

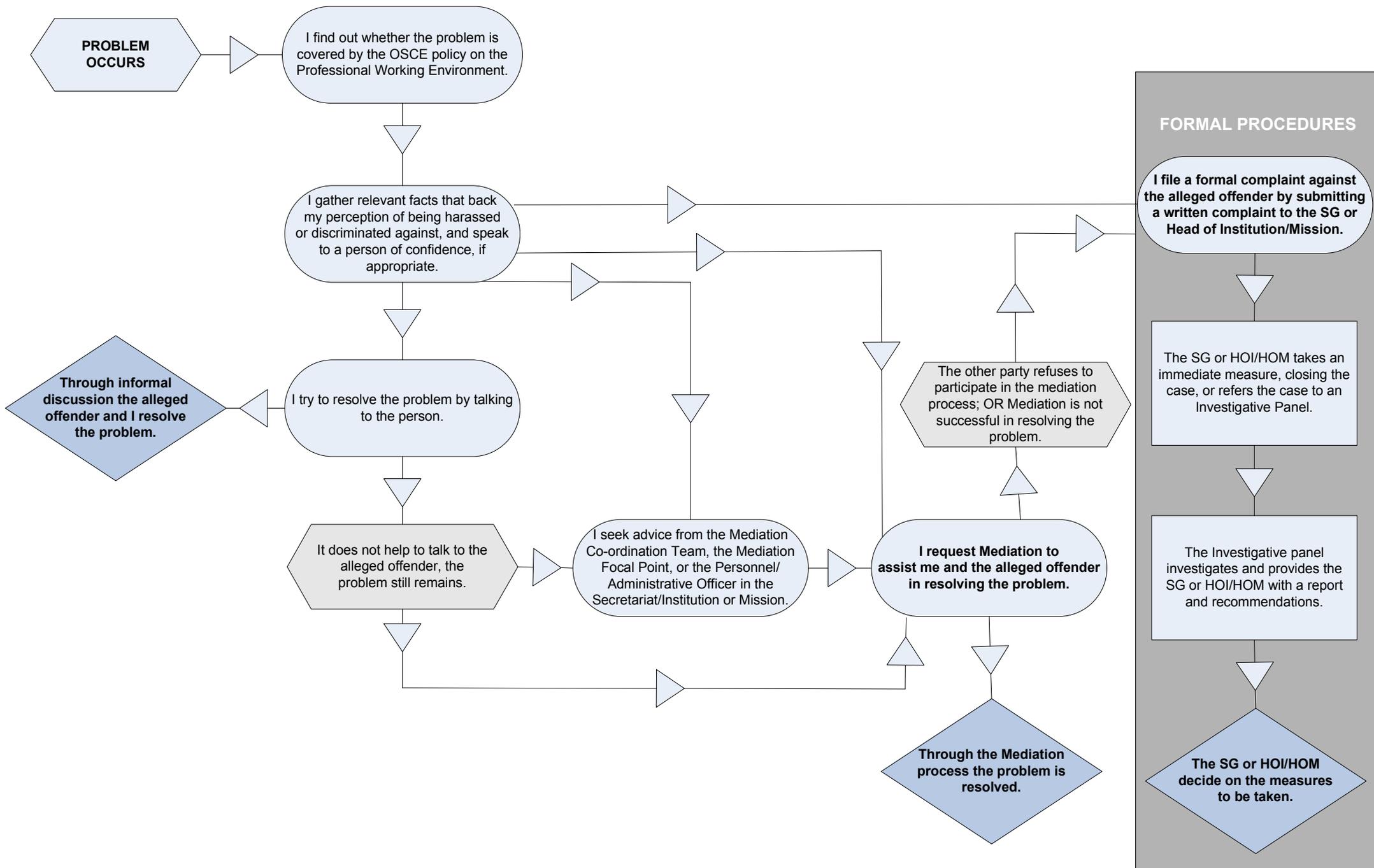
Professional Working Environment

Guide on the OSCE Policy against Harassment, Sexual Harassment and Discrimination



Organization for Security and
Co-operation in Europe

FLOWCHART – CASE OF HARASSMENT AND/OR DISCRIMINATION



Professional Working Environment – Guide on the OSCE Policy against
Harassment, Sexual Harassment and Discrimination
Second Edition

Published by the Department of Human Resources in co-operation with
the Gender Section and Legal Services, OSCE Secretariat.

This document is the property of the Organization for Security and
Co-operation in Europe (OSCE). No portion of this document may be
reproduced for resale or mass publication without express consent, in
writing, of the OSCE.

© 2010 Organization for Security and Co-operation in Europe

Contents

Case Flowchart

1.	Introduction 1
2.	Definitions 2
	2.1. Harassment	
	2.2. Sexual Harassment	
	2.3. Discrimination	
3.	Channels for Assistance 5
4.	Actions to Take if Accused of Harassment or Discrimination17

1. Introduction

The OSCE Policy against Harassment, Sexual Harassment and Discrimination (Staff Instruction 21/2006) and relevant articles in the OSCE Staff Regulations and Staff Rules¹ provide the regulatory framework for implementing the OSCE's commitment to a healthy, harassment-free working environment for all its officials.

Conduct
at the highest
personal and
professional
level

Under the Code of Conduct², OSCE officials are expected to conduct themselves at the highest personal and professional level not only during working hours but also when they are off duty.

This Guide, which contains basic definitions of harassment, sexual harassment and discrimination, should serve as a practical information tool for all OSCE officials. It contains information on the organizational structures and procedures available to OSCE staff or mission members in cases of grievances.

¹ DOC.SEC/3/03, regularly updated.

² OSCE Staff Regulations and Staff Rules, Appendix 1.

2. Definitions

2.1. Harassment

According to Staff Instruction 21/2006, harassment is defined as any behaviour that degrades, humiliates or embarrasses a person because of his or her gender, race, religion or belief, nationality, ethnic or social origin, age, sexual orientation, marital status, disability or other aspects of personal status. Furthermore, harassment is defined as visual, verbal or physical conduct which:

- Has the purpose or effect of unreasonably interfering with an individual's work performance,
- or
- creates an intimidating, hostile or offensive work environment.

Harassment can be a behaviour displayed by an individual or by a group. Harassment can be a one-off incident or a continuation of several incidents over a longer period of time.

2.2. Sexual Harassment

As a particularly serious form of harassment, sexual harassment is defined as:

- Any unwelcome sexual advance and/or request for sexual favours,
- or
- other verbal or physical conduct of a sexual nature which creates an intimidating hostile or offensive work environment, especially when it is made a condition of employment.

Particularly serious when the offender has the power to influence the career or employment conditions

It is particularly grave when an OSCE staff or mission member engaged in this kind of behaviour is in a position to influence the career or employment conditions of another staff member.

Sexual harassment means the sexual advance is unwanted and regarded as offensive and intimidating by the recipient. Sexual harassment can be expressed in several ways, but may include some of the following:

- Physical: pinching, patting, rubbing and grabbing or any unwelcome physical contact;
- Verbal: “dirty” jokes, comments or innuendos, nicknames or insults, unwelcome sexual invitations, demands or threats of sexual nature, suggestive or insulting sounds;
- Visual: displaying disrespectful, sexually suggestive objects, pictures, cartoons or posters; leering and making sexual gestures, writing sexually suggestive letters or notes.

2.3. Discrimination

Discrimination is defined as a distinction, exclusion or restriction made without reason on the basis of gender, race, religion or belief, nationality, ethnic or social origin, age, sexual orientation, marital status, disability or other aspects of personal status.

Discrimination can take a number of different forms, and may include cases, for example, where a qualified person is denied a job, promotion, renewal of contract, references, opportunities for training or increased responsibility because of gender, race, religion or other factors. Similarly, an evaluation of a person's ability based on prejudice or assumption, rather than on merit and competence, may constitute discrimination.

Discrimination takes many forms, based on: gender, race, religion or belief, nationality

3. Channels for Assistance

If you feel you are a victim of harassment, sexual harassment or discrimination, there are different options at your disposal. Staff Instruction 21/2006 provides for two types of procedures: informal and formal. If an informal procedure does not resolve the conflict or is not appropriate in your case, you have the right to initiate a formal procedure at any time.

- ❑ Overall, it is important that you **take action as soon as possible**.

A flowchart at the end of this booklet illustrates the steps of dealing with a case of harassment or discrimination and gives an overview of the options available to you. These steps are further described below.

A. Find out if the problem you are facing relates to Staff Instruction 21/2006

Differences in opinion between you and your supervisor about the quality of work or performance do not, in general, constitute harassment or discrimination. For details on procedures to address performance matters see Staff Instruction 15/2004 on the Performance Appraisal System.

Nature
of the
problem
defined

B. Note down and document what kind of behaviour or treatment you have found offensive

Information
is collected

To support your allegations, it is useful to document and gather all relevant facts. This record should be as detailed and specific as possible, including descriptions, dates and times of incidents and names of any potential witnesses.

C. Try to deal with the problem informally - talk to the offender

If you believe you are a victim of harassment or discrimination, you should try to informally resolve the problem at an early stage.

Direct
confrontation
of the problem

If possible, talk directly to the alleged offender. Maybe the person is not aware the behaviour, treatment or use of language is understood as offensive by you.

If appropriate to your case, here are some concrete ways you could confront the other person:

Confront the Suspected Offender

- ❑ Find an opportunity where you and the person in question can talk face to face, and explain that the conversation is confidential;
- ❑ describe the problem by explaining how the person's behaviour is making you feel and how you perceive it;
- ❑ request the person to stop the behaviour you find offensive;

- allow the person to respond to what you have explained.

Make sure to keep records of the details of the conversation(s), including the date(s) of the conversation(s) and what was said.

It might not be possible for you to talk to the person who seems to behave improperly toward you, your case might not be suitable to be solved in such an informal way, or the person in question might not wish to address the problem.

The next step for you could then be to turn to someone else for advice and guidance. This could be a supervisor, a trusted colleague, the Mediation Co-ordination Team, the Secretariat / an Institution/Field Operation mediation focal point, a staff mediator, staff representative or a staff member from the Personnel or Administration Office.

Advice
and
guidance

If you turn to your supervisor for assistance:

- Explain what you have found offensive in the behaviour of the person in question and inform your supervisor, if applicable, that you have tried to talk to the person to resolve the problem;
- tell your supervisor how you would like to proceed, for example you could ask your supervisor to talk to the person in question, or you could ask for all three of you to meet to talk about the problem and how it can be resolved.

When your supervisor is the alleged offender:

In case the person who seems to harass you or discriminate against you is your supervisor, you may wish to discuss the problem with another person. This other person could be the supervisor of your supervisor, a Personnel/Administrative Officer, or someone else in management in your work place.

Turn to the Mediation Co-ordination Team in the Department of Human Resources, the Mediation Focal Point, or the Personnel/Administrative Officer in the Secretariat/Institution or mission

The Mediation Co-ordination Team, the Mediation Focal Point, or the Personnel/Administrative Officer will inform you about regulations and procedures relevant to your case and outline possible options. They can also help you initiate the mediation process.

D. Try Mediation

Involvement
of a third
party

If you have tried to resolve the problem without success, you can also contact the Mediation Co-ordination Team or Mediation Focal Point to assist you with the mediation process.

What happens during mediation?

Mediation is the informal but structured process of seeking conciliation of inter-personal conflicts, including harassment and discrimination between two or more parties. In this process you and the other party are given the opportunity to be heard and, in a structured way, to work on an agreed solution. This process is to be conducted as discreetly as possible. During the mediation process, both you and the other party have the right to request the assistance of a person of confidence.

Who is the mediator?

Once mediation has been requested, the Mediation Co-ordination Team or Mediation Focal Point can assist you in identifying an appropriate neutral mediator within the OSCE, or, if necessary, an independent, external mediator. In some cases the most appropriate internal mediator might be from another OSCE mission. Both you as the complainant and the alleged offender will be consulted regarding the mediator assigned to the case.

Who decides if mediation is to be conducted?

If you decide to try to resolve the situation through mediation, it is necessary that the person whom you accuse of harassment or discrimination agrees to participate in the mediation process. The person has the right to refuse to participate. If you and the other party agree to mediation, the process is to be initiated by the mediator at a pace and schedule agreed by both parties. Both you and the other party have the right to ask for the mediation to be interrupted at any time.

Necessary
that all
parties
agree on
mediation

What is the expected outcome of the mediation process?

Not only are the differences between you and the other party addressed, but through the mediation process you are also encouraged to try to explore possible solutions that you would be comfortable and satisfied with. A solution can only be valid if both parties agree to it.

Satisfactory
results for
both parties

How is the collected information used?

Any information and records compiled during the mediation process will be used only by the mediator in that function during the process.

Usage
of
information
restricted

The contents and the process of the mediation will remain confidential and cannot be disclosed beyond the three parties involved.

E. File a formal complaint against the alleged offender

You
can
proceed
directly and
at any time
with a
formal
complaint

You might have tried to resolve the problem of harassment and / or discrimination through any of the informal processes, including mediation, without satisfactory result. It could also be that your case is so serious that it cannot be settled in an informal way, or that the alleged offender refuses to participate in the mediation process. If so, you can directly and at any time choose to complain formally.

Complaint Contents

Complaint
form to be
filled in

Any formal complaint should be in writing, using the form contained in Annex I of Staff Instruction 21/2006. It should include the following information:

- Your name;
- the type of harassment and/or discrimination you experience, with concrete details;
- the date, time and place of the occurrence(s);
- the name(s) of the persons(s) accused of harassment or discrimination;

- ❑ the relief that is claimed, (e.g. the remedy or solution you would like to see);
- ❑ supporting documents, if any, such as e-mails or other correspondence.

Submitting the Complaint

Complaint
filed to the
head of
institution/
mission

The formal complaint must be submitted to the Secretary General or the head of institution/ mission, depending on your duty station.

F. Your case is investigated and recommendations are presented

When the Secretary General or head of institution/mission receives a formal complaint, he/she will do the following:

1) Without delay, provide the complaint to the accused person within 10 days and ask the person to respond to the allegations in writing, and

2) a) refer the case to a so-called Investigative Panel, or
 b) decide directly which disciplinary measure should be taken (Staff Rule 9.03.4). Disciplinary measures can be imposed by the Secretary General or the head of institution/mission without an investigation in the following cases:

- ❑ The accused person is summarily dismissed (i.e. immediate separation);

Copy
of
complaint
to the
alleged
offender

- ❑ the accused person is on a short-term contract (less than six months);
- ❑ the complainant has requested in writing that he/she does not wish to have the allegations investigated, in which case a decision will be taken on disciplinary measures imposed, if any, based on the evidence provided and any response provided by the accused person.

In most harassment and discrimination cases an Investigative Panel will be formed.

If you have legitimate reasons to believe that any of the three members of the Investigative Panel are not sufficiently objective to investigate the case, you can object to the composition of the panel within three working days of being notified of the designated panel members. The accused person has the same rights. If an objection is made, the Secretary General or the head of institution/mission may make changes to the composition of the Investigative Panel. No objections can be raised regarding composition of a new Investigative Panel.

Objection can be made to the composition of the Investigative Panel

In case you and the alleged offender come to an agreement to settle the conflict while the Panel is working on the case, you will both have to let them know in writing. The Panel will then be dissolved and the case closed.

If your contract, or the contract of the accused person, ends during the procedure, this will not affect the process. The complaint procedure will still be completed. However, former staff/mission members can only submit a complaint within 30 days of their last day on duty. Otherwise, the complaint will be rejected.

The complaint process continues even if your contract ends

The Investigative Panel and its Proceedings

According to Staff Rule 9.03.5 the Panel consists of:

- 1) The chairperson: designated by the Secretary General or the respective head of institution/mission in consultation with the staff representatives;
- 2) a member designated by the Secretary General or the respective head of institution/ mission;
- 3) a member designated by the staff representatives.

To avoid possible conflicts of interest, the chairperson, or any other members of the Panel, should not have been involved in the case before.

Confidential
proceedings

The proceedings of the Investigative Panel shall be confidential.

The Panel:

- Reviews both your and the alleged offender's versions of events;
- identifies potential witnesses or any other person who might be able to give relevant information;
- conducts interviews and collects documentary information;
- keeps notes of the interviews;
- finishes the investigation within 30 days of assignment, subject to an extension of a maximum of 30 days;
- prepares a report presenting facts and evidence and making recommendations to the Secretary General or head of institution/mission on further actions to be taken.

Both you and the accused person may be assisted by a person of confidence of your own choice. It is important to note that the

mediator should not assist either party if that person has been dealing with the case prior to the formal complaint.

Complaint is considered well-founded and alleged offender is found guilty

The Investigative Panel may find that your complaint is considered well-founded. If so, the Panel can recommend one of the following measures:

- ❑ A letter of apology be sent to you by the Secretary General or head of institution/ mission or,
- ❑ if the offender is a seconded staff member, a letter be sent to the seconding authority regarding the findings of the Investigative Panel and the decision of the Secretary General or head of institution/mission, without revealing your name.

Furthermore, the following disciplinary measures against the offender may be recommended by the Panel (Staff Rule 9.03.):

- (a) Written censure, which is a letter that stays in the offender's personnel file;
- (b) written censure with transfer to another post of the same level;
- (c) suspension from work without pay, not exceeding two weeks;
- (d) for OSCE staff/mission members entitled to salary increments, postponement of the next increment for a period not exceeding twelve months;
- (e) for OSCE staff/mission members entitled to salary increments, decrease of the salary by one step in the relevant salary scale;
- (f) for OSCE staff/mission members with grade, demotion, i.e. personal downgrading in their own post;
- (g) transfer to another post at a lower level;
- (h) separation from service, with or without notice, or compensation in lieu of notice;
- (i) summary dismissal.

Complaint is considered false or made in bad faith

Should the Investigative Panel consider your complaint to be false or find that you have made the complaint with the intention to misrepresent the truth, it may recommend disciplinary measure(s) as listed in Staff Rule 9.03. be taken against you. The Panel may also recommend appropriate rehabilitation measures for the person wrongly accused.

Recommendations regarding other relevant persons

The Investigative Panel may find that other persons somehow involved in the case, including management, have not followed policy. For example, the case might not have been handled in a timely manner, or there might have been undue pressure on the victim to drop the complaint. Should the Panel conclude that violations of the policy have taken place, it may also recommend appropriate measures to be taken against other persons, including management.

Panel recommends measures for other people when detecting improper behaviour in connection to the case

G. The Secretary General or head of institution/mission takes a decision

Once the Secretary General or head of institution/mission receives the report and recommendations from the Investigative Panel, that person decides whether measures should be taken, and if so, what kind of measures. The reasons for the decision should be fully explained.

The Secretary General or head of institution/ mission then further:

- Notifies you, the complainant, of the decision;

- notifies the accused person and any other persons who will be affected by the decision;
- attaches a copy of the report of the Investigative Panel to the decision.

Follow-up

The report of the Investigative Panel and the decision made by the Secretary General or head of institution/mission should be placed in the personnel file of the offender in the institution/mission concerned as well as in the Department of Human Resources of the Secretariat.

Any official who retaliates against a complainant or against any person involved or assisting the work of the Investigative Panel faces disciplinary action. The Secretary General or head of institution/mission, may organise a follow-up of the case by meeting with both parties, if necessary, to ensure that no retaliation action is undertaken.

4. Actions to take if accused of Harassment or Discrimination

If you as an OSCE Official are accused of having violated SI 21/2006, you must be informed, informally or formally, about the allegations. You might need to be made aware that your behaviour is perceived as offensive.

The channels for assistance and the support structures in relation to cases of harassment and/or discrimination are available to both the staff/mission member who feels targeted and to the person accused of offensive behaviour.

Both parties can make use of the support available within the Organization

If accused of harassment and/or discrimination you can turn to a third party, who could be a person of confidence, for advice or a Personnel / Administration Officer for information on the Organization's procedures.

The alleged victim or the Personnel/ Administration Officer might suggest the help of a mediator to resolve the case. You have the right to refuse to participate in a mediation process, or, if you accept this, to be consulted on the appointment of the mediator.

The alleged offender must receive a copy of the complaint

When a formal complaint has been filed against you, you must receive a copy of the complaint within 10 days from the Secretary General/head of institution/mission. Once you have been notified of what accusations have been made against you, you can submit your written response within 10 days.

Pending the outcome of an investigation, you may be suspended from duty with or without pay, depending on the gravity of the accusations. This measure, however, does not constitute a disciplinary action and in the event that all accusations are considered unfounded you must be reinstated with full rights.

Furthermore, you have the right to be informed by the Secretary General or head of institution/mission about:

- ❑ The disciplinary proceedings that have been initiated against you;
- ❑ who has been chosen to be in the Investigative Panel;
- ❑ your right to present your own defence in writing or orally;
- ❑ your right to be assisted by another OSCE staff/mission member of your choice in preparing the defence.

As the case reaches the Investigative Panel, both parties have the same rights to present facts about the matter at hand.

If the Secretary General or the head of institution/mission chooses to take disciplinary measures against you, you have the right to appeal internally within 30 days of receiving the notification. The entire internal appeals procedure is outlined in Article X of the Staff Regulations and Rules. If, thereafter, the disciplinary measure is re-confirmed by the Secretary General or the head of institution/mission you have the right to appeal to the Panel of Adjudicators. The Terms of Reference of the Panel as well as the procedure, including the formal requirements for submissions, are set out in Appendix II of the Staff Regulations and Rules and in the Procedural Rules of the Panel of Adjudicators³.

³ CIO/GAL/58/06.