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Annual report of the Chairman of the Complaints Board for the year 2009

Board of Governors of the European Schools

Brussels, 14, 15 and 16 April 2010

COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

The Chairman

Brussels, 4 February 2010

ANNUAL REPORT FOR THE YEAR 2009

During the year 2009, the Complaints Board of the European Schools was again faced with a large number of appeals, in conditions a little more difficult than the previous year and more akin to those of the year 2007.

I – Composition, organisation and operation of the Complaints Board

The term of office of the six members of the Complaints Board was renewed, in accordance with Article 1 of its Statute, for a period of five years, starting from 21 April 2009.

However, although no change to the composition of the Complaints Board occurred during the year 2009, the Board was unable to operate with its full complement of members during the summer period as a result of the unavailability of one of those members. During that period, which is the one when the largest number of appeals has to be examined and heard, it was not possible to form the two sections into which the six members of the Board are usually divided, on a rotating basis.

Moreover, the same period was marked by the departure in early July of the legal assistant to the Complaints Board, Mrs Amanda Nouvel de la Flèche, who joined the Court of Justice of the European Communities, and who was only replaced in September by Mrs Nathalie Peigneur.

This *de facto* situation added considerably to the workload of the chairman and of the registrar during the same period.

II – Judicial activity of the Complaints Board in 2009

1) Number and categories of appeals registered

In 2009, 69 appeals were lodged with the Complaints Board, thus slightly more than the numbers registered in 2008 (65) and in 2007 (68), a year which showed a spectacular increase compared with 2006 (23) and 2005 (20).

As was the case in the previous two year years, the largest number were appeals lodged direct against the decisions of the Central Enrolment Authority for the Brussels European Schools: 47 (as compared with 41 in 2008 and 44 in 2007), 15 of them in summary proceedings (9 in 2008 and only 1 in 2007).

The other contentious appeals were lodged after dismissal of a prior administrative appeal to the Secretary-General of the European Schools.

Firstly, 7 appeals concerning the Regulations for Members of the Seconded Staff were lodged by teachers (as compared with 4 appeals of this type in 2008 and 5 in 2007).

Secondly, 6 appeals were lodged against the decisions of class councils on pupils' promotion to the year above (17 in 2008 and 14 in 2007), including 1 in summary proceedings (4 in 2008 and 3 in 2007).

Four appeals were lodged against refusals of applications for enrolment in schools other than the Brussels ones, including 1 in summary proceedings (no appeals of this type in the previous years).

Two appeals were lodged, 1 of them in summary proceedings, against a decision on integration of a special needs child (no appeals of this type in 2008 and 2 in 2007).

Two appeals were lodged against decisions taken on pupils by discipline councils (1 in 2008 and 2 in 2007).

Finally, 1 appeal concerned the specific rules of the European Baccalaureate (2 in 2008 and none in 2007).

2) Decisions delivered by the Complaints Board

In accordance with the provisions of the rules of procedure of the Complaints Board, these different appeals were examined and settled, depending on the case, by decisions delivered in ordinary proceedings, written and oral, by decisions delivered in adversarial proceedings without a hearing, by reasoned decisions in non-adversarial proceedings, by interim rulings or by orders to remove the case from the register.

As regards the tenor of the decisions delivered by the Complaints Board, the following can be said:

- of the 32 main appeals lodged against decisions of the Brussels Central Enrolment Authority to refuse pupils' enrolment applications, 7 led to the decisions' being declared void, 7 to orders to remove the case from the register following withdrawal or as a result of the fact that there was no need to give a decision and 18 were dismissed; of the 15 appeals lodged in summary proceedings accompanying these main appeals, 1 led to suspension of enforcement with provisional enrolment, 11 to orders to remove the case from the register following withdrawal or as a result of the fact that there was no need to give a decision and 3 were dismissed;
- of the 7 appeals concerning the Regulations for Members of the Seconded Staff, 1 led to the decision's being declared void, 2 led to suspension of the proceedings (following referral to the Court of Justice of the European Communities for a preliminary ruling) and 4 were dismissed;
- of the 6 appeals lodged against non-promotion to the year above, 1 led to removal from the register following withdrawal and 5 were dismissed;
- of the 4 appeals against refusals of applications for enrolment in schools other than the Brussels ones, 1 was removed from the register as a result of the fact that there was no need to give a decision and 3 were dismissed;
- the main appeal lodged against a decision on the integration of a special needs child was dismissed and the accompanying appeal lodged in summary proceedings was removed from the register as a result of the fact that there was no need to give a decision;
- the 2 appeals lodged against decisions taken on pupils by discipline councils were dismissed;
- the appeal concerning the European Baccalaureate was dismissed.

It should be noted that one of the decisions delivered by the Complaints Board in 2009 is distinguished by the fact that the Board was led, for the first time, in a case concerning the detailed rules for calculation of the remuneration of UK teachers in the different European Schools, to refer the matter to the Court of Justice of the European Communities for a preliminary ruling, under the procedure provided for by the Treaty establishing the European Community. It will be very interesting to know whether or not the Court of Justice will accept the Complaints Board of the European Schools amongst the courts which may bring matters before it in this way.

III – Outlook for the year 2010

The relative improvement in the Complaints Board's operation observed in 2008 compared with 2007, which it was hoped could be consolidated in 2009 thanks to conversion of the post of part-time assistant into that of full-time legal assistant on a permanent basis, was not, unfortunately, confirmed, on account of the events which occurred during summer 2009.

As pointed out at the beginning of this report, the Complaints Board was deprived of one of its members during that period, meaning that it was unable to sit in two sections to deal with the larger number of appeals, and of its legal assistant, who was brilliantly admitted to the ranks of the lawyer-linguists of the European Court of Justice.

However, it succeeded, at the price notably of an appreciably heavier workload for its chairman and for its registrar, in dealing with the most urgent cases, in particular those concerning enrolments in the Brussels schools, within satisfactory time periods.

In 2010, the Complaints Board will need to recruit a new registrar, as Mrs Petra Hommel, whose professional and human qualities were unanimously appreciated, returned to her country of origin in January after spending five years at our Board's service. The Board will also be able to rely on the collaboration of its new legal assistant, who has already demonstrated her competence, effectiveness and efficiency in the space of a few months, and who, in addition to assistance provided to the chairman and members of the Complaints Board, will be expected to take charge of legal documentation and of input to the website. The reason is that the website is to be an increasingly important tool for all the people coming within the Board's jurisdiction.

It should, however, be emphasised that the Complaints Board's situation will remain fragile, in view not only of the number of appeals likely to result from the new enrolment policy in the Brussels schools but also of the widening of its jurisdiction to include new areas, which still seems to be envisaged.

In concluding this report, the chairman of the Complaints Board again wishes to thank publicly his colleagues and the members of staff of the registry for the diligence which they showed during the year 2009. As already pointed out in the previous years, this diligence is the guarantee that if our Board is properly resourced, it will be able to continue to operate normally at the service of all litigants – teachers, pupils, parents and the European Schools themselves alike.

Henri Chavrier