondent forwarded a response, misnamed as 'Reply' (cf. Article 5 of the Panel's Rules of Procedure), on 16 July 2024, and the Applicant was advised that [REDACTED] has a right to reply. [REDACTED] reply of 12 August 2024 was transmitted to the Respondent for information.
3. In accordance with Article VI of the Terms of Reference of the Panel (ToR), Appendix 2 to the Staff Regulations and Staff Rules (SRSR), the Chairperson of the Panel convened the Panel on 11 and 12 December 2024 at the Hofburg premises at Vienna to examine the appeal. The Panel was composed of its Chairperson, Mr. Thomas Laker, and its members, Ms. Anna Csorba and Ms. Catherine Quidenus.
4. After examining all the documents submitted to it, the Panel noted that the Applicant's claims include the following:
  - a) Rescission of the appealed decision;
  - b) Investigation and adjudication of the Applicant's initial complaint;
  - c) Appropriate disciplinary measures against the Alleged Offender;
  - d) Appropriate binding recommendations to the OSCE on fair adjudication of respective complaints;
  - e) Moral damages.

*Summary of facts*

5. The Applicant is currently employed by the [REDACTED] as a [REDACTED], since [REDACTED].
6. On 13 May 2022, the Applicant and [REDACTED] then first-level supervisor (Alleged Offender) exchanged emails over the Applicant's upcoming duty travel to [REDACTED], in which, *inter alia*, the Alleged Offender expressed the view that the Applicant had not executed the proper approvals through [REDACTED] as the first level supervisor, but deferred to those who had approved the travel in the Request Approval and Tracking System (RATS). The Applicant disagreed with this view on the proper approval procedures.
7. In part, the emails which were shared with six other staff members, read:

“Dear all, I was just told [the Appellant] wants to travel to [REDACTED] next week. This has not been discussed with me at any point in time and it is not approved by me. The answer is no. Pls hire [REDACTED]. ...”, to which the Appellant answered, *inter alia*, that he would be “on duty in [REDACTED], ... every single procedural step for this trip has been observed, and your approval is not part of them”, to which the Alleged Offender returned by writing “ ... you cannot go on mission without prior approval...”. In some more emails of this day, a dispute arose about the question whether the Alleged Offender’s approval was necessary or not.
8. As from 14 May 2022, the Alleged Offender inquired about the placement of [REDACTED] within the internal structures of other [REDACTED]
9. On 1 June 2022, the Alleged Offender advised the Applicant that [REDACTED] reporting lines would be changed. Later that day, the former emailed the [REDACTED] [REDACTED] that, as previously discussed, they had jointly concluded that the Applicant's first-level supervisor was to change to the [REDACTED] and second-level supervisor to [REDACTED]. The [REDACTED] confirmed via email that the reporting lines had been changed in the system that same day.

10. On 10 June 2022, the Alleged Offender exchanged messages with the [REDACTED] regarding a complaint that had been received from a police contact regarding dangerous driving, including a photograph of the vehicle in question.
11. On 23 June 2022, the Applicant filed a Complaint under Staff Instruction No. 21/Rev. 1 on Professional Working Environment (SI 21) against the Alleged Offender, alleging: (i) bullying, misquoting, and insulting (amounting to harassment), (ii) disseminating a rumour about the Applicant (amounting to harassment), and (iii) a change in supervisory lines (amounting to retaliation).
12. On 26 January 2023, the Applicant was informed by [REDACTED] that [REDACTED] Complaint had been determined by [REDACTED] to be *prima facie* unsubstantiated.
13. On 24 February 2023, the Applicant filed a Request for Internal Review, challenging the [REDACTED] determination. Following the filing, the [REDACTED], with the assistance of the [REDACTED], made attempts at an informal resolution; however, an amicable resolution was not arrived at by the parties.
14. On 14 April 2023, the [REDACTED] determined that the Complaint was not processed in accordance with the procedure mandated by SI 21. The decision of 26 January 2023 was therefore rescinded, and the Complaint was reinstated.
15. On 25 April 2023, the Alleged Offender was notified by the [REDACTED] of the Complaint filed by the Applicant and was invited to submit a response, which [REDACTED] did on 15 May 2023.
16. On 19 May 2023, the [REDACTED] notified the Applicant that [REDACTED] Complaint was temporarily paused for the interim period between [REDACTED] departure and the arrival of a [REDACTED].
17. The [REDACTED], having assumed [REDACTED] role on [REDACTED], on 14 September 2023, issued [REDACTED] determinations on the allegations arising from the Applicant's Complaint. With respect to the allegation under ii) (see above para. 11), [REDACTED] considered the allegations to be *prima facie* unsubstantiated, and the actions under i) and iii) were considered to fall outside the scope of SI 21.

18. On 9 October 2023, the Applicant filed a Request for Internal Review. On 16 October 2023, an Internal Review Body (IRB) was established, and on 24 November 2023, the [REDACTED] submitted [REDACTED] reply to the IRB.
19. Once the [REDACTED] (again) had left, the Alleged Offender, on [REDACTED], was appointed as [REDACTED].
20. On 7 February 2024, the Office of Legal Affairs notified the IRB, the Applicant and the Alleged Offender that the Secretary General had decided to transfer the case to the Secretariat to prevent any conflict of interest.
21. On 8 February 2024, the IRB submitted its Report to the Secretary General. The IRB recommended to uphold the impugned decision, and to award monetary compensation to the Applicant, for the delays in mishandling the Applicant's initial complaint.
22. On 11 March 2024, the Secretary General endorsed the IRB's recommendations and offered an ex-gratia payment of 1,500 EUR.
23. On 10 May 2024, the Applicant submitted, in electronic form, the present application for external review to the Secretariat. On 14 May 2024, the application together with five paper copies and supporting material was received at the Secretariat.

*Contentions of the parties*

24. The Applicant's major arguments are:

- The complaints fall within the scope of SI 21;
- The reasons given are based on factual and legal errors;
- The dissemination of rumours was wrongly determined as not being substantiated;
- The change in the supervisory line was not in line with OSCE rules.

25. The Respondent's major arguments are:

- The impugned decision was substantially made in accordance with the internal law of the Organization and applicable general principles of international administrative law;
- The determination on the allegations on harassment and on retaliation was properly made;
- Some (new) allegations in the request for external appeal were not submitted in the Applicant's initial complaint and are outside the scope of the present appeal.

#### *Considerations*

#### *Scope of review*

26. The Panel takes note that the initial complaint of 23 June 2022 is limited to alleged harassment and/or retaliation within the email communication from the Alleged Offender on 13 May 2022 and the change of the Applicant's line of supervision on 1 June 2022 respectively, as well as the alleged initiation of a badmouthing campaign on 10 June 2022. Accordingly, the contested decision of 13 March 2023 focuses on these incidents. Later incidents, as described in the Applicant's request for external appeal, do not form part of the contested decision nor, therefore, of the present external review.

#### *Request for rescission of the administrative decision of 14 September 2023*

#### *Legal background*

27. The Panel takes note that SI 21/Rev.1<sup>1</sup> on the 'OSCE Policy on the Professional Working Environment' includes detailed definitions of the respective policy as well as procedures to be followed should allegations of violations of this policy be reported.

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<sup>1</sup> As the complaint at stake was submitted on 22 June 2022, SI 21/Rev. 1, effective on 1 November 2013, is applicable to this case. The superseding SI 21/Rev. 2 took effect only on 1 November 2022.

28. With respect to the present case, paragraph 6 of SI 21/Rev.1 provides the following definition of harassment:

“6.1 Harassment is any improper and unwelcome conduct on the part of one or more OSCE officials or non-OSCE staff that has caused or might reasonably be expected or be perceived to cause offence or humiliation to another colleague.

6.2 Harassment may be present in the form of words, gestures, or other actions that annoy, alarm, abuse, demean, intimidate, belittle or cause humiliation or embarrassment to another person, or cause an intimidating, hostile or offensive work environment. ... Harassment could amount to an abuse of authority, when engaged in by any official or non-OSCE staff who is in a position of influence or power of the recipient of such actions. It may be deliberate, unsolicited or coercive. Harassment normally happens over a period of time and therefore implies a series of incidents. However, depending on its nature, a one-time incident could exceptionally fall within the definition.”

29. Paragraph 6.6 of SI 21/Rev.1 defines retaliation as follows:

“Retaliation is an action taken directly or indirectly against an OSCE official or non-OSCE staff because he/she made a good faith report of harassment, sexual harassment or discrimination or co-operated in good faith with an investigation into or a disciplinary procedure for an allegation of harassment, sexual harassment or discrimination or participated in good faith in any other investigative or disciplinary proceedings initiated in accordance with the OSCE Regulations and Rules.”

30. Further, paragraph 6.7 of SI 21/Rev.1 reads:

“The mere expression of disagreement, admonishment, criticism or similar action regarding work performance, conduct or related issues within a supervisory relationship shall not normally be considered harassment within the meaning of this policy.”

31. Finally, paragraph 6.9 of SI 21/Rev.1 provides:

“OSCE officials must have reasonable grounds before making a complaint under this Staff Instruction. While unwelcome behaviour is seen from the perspective of the complainant, the standard for judging whether behaviour is inappropriate is not purely subjective. The OSCE employs a standard based on reasonableness. Whether conduct constitutes inappropriate behaviour will be based on an assessment of the facts and circumstances in which they occur, taking into account the particular sensitivities required in the OSCE multicultural environment.”

32. Annex 2 to SI 21/Rev.1 provides, *inter alia*, the steps to be taken after receipt of a formal complaint. The Panel notes that, in the present case, the [REDACTED], based on paragraph 2.9 b) and c) of this annex, had decided that the Applicant’s allegations were *prima facie* unsubstantiated in part, or fall outside the scope of application of SI 21/Rev.1. The Panel will examine this determination in turn.

*Bullying, misquoting, insulting*

33. Pursuant to paragraph 6.7 of SI 21/Rev.1, *inter alia*, the mere expression of disagreement regarding conduct or related matters within a supervisory relationship shall not normally be considered harassment within the meaning of the respective policy. However, in exceptional cases, the use of improper conduct within such relationship can amount to harassment and, therefore, ask for an application of SI 21/Rev.1.

34. In the present case, the dispute about the necessity of the Alleged Offender’s approval regarding the Applicant’s duty travel is clearly an expression of disagreement on a work related matter. The Panel notes with regret the irritable tone of the language used between the Alleged Offender and the Applicant in their respective email exchange of 13 May 2022. However, this tone does not exceed the limits to improper or insulting language, although there should have been better ways to resolve the matter. Therefore, no exceptional circumstances can be found which, based on paragraph 6.7 of SI/21

Rev.1, could justify the application of the definition of harassment in the Applicant's case.

#### *Dissemination of a rumour*

35. In the Panel's view, the Applicant's allegations about the dissemination of a rumour to ■ disadvantage remain vague and unclear. The Alleged Offender's inquiries regarding a traffic incident with the participation of a car with OSCE plates as such does not damage the Appellant's reputation and, also, does not amount to harassment. In this respect, the Panel confirms the determination that respective allegations are *prima facie* unsubstantiated.

#### *Change of supervisory/reporting line*

36. The Panel notes that the Applicant's reporting line was changed on 1 June 2022, whereas ■ submitted ■ official and present complaint only three weeks later, i.e. on 23 June 2022. As the contested measure predates the Applicant's submission of the present allegations, it does not meet the definition of retaliation as provided in paragraph 6.6 of SI 21/Rev.1. Pursuant to this definition, an action may only qualify as retaliation if it is taken *because* of a good-faith report of alleged misconduct. Therefore, the change of the Applicant's reporting line does not fall within the scope of SI 21/Rev.1. Having said this, given the regrettable tensions between Alleged Offender and the Applicant, the change of the supervisory/reporting line does not seem to be an abuse of discretion.

#### *Other claims*

37. It follows from the above that the contested decision of 14 September 2023 was taken in line with the provisions of SI 21/Rev.1. Therefore, the requests to investigate and adjudicate the Applicant's initial complaint as well as to take disciplinary measures against the Alleged Offender (see above 4 b) and c)) have no basis and must fail. Further, it is not within the jurisdiction of the Panel to render general binding recommendations to the OSCE (see above 4 d)), as the Panel's competence is limited to decide on appeals against individual administrative decisions, as foreseen in Article 1 paragraph 1 of its ToR (see Appendix 2 to the SRSR).



*Delay and moral damages*

38. The Panel notes that 15 months elapsed from the submission of the Applicant's Complaint in June 2022 until the notification of the contested decision in September 2023. Even considering the special circumstances the Respondent emphasizes, such a long period of time does not meet the requirements of paragraph 8.1 of SI 21/Rev.1, pursuant to which complaints "shall be dealt with promptly".
39. The Panel further notes that more than five months passed by between the submission of the Request for Internal Review on 9 October 2023 and the [REDACTED] final decision of 11 March 2024. Additional delays occurred during these proceedings before the IRB, since the report was not submitted within the time-line established in Article V paragraph 7 of Appendix 12 to the SRSR.
40. It is noted that the Respondent offered an *ex gratia* payment of 1,500 EUR with respect to these delays. The Panel finds that such amount of money is adequate to compensate any moral damages the Applicant may have suffered, and expects that it has already been or will be paid.

*Conclusion*

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

Done in Vienna on 12 December 2024



Thomas Laker  
Chairperson



Anna Csorba  
Member



Catherine Quidenus  
Member