

Decision of the European Ombudsman on complaint 1435/2003/MF against the European Commission

Decision

Case 1435/2003/MF - Opened on 17/09/2003 - Recommendation on 14/03/2005 - Decision on 06/12/2005

In April 2003, the complainants Mr D. (a Spanish national), and Ms C., (an Italian national) applied for the enrolment of their son in the English-language section of the primary school of the European School of Ixelles for the year 2003/2004. On 11 June 2003, they were informed by the latter that their son could not be enrolled in the English-language section due to the lack of available places.

On 28 July 2003, the complainants made a complaint to the European Ombudsman against the Commission concerning the refusal of the European School of Ixelles to enrol their son in the English-language section. They namely alleged that they had not been given the reasons justifying the decision not to enrol their son in the English-language section. In their view, this constituted a lack of transparency in the procedure for the selection of pupils. The complainants claimed that the decision of the European School of Ixelles dated 11 June 2003 not to enrol their son in the English-language section should be annulled. They claimed that their son should be enrolled in the English-language section for the school year 2003/2004.

In its opinion, the Commission stated that the rules of admission for pupils at the European Schools had been approved by the Board of Governors which had decided that "the enrolment in one of the language sections of the European Schools (both nursery school, primary school, secondary school) shall be decided, as a rule, on the basis of the tongue mainly spoken by the pupil". In the complainants' case, the languages spoken within the family were Italian and Spanish. The complainants' son was entitled to be enrolled in a European School, but not necessarily in the language section chosen by his parents.

As regards the alleged lack of transparency, the Ombudsman noted that, in his letter dated 25 September 2003, the Director of the European School of Ixelles had pointed out that "given that the languages mainly spoken by the complainants' son are Spanish and Italian, and that the English-language and Spanish-language section are full and that there is no Italian-language section, we had to advise the [complainants] to refer to the European School of [Uccle] to which we had transferred the file, with the possibility for this school to offer the choice of a Spanish, Italian and English-language sections". The Ombudsman further noted that the Director referred both to the languages that, according to him, were mainly spoken by the complainants' son, i.e.,



Spanish and Italian, and to the lack of available places in the English-language section. Thus, the decision appeared to be based on both of these considerations. However, if the admission to a specific language-section depended on the languages mainly spoken by the pupil, it was difficult to understand why the Director had also referred to the lack of available places in the English-language section, given that this language did not, according to the Director, belong to the languages mainly spoken by the complainants' son. If, on the other hand, the admission to a specific language-section depended on the availability of places in the relevant section, it was difficult to understand why the Director referred to the languages mainly spoken by the complainants' son. The Ombudsman therefore considered that the letter of the Director of the European School of Ixelles was not clear enough to enable the complainants to understand the reasons for his decision not to enrol their son in the English-language section. This constituted a lack of transparency in the procedure for the selection of the pupils and thus an instance of maladministration.

On 14 March 2005, the Ombudsman addressed a draft recommendation to the Commission according to which the latter should endeavour to clarify the conditions of admission of pupils in the language sections of the European Schools.

In its detailed opinion, the Commission informed the Ombudsman that, on 27 April 2005, the Board of Governors had decided that the Board of Inspectors should look into the organisation of language sections in the European Schools in general. Therefore, the conditions of admission to the language sections of the European Schools would be further examined by the European Schools inspectors. The Commission further stated that it had, in the meantime, transmitted to the Secretary General of the European Schools the request for clarification of the criteria of admission of pupils in the European Schools. With the view of promoting good management, transparency and accountability in the European School system, the Commission launched a wide-ranging consultation on the development of the European Schools, open until 30 June 2005.

During a telephone conversation of 3 October 2005, Ms C. informed the Ombudsman's services that she and her partner were satisfied by the Commission's detailed opinion and that they had no observations to make on it. The complainant further informed the Ombudsman's services that their son had been accepted in the English-language section of the European School of Ixelles for the school year 2005/2006. The complainant thanked the Ombudsman for his successful intervention on behalf of herself and her partner. On the basis of his inquiries into the allegation of lack of transparency, the Ombudsman concluded that the Commission had accepted his draft recommendation and that the measures taken by the Commission were satisfactory. The Ombudsman therefore closed the case.

Strasbourg, 6 December 2005

Dear Mrs C. and Mr D.,

On 28 July 2003, you made a complaint to me against the European Commission concerning the refusal of the European School of Ixelles to enrol your son in the English-language section.



On 17 September 2003, I forwarded the complaint to the President of the European Commission. The European Commission sent its opinion on 19 November 2003. On 27 November 2003, I forwarded it to you with an invitation to make observations, which you sent on 7 January 2004.

On 19 October 2004, I asked the Commission for further information in relation to your complaint. The Commission sent its reply on 1 December 2004. The Commission's reply was forwarded to you, with an invitation to make observations, which you sent on 10 January 2005.

On 14 March 2005, I addressed a draft recommendation to the Commission. You were informed accordingly in a letter sent the same day.

On 21 June 2005, the Commission sent me its opinion regarding my draft recommendation. I forwarded it to you on 30 June 2005 with an invitation to make observations before 31 July 2005. Given that no observations were received from you by that date, my services contacted you (Ms C.) by telephone on 3 October 2005 and were informed that you and your partner (Mr. D.) were satisfied by the Commission's detailed opinion and that both of you had no observations to make.

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

THE COMPLAINT

According to the complainants, the relevant facts are as follows:

The complainants live in Brussels. Mr D. is a Spanish national and Ms C., who works for the European Commission, is an Italian national.

There are three European Schools in Brussels, namely the European School of Brussels I (or Uccle), the European School of Brussels II, and the European School of Brussels III (or Ixelles). They all comprise a nursery school, a primary school and a secondary school.

On 16 April 2002, the complainants applied to the European School of Uccle to enrol their son in the English-language section of the nursery school for the school year 2002/2003. On 13 May 2002, the complainants' son was invited for an interview with the Director in order to test his language skills. The complainants were informed informally that the level of their son in English was not considered to be at the mother tongue level. On 28 May 2002, the complainants were informed that their son would be enrolled in the Spanish-language section of the European School of Uccle.

On 10 June 2002, following the complainants' application for enrolment of their son in the English section of the nursery school of the European school of Ixelles for the school year 2002/2003, the complainants' son was invited for an interview in order to test his English-language skills at the European School of Ixelles. On 21 June 2002, the European



School of Uccle informed the complainants that their son could not be enrolled in the English-language section of the School for the school year 2002/2003 and that they had to decide if they wanted their son to be enrolled in the Spanish-language section. On 27 June 2002, the European School of Ixelles informed the complainants that their son was accepted for admittance to the Spanish-language section. Following the refusal of the two European Schools of Uccle and Ixelles to enrol the complainants' son in their English-language section, they decided to enrol the latter in a private English Primary School in Brussels.

In April 2003, the complainants applied for the enrolment of their son in the English-language section of the primary school of the European School of Ixelles for the year 2003/2004. On 11 June 2003, they were informed by the European School of Ixelles that their son could not be enrolled in the English-language section due to the lack of available places. On 16 and 26 June 2003, the complainants wrote to the European School of Ixelles and asked it to review its decision. On 1 July 2003, the lawyer of the complainants wrote to the Director of the European School of Ixelles and to the Representative of the European Schools in the European Commission. He asked them to reconsider their position and to give him an answer before 18 July 2003.

On 28 July 2003, the complainants lodged a complaint with the European Ombudsman against the European School of Ixelles and the European Commission concerning the refusal of the European School of Ixelles to enrol their son in the English-language section. The complainants made the following allegations:

- The European School and the European Commission had failed to give any reasons to justify their decision not to enrol the complainants' son in the English-language section for the school year 2003/2004. This constitutes a lack of transparency and objectivity in the procedure for the selection of pupils.
- The European School and the European Commission infringed Article 4 (4) and (6) of the Convention defining the Statute of the European Schools and Articles 14, 21, 22 and 24 of the Charter of Fundamental Rights of the European Union. The European School and the European Commission failed to respect the right to instruction and education of one's choice, the principle of non-discrimination on the basis of nationality and language, and the rights of the child related to his/her instruction.
- The complainants had not received any reply to the letter dated 1 July 2003, sent by their lawyer to the European School and the Representative of the European Schools in the European Commission, in which they requested the enrolment of their son in the English-language section for the school year 2003/2004.

The complainants claimed that the decision of the European School of Ixelles dated 11 June 2003 not to enrol their son in the English-language section should be annulled. They claimed that their son should be enrolled in the English-language section for the school year 2003/2004.

THE INQUIRY

The Commission's opinion

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



The aim of the European Schools was to enable staff of the European Institutions to live near their working places, to ensure an appropriate education of the children of staff and to facilitate a proper functioning of the European Institutions.

The rules of admission for pupils at the European Schools were approved by the Board of Governors, an intergovernmental body composed of representatives of the Member States, the European Patent Office and the Commission.

The Board of Governors had decided that "the enrolment in one of the language sections of the European Schools (both nursery school, primary school, secondary school) shall be decided, as a rule, on the basis of the tongue mainly spoken by the pupil". This rule aimed to ensure a better education of the child and to avoid a drop of the level of education in the class. In the complainants' case, the languages spoken within the family were Italian and Spanish.

Even though the Commission had no competence in the educational field nor in the management of the European Schools, its services had shown concern for the case of the complainants' son and had invited the two European Schools concerned to inform the complainants of the grounds of the decision not to enrol their son in the English-language section. The decisions of the two European Schools were based on the following grounds:

The European School of Ixelles, after having noted that the languages mainly spoken by the complainants' son were Italian and Spanish, could not enrol him in the English-language section, due to the lack of available places. The European School of Ixelles advised the complainants to contact the European School of Uccle and forwarded the file of the complainants' son to the latter.

The complainants then applied for the enrolment of their son in the English-language section of the European School of Uccle for the school year 2003/2004. They had already applied on 16 April 2002 and an interview in English had been held on 15 May 2002. Given that the interview revealed that the complainants' son had an almost total lack of knowledge of English, the European School suggested his enrolment in the Spanish-language section. This suggestion was rejected by the complainants.

The European School of Uccle refused again the enrolment of the complainants' son in the English-language section for the school year 2003/2004 for the same reasons already clearly given by the Board of Governors and the European School of Ixelles. The European School of Uccle suggested the enrolment of the complainants' son in the Spanish-language section (mother tongue of the father) or in the Italian-language section (mother tongue of the mother).

The complainants decided to contact on their own the teacher of the European School in charge of the interviews for the enrolment in the English-language section. The latter refused to organise such an interview with the complainants' son because his name was not included in the list of the pupils to be interviewed.



It was obvious that the complainants' son, as a pupil of category I (1) , was still entitled to be enrolled in a European School, but not necessarily in the language section chosen by his parents.

It was regrettable that there had been a delay in answering the complainants' letters. However, the complainants could not deny that the European Schools had clearly informed them of the conditions of admission.

The complainants' observations

The European Ombudsman forwarded the Commission's opinion to the complainants with an invitation to make observations. In their reply sent by their lawyer and dated 7 January 2004, the complainants maintained their complaint and made the following further comments:

As to the failure of the European School of Ixelles to enrol the complainants' son in the English-language section, the decision regarding the enrolment in one of the language sections of the European Schools should not only have depended on the mother tongue of the pupil but also on other elements, in order to ensure that the right to instruction and education of one's choice, the principle of non-discrimination on the basis of nationality and language and the rights of the child related to his/her instruction are respected.

The Commission had wrongly stated that the languages spoken within the complainants' family were Italian and Spanish. The complainants and their son used Spanish, Italian and English every day.

Contrary to the Commission's statement, the complainants had not been informed of the conditions of admission to the European Schools.

The Commission had not taken into consideration the interests of the complainants' child, namely his personal and educational aim of improving his level of English in view of the family's intention to move to a non-Spanish speaking country.

By stating that the complainants' son had an almost total lack of knowledge of English, the Commission had acted in an offhand and humiliating way. The level of knowledge of English of the complainants' son was never assessed by the European School. In addition, the complainants' son had been in an English primary school in Brussels for four years and his results were satisfactory indeed.

By justifying its decision not to enrol the complainants' son in the English-language section by the lack of available places, the European School had penalised the education of a particular category of children of staff of the European institutions.

In these circumstances, the complainants asked for the assessment of the level of English of their son by an independent committee that would be nominated by the European Ombudsman.

As to the failure of the European School and the European Commission to reply to the letter dated 1 July 2003, the complainants considered that principles of good administration had not



been respected.

Further inquiries *The request for information addressed to the Commission*

After careful consideration of the Commission's opinion and the complainants' observations, it appeared that further inquiries were necessary. The European Ombudsman therefore asked the Commission to provide him with information on the following points:

- In its opinion, the Commission stated that the Board of Governors had decided that " *the enrolment in one of the language sections of the European Schools (both nursery school, primary school, secondary school) shall be decided, as a rule, on the basis of the language mainly spoken by the pupil* ". However, in its letter dated 11 July 2003 to the complainants, the European School of Ixelles informed the latter that it was unable to enrol their son in the English-language section of the school due to the lack of available places in the school. The Ombudsman asked the Commission to explain this discrepancy.
- In their observations, the complainant maintained their allegation following which they had not received any reply to the letter of 1 July 2003 in which they had requested the enrolment of their son in the English-language section for the school year 2003/2004. The Ombudsman asked the Commission to indicate whether a reply had been sent to the complainants.

The Commission's reply

In its reply, the Commission made in summary the following statements:

The Board of Governors decided that the Directors of the three European Schools in Brussels should enforce its decision pursuant to which: " *the enrolment in one of the language sections of the European Schools shall be decided as a rule, on the basis of the language mainly spoken by the pupil* ". With a view to reducing costs and over-crowding in the three European Schools, the Board of Governors further decided that the Directors of the three European Schools in Brussels should consult with each other on a regular basis when deciding on admissions and should treat the three European Schools as a single school. This meant that if a certain class in one school was full or nearly full but one of its counterparts had more room for accepting new pupils, the parents requesting the admission of their child should be directed to the school which had places in the appropriate class. Children of category I would therefore be accepted in a European School but not necessarily the one of their choice.

In the complainants' case, the Director of the European School of Ixelles advised the complainants to make an application to the European School in Uccle since the class in which the complainants wished their son to be enrolled in the European school of Ixelles was full. The Director of the European School of Ixelles was therefore referring to the decision of the Board of Governors pursuant to which the three European Schools had to be considered as a single school. He did not consider it necessary to refer to the decision of the Board of Governors pursuant to which " *the enrolment in one of the language sections of the European Schools shall be decided as a rule, on the basis of the language mainly spoken by the pupil* ". However, the Director of the European School of Ixelles further suggested to the parents to have their son enrolled in the Italian- or Spanish-language section of the European School in Uccle. The child was therefore not refused access to the European School system. The Commission therefore did not see any discrepancy between the two decisions of the Board of Governors and the reasons given by the Director of the European School of Ixelles for not accepting the son of the complainants in the English-language section of his school.



Concerning the alleged failure to reply to the complainants' letter of 1 July 2003, the Commission enclosed with its opinion a copy of a reply dated 25 September 2003 from the then Director of the European School of Ixelles responding to the complainants' lawyer on the refusal of the European School to accept the son of the complainants in the English-language section. The reply was indeed late but due consideration should be given to the fact that the summer vacation had intervened and that both the end and beginning of the school year were very busy periods for schools. In relation to delays in responses to parents from the European Schools, the Commission would like to inform the Ombudsman of its proposal on "Transparency and Good Administration" tabled at the meeting of the Board of Governors in January 2004 according to which the European Schools are requested to reply in due time (ten working days).

As a conclusion, the rules for enrolment in the European Schools were applied, without discrepancies or discrimination. Secondly, replying to parents in such matters was the sole responsibility of the Director of the European School. The Commission recognised that there was a delay in providing the complainants with a response but denied the allegation that no reply was sent by the school to the parents.

As regards the future, there could still be a possibility for the son of the complainants to enrol in an English-language section at a European School. It appeared that the European School of Ixelles did not test the complainants' son to assess his knowledge of the English language and that he was only tested in the European School in Uccle in May 2002. Since the latest documents provided by the complainants, from the Brussels Primary School where their son was currently enrolled, attested to his sufficient level of English, the complainants could re-apply to the European School and have their son tested again for possible admission to an English-language section.

The complainants' further observations

In their further observations, the complainants maintained their allegations. They made the following additional comments:

In its letter dated 11 June 2003, the Commission had firstly noted that the languages mainly spoken by the complainants' son were Italian and Spanish and further decided not to enrol the latter, due to the lack of available places. The conditions of admission to the European Schools were therefore still misleading and confused.

The complainants further pointed out that they had applied to the European School of Ixelles to enrol their son in the English-language section for the school year 2004/2005. On 25 June 2004, the European School of Ixelles informed the complainants that their son could not be enrolled in the English-language section of the School "due to the high number of enrolments". The Director of the European School of Ixelles advised the complainants to refer to European School of Uccle. On 15 July 2004, the latter informed them that careful consideration had been given to the tests taken by their son in English and Spanish. The Director of the European School of Uccle further proposed to test the complainants' son in Italian. In an e-mail dated 29 July 2004, the complainants replied to the Director of the European School of Uccle that they had decided to educate their son in the English language and the proposal to test their son's



level in Italian was pointless. In an e-mail of the same day sent to the Director of the European School of Ixelles, the complainants suggested the possibility of introducing their son's application in a kind of reserve list to enable them to apply to the school the following year without their son having to take the usual English test. The complainants alleged that they did not receive any reply to these two e-mails until the time of their further observations.

Concerning the Commission's failure to reply to the complainants' letter dated 1 July 2003, the complainants pointed out that the reasons given by the Commission in its further opinion, namely the fact that the summer vacation had meanwhile intervened and that both the end and beginning of the school year were very busy periods for schools, were not relevant and could not justify the delay in answering the letter.

THE OMBUDSMAN'S DRAFT RECOMMENDATION

The draft recommendation

On 14 March 2005, the Ombudsman addressed the following draft recommendation to the Commission with regard to the complainants' first allegation:

The European Commission should endeavour to clarify the conditions of admission of the pupils in the language sections of the European Schools.

This draft recommendation was based on the following considerations:

1 The 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 allegations made by the complainants in their complaint, to the extent that it was directed against the Commission.

1.4 In their observations on the opinion, the complainants asked for the assessment of the level of English of their son by an independent Committee that would be nominated by the Ombudsman. The Ombudsman recalls that the EC Treaty empowers him to inquire into possible instances of maladministration in the activities of Community institutions and bodies. It is thus outside his competence to nominate a committee which would assess the level of English of the complainants' son.



1.5 The Ombudsman would like to recall that the complaint is only directed at the European School of Ixelles. In these circumstances, the scope of his inquiry is limited to the European School of Ixelles.

1.6 In their further observations, the complainants pointed out that they had applied to the European School of Ixelles to enrol their son in the English-language section for the school year 2004/2005. They further alleged that they had not received any reply to the two e-mails dated 29 July 2004 sent to the Directors of the European School of Uccle and Ixelles until the time of their further observations.

1.7 The Ombudsman notes that these allegations were not included in the original complaint. He takes the view that, in order not to delay the course of the present inquiry, it is not appropriate to extend the scope of the present inquiry so as to include the new allegations presented in the complainants' further observations on the Commission's opinion. The complainants are free to address their new allegations to the Commission and to lodge a new complaint with the Ombudsman if they should not receive a satisfactory reply from the Commission.

2 The alleged lack of transparency and objectivity in the procedure for the selection of the pupils of the European School of Ixelles

2.1 The complainants alleged that they had not been given the reasons justifying the decision not to enrol their son in the English-language section of the European School of Ixelles for the school year 2003/2004. According to the complainants, this constituted a lack of transparency and objectivity in the procedure for the selection of pupils.

2.2 The Commission pointed out that, even though it had no competence in the educational field or in the management of the European Schools, its services had shown concern for the case of the complainants' son and had invited the two European Schools concerned to inform the complainants of the grounds of the decision not to enrol their son in the English-language section. The Commission submitted that the European School of Ixelles, after having noted that the languages mainly spoken by the complainants' son were Italian and Spanish, had been unable to enrol him, due to the lack of available places in the school. The European School of Ixelles had advised the complainants to contact the European School of Uccle and had forwarded the file of the complainants' son to the latter.

According to the Commission, the complainants then applied for the enrolment of their son in the English-language section of the European School of Uccle for the school year 2003/2004. They had already applied on 16 April 2002 and an interview in English had been held on 15 May 2002. On the basis of the results of this interview, the European School of Uccle had suggested the enrolment of the complainants' son in the Spanish-language section. This suggestion was rejected by the complainants.

2.3 In October 2004, the Ombudsman asked the Commission to explain the discrepancy between the statement made in its opinion pursuant to which the Board of Governors had decided that "*the enrolment in one of the language sections of the European Schools (...) shall be decided, as a rule, on the basis of the language mainly spoken by the pupil*" and the letter of



the European School of Ixelles dated 11 July 2003 in which it informed the complainants that it was unable to enrol their son in the English-language section of the school due to the lack of available places in the school.

2.4 In its reply, the Commission stated that the Board of Governors decided that the Directors of the three European Schools in Brussels should enforce its decision pursuant to which “ *the enrolment in one of the language sections of the European Schools shall be decided as a rule, on the basis of the language mainly spoken by the pupil* ”. With a view to reducing the costs and over-crowding in the three European Schools, the Board of Governors further decided that the Directors of the three European Schools in Brussels should consult with each other on a regular basis when deciding on admissions and should treat the three European Schools as a single school.

In the complainants' case, the Director of the European School of Ixelles advised the complainants to make an application to the European School in Uccle since the class in which they wished their son to be enrolled in the European School of Ixelles was full. The Director of the European School of Ixelles was therefore referring to the decision of the Board of Governors pursuant to which the three European Schools had to be considered as a single school. He did not consider it necessary to refer to the decision of the Board of Governors pursuant to which “ *the enrolment in one of the language sections of the European Schools shall be decided as a rule, on the basis of the language mainly spoken by the pupil* ”. However, the Director further suggested to the parents to have their son enrolled in the Italian or Spanish section in the European School in Uccle. The child was therefore not refused access to the European School system. The Commission therefore did not see any discrepancy between the two decisions of the Board of Governors and the reasons given by the Director of the European School of Ixelles for not accepting the son of the complainants in the English-language section of the school.

2.5 In their further observations, the complainants argued that the conditions of admission to the European Schools were still misleading and confused.

2.6 As regards the alleged lack of objectivity, the Ombudsman notes that, in his letter dated 25 September 2003, the Director of the European School of Ixelles gave several reasons to the complainants in order to justify his decision not to enrol their son in the English-language section, namely the languages mainly spoken by their son and the lack of available places in the relevant section. The Ombudsman considers that these reasons constitute objective considerations which could have been invoked in any given case to justify the decision not to enrol a pupil in a specific language section. In view of the above, the Ombudsman considers that the complainants have not substantiated their allegation that there was a lack of objectivity in the procedure for the selection of the pupils of the European School of Ixelles.

2.7 As regards the alleged lack of transparency, the Ombudsman notes that in his letter dated 25 September 2003, the Director of the European School of Ixelles pointed out that “ *given that the languages mainly spoken by the complainants' son are Spanish and Italian, and that the English-language and Spanish-language section are full and that there is no Italian-language section, we had to advise the [complainants] to refer to the European School of [Uccle] to which*



we had transferred the file, with the possibility for this school to offer the choice of a Spanish, Italian and English-language sections. "

2.8 The Ombudsman further notes that the Director of the European School of Ixelles referred both to the languages that, according to him, were mainly spoken by the complainants' son, i.e., Spanish and Italian, *and* to the lack of available places in the English-language section. Thus, the decision appears to be based on both of these considerations. However, if the admission to a specific language-section depended on the languages mainly spoken by the pupil, it is difficult to understand why the Director of the European School of Ixelles also referred to the lack of available places in the English-language section, given that this language did not, according to the Director, belong to the languages mainly spoken by the complainants' son. If, on the other hand, the admission to a specific language-section depended on the availability of places in the relevant section, it is difficult to understand why the Director of the European School referred to the languages mainly spoken by the complainants' son. The Ombudsman therefore considers that the letter of the Director of the European School of Ixelles was not clear enough to enable the complainants to understand the reasons for his decision not to enrol their son in the English-language section. This constitutes a lack of transparency in the procedure for the selection of the pupils and thus an instance of maladministration.

3 The alleged failure to respect Article 4 (4) and (6) of the Convention defining the Statute of the European Schools, and articles 14, 21, 22 and 24 of the Charter of Fundamental Rights of the European Union

3.1 The complainants alleged that Article 4 (4) and (6) of the Convention defining the Statute of the European Schools and Articles 14, 21, 22 and 24 of the Charter of Fundamental Rights of the European Union had been infringed. According to the complainants, the right to instruction and education of one's choice, the principle of non-discrimination on the basis of nationality and language, and the rights of the child related to his/her instruction had not been respected.

3.2 The Commission stated that the rule pursuant to which the Board of Governors had decided that the enrolment in one of the language sections of the European Schools had to be decided on the basis of the language mainly spoken by the pupil aimed to ensure a better education of the latter and to avoid a drop in the level of education in the class.

3.3 The Ombudsman notes that Article 4 (4) and Article 4 (6) of the Convention defining the Statute of the European Schools state that "The education given in the Schools shall be organised on the following principles: a particular effort shall be made to give pupils a thorough knowledge of modern languages (Article 4 (4) (...) in education and instruction, the conscience and convictions of individuals shall be respected" (Article 4 (6)). He further notes that pupils admitted to the European Schools are normally placed in the language section corresponding to the language spoken at home. If necessary they may be required to sit an entrance examination to determine their level of proficiency in the language of the section chosen.

3.4 The Ombudsman considers that it does not fall within his competence to determine the level of proficiency in English of the complainants' son. This assessment falls within the competence of the European Schools. The decision of the European School not to enrol the complainants' son in the English-language section for the school year 2003/2004 appears to be reasonable, in



view of the outcome of the two interviews which had been organised to determine his level of proficiency in English. In these circumstances, the Ombudsman considers that the complainants have not submitted sufficient evidence to show that Article 4 (4) and (6) of the Convention defining the Statute of the European Schools and Articles 14, 21, 22 and 24 of the Charter of Fundamental Rights of the European Union were infringed. The Ombudsman therefore concludes that there appears to have been no maladministration by the European Commission as regards this aspect of the case.

4 The alleged failure to reply to the complainants' letter dated 1 July 2003

4.1 The complainants alleged that they had not received any reply to the letter dated 1 July 2003 sent by their lawyer to the European School of Ixelles and to the Representative of the European Schools in the European Commission. In this letter, they had requested the enrolment of their son in the English-language section for the school year 2003/2004.

4.2 The Commission pointed out that it was regrettable that there had been a delay in answering the complainants' letter. According to the Commission, however, the complainants could not deny that the European Schools had clearly informed them of the conditions of admission.

4.3 In October 2004, the Ombudsman asked the Commission to indicate whether a reply had been sent to the complainants' letter of 1 July 2003.

4.4 In its reply, the Commission stated that the reply to the complainants' letter of 1 July 2003 had been late but that due consideration should be given to the fact that the summer vacation had intervened and that both the end and beginning of the school year had been very busy periods for schools. A copy of the reply of the Director of the European School of Ixelles, dated 25 September 2003, was enclosed with the Commission's reply.

4.5 In their further observations, the complainants argued that the reasons given by the Commission in its further opinion were not relevant and could not justify the delay in answering the letter.

4.6 The Ombudsman would like to recall that the Commission's responsibility does not extend to questions concerning the internal management of the Schools and that the relevant point to be examined hereinafter is the alleged delay of the Commission in replying to the complainants' letter. The Ombudsman notes that the Commission refers to the reply of the European School of Ixelles dated 25 September 2003. The issue of interest is therefore to determine whether the period of time between the complainants' letter and the reply of the European School of Ixelles constitutes a delay. The Ombudsman notes that, in his letter dated 1 July 2003, the complainants' lawyer asked the Director of the European School of Ixelles and the Representative of the European Schools in the European Commission to reconsider their position. In its reply, the European School of Ixelles confirmed its decision not to enrol the complainants' son in the English-language section for the school year 2003/2004. Therefore, even if this reply was late, the Ombudsman considers that the complainants had already been informed of the decision of the European School of Ixelles on 11 June 2003. In these circumstances, the Ombudsman considers that the complainants have not provided any



evidence that they had suffered harm due to the delay in the reply of the letter of their lawyer dated 1 July 2003.

4.7 In view of the above, the Ombudsman concludes that there appears to have been no maladministration by the European Commission as regards this aspect of the case.

The Commission's detailed opinion

In its detailed opinion on the draft recommendation, the Commission stated that, on 27 April 2005, the Board of Governors had decided that the Board of Inspectors should look into the organisation of language sections in the European Schools in general. Therefore, the conditions of admission to the language sections of the European Schools would be further examined by the European Schools' inspectors.

The Commission had in the meantime transmitted to the Secretary General of the European Schools a request for clarification of the criteria of admission of pupils in the European Schools. The Commission tried to promote good management, transparency and accountability in the European School system. In this respect, the Commission launched a wide-ranging consultation on the development of the European Schools which was open until 30 June 2005 (2) .

In conclusion, the Commission had indicated its concern on the issue raised by the complainants to the Secretary General of the European Schools and awaited the report from the Board of Inspectors and then the discussion of the Board of Governors.

The complainants' observations

No observations were received from the complainants by the date set for this purpose. However, during a telephone conversation on 3 October 2005, Ms C. informed the Ombudsman's services that she and her partner were satisfied by the Commission's detailed opinion and that they had no observations to make on it. Ms C. further informed the Ombudsman's services that her son had been accepted in the English-language section of the European School of Ixelles for the school year 2005/2006. Ms C. thanked the Ombudsman for his successful intervention on behalf of herself and her partner.

THE DECISION

1.1 On 28 July 2003, the complainants made a complaint to the European Ombudsman against the European Commission concerning the refusal of the European School of Ixelles to enrol your son in the English-language section. They alleged that they had not been given the reasons justifying the decision not to enrol their son in the English-language section of the European School of Ixelles for the school year 2003/2004. According to the complainants, this constituted a lack of transparency and objectivity in the procedure for the selection of pupils.

The complainants claimed that the decision of the European School of Ixelles dated 11 June 2003 not to enrol their son in the English-language section should be annulled. They claimed that their son should be enrolled in the English-language section for the school year 2003/2004.

1.2 On 14 March 2005, the Ombudsman addressed a draft recommendation to the Commission



according to which the latter should endeavour to clarify the conditions of admission of pupils in the language sections of the European Schools.

1.3 In its detailed opinion, the Commission informed the Ombudsman that, on 27 April 2005, the Board of Governors had decided that the Board of Inspectors should look into the organisation of language sections in the European Schools in general. Therefore, the conditions of admission to the language sections of the European Schools would be further examined by the European Schools inspectors.

The Commission had in the meantime transmitted to the Secretary General of the European Schools the request for clarification of the criteria of admission of pupils in the European Schools. The Commission tries to promote good management, transparency and accountability in the European School system. In this respect, the Commission launched a wide-ranging consultation on the development of the European Schools which was open until 30 June 2005 (3) .

In conclusion, the Commission indicated its concern on the issue raised by the complainants to the Secretary General of the European Schools and awaited the report from the Board of Inspectors and then the discussion in the Board of Governors.

1.4 No written observations were received from the complainants by the date set for this purpose. However, during a telephone conversation of 3 October 2005, Ms C. informed the Ombudsman's services that she and her partner were satisfied by the Commission's detailed opinion and that they had no observations to make on it. The complainant further informed the Ombudsman's services that their son had been accepted in the English-language section of the European School of Ixelles for the school year 2005/2006. The complainant thanked the Ombudsman for his successful intervention on behalf of herself and her partner.

Conclusion

On the basis of his inquiries into the allegation of lack of transparency, the Ombudsman concludes that the Commission has accepted the Ombudsman's draft recommendation and that the measures taken by the Commission are satisfactory. 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) Pupils of Category I are pupils who have to be admitted by the European Schools because they are children of staff in the service of the Community institutions or of a limited number of other organisations employed directly and continuously for a minimum period of one year.



(2) Communication from the Commission to the Council and the Parliament- Consultation on Options for developing the European Schools System, COM (2004) 519, 20.07.2004.

(3) Communication from the Commission to the Council and the Parliament- Consultation on Options for developing the European Schools System, COM (2004) 519, 20.07.2004.