

Draft recommendation to the European Commission in complaint 845/2002/IJH

Recommendation

Case 845/2002/(IJH)MF - Opened on 16/05/2002 - Recommendation on 10/12/2002 - Decision on 08/07/2003

(Made in accordance with Article 3 (6) of the Statute of the European Ombudsman. (1))

THE COMPLAINT

In May 2002, Mrs L complained in her own name and that of 50 or so other parents of children at the European Schools in Brussels concerning the allocation of places at the Schools for the academic year 2002-3, the subsequent appeals that have been lodged and the mechanisms for co-ordination between the Schools.

In summary, the complainants made the following points:

Places available in the new primary section in Ixelles were allocated to pupils currently attending the two existing primary sections on the basis of two different sets of criteria, which were determined and applied unilaterally and non-transparently by the school of origin. Over 200 appeals have been lodged, some of which had still not been dealt with at the date of the complaint.

The mechanisms for co-ordination between the Brussels schools are quite inadequate even to basic tasks like harmonising holidays and days off between the three schools.

The action of the schools in this matter contradicts the basic principles of good administrative practice and therefore breaches Article 41 of the Charter of Fundamental Rights. There is also a breach of Article 24 (2) of the Charter, which states that *"In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration"*. The first criterion for distributing children between schools was the capacity of the three schools, which had been fixed in advance, without reference to the needs of the children or the wishes of their parents.

The complainants contacted the Commission which is a member of the Board of Governors and which has the duty of protecting its staff's rights and interests. The complainants have never had a complete answer or explanation from the direction of the European Schools, the Board of



Governors or the European Commission.

The complainants fear further chaos when a fourth European School in Brussels is established in future.

In summary, the complainants allege that the action of the European Schools contradicts Articles 24 (2) and 41 of the Charter of Fundamental Rights and that co-ordination mechanisms between the schools are inadequate.

The complainants ask the Ombudsman to do everything in his power to ensure that:

- a solution is urgently found respecting the best interests of the children involved;
- the matter is fully investigated at the highest level;
- there is a comprehensive review of the administration of the European Schools to ensure that in future they operate according to the same standards of good governance and good administrative practice that apply to other EU institutions and that, in accordance with Article 24 (2) of the Charter, the best interests of the children are the primary consideration in all actions affecting them;
- all the appeals are accepted even if this solution would require splitting some classes into two;
- there is a review of the distribution of resources between schools;
- a clear and transparent system for allocating children between the Schools is established, in order to avoid future transfer of children in similar conditions.

THE INQUIRY

The Ombudsman has consistently taken the view that the European Schools are not a Community institution or body. The Ombudsman therefore informed the complainant that he could not address the European Schools directly about the complaint.

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.

On this basis, the Ombudsman asked the Commission for an opinion on the complaint.

The Commission's opinion

In summary, the Commission's opinion made the following points:

The redistribution of a certain number of pupils between the European Schools in Brussels was the inevitable consequence of two factors. First, the decision by the Board of Governors to open the third School in Ixelles, in order to relieve the Uccle and Woluwe Schools, which were particularly over-subscribed at the time and second, the need to move temporarily a number of pupils from the Uccle School to the Woluwe School as a result of major repair and reconstruction work.



In deciding the redistribution of the language sections between the three schools, the Board of Governors sought to ensure that the dual principle of geographical balance and rational utilisation of resources was respected. At no time did the Heads' decision require the reallocation of pupils during term.

To better manage these movements, the Representative of the Board of Governors set up a co-ordinated management group for the three Brussels Schools, on which the Heads, the teaching staff and the parents' associations were represented.

According to the information supplied to the Commission, parental choice was given priority, but the limits imposed by the structure of the school organisation and the need to make optimal use of available resources made it impossible to meet the expectations and requirements of all families. According to the School, it would have been difficult to justify splitting sections or classes in one School when the corresponding sections and classes in another School were virtually empty.

The Schools argue that, in their assessment of individual cases, they applied the criteria of the presence of siblings, geographical proximity to the family home and the creation of balanced classes in the three Schools. The Heads' decisions about where to place pupils were based on the information provided by the parents to the School concerning the schooling of siblings and the location of the family home.

The Commission is aware that a significant number of complaints have been submitted. These complaints have been dealt with individually by committees within each School that comprise members of the Administrative Board and parents' representatives. A large number of the complaints were upheld.

In response to the complainants' requests, the Commission made the following points:

1 The procedure followed and the criteria used by the Schools for the transfer of pupils, along with the possibility of appeal, suggests that the pupils' best interests were a primary consideration which, as far as possible, was taken into account.

2 During its meeting 21-23 May 2002, the Board of Governors examined the Report drawn up by its Representative on the "Distribution of pupils from pre-school, primary and secondary cycles between the Brussels I, II and III Schools". The Commission has not been made aware of any irregularities in this regard.

3 The principles laid down in the Charter of Fundamental Rights, and particularly its Articles 24 (2) and 41, apply in full to the European Schools and are binding upon them. These principles also apply to future reform of the Schools.

4 According to the information supplied to the Commission, the Schools made every effort to take into account, as a primary consideration, the choices of parents. In fact, efforts were made to adjust the distribution of classes from September 2002, with the ensuing transfer of posts, as



well as to derogate from the rules governing the grouping of primary classes during the year 2002/2003 for certain sections. Despite these efforts, certain limits imposed by the structure of the school organisation and the need to make optimal use of available resources could not be ignored. Splitting sections or classes in one School, when the corresponding sections and classes in another School were virtually empty, would not have been good administrative practice.

5 The Board of Governors alone is competent to decide on the distribution of resources between the different European Schools. It must be guided by the principles of geographical balance and the optimal utilisation of available resources.

6 The participation of the parents' associations, first in the co-ordinated management group for the three Brussels Schools, which was set up to better manage the transfer of pupils, and, subsequently, in the committees responsible for examining complaints, is evidence of the transparency of the system. This transparency must be maintained in any future pupil transfers.

The complainant's observations

Mrs L. sent observations making, in summary, the following points:

The complainants supplied information to the Commission and requested it to intervene in the Board of Governors on behalf of the children and their families. The Commission representative should, therefore, have been aware of the situation when the Board of Governors met on 21-23 May 2002. The distribution of resources among schools without a thorough evaluation of the children's needs is an example of the worst administrative practice.

The Commission considers that the Board of Governors alone is competent to decide on the allocation of resources between the Schools. This shows that the Commission has not learnt any lessons and is refusing its responsibilities. The Commission provides most of the money for the schools and should put the children's needs and interests first.

THE DECISION

1 Allocation of places at the European schools *The complainant's case*

1.1 In May 2002, Mrs L complained in her own name and that of 50 or so other parents of children at the European Schools in Brussels concerning the allocation of places for the academic year 2002-3, the subsequent appeals that were lodged and the mechanisms for co-ordination between the Schools. The complainants contacted the Commission which is a member of the Board of Governors and which has the duty of protecting its staff's rights and interests.

In summary, the complainants allege that the action of the European Schools contradicts Articles 24 (2) and 41 of the Charter of Fundamental Rights and that co-ordination mechanisms between the schools are inadequate. They ask the Ombudsman to do everything in his power to ensure that:

- a solution is urgently found respecting the best interests of the children involved;
- the matter is fully investigated at the highest level;



- there is a comprehensive review of the administration of the European Schools to ensure that in future they operate according to the same standards of good governance and good administrative practice that apply to other EU institutions and that, in accordance with Article 24 (2) of the Charter, the best interests of the children are the primary consideration in all actions affecting them;
- all the appeals are accepted even if this solution would require splitting some classes into two;
- there is a review of the distribution of resources between schools;
- a clear and transparent system for allocating children between the Schools is established, in order to avoid future transfer of children in similar conditions.

The Commission's arguments

1.2 The Commission stated its awareness of a significant number of complaints. These were dealt with individually and a large number were upheld. The procedure and the criteria used by the Schools for the transfer of pupils, along with the possibility of appeal, suggests that the pupils' best interests were a primary consideration which, as far as possible, was taken into account.

The Board of Governors alone is competent to decide on the distribution of resources between the different Schools. It must be guided by the principles of geographical balance and the optimal utilisation of available resources. The Board of Governors examined a Report on the matter and the Commission is not aware of any irregularities in this regard.

The Schools made every effort to take the parents' choices into account as a primary consideration. Efforts were made to adjust the distribution of classes, but splitting sections or classes in one School, when corresponding sections and classes in another School were virtually empty, would not have been good administrative practice.

The principles laid down in the Charter of Fundamental Rights, and particularly its Articles 24 (2) and 41, apply in full to the European Schools and are binding upon them. These principles also apply to future reform of the Schools.

The participation of the parents' associations, first in the co-ordinated management group for the three Brussels Schools, which was set up to better manage the transfer of pupils, and, subsequently, in the committees responsible for examining complaints, is evidence of the transparency of the system. This transparency must be maintained in any future pupil transfers.

The Ombudsman's findings

1.3 The Ombudsman notes that the European Schools were originally created by the Member States, which signed the Statute of the European School in 1957. In 1994, the Member States and the European Communities signed a Convention which cancels and replaces the 1957 Statute. That Convention entered into force on 1 October 2002.

1.4 The Ombudsman has consistently taken the view that the European Schools are not a Community institution or body, but that the Commission has a certain responsibility for their operation 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.



The appeals

1.5 As regards the appeals concerning allocation of children between the Schools, the Ombudsman considers that decisions on individual appeals are not within the Commission's responsibility and hence are outside the scope of the Ombudsman's inquiry. The Ombudsman notes that the Commission has stated that a large number of the appeals have been upheld.

The Charter of Fundamental Rights

1.6 Concerning the alleged violations of the Charter of Fundamental Rights, the Ombudsman welcomes the Commission's acknowledgement that the right to good administration (Art. 41) and the rights of the child (in particular Art 24 (2) (2)) are binding on the European Schools and also apply to their future reform. As a general principle, the Ombudsman considers that respect for these rights is consistent with also taking into account efficiency in the allocation of resources between the Schools. In the present case, the Ombudsman does not consider that his inquiry has produced evidence of violation of the rights of children as guaranteed by Art 24 (2) of the Charter, especially taking into account that the original allocation of children between the Schools appears to have been modified by the large number of successful appeals.

The right to good administration is considered further below.

Co-ordination and good administration

1.7 As regards the allegation that that co-ordination mechanisms between the schools are inadequate, the Ombudsman recalls that a large number of appeals were made and that, according to the Commission, many of them were upheld. The Ombudsman considers this to be evidence that there exists an effective and responsive system for dealing with grievances.

1.8 At the same time, the Ombudsman points out that when a particular area of administration generates an unusually large number of appeals or complaints it is good practice to examine whether there is an underlying problem and, if so, to take measures to deal with it for the future. This is particularly true when it emerges that a high proportion of the appeals or complaints is justified.

1.9 The Ombudsman also points out that the Commission is the representative of the European Communities, which largely finance the European Schools and which are a signatory to the 1994 Convention on the Statute of the Schools. The Ombudsman takes the view that the Commission's responsibility in this role includes the promotion of good administration by the European Schools. The Ombudsman considers that the Commission's response to the events that gave rise to the present complaint fails to demonstrate that the Commission fully recognises this responsibility. This is an instance of maladministration.

2 Conclusion

2.1 For the reasons explained above, the Ombudsman considers that the Commission's response to the events which gave rise to the present complaint fails to demonstrate that it fully recognises its responsibility to promote good administration by the European Schools.

2.2 The above finding raises an issue of general importance, which is not susceptible to a friendly solution. The Ombudsman therefore makes the following draft recommendation to the Commission, in accordance with Article 3 (6) of the Statute of the Ombudsman:

The draft recommendation



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.

The Commission and the complainant will be informed of this draft recommendation. In accordance with Article 3 (6) of the Statute of the Ombudsman, the Commission shall send a detailed opinion before 31 March 2003. The detailed opinion could consist of the acceptance of the Ombudsman's draft recommendation and a description of how it has been implemented.

Strasbourg, 10 December 2002

Jacob SÖDERMAN

(1) Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, OJ 1994 L 113/5.

(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."