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Annual Report of the Complaints Board of the European Schools for the year 2011.

Budgetary Committee

Meeting in Brussels on 13 and 14 March 2012 – room -1/15

COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

The chairman

Brussels, 16 February 2012

ANNUAL REPORT FOR THE YEAR 2011

During the year 2011, the number of complaints and appeals lodged with the Complaints Board of the European Schools was comparable with that in the year 2010, which was substantially greater than those in the previous years. The Board endeavoured to cope with this situation in conditions which continue to show relative fragility.

I - Composition, organisation and operation of the Complaints Board

Unlike the year 2010, marked by both the re-election of the chairman of the Complaints Board and the departure and replacement of its registrar, there were **no changes** in 2011 in the six members of the Board (who are involved in other activities in the Member States) and the two people assigned to its registry (a part-time registrar and a full-time legal assistant).

The Board is **organised** in two sections, the first chaired by the chairman of the Board, the second by the section chairman, the other members being assigned to one or other in rotation. For the most important cases and those which are dealt with quickly, the first section generally comprises both the two chairmen and another member. By way of an exception, the Board can convene in plenary session, comprising its six members.

The Complaints Board's **operation** is traditionally characterised by particularly sustained activity between the months of May and October, on account of the influx of appeals against refusal of enrolment decisions and refusal of promotion to the year above decisions, but it is also marked by continuation of some level of activity during the last quarter of the year, on account of settlement of appeals on which it did not prove possible to give rulings in the summer. The rest of the year is spent dealing with various other complaints and appeals, including those lodged by teaching staff.

Whilst the **resources** available to the Complaints Board seem sufficient for it to carry out its mission during the year, the situation remains very worrying during the summer holiday period. The reason is that this period implies on the one hand, virtually permanent activity for the chairman of the Board, who has to consider all the appeals personally, give rulings himself on appeals lodged in summary proceedings and propose to his colleagues the appropriate procedure for each of the other appeals, and on the other, the need for the registry to make arrangements for someone to be on duty constantly, the tasks involved being particularly onerous.

The **length** of ordinary proceedings before the Complaints Board generally corresponds, on account of the sheer weight of the process of communication of submissions and translations and the holding of a public hearing, to the period of six months laid down by the General Rules of the European Schools and by the Regulations for Members of the Seconded Staff. Where this time period is likely to be exceeded or where it turns out to be too long because of the circumstances of the case, the Board endeavours, apart even from appeals lodged in summary proceedings, which are dealt with urgently, to use the resources of its rules of procedure to shorten the length of the proceedings, by giving a ruling, with the submissions of the parties but without a hearing (Article 19), or even by reasoned decision without the submissions of the parties (Article 32).

In view of the large increase in the number of appeals registered in 2010, in 2011, the Complaints Board adopted a practice inspired by the methods in use at the European Court of Human Rights for **administrative handling of appeals** prior to their registration. This practice, which allows official registration of a number of appeals which have no chance whatsoever of being successful to be avoided, is as follows:

- On reception at the registry of an appeal which seems to be manifestly inadmissible and/or unfounded in law, within the meaning of Article 32 of the rules of procedure, the legal assistant sends an e-mail to the applicant drawing his/her attention to the fact that his/her appeal has no chance of success and to the question of the legal and other costs which he/she may have to pay. She invites him/her to scrutinise relevant decisions of the Complaints Board in similar cases (reference is made to the 'Database' and to 'Practical advice for parties in dispute', which can be consulted on the website) and to notify her as to whether *or not* he/she intends to continue with the contentious procedure. All the e-mails exchanged are copied to the chairman of the Complaints Board, so that he is fully informed and can supervise matters.
- Having been duly informed of the whys and wherefores of the contentious procedure before the Complaints Board, the applicant can then decide, with full knowledge of the facts, whether or not he/she wishes to continue down this path. If he/she does so, he/she will not be surprised by the negative decision of which he/she will be notified in due course (in the form of a 'reasoned decision', without the submissions of the parties, as provided for in Article 32 of the rules of procedure). If he/she decides against continuing down the contentious appeal path, he/she will nevertheless have received the necessary justifications and explanations of which he/she was previously unaware or whose implications he/she had failed to grasp. The registry will not then need to register the case and there will be no litigation, and the members of the Complaints Board will not have to give a ruling, producing savings on time and fees.

This new practice enabled the official registration of 22 appeals to be avoided in 2011.

II – Judicial activity of the Complaints Board in 2011

1) Number and categories of appeals registered

In 2011, **97 appeals** (including 12 in summary proceedings) were lodged with the Complaints Board, i.e. exactly the same number as in the year 2010 (the only difference being that 22 of these 97 appeals were not officially registered) and far higher than the figures for the previous years: 69 in 2009, 65 in 2008, 68 in 2007, the year which, as a result of the introduction of new appeal procedures, marked a spectacular progression compared with 2006 (23 appeals) and 2005 (20 appeals).

As was the case in the previous years, the largest number were **appeals lodged direct** against the decisions of the Central Enrolment Authority for the Brussels European Schools: 55 in total (of which 17 were not registered and 5 were lodged in summary proceedings), a figure which is roughly comparable with those for the previous years (53 in 2010, including 6 in summary proceedings; 47 in 2009, including 15 in summary proceedings; 41 in 2008, including 9 in summary proceedings; 44 in 2007, including one in summary proceedings).

The other contentious appeals were lodged **after rejection of a prior administrative appeal** to the Secretary-General of the European Schools. They broke down as follows:

- 18 appeals lodged against the decisions of class councils on pupils' promotion to the year above, including 5 which were not registered and 3 which were appeals in summary proceedings (13 in 2010, including 3 in summary proceedings; 6 in 2009, including one in summary proceedings; 17 in 2008, including 4 in summary proceedings; 14 in 2007, including 3 in summary proceedings);
- 10 appeals (including 2 in summary proceedings and one which was an application for judicial review) lodged against decisions associated with enrolments in schools (or language sections) other than the Brussels ones (14 appeals of that type in 2010, including 2 in summary proceedings and one which was an application for judicial review; 4 appeals in 2009, including one in summary proceedings);
- 6 appeals (including one which was an application for judicial review) concerning the Regulations for Members of the Seconded Staff and lodged by teachers (as compared with 8 appeals of that type in 2010, 7 in 2009, 4 in 2008 and 5 in 2007);
- 3 appeals (including one in summary proceedings) concerning the application of the specific rules of the European Baccalaureate (5 in 2010, including one in summary proceedings; one in 2009; 2 in 2008);
- 3 appeals (including one in summary proceedings), lodged against a decision of the Board of Governors (2 in 2010);
- 2 'miscellaneous' appeals (one lodged against "*certain actions and abstentions (...) pertaining to the monitoring of schooling*"; one lodged against a decision concerning provision for the children in the nursery cycle of a school).

It will be remembered that there was a stay of proceedings in the case of three appeals registered in 2008 and 2009 and lodged by British teachers (08/51, 09/01 and 09/05), on account of a reference to the Court of Justice of the European Union for a preliminary ruling, and the appeals in question remained pending in 2010 and 2011.

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 **investigated** and **ruled on**, depending on the case, by decisions delivered in proceedings with the written and oral submissions of the parties, by decisions delivered in proceedings with the written submissions of the parties but without a hearing, by reasoned decisions without the submissions of the parties, 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, it being specified that all the removals from the register because there was no need to give a decision and a proportion of those resulting from withdrawal follow a decision of the European Schools satisfying the applicant:

- of the 33 main appeals registered and lodged against decisions of the Brussels Central Enrolment Authority, 6 led to the decisions' being declared void, 7 to orders to remove the case from the register following withdrawal and 20 were dismissed; of the 5 appeals lodged in summary proceedings, 2 were removed from the register because there was no need to give a decision and 3 were dismissed;
- of the 10 main appeals registered and lodged against decision of the class councils refusing pupils' promotion to the year above, 5 were removed from the register following their withdrawal, one was removed from the register because there was no need to give a decision and 4 were dismissed; the 3 appeals lodged in summary proceedings were dismissed;
- of the 7 main appeals lodged against decisions connected with enrolments at schools (or language sections) other than the Brussels ones, one was removed from the register following its withdrawal, one was removed from the register because there was no need to give a decision and 5 were dismissed; the appeal which was an application for judicial review and the 2 appeals lodged in summary proceedings were dismissed;
- of the 5 main appeals concerning the Regulations for Members of the Seconded Staff, 4 were dismissed and one is still being considered; the appeal which was an application for judicial review was dismissed;
- of the 2 main appeals concerning the European Baccalaureate, one was removed from the register following its withdrawal and the other was dismissed; the appeal in summary proceedings was dismissed;
- of the 2 main appeals lodged against decisions of the Board of Governors, one was removed from the register because there was no need to give a decision and the other was dismissed; the appeal in summary proceedings was dismissed;
- the 2 'miscellaneous' appeals were dismissed.

Finally, the Complaints Board ruled on appeals 08/51 and 09/01, concerning the remuneration of the British teachers in the different European Schools, which had remained pending on account of a reference to the Court of Justice of the European Union for a preliminary ruling.

In a judgment of 14 June 2011, delivered by the Grand Chamber and contrary to the opinion of its advocate general and that of the European Commission, **the Court of Justice held that it had no jurisdiction to rule on a reference for a preliminary ruling** from the Complaints Board. The upshot is that it is up to the Complaints Board to rule on the questions of European Union law raised in disputes pending before it.

That is what it did in the judgment delivered on 20 December 2011 on the aforementioned appeals, which partially quashed the disputed decisions and ordered the European Schools to make payments of back pay.

Investigation of appeal 09/05 has been restarted and a decision is expected to be delivered during the first half of 2012.

III – Outlook for the years to come

The continuing large number of appeals in 2011 confirms a ‘burdensome’ trend, leading it to be considered that despite the administrative innovations designed to cope with that trend, the Complaints Board’s situation remains **fragile**.

Without returning to the comparison made last year with the European Union Civil Service Tribunal, a standing tribunal composed of seven members attached exclusively to it and with incomparable resources available to it to handle a number of appeals of the same order of magnitude, the question is bound to arise as whether the Complaints Board will still really be in a position to provide the ‘**adequate legal redress**’ which justified its setting up by the Convention defining the Statute of the European Schools.

This question becomes all the more pertinent on reading the judgment delivered on 14 June 2011 by the Court of Justice of the European Union. It follows from that important decision that the Complaints Board, which has jurisdiction in the first and final instance, is expected, unlike the supreme courts of the Member States, **to interpret alone and without any control** the rules of law of the European Union applicable in the disputes referred to it.

It is therefore understandable that at the end of its judgment, the Court of Justice should have suggested possible amendment of the Convention defining the Statute of the European Schools by the States which are signatories to it, with a view to allowing uniform interpretation of those rules and to guaranteeing effective respect of the rights which the persons referred to in the said Convention derive from the rules.

Suffice it to say that the Complaints Board, which had itself wondered about the **link to be established with the Court of Justice** to ensure that its litigants have the right to legal redress comparable with that enjoyed by any citizen of the European Union, obviously subscribes to such a suggestion.

Finally, the Complaints Board continues to believe that should the trend towards an increase in the number of appeals be confirmed and should there be a desire to put an end to the fragile situation in which it finds itself today, consideration needs to be given to granting it **resources** more akin to those of a standing tribunal, in particular by attaching to it exclusively at least some of its members and of its staff.

In conclusion to this report, the chairman of the Complaints Board wishes to thank publicly his colleagues and the members of staff of his registry for the diligence which they again showed during the year 2011 at the service of all litigants, namely on the one hand, teachers, pupils and parents and on the other, the European Schools themselves.

Henri Chavrier