

Decision of the European Ombudsman on complaint 1258/2002/ADB against the European Commission

Decision

Case 1258/2002/ADB - Opened on 18/07/2002 - Decision on 21/07/2003

Strasbourg, 21 July 2003

Dear Mr B.,

On 4 July 2002, you made a complaint to the European Ombudsman concerning the refusal of the European School of Ixelles to enrol your son in the first year of the primary school.

On 18 July 2002, my predecessor forwarded the complaint to the President of the European Commission. On 17 September 2002, you sent further information regarding the correspondence between you and the European Schools. The Commission sent its opinion on 29 October 2002. My predecessor forwarded it to you with an invitation to make observations, which you sent on 19 December 2002. On 29 January 2003, the Commission was asked for an additional opinion. The Commission sent its opinion on 11 March 2003 and it was sent to you for observations on 20 March 2003. I received your additional observations on 30 April 2003.

I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

The original complaint

The complainant is a European Commission official. He wanted to enrol his son in the first year of the primary section in Ixelles, one of Brussels' three European Schools (Uccle, Woluwé and Ixelles). On 19 March 2002, he had applied at the Ixelles school which is very close to his place of residence. The enrolment at the school in Ixelles was allegedly confirmed on 27 March 2002. However, on 17 June 2002, the Director of the school refused to admit the complainant's son in a newly created French class of the first year of the primary section because it was already full (32 pupils) and advised the complainant to contact the school in Uccle in order to have his son enrolled there. This school being significantly farther away from his family's place of residence, the complainant was reluctant to accept this suggestion.

The complainant lodged a complaint with the Commission pursuant to article 90(2) of the Staff Regulations which was rejected. On 4 July 2002, the complainant therefore lodged a complaint with the European Ombudsman and alleged that the decision-making process regarding the



eligibility of pupils in the European Schools is not transparent.

The complainant fails to understand how the 32 pupils were selected and considers that his son satisfied all the criteria set out in the school's Regulation. He would like to be sure that the decisions made by the school are based on transparent and non-arbitrary criteria. According to the complainant, the Director of the school in Ixelles has not provided him with a satisfactory reply and gave instructions not to be disturbed by the complainant.

The complainant claims that since the Commission finances the European Schools, the latter should abide by the principles of good administration. The Union should not finance a system where arbitrariness is standard practice for enrolment.

Further information from the complainant

On 17 September 2002, the complainant informed the Ombudsman that his son had been enrolled in the European School of Uccle. However, after a try-out, the unbearable living conditions created by the distance between the school and his place of residence had led him to take his son out of the European School. With his letter, the complainant provided additional information as to the maladministration that according to him took place in the Ixelles school.

THE INQUIRY

The Commission's opinion

The opinion of the European Commission on the complaint was in summary the following:

According to the Convention defining the Statute of the European Schools of 12 April 1957, the European Schools are under the responsibility of an intergovernmental body, the Board of Governors. The latter is not a Community body. It is composed of ministers of the contracting parties. On 11 December 1957, the European Community accepted to participate in the financing of the European Schools and at the same time also became member of the Board of Governors. It is represented by the European Commission.

According to the Convention, the Board of Governors decides upon the general rules of the schools. According to article 47 of the general rules (version of 24 and 25 October 2000), the Director of the school decides upon the admission of a child on the basis of conditions determined by articles 48 to 52 of the general rules as well as of directives of the Board of Governors. One of these directives requires that the enrolment of a pupil should be refused whenever this would imply the creation of a class while places are available in other European Schools in the same town. This aims to comply with the requirement of sound financial management of available resources. The Director who refuses an enrolment shall direct the parents to a school with available places.

According to the information provided by the European Schools, the refusal to admit the complainant's son in the Ixelles school was based on the lack of available places in the first year of the primary section. The places had been distributed as a priority to children coming from the school's own nursery school. Several had been transferred from the schools of Uccle and Woluwé in the framework of a procedure aiming at easing congestion in those two schools and



the remaining places had been attributed as people applied. The management of the registrations had been discussed at length with the monitoring group of Brussels' European Schools. This group is composed of representatives of the parents, of the Directors of the schools, of the Commission and of the Belgian delegation.

All this information had been given to the complainant by the Board of Governors in three letters of 28 June and 18 July 2002 (2 letters).

In view of the above, the Commission found no reason to reappraise the agreement signed with the European Schools or to reconsider their financing.

The complainant's observations

The European Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. In his reply of 19 December 2002, the complainant maintained his claim. In summary he stated the following:

It appears that the parents are not aware of any provision that would create a priority for children of the nursery school. Furthermore, it is difficult to understand why children had been transferred from the schools of Uccle and Woluwé since there were places available in both of these schools. Finally, the parents have not been informed that the places would be attributed to those who applied first. Actually there appear to be examples which contradict this principle and the only known requirement was to hand in the application within a certain time span.

Although the budgetary requirements can be understood, the fact that the Union finances schools which use changing and unwritten rules can not. It is a question of credibility, transparency and objectivity.

By financing only the European Schools, the Commission creates a monopoly for these schools. The Commission does not finance any other school or does not finance the schooling of children who could not be enrolled in a European School. The complainant takes the view that the parents are deprived of making a free choice and claims that the Commission should also finance other schools (French, English or international ones).

Finally, given that the only existing remedies are internal to the schools, the complainant considers that the Commission should assist its officials when they have problems with the European Schools. When facing arbitrary decisions and maladministration within the schools, the only possibility is to refer the matter to the European Ombudsman.

FURTHER INQUIRIES

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary. On 29 January 2003, the Ombudsman therefore wrote to the Commission and asked for an additional opinion. The Commission was asked to deliver a complementary opinion (1) on the additional elements of fact raised in the complainant's letter of 17 September 2002, as well as (2) on a new allegation and a new claim



raised by the complainant. In his observations, the complainant alleged that by financing exclusively the European Schools, the Commission creates a monopoly and deprives the parents of a free choice. The complainant claims that other schools be financed as well.

The Commission's additional opinion

In its opinion, the Commission in summary stated the following:

1. The Commission had asked the Director of the Ixelles school to make a declaration regarding the complainant's allegation about maladministration by his services. The Commission referred to this declaration and subscribed to it. According to this declaration, the complainant had been merely informed orally that his son would be in one of the European Schools. The complainant had never been given assurances about enrolment in a precise school. Parents were in principle informed about the inscription of their children in writing during the month of June. In this framework, the complainant was informed that his son could not be enrolled in the Ixelles school. The newly created first year of the primary section in Ixelles was filled with 32 children. Most of the children came from the school's own nursery school. They could not reasonably be excluded from the school to let other children join in. In very rare cases, in view of bringing together families, children from the schools of Woluwé and Uccle had been accepted. These two schools had each two French classes of first year of the primary section with each between 23 and 24 pupils. Insofar as the classes of the other schools were not full, for reasons of sound financial management, no splitting of classes was authorised in the Ixelles school, despite many refused inscriptions and the very high pressure linked to it.

2. The European Communities' contribution to the European Schools is based on the *Convention defining the Statute of the European Schools* of 21 June 1994. The latter does not imply a monopoly of education. Parents are free to send their children to the school of their choice. To that effect, they receive an education allowance which equals the actual education costs incurred with a maximum determined by the Staff Regulations.

The Commission rejected the complainant's allegation about the lack of transparency and arbitrariness in the enrolment procedures. The enrolment criteria are clear and the school in Ixelles respected them. The parents' associations were well informed of the problems and the parents who wished to complain were informed of the procedure foreseen by article 27 of the *Convention defining the Statute of the European Schools* (1) of 21 June 1994.

The complainant's additional observations

In his observations, the complainant stated the following:

1. The complainant considers that there is a discrepancy between the enrolment criteria of the Ixelles school mentioned by the Commission in its first opinion and in its second opinion. He fails to understand why inscriptions were organised while it was clear that the class was full and why pupils have been accepted by the end of June and on the basis of what criteria. The complainant declares that the Director of the school in Ixelles never replied to his requests for clarification. The letter refusing the complainant's son's enrolment does not contain any explanation or any indication as to the ways of appeal against the decision. The appeal procedure foreseen by the *Convention defining the Statute of the European Schools* was mentioned neither by the European School's Directors or the Board of Governors, nor by the



European Commission. Finally the complainant fails to understand the reasons for refusing the disclosure of a list of accepted and rejected pupils in the first year of the primary section of the Ixelles school.

The complainant takes the view that the enrolment criteria in the European Schools are neither public nor transparent.

2. The education allowance is paid for children regardless as to whether they are going to a European School or another school. Schools which do not receive a contribution by the European Communities impose additional costs on the parents. The complainant therefore considers that there is a discrimination between children which have been accepted and those which have been refused by the European School. In this framework, a complaint with the Commission pursuant to article 90(2) of the Staff Regulations appears to have been lodged by the complainant on 21 January 2003.

THE DECISION

1 Scope of the Ombudsman's inquiry

1.1 The European Schools were originally created by the European Communities and the Member States of the European Communities, which signed the Statute of the European School in 1957. The Ombudsman has consistently taken the view that the European Schools are not a Community institution or body.

1.2 However, the Ombudsman also takes the view that the Commission has a certain responsibility for the operation of the European Schools because it is represented in the Board of Governors and contributes largely to their financing. The Ombudsman considers that the Commission's responsibility does not extend to questions concerning the internal management of the Schools.

1.3 On this basis, the Ombudsman asked the Commission for an opinion on the complaint. However, the complainant's individual dispute with the school is outside the scope of the present inquiry. This also includes the allegation made by the complainant in his additional observations and according to which the European School of Ixelles allegedly refused to disclose a list of accepted and rejected pupils in the first year of the primary section.

1.4 The Ombudsman notes that the complainant, in his additional observations, also submitted a further allegation regarding the possible discrimination by the Commission between parents who send their children to a European School and parents who send their children to another school of their choice. The Commission has not yet had the opportunity to express its views on this new allegation. In view of the advanced stage of the present inquiry, the Ombudsman takes the view that this allegation should not be dealt with in the present inquiry. The complainant is however free to submit a new complaint in connection to this allegation after having made the necessary prior administrative approaches to the Commission.

2 Good administration in the European Schools

2.1 The complainant considers that the decision-making process regarding the eligibility of



pupils in the European Schools is not transparent. He claims that in view of the fact that the Commission finances the European Schools, the latter should abide by the principles of good administration. The Union should not finance a system where arbitrariness is standard practice for enrolment.

2.2 The Commission argued that in the case of the complainant's son, the Director of the European School in Ixelles had refused his enrolment on the basis of the applicable provisions and for sensible reasons. The Commission therefore rejected the complainant's allegation.

2.3 The Ombudsman would like to refer to the draft recommendation of 10 December 2002 addressed to the Commission in the framework of the Ombudsman's inquiry in case 845/2002/IJH (2) . The Ombudsman's draft recommendation follows a complaint from 50 parents of children at the European Schools in Brussels about the way places were allocated between the three Schools for the academic year 2002-03, including the admission of pupils in the school of Ixelles. This led to over 200 internal appeals.

The Ombudsman considered that the Commission's response to the events which gave rise to complaint 845/2002/IJH had failed to demonstrate that it fully recognised its responsibility to promote good administration by the European Schools. The Ombudsman therefore recommended that:

"The Commission should recognise its responsibility to promote good administration by the European Schools and outline concrete measures which it will take to fulfil that responsibility in the future."

2.5 On 25 February 2003, the Commission informed the European Ombudsman that although its powers did not extend to matters falling under the internal management of the European Schools, it had closely followed the progress of this matter. The Commission declared that it would again draw the attention of the Secretary-General of the European Schools to the fact that in the future, especially when the fourth Brussels school opens, all the necessary measures must be taken to ensure that transfers of pupils take place under optimum conditions.

2.6 Given that the issues raised by the complainant in the present complaint are similar those which gave rise to the above mentioned draft recommendation, the Ombudsman considers that it is not necessary further to pursue his inquiry into this aspect of the case.

3 Creation of a monopoly for education

3.1 The complainant alleged that by financing exclusively the European Schools, the Commission creates a monopoly and deprives the parents of a free choice. The complainant claimed that other schools should be financed as well.

3.2 The Commission recalled that the European Communities' contribution to the European Schools is based on the *Convention defining the Statute of the European Schools* of 21 June 1994. The latter does not imply a monopoly of education. Parents are free to send their children to the school of their choice. To that effect, they receive an education allowance which equals the actual education costs incurred with a maximum determined by the Staff Regulations.



3.3 The Ombudsman notes that, according to the Staff Regulations and to the general implementing provisions for granting the education allowance of 1 March 1975, an education allowance is granted, upon submission of an application, to officials and temporary staff of the European Communities for dependent children who are in regular full time attendance at an educational establishment. No distinction is made as regards the school chosen by the parents.

3.4 There is nothing to suggest that the Commission, by granting financial assistance to the European Schools, hinders the free choice of parents as to the education of their children.

3.5 In these circumstances, the Ombudsman concludes that there is no evidence of maladministration as regards this aspect of the case.

4 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appear to be no grounds to pursue the inquiry as regards the Commission's alleged failure to promote good administration by the European Schools. The Ombudsman has found no maladministration by the European Commission as regards the alleged creation of a monopoly for education. The Ombudsman therefore closes the case.

The President of the European Commission will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Official Journal L 212, 17/08/1994 p. 0003 - 0014

(2) <http://www.ombudsman.europa.eu/recommen/en/020845.htm> [Link]