

Decision of the European Ombudsman on own-initiative inquiry OI/5/2003/IJH against the European Commission

Decision

Case OI/5/2003/IJH - Opened on 15/12/2003 - Decision on 19/07/2004

The European Schools were established in 1957 to educate children of staff of the EU Institutions. They are not directly within the Ombudsman's mandate, but the Commission is represented in their Board of Governors and provides a large part of their funding. The Ombudsman therefore asks the Commission for an opinion on complaints about the Schools. Many such complaints have expressed a sense of frustration and disempowerment on the part of parents, including a mass complaint in 2002 (845/2002/IJH), which resulted in a draft recommendation to the Commission.

In December 2003, the Ombudsman began an own-initiative inquiry into the Commission's plans to promote the Schools' good administration. The inquiry pointed to the need to help the Schools to ensure improved and maintained levels of trust among the constituencies whose interests they should serve (children, parents, the institutions and citizens generally), as well as increased efficiency in the future.

The Commission's reply agreed on the need for action, recognised the importance of cooperation with parents and announced a forthcoming Communication to highlight the need for improved governance and transparency. The Commission explained that it has already requested the Schools to take immediate action, including following the spirit of Article 42 of the Charter of Fundamental Rights on access to documents. The Commission pointed out, however, that it has limited influence in the Board of Governors, which is slow to take any decision and reluctant to undertake reforms.

The Ombudsman took the view that the Commission had tried to identify and tackle the most serious operational weaknesses that had given rise to complaints. Furthermore, its proposals for the forthcoming Communication represented a significant opportunity to enhance the quality of the Schools' administration. The Ombudsman concluded that the Commission fully recognises its general responsibility to promote good administration by the Schools in accordance with the same values, principles and standards that apply to the Community institutions and bodies. He therefore closed the inquiry with a finding of no maladministration by the Commission.

The Ombudsman also suggested that the Commission should:



- inform the Board of Governors about the European Code of Good Administrative Behaviour and encourage its application by the Schools;
- seek to ensure that the Schools themselves acknowledge the need to empower and win the trust of parents as part of their core mission.

Finally, the Ombudsman expressed his willingness to help review future progress in raising the quality of administration of the European Schools and enhancing their transparency and efficiency.

Strasbourg, 19 July 2004
Mr President,

According to Article 195 of the Treaty establishing the European Community, the European Ombudsman is empowered to conduct inquiries on his own initiative in relation to possible instances of maladministration in the activities of Community institutions and bodies.

On 15 December 2003, I informed you that I had decided to open an inquiry, by virtue of the above provision, into the activity of the Commission to promote the good administration of the European Schools.

The Commission sent its reply on 2 April 2004.

I am writing now to let you know the results of the own-initiative inquiry.

THE REASONS FOR THE INQUIRY

The European Schools provide pre-school, primary and secondary education for children of staff of the EU Institutions. From 1957, the Schools operated under a Statute signed by the Member States. In 1994, the Member States and the European Communities signed a Convention (1), which cancelled and replaced the 1957 Statute. That Convention entered into force, however, only on 1 October 2002.

Since the beginning of the Ombudsman's activity in 1995 to the date when the inquiry was launched, 36 complaints were received against the European Schools, including nine in 2002 and eleven in 2003. In dealing with the complaints against the European Schools, the Ombudsman has taken the view that the Schools are not a Community institution or body, but that the Commission has a certain responsibility for their operation because it is represented in their Board of Governors and contributes largely to their financing. The Ombudsman has considered, however, that the Commission's responsibility does not extend to questions concerning the internal management of the Schools.

In May 2002, some 50 parents of children at the European Schools in Brussels sent a complaint to the European Ombudsman arising out of the allocation of places at the Schools in Brussels for the academic year 2002-3 (0845/2002/IJH).



During the Ombudsman's inquiry into the complaint, the Commission acknowledged that the right to good administration (Article 41 of the Charter of Fundamental Rights of the European Union) and the rights of the child (Article 24 (2) of the Charter (2)) are binding for the European Schools and should also apply to their future reform. The Ombudsman welcomed the Commission's position on the applicability of these fundamental rights to the European Schools. However, the Ombudsman also considered that the Commission's response to the events that had given rise to the complaint failed to demonstrate that the Commission fully recognised its responsibility to promote good administration by the Schools. The Ombudsman therefore made the following draft recommendation to the Commission on 10 December 2002:

"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."

On 25 February 2003, the Commission sent its detailed opinion on the Draft Recommendation. The Ombudsman considered the detailed opinion to be a satisfactory response as regards the specific complaint. However, in the decision closing the case (3) the Ombudsman also announced the possibility of a future own-initiative inquiry into the Commission's general responsibility to promote the good administration of the European Schools.

Many of the complaints sent to the Ombudsman about the European Schools since 1995 express a sense of frustration and disempowerment on the part of parents. Lack of trust in the administration of the European Schools, whenever it occurs, should be of concern not only to the Schools themselves, but also to the European Communities, since the Schools exist to educate the children of staff of the institutions.

The Ombudsman is also aware that the European Parliament expressed dissatisfaction with the operation and financing of the European Schools in a resolution based on the Bösch Report (4)

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The Ombudsman notes that, since the entry into force on 1 October 2002 of the Convention Defining the Statute of the European Schools, the legal basis of the Schools is no longer purely inter-governmental. The European Communities are now also a contracting party and the Commission should represent their interests.

Moreover, the Schools face new challenges as the result of the enlargement of the Union to 25 Member States from 1 May 2004 (more children, additional languages, and greater cultural variety).

The Ombudsman therefore considers that an own-initiative inquiry could help raise the quality of administration of the European Schools, thereby enabling them to ensure improved and maintained levels of trust among the many constituencies whose interests they should serve (children, parents, the institutions and citizens generally), as well as increased efficiency in the future.



The Ombudsman requested the Commission to inform him whether it plans to take action to promote the good administration of the European Schools and if so, to explain the details and the timetable of its future activity.

THE INQUIRY

The Commission's opinion

The Commission's opinion was as follows:

The European Schools are facing many challenges for the future and are in the process of change. As the ombudsman rightly states, a recent important change has indeed been the change of the legal basis of the Convention on the European Schools signed between the Member States and the Commission, where for the first time the Commission enjoys rights as a full member of the Board of Governors of the European Schools. Another key change under the new Convention is that decisions can now be taken by qualified majority vote and unanimity is no longer required for most decisions.

The Commission believes that, after 50 years of operation of the Schools, the time has come for reform to be undertaken in order for the Schools to improve the quality of education offered, be more cost effective, provide greater participation to those who finance and those who receive their services, and, importantly, operate with much needed greater transparency.

The Commission is currently preparing a Communication on the reform needed in the European Schools, which will specifically highlight the need for improvement of governance and transparency. This need has also been highlighted by the European Parliament's Bösch report as well as by the Ombudsman. The Commission agrees with the Ombudsman that action is needed to promote and foster good administration in the European Schools and has already taken the initiative to make some first proposals towards this end to the Board of Governors.

As a first step, the Commission has requested the European Schools to take immediate action on transparency and good administration, including specific actions such as the adoption of a Code of Good Administrative Conduct, the provision of justification along with the notification of decisions taken at various levels, greater access to documentation and information, and improved management and accountability.

The European Schools must undertake administrative reforms for improvement of service delivery similar to those already adopted in the European institutions. To this end, deadlines are proposed for responses to correspondence as well as the right of the interested party to receive a response on the substance as well as an explanation and justification of decisions taken. Courteous and professional conduct from staff in the European Schools is required along with individual responsibility and accountability for actions and performance. More transparency in management is also called for, with proposals for the drawing of job descriptions for every post in the European School system. In addition, the Commission asked the Board of Governors to identify clear lines of responsibility in the management system and develop these further where



necessary. Transparency is asked for further by asking the Schools to follow the spirit of Article 42 of the *Charter of Fundamental Rights* in terms of access to documents.

In addition to the above, the Commission intends to expand on the subject of good administration, governance and transparency, in the forthcoming Communication on the European Schools by proposing (inter alia):

- substantial improvements to the appeals and disciplinary procedures for both students and teaching staff;
- the publication of an annual report by the Commission on the European Schools which will include steps taken to improve good administration and transparency;
- the expansion of information available on the European Schools in the Commission's "bureau d'accueil" for staff and the public availability of non-confidential Board of Governors documents;
- the observance of the *Charter of Fundamental Rights of the European Union and the Rights of the Child* in all the schools;
- full accountability of each school and its director for issues of good administration and transparency;
- external quality evaluation of programmes and/or methods in teaching.

Providing a timetable for these measures is difficult given the fact that decisions can only be taken in the context of the Board of Governors meetings, which are slow to take any decision. The Board of Governors meets three times a year and its usually overloaded agenda is set by the Secretary General and the President. The Commission intends to make proposals at each Board of Governors in the coming year and expects that by summer 2005, the priority measures for reform, including those for good administration and transparency, will be in place.

With regard to the specific complaints made by parents concerning the allocation of places in the different Brussels schools, which was the origin of the Ombudsman's inquiry, the Commission would like to see preventive measures being put in place by the European Schools, insofar as possible, in order to avoid similar problems in the future. The Commission agrees with the Ombudsman that its responsibility does not extend to the internal management of the schools but it has proposed to the Board of Governors that a transparent procedure with clear criteria be followed at the next round of student re-distribution when the fourth European School in Brussels opens, and more immediately, for when the second school in Luxembourg opens next September 2004. Both the Commission and the Ombudsman need to monitor this process in order to avoid past mistakes.

The Commission believes that cooperation with parents is very important. In relation to the planned fourth European School in Brussels, the Commission took the initiative to seek a more appropriate site than had originally been proposed by the Belgian authorities, and has met repeatedly with parent representatives from the Brussels schools regarding this matter. It should be noted that Commission representatives also meet regularly with parent and staff representatives before each Board of governors meeting to discuss all the agenda items.

Finally, despite the "democratic deficit" faced by the EU institutions in the Board of Governors of the European Schools (the Commission is only 1 out of 17 members), the Commission is taking



a far more active role in the Board of Governors than ever before, as illustrated by the Commission's first substantive proposals for reforms proposed to the Board of Governors, the reinforcement of the DG ADMIN team working on the European Schools issues and the personal involvement of Vice President Kinnock and Director-General Reichenbach. However, the constraints of the existing Convention of the European Schools combined with an apparent reluctance of the Board of Governors to undertake reforms may limit the extent to which the necessary modernisation of the European Schools system is possible without a fundamental revision of the entire system and its governance.

THE DECISION

1 The scope of the Ombudsman's inquiry

1.1 The present decision closes the Ombudsman's own-initiative inquiry OI/5/2003/IJH into the quality of administration of the European Schools.

1.2 The Ombudsman is also dealing with a large number of complaints from parents of children with special educational needs for which the European Schools do not provide. The Ombudsman has made a draft recommendation to the Commission in relation to one of these complaints (1391/2002/JMA), on which the Commission's detailed opinion is expected in July 2004. Furthermore, on 19 November 2003, the Ombudsman launched an own-initiative inquiry (OI/3/2003/JMA) into the integration of persons with disabilities, in particular as regards the measures implemented by the European Commission to ensure that persons with disabilities are not discriminated against in their relations with the institution.

1.3 For the avoidance of doubt, the Ombudsman points out that the present decision does not relate to the above-mentioned complaints from parents of children with special educational needs, nor to own-initiative inquiry OI/3/2003/JMA. The Ombudsman's inquiries in these cases are ongoing.

2 Responsibility for the European Schools

2.1 Since the beginning of his activity in 1995, the Ombudsman has consistently taken the view that the European Schools are not a Community institution or body and are therefore not within the mandate of the European Ombudsman under Article 195 EC. The Ombudsman has considered, however, that the Commission has a certain responsibility for the European Schools' operation, because it is represented in their Board of Governors and contributes largely to their financing. The Ombudsman has also considered that the Commission's responsibility does not extend to questions concerning the internal management of the Schools, a point on which the Commission expressed its agreement during the present inquiry.

2.2 The Ombudsman has carefully studied the Convention Defining the Statute of the European Schools ("the 1994 Convention") (5) , which entered into force on 1 October 2002, as well as the Council Decision authorising the Communities' participation therein (6) . The Ombudsman considers that the entry into force of the 1994 Convention does not affect his own mandate. The Ombudsman will therefore continue to deal with possible future complaints concerning the European Schools on the same basis as he has dealt with previous complaints.



2.3 The Ombudsman recalls, however, that the Communities are a contracting party to the 1994 Convention and that the Commission should represent their interests. The Ombudsman therefore considers that the entry into force of the 1994 Convention implies greater Commission responsibility for the Schools, including a general responsibility to promote their good administration, in accordance with the same values, principles and standards that apply to the Community institutions and bodies.

2.4 The Commission's opinion agrees with the Ombudsman that action is needed to promote and foster good administration in the European Schools.

The Ombudsman welcomes the Commission's positive response, which is the subject of detailed evaluation in the following part of this decision.

3 The quality of administration of the European Schools

3.1 The European Ombudsman has received and dealt with numerous complaints from parents of children at the European Schools, many of whom expressed a sense of frustration and disempowerment. The Ombudsman considered that an own-initiative inquiry could help raise the quality of administration of the European Schools, thereby enabling them to ensure improved and maintained levels of trust among the many constituencies whose interests they should serve (children, parents, the institutions and citizens generally), as well as increased efficiency in the future. The Ombudsman therefore requested the Commission to inform him whether it plans to take action to promote the good administration of the European Schools and if so, to explain the details and the timetable of its future activity.

3.2 The Commission's opinion explains both the action that it has already taken and the proposals that it intends to put forward in a forthcoming Communication on the European Schools.

The Commission's action so far

3.3 The Commission states that it is taking a far more active role in the Board of Governors than ever before. Commissioner Kinnock and the Director-General of DG Admin are personally involved and the DG ADMIN team working on European Schools issues has been reinforced. The Commission has already made proposals to the Board of Governors for reforms, which the Ombudsman summarises as follows:

- adoption of administrative reforms for improvement of service delivery similar to those already adopted in the European institutions, including individual responsibility and accountability for actions and performance, as well as clear lines of responsibility in the management system.
- improvement of transparency, by following the spirit of Article 42 of the Charter of Fundamental Rights in terms of access to documents and information.

The Commission has also requested the European Schools to take immediate action to adopt a Code of Good Administrative Conduct. In this regard, the Commission mentions, in particular, the need:

- to set deadlines for reply to correspondence;
- to explain and justify decisions to their recipients;
- to respect the right of an interested party to receive a response on the substance of a request;
- for courteous and professional conduct by staff.



The Ombudsman considers that the proposals that the Commission has made to the Board of Governors of the European Schools indicate that the Commission has sought to identify and tackle the most serious operational weaknesses that have given rise to complaints to the Ombudsman.

3.4 As regards openness, the Ombudsman points out that he is not aware of any obstacle to the Board of Governors deciding to treat documents held by the European Schools in accordance with conditions and limits laid down by Regulation 1049/2001 (7) . In this context, the Ombudsman notes that the European Parliament has called on the Board of Governors to make all non-confidential agendas and minutes of its meetings publicly available on-line (8) .

3.5 The Ombudsman also points out that the European Schools presumably hold significant quantities of personal data concerning staff, children and parents. The Ombudsman hopes that the Commission will, if necessary, clarify the legal regime applicable to the processing of such data by the schools with a view to ensuring a level of protection equivalent to that under Regulation 45/2001 (9) , thereby ensuring respect for the right of privacy.

3.6 As regards a code of good administration, the Ombudsman recalls that the Charter of Fundamental Rights includes the right to good administration (Article 41) and that the European Parliament has approved the European Code of Good Administrative Behaviour. It could be useful for the Commission, if it has not already done so, to inform the Board of Governors of the European Schools about the European Code of Good Administrative Behaviour, which the European Parliament approved by Resolution of 6 September 2001 (10) , and to encourage the Code's application by the European Schools. The Ombudsman will make a further remark to this effect below.

The proposed Communication

3.7 The Commission stated that it is currently preparing a Communication on the reform needed in the European Schools, which will expand on the subject of good administration, governance and transparency by proposing, among other things:

- substantial improvements to the appeals and disciplinary procedures for both students and teaching staff;
- the publication of an annual report by the Commission on the European Schools which will include steps taken to improve good administration and transparency;
- the expansion of information available on the European Schools in the Commission's "bureau d'accueil" for staff and the public availability of non-confidential Board of Governors documents;
- the observance of the Charter of Fundamental Rights of the European Union and the Rights of the Child in all the schools;
- full accountability of each school and its director for issues of good administration and transparency;
- external quality evaluation of programmes and/or methods in teaching.

According to the Commission, it intends to make proposals at each Board of Governors meeting in the coming year and expects that by summer 2005, the priority measures for reform, including those for good administration and transparency, will be in place.



3.8 The Ombudsman considers that the Commission's proposals represent a significant opportunity to enhance the quality of the European Schools' administration. The Commission's timetable for implementation appears reasonable, especially taking into account the limitations on its role referred to in paragraph 3.11 below.

Co-operation with parents

3.9 The Commission's opinion recognises the importance of cooperation with parents. The Commission points out that representatives of the Commission, parents and staff meet before each Board of Governors meeting to discuss all the agenda items. The Commission also reports that it took the initiative to seek a more appropriate site for the planned fourth European School in Brussels than was originally proposed by the Belgian authorities and that it has met repeatedly with parent representatives about the matter. Finally, the Commission states that it has proposed to the Board of Governors that a transparent procedure with clear criteria be followed for re-distribution of students in connection with the opening of the second European School in Luxembourg and the fourth school in Brussels.

3.10 The Ombudsman welcomes the Commission's commitment to cooperation with parents. The Ombudsman recalls in this context that the European Schools were established to educate the children of staff of the European institutions, in order to ensure the proper functioning of the institutions (11) . The Ombudsman therefore suggests that it could be useful for the Commission to seek to ensure that the European Schools themselves acknowledge the need to empower and win the trust of parents as part of their core mission. The Ombudsman will make a further remark to this effect below.

The difficulties faced by the EU institutions

3.11 The Commission mentions that the EU institutions in the Board of Governors of the European Schools face a "democratic deficit", given that the Commission is only 1 out of 17 members. The Commission also refers to the constraints of the 1994 Convention and to an apparent reluctance of the Board of Governors to undertake reforms. The Commission expresses the view that the Board of Governors is slow to take any decision and that its agenda (which is set by the Secretary General and the President) is usually overloaded.

According to the Commission, the above-mentioned factors may limit the extent to which the necessary modernisation of the European Schools system is possible without a fundamental revision of the entire system and its governance.

3.12 The Ombudsman recalls that the European Parliament has already stated that the number of representatives of the Commission on the Board of Governors should be increased in order to ensure a stronger influence from the Community within the decision-making process of the European Schools (12) .

3.13 The Ombudsman notes that the Commission intends to publish an annual report on the European Schools that will include steps taken to improve good administration and transparency. In this context, the Ombudsman points out that Article 10 of the 1994 Convention requires, amongst other things, that the Board of Governors shall each year draw up, on the basis of a draft prepared by the Secretary-General, a report on the operation of the Schools and



shall forward it to the European Parliament and to the Council.

The Ombudsman considers that the Board of Governors' annual report and the proposed annual report from the Commission could together provide a useful opportunity for external review of progress in raising the quality of administration of the European Schools and enhancing their transparency and efficiency. This could help to improve and maintain levels of trust among the many constituencies whose interests the European Schools should serve (children, parents, the institutions and citizens generally). The Ombudsman is ready to assist in the external review process, if that could be helpful. The Ombudsman will make a further remark to this effect below.

4 Conclusion

The Ombudsman considers that the proposals that the Commission has already made to the Board of Governors of the European Schools indicate that the Commission has sought to identify and tackle the most serious operational weaknesses that have given rise to complaints to the Ombudsman. Furthermore, the Commission has announced its intention to issue a Communication on the European Schools. In the Ombudsman's view, the Commission's proposals for the content of the Communication represent a significant opportunity to enhance the quality of the European Schools' administration and the Commission's timetable for implementation appears reasonable, taking into account the limitations on its role referred to in paragraph 3.11 above.

The Ombudsman concludes that the Commission fully recognises its general responsibility to promote good administration by the European Schools in accordance with the same values, principles and standards that apply to the Community institutions and bodies. The Ombudsman therefore finds no maladministration by the Commission and closes the inquiry.

FURTHER REMARKS

1 It could be useful for the Commission, if it has not already done so, to inform the Board of Governors of the European Schools about the European Code of Good Administrative Behaviour, which the European Parliament approved by Resolution of 6 September 2001, and to encourage the Code's application by the European Schools.

2 It could be useful for the Commission to seek to ensure that the European Schools themselves acknowledge the need to empower and win the trust of parents as part of their core mission.

3 The Board of Governors' annual report and the proposed annual report from the Commission could together provide a useful opportunity for external review of progress in raising the quality of administration of the European Schools and enhancing their transparency and efficiency. This could help to improve and maintain levels of trust among the many constituencies whose interests the European Schools should serve (children, parents, the institutions and citizens generally). The Ombudsman is ready to assist in the external review process, if that could be helpful.



In view of the European Parliament's Resolution of 17 December 2002 relating to the European Schools, the Ombudsman considers it useful to send a copy of the present decision to the President of the European Parliament, for information.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

- (1) Convention Defining the Statute of the European Schools, 1994 OJ L 212/3.
- (2) *"In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration."*
- (3) Available on the Ombudsman's website: <http://www.ombudsman.europa.eu> [Link]
- (4) Resolution on the future financing of the European Schools, 17 December 2002; Report on the future financing of the European Schools, A5-0395/2002, 13 November 2002.
- (5) Convention Defining the Statute of the European Schools, 1994 OJ L 212/3.
- (6) Council Decision 94/557/EC, Euratom of 17 June 1994 authorising the European Community and the European Atomic Energy Community to sign and conclude the Convention defining the Statute of the European Schools, 1994 OJ L 212/1.
- (7) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, 2001 OJ L145/43.
- (8) Resolution on the future financing of the European Schools, 17 December 2002, point 28.
- (9) Regulation (EC) 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L8/1.
- (10) European Parliament resolution on the European Ombudsman's Special Report to the European Parliament following the own-initiative inquiry into the existence and the public accessibility, in the different Community institutions and bodies, of a Code of Good Administrative Behaviour (C5-0438/2000 - 2000/2212 (COS)), 6 September 2001.
- (11) See the Preamble to the Convention Defining the Statute of the European Schools.
- (12) Resolution on the future financing of the European Schools, 17 December 2002, point 8.

