



Schola Europaea

The Chairman of the Complaints Board of the European
Schools

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ANNUAL REPORT OF THE COMPLAINTS BOARD FOR THE YEAR 2007

Board of Governors of the European Schools

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COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

The Chairman

Brussels, 4 January 2008

ANNUAL REPORT FOR THE YEAR 2007

During the year 2007, the Complaints Board of the European Schools had to cope with a particularly difficult situation, characterised not only by major changes in its membership, in the scope of its jurisdiction and in its rules of procedure, but also by an unprecedented increase in the number of appeals lodged with it.

I - The composition and organisation of the Complaints Board

1) *The old Board of Appeal*

Prior to the entry into force of the Convention defining the Statute of the European Schools, the Complaints Board, as this organ was formerly called in English, was composed, in accordance with Article 1 of the Implementing Regulations for its functioning, of three members appointed by the Board of Governors on a proposal from the Member States, the persons nominated by the States being persons whose independence was beyond doubt and who were recognised as being competent in law.

2) *The new Complaints Board*

Since the entry into force of the said Convention and pursuant to Article 27 thereof, only persons who not only offer the aforementioned guarantees but are also on a list compiled by the Court of Justice of the European Communities are eligible for membership of the Complaints Board. In accordance with Article 1 of the Statute of the Complaints Board, adopted pursuant to the Convention, it is composed of six members, appointed for a period of five years, their term of office being tacitly renewable, unless the Board of Governors expressly decides otherwise. In accordance with Article 6 of the Statute, the Complaints Board elects its Chairman for a period of three years, although this period may not exceed the term of office of the member in question, and it is specified that the Board may re-elect its Chairman. Finally, in accordance with Article 12 of the said Statute, the Chairman decided in 2004, in agreement with all the members of the Board, that it would sit in two sections in rotation, one section being chaired by a member appointed by him.

3) *Events of the year 2007*

The year 2007 was marked by the re-election of the Chairman of the Complaints Board, by the appointment of three new members and by a change at the Registry.

Mr Henri Chavier, President of the Bordeaux Administrative Court (France), was re-elected Chairman of the Complaints Board for a three-year period expiring on 1 July 2010. In agreement with all the members of the Board, he again appointed Mr Eduardo Menéndez Rexach, judge at *Sala de lo Contencioso Administrativo de la Audiencia Nacional* (Administrative Disputes Chamber of the National Court) (Spain), as section chairman.

Following the death of Mr Göran Schäder and the resignations of Mrs Annelie Marquardt and Mr Nicolas Mackel, in 2007, the Board of Governors appointed three new members after their entry on the ad hoc list compiled by the Court of Justice of the European Communities. They are Mr Andreas Kalogeropoulos, former judge at the Court of First Instance of the European Communities and Chairman of the Appeals Committee of the European Investment Bank, Mr Mario Eylert, judge at the *Bundesarbeitsgericht* (Federal Labour Court) (Germany), and Mr Paul Rietjens, Director-General of Legal Affairs and Legal Adviser – Federal Department of Foreign Affairs (Belgium).

Finally, there was a change at the Registry of the Complaints Board: Mrs Lise Junget, assistant, retired and was replaced by Mrs Amanda Nouvel de la Flèche, who had previously been *assistante de justice* (judge's assistant) at the Nice Administrative Court (France).

II – Extension of the jurisdiction of the Complaints Board and new procedures

1) *Jurisdiction of the old Board of Appeal*

Until the entry into force of the Convention defining the Statute of the European Schools, the Board of Appeal was only competent for appeals lodged by teaching staff. This competence was based on Article 80 of the Regulations for the Members of the Teaching Staff of the European Schools.

2) *New jurisdiction*

Article 27 of the Convention extended the Board's jurisdiction to all persons covered by the Convention, with the exception of administrative and ancillary staff, the conditions and the detailed rules being laid down by the Service Regulations for the teaching staff, the conditions of employment for part-time teachers and the General Rules of the Schools. But this extension, to cover parents and pupils who had reached the age of majority in particular, was a gradual process, which occurred on the basis of changes made to the General Rules of the European Schools by the Board of Governors.

For instance, in 2005, the possibility of lodging contentious appeals against certain disciplinary measures imposed on pupils, against decisions concerning promotion to the year above, against decisions taken on the integration of SEN (special educational needs) children and against decisions concerning the European Baccalaureate examination was newly introduced, under Article 67 of the General Rules.

In April 2007, a new and major change was made to the General Rules, allowing parents and pupils who had reached the age of majority to dispute, in certain circumstances, the decisions ruling on enrolment applications, in particular, by means of a direct contentious appeal, against the decisions taken by the Central Enrolment Authority for the Brussels European Schools (CEA).

3) The new Rules of Procedure

This latter extension was accompanied by a major change made to the Statute and the Rules of Procedure of the Complaints Board, designed to enable the Board, in view of the foreseeable influx of appeals likely to result from the change, to give interim rulings very quickly following summary proceedings, rulings on main proceedings normally taking the six months provided for by both the Regulations for Members of the Seconded Staff and the General Rules. Pursuant to Article 12 of the Statute and Articles 16, 34 and 35 of the Rules of Procedure, the member of the Complaints Board appointed as rapporteur by the Chairman may now, at the applicant's request, and where, in the event of proven emergency and of serious doubt about the disputed decision, there is, in the circumstances of the particular case, a real risk of absence of effectiveness of the right to appeal, order any interim measure required to be taken.

III - Judicial activity of the Complaints Board in 2007

1) Trend in the number of appeals since the beginnings

Between 1988 and 2003, 115 appeals in total, or an average of the order of seven per year, were lodged with the old Board of Appeal, which at the time comprised only three members appointed on proposals from the Member States and which was competent to rule only on disputes between the European Schools and their teaching staff.

The new Complaints Board, comprising six members appointed on the basis of a list compiled by the Court of Justice of the European Communities, the scope of whose jurisdiction has gradually been extended as already stated, received, successively, 15 appeals in 2004, 20 in 2005, 23 in 2006 and 68 in 2007.

2) Influx of appeals registered in 2007

The spectacular increase recorded during the last year is due mainly to appeals lodged against decisions of the Central Enrolment Authority for the Brussels European Schools, numbering 44. The other categories of appeals lodged in 2007 were as follows, in descending order: 14 appeals lodged against decisions not to promote pupils to the year above, 5 appeals lodged by teachers, 2 appeals lodged against decisions on the integration of SEN children, 2 appeals against disciplinary measures imposed on pupils and 1 appeal against the level of school fees.

3) Steps taken for the handling of these appeals

The Complaints Board had all the more difficulty in coping with this influx of requests, which was completely unprecedented in comparison with previous years, as on account of the changes already mentioned and of the unavailability of some of its members, it never reached its full complement during the year 2007 and, except at the end of the year, only one section composed of three members was able to hold public hearings. It was therefore obliged to take steps quickly in order to avoid finding itself in a situation where ultimately it could rule on all these appeals only several months after the beginning of the new school year in September.

a) The first step taken was to arrange very quickly, in mid-July, for a special hearing to be held to examine those of the first appeals, registered in June, which raised the most important questions of principle. This unusual procedure, since cases are generally only heard after several months of written proceedings, was made necessary both by the newness of the questions likely to be asked in the context of the new possibility of lodging appeals against decisions on enrolments and by the virtually total lack of use by appellants of the new summary proceedings possibility, even though this had been introduced specifically to allow them to obtain a speedy interim decision of the Complaints Board. Of the 44 appeals lodged against decisions of the CEA, a temporary injunction was sought in summary proceedings in only one case (three applications of this type were subsequently made in support of appeals lodged against decisions on non-promotion to the year above).

Thus, as early as 31 July, the Complaints Board delivered important decisions, allowing in particular its position to be ascertained on the delicate issues of competence and admissibility raised by these new appeals, the origin of some of the problems arising lying in the actual drafting of the provisions adopted by the Board of Governors. In that connection, the Complaints Board accepted that appeals lodged against the decisions of the CEA could be based not only on a breach of procedure proper or a new fact but also on the non-conformity of disputed decisions with the enrolment policy or with the directives of the Board of Governors and on pleas in law drawn, directly or indirectly, from infringement of the Convention defining the Statute of the European Schools or of fundamental principles recognised in both the European Community legal system and that of the Member States.

These decisions were published on the European Schools' website.

b) The Complaints Board then decided to use all the possibilities offered by its Rules of Procedure to take a decision, as far as was possible, before or shortly after the beginning of the new school year:

- either by decision delivered in accordance with the ordinary rules of procedure, after written submissions from both parties and a public hearing at which both parties had an opportunity to put their cases;

- or by decision delivered after written submissions from both parties but without a hearing, as allowed by Article 19, taking into consideration in particular the decisions of principle taken in cases where there had been a public hearing;

- or by reasoned decision, which could be taken at any point in the proceedings, to dismiss an appeal which was manifestly inadmissible or manifestly unfounded in law, within the meaning of Article 32, in the light in particular of the aforementioned decisions of principle;

- or by ordering the case to be removed from the register in the cases provided for in Article 31 (discontinuance or dismissal of proceedings), a fairly frequent occurrence because the case had been settled to the appellant's satisfaction before the Board had even ruled on the substance;

- or, finally, by order made in summary proceeding in accordance with the procedure provided for in Articles 34 and 35.

4) Decisions delivered or to be delivered by the Complaints Board

A total of 25 appeals have been or are being examined in accordance with the ordinary procedure, written or oral (4 were removed from the register when they were due to have been heard, judgment has been reserved on 3, there is to be a public hearing on 2 and 2 are still at the written procedure stage), 10 were the subject of a decision taken after written submissions from both parties but without a hearing, 25 were the subject of a reasoned decision, 4 were the subject of an order that they be removed from the register without being examined and 4 were the subject of an order made in summary proceedings.

As regards the tenor of the decisions delivered or to be delivered by the Complaints Board, and hence the outcome of the appeals, it is to be noted that:

- of the 44 appeals lodged against the CEA, in 8 cases the decisions of the CEA were quashed and 4 cases were removed from the register, whilst a decision is still pending in one case and all the other appeals were dismissed;

- of the 14 appeals lodged against non-promotion to the year above, one resulted in a temporary injunction ordering that the pupil be promoted and 4 cases were removed from the register (in one case, this was the direct result of the injunction, the European Schools having themselves conceded the case by promoting the pupil concerned to the year above permanently), whilst a decision is pending in 3 cases and the others were dismissed;

- of the 5 appeals lodged by teachers, 3 were dismissed and a decision is pending in 2 cases;

- of the 2 appeals lodged against decisions on the integration of SEN children, one was removed from the register and a decision of the Complaints Board is pending in the other case;

- of the 2 appeals lodged against disciplinary measures, one resulted in their quashing and the other was dismissed;

- finally, the appeal concerning the level of school fees was dismissed on account of the lack of competence of the Complaints Board.

IV - The foreseeable difficulties for the future and conceivable solutions

1) Impossibility of continuing in the same conditions

It must be emphasised that if a situation comparable with that in 2007 were to arise in 2008 and, all the more so, if the number of appeals were to rise further, the Complaints Board would probably no longer be able to discharge its obligations.

It is only thanks to the exceptional dedication of its members, who worked throughout summer 2007, of its Registrar and of her assistant that the Board was able to rule on the majority of appeals before or very shortly after the beginning of the new school year in September. Its Chairman was himself obliged to sacrifice his holidays completely in order to examine personally all the appeals lodged and to propose to his colleagues the procedure suited to each case. Clearly, he is unable to contemplate continuing to work in such conditions, especially as like most of the other members of the Complaints Board, he performs his duties on the Board only in a part-time capacity, in addition to his heavy responsibilities at national level.

It should be pointed out in this connection that the Complaints Board of the European Schools is not a permanent tribunal but a body composed of judges who perform their main duties in different Member States and that the Registry comprises only two people, who work for it only partially. While this type of organisation allowed the Complaints Board to operate normally as long as the number of appeals did not exceed 20 or so per year, it is quite obvious that it is not suited to the handling of around 60 appeals, let alone to the handling of even more appeals, most of which are registered between June and September.

By way of comparison, the Civil Service Tribunal of the European Union, a permanent body composed of seven members exclusively attached to it, was created two years ago, when the number of appeals likely to fall within its jurisdiction was of the order of around a hundred per year. Moreover, apart from summary proceedings, it does not sit during the summer period.

2) Conceivable solutions

One of the biggest difficulties experienced by the Complaints Board since this year, and which all the evidence suggests is likely to recur in the future, is associated with the particular fact that the majority of the appeals lodged with it are registered between June and September and that this situation imposes an extraordinarily heavy extra workload on it during the second half of the year.

To deal with this situation, it would probably be futile, in view in particular of the difficulty of regular operation of a body composed of judges based in different Member States, to plan an increase in the number of members of the Complaints Board.

On the other hand, two measures can, at least initially, be envisaged.

a) The first involves planning the recruitment to the Registry of the Complaints Board of at least two qualified legal experts who would work full time during the busiest period (and in particular on a rota basis during the summer holidays), whilst being able to work part time at the General Secretariat during the rest of the year. The role of these legal experts would be firstly, to assist the Chairman with prior examination of appeals and of the decisions to be taken on their investigation and secondly, to act as rapporteurs for the preparation and writing of reports and draft decisions.

By way of comparison, it is perhaps worth mentioning that each of the judges of the Civil Service Tribunal of the European Union enjoys the services and support on a permanent basis of a law clerk.

As in accordance with Article 9 of the Statute of the Complaints Board, the Registrar and his/her staff are appointed by the Secretary-General of the European Schools with the agreement of the Chairman of the Complaints Board, implementation of such a measure is dependent on a decision of the Board of Governors.

b) The second measure, which is dependent solely on the Complaints Board, concerns the method of settlement of disputes during the summer holidays. The reason is that during that period there can no longer be any question of settling disputes in accordance with the ordinary procedures. Only the emergency procedure, which allows a member of the Complaints Board to give interim rulings following summary proceedings, should result in speedy decisions. This means in very concrete terms that an appellant who has not presented an application for a ruling in summary proceedings cannot hope to receive a decision of the Complaints Board until the end of the normal period for examination and investigation of cases, which can take up to six months after the lodging of the appeal.

If these two measures are taken, there are grounds for hope that, unless there is a further excessive increase in the number of appeals, the Complaints Board of the European Schools will be able to continue to operate.

Otherwise, particularly if in the next few years there is an upward trend as spectacular as the one seen in 2007, it is to be feared that in the end there will be no alternative but to concede the need for a far more expensive solution, namely the creation if not of a permanent tribunal, at least of a permanent structure allowing each of the six judges to enjoy the services and support of a qualified legal expert.

In conclusion to this report, the Chairman of the Complaints Board wishes to thank publicly his colleagues and the staff of the Registry for the exceptional diligence which they displayed during the year 2007. This proves that if it is given the necessary resources, our

Board will be able to continue to operate normally, at the service of those seeking justice, namely teachers, pupils and their parents, but also the European Schools themselves.

Henri Chavier