

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

(CASE No: OSCE PoA 2/2023)

Proceedings

1. The Chairperson of the Panel of Adjudicators (PoA) of the Organization for Security and Co-operation in Europe (OSCE) received on 22 September 2023 a letter from the Chairperson of the Permanent Council of the OSCE transmitting an external appeal by ██████████ (Applicant) which the former had received on 11 September 2023.
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 26 September 2023 of the constitution of the Panel 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 26 October 2023. The Respondent forwarded ██████ reply on 25 October 2023 which was transmitted to the Applicant, advising ██████ that ██████ has a right to respond by 16 November 2023. The Applicant filed such response on 16 November 2023 which was transmitted to the Respondent for information.
3. In accordance with Article VI of the Terms of Reference of the Panel, the Chairperson of the Panel convened the Panel on 7-8 December 2023 at the Hofburg premises at Vienna to examine the appeal. The Panel was composed of its Chairperson, Mr. Thomas Laker, its Deputy-Chairperson, Ms. Jenny Schokkenbroek, and its member, Ambassador Andrei Popkov.
4. After examining all the documents submitted to it, the Panel noted that the Applicant's claims include the following:
 - a) to be engaged as ██████████ on a Short Term Appointment (STA);
or, in the alternative;
 - b) The ██████████ consider and decide on the merits upon ██████ request to continue in service on STA;

- c) to be compensated for Board and Lodging Allowance (BLA) payable at the [REDACTED] from the date of [REDACTED] separation from service;
- d) to alert the 'Chairman in Office' of the OSCE of the illegal practices in the present case.

Summary of facts

- 5. The Applicant, born in [REDACTED], an [REDACTED] on secondment [REDACTED], served from [REDACTED] to [REDACTED] as [REDACTED], [REDACTED]. On the latter date, the Applicant reached the regular maximum period of service in a mission and was separated from the OSCE.
- 6. From end of June 2022 to beginning of March 2023, the Applicant was on various types of leave, including sick leave, and did not work in person at [REDACTED] duty station. After exhaustion of [REDACTED] sick leave entitlements, [REDACTED] was granted exceptional special leave with pay to allow [REDACTED] to deal with health-related issues.
- 7. Earlier this year, on 24 January 2023, the Applicant had been advised that [REDACTED] intended to advertise [REDACTED] position. In an exchange of emails, the Applicant inquired about the mission's practice to offer STAs to [REDACTED] who reach the maximum period of service. The Applicant expressed [REDACTED] view that there was a "established practice" to do so.
- 8. In [REDACTED] email of 26 January 2023, the [REDACTED] informed the Applicant that, pursuant to [REDACTED] state of information, "there has never been an established practice to extend seconded [Mission Members] MMs beyond maximum periods of service. The current leadership's position is that we will stick to succession planning according to maximum periods of service, unless there is a strong, justifiable reason to make an exception for a particular post at a particular time...With this in mind, we intend to proceed with advertising the position in the next few weeks".

9. On 31 January 2023, the Applicant filed a request for internal review, requesting as relief that “STAs be issued”.
10. On 27 February 2023, ██████████ acknowledged receipt and, on 3 March 2023, the Applicant was informed about the establishment and the composition of an Internal Review Board (IRB).
11. Since the Applicant had objected to one of the proposed IRB members, on 8 March 2023, a recomposed IRB was established. The Applicant again objected to the composition, and ██████ objection was rejected on 8 March 2023.
12. The IRB informed the Applicant on 28 March 2023 to substantiate ██████ appeal which ██████ did on 7 April 2023. Having received ██████████ reply on 10 May 2023, the IRB submitted its report on 24 May 2023, recommending to dismiss the appeal. On 12 June 2023, ██████████ informed the Applicant of ██████ decision to follow the IRB’s recommendation.
13. On 11 August 2023, the Applicant submitted the present application by electronic means, followed by paper copies which were received at the OSCE Secretariat on 16 August 2023.

Contentions of parties

14. The Applicant’s major contentions are:
 - The rejection of ██████ efforts to be offered an STA constitutes an administrative decision;
 - The internal review procedure was tainted by procedural irregularity;
 - Based on the practice of the mission and the regulatory framework, there was an expectation to be offered a STA after completion of ██████ fixed-term appointment;
 - The non-award of a STA was discriminatory and based on improper grounds.

15. The Respondent's major contentions are:

- The Application is irreceivable as it does not concern an administrative decision;
- In the alternative, the decision not to offer the Applicant a STA was properly made in accordance with the regulatory framework without unreasonableness or unfairness;
- The internal review proceedings complied with the law of the Organization.

Considerations

Procedural issues

Admissibility of the application

16. At the outset, the Panel reiterates Staff Regulation 10.01 pursuant to which OSCE's internal appeals procedure is limited to "administrative decisions concerning alleged non-observance of their letter of appointment or terms of assignment, or of any provisions governing their working conditions". Accordingly, Staff Regulation 10.02 provides for "a right of final appeal to a Panel of Adjudicators against an administrative decision directly affecting him/her". These limitations of jurisdiction are repeated in Article 1 paragraph 1 of its Terms of Reference (Appendix 2 to the Staff Regulations and Staff Rules - SRSR), stating that the Panel shall be competent to decide on final appeals "against administrative decisions".

17. Further, the Panel recalls its established jurisprudence, based on a respective tradition in international administrative law, according to which an administrative decision may be defined as a unilateral decision taken by the administration in a precise individual case which produces direct consequences to the legal order (see decisions of 14 July 2017, OSCE PoA 1/2017, para. 15; of 22 November 2019, OSCE PoA 31/2019 and 36/2019, para. 18).

18. In the present case, it is undisputed that the Applicant's fixed-term appointment automatically ended on 31 May 2023, due to the expiration of the maximum period of seven years, as established in Staff Regulation 3.08 (f). In this respect, no further action

or administrative decision was needed to put an end to the contractual relation between the Organization and the Applicant.

19. However, it transpires from the file that, after being informed about the Organization's intention to advertise [REDACTED] position, the Applicant expressed [REDACTED] interest in a continuation of [REDACTED] appointment by way of being awarded a STA. The exchange of emails in January 2023 clearly indicates the Applicant's respective intentions.
20. Finally, the Panel notes that the Organization left no doubt that it did not intend to engage in any further appointment of the Applicant. In contrast, it insisted on proceeding with the advertisement of the Applicant's post and informed the Applicant accordingly in unmistakably words.
21. It follows from the above that the Applicant's appointment ended on 31 May 2023 without any legal course of action from the Organization's side that could be contested. However, the Applicant's interest in being awarded a STA to continue with [REDACTED] expiring appointment were addressed in the email of 26 January 2023 when the Organization informed [REDACTED] that [REDACTED] post would be advertised and no further appointment of the Applicant was intended. In the Panel's view, this message implicitly includes a rejection of the Applicant's efforts to receive a STA and entails all elements of an administrative decision as described above. Therefore, the application for external review is admissible.

Internal review proceedings

Composition of the IRB

22. Pursuant to Article II (1) (a) of Appendix 12 to the Staff Regulations and Staff Rules (SRSR), an IRB [REDACTED] shall be composed within seven days upon receipt of the request for review. In the present case, a delay of 24 days (8 February to 3 March) has to be noted. Although regrettable, such delay does not render the following proceedings illegal.

23. Pursuant to Article II (6) of Appendix 12 to the SRSR, based on the objection of an Appellant, a recomposition of an IRB is possible, as it happened in the present case. However, following such recomposition, the Appellant shall not be allowed to object to its new composition. Regarding the Applicant's allegation that, even after recomposition of the IRB, one member of the IRB had a conflict of interest, the Panel notes that the respective concerns as raised at the time - "I have heard ■[...] express reverence, as an ■■■■■■■■■■, towards ■[...] the ■■■■■■■■■■" - were based on assumptions and possibilities. The fact that the chosen IRB member shared the nationality of a person who had been otherwise blamed by the Applicant does not support the existence of a conflict of interest.

Proceedings of the IRB

24. Regarding the Applicant's complaint about the IRB's change of view about the substantiation of ■ application, the Panel cannot find a procedural irregularity. Within the limits of Appendix 12 to the SRSR, it is for the IRB to determine its own procedure and to adopt, by majority vote, the report which shall include its recommendation within sixty days upon receipt of the Organization's reply (cf. Article V of Appendix 12). This is what happened here.

Merits

25. Pursuant to Staff Regulation 3.08 (f), the maximum period of service for seconded mission members in the same mission is seven years. Further, according to Staff Regulation 4.01, fixed-term appointments of mission members who reach the age of 65 while in service shall normally expire on the last day of the month of their 65th birthday.

26. Pursuant to Staff Regulation 3.11 (a), beyond the above seven-year period an extension "may be granted". Further, paragraph 5.2 (b) of Staff Instruction No. 26/Rev.1 of 5 December 2012 as well as its recently revised version (i.e. paragraph 5.4 (b) of Staff Instruction No. 26/Rev. 2 of 15 March 2023) provide that the STA modality may be used, *inter alia*, to "temporarily fill vacant posts on the approved post table."

27. It follows from this legal background that, on the one hand, the service of seconded staff in the same mission, as a rule, is limited to seven years and normally ends at the 65th birthday of the respective staff member. On the other hand, a STA may be granted to temporarily fill vacant posts. Thus, there is an option to offer a STA after completion of the maximum period of service if there is a specific need to do so.
28. In the present case, the Organization decided to advertise the Applicant's post in light of the fact that ■ would reach the end of ■ maximum seven-year period. The Applicant was informed accordingly in January 2023, about four months before the end of ■ appointment. This course of action is, as shown above, in line with the general rules and does not need any specific justification.
29. It is noted that the Applicant's post was filled after a recruitment exercise on 1 July 2023, i.e. only month after ■ separation from service. It turned out that, indeed, there has not been a relevant vacancy that needed to be filled by awarding a STA to the Applicant. ■ concerns regarding the qualification of ■ successor are not relevant and do not give rise to an obligation to award a STA to ■.
30. The Panel emphasizes that the administration's use of its discretionary power is not unfettered. *Inter alia*, unjustified discrimination and/or violations of the general principle of equal treatment are unacceptable and have to be avoided, as follows from Staff Regulation 3.01 (a) and (b).
31. In this respect, the Applicant submits on the one hand that "it has been the constant practice to apply SI 26 to keep on strength officers who have acquired seven years of experience in a function" in ■, whereas, on the other hand, even according to the Applicant's description in ■ just "two of the five ■ were on STAs after seven years of FTA". Under these circumstances, the Panel cannot find sufficient proof for an unjustified unequal treatment.
32. Further, in connection with ■ role as initiator of inquiries into allegedly illegal activities inside ■, the Applicant "concludes that the decision to end ■ service is related to the discomfiture ■ feel in having a rat in their midst". For this assessment, strongly contested by the Respondent, the Panel did not find any reliable factual basis as well.

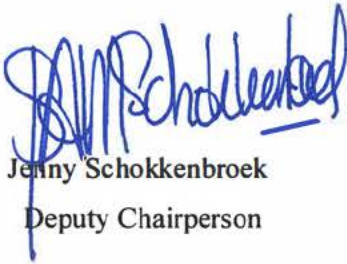
Conclusion

33. In view of the foregoing, all claims of the application are rejected.

Done in Vienna on 8 December 2023



Thomas Laker
Chairperson



Jenny Schokkenbroek
Deputy Chairperson



Ambassador Andrei Popkov
Member