

Appeal No 10/02
Interparents Association

COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS
(Sitting in plenary session)

Decision of 22 July 2010

In the case registered under No 10/02, the subject of which is an appeal lodged on 29 January 2010 by the Association of the Parents' Associations of the European Schools (Interparents), represented by its president, Mrs Carine Lingier, having as her address for service Molenweidjtje 5, NL-182BC Bergen NH (Netherlands), namely that of Interparents, and acting on her own behalf and on that of the different Parents' Associations, the said appeal, after the administrative appeal rejected by the Secretary-General of the European Schools on 15 January 2010, being lodged against the decision of Board of Governors of the said schools, taken at its meeting of 2, 3 and 4 December 2009, approving the draft Rules of Procedure for the Administrative Boards of the European Schools, in so far as the decision provides for the allocation of a single vote to the parents' representatives,

the Complaints Board of the European Schools, composed of

- Mr Henri Chavrier, Board chairman (rapporteur),
- Mr Eduardo Menéndez Rexach, section chairman,
- Mrs Evangelia Koutoupa-Rengakou, member,
- Mr Andreas Kalogeropoulos, member,
- Mr Mario Eylert, member,
- Mr Paul Rietjens, member,

assisted by Mr Andreas Beckmann, registrar, and by Mrs Nathalie Peigneur, legal assistant,

having regard to the written observations submitted on the one hand, by the applicant and on the other, by Muriel Gillet, barrister at the Brussels Bar, on behalf of the European Schools,

having heard, at the public hearing of 17 June 2010, Mr Chavrier's report, the oral observations and explanations, on the one hand, on behalf of the applicant, of Mr Orlandi, barrister at the Brussels Bar, of Mrs Lingier and of Mrs Ana Gorey, the Association's new president, and on the other, on behalf of the European Schools, of Mr Snoeck, barrister at the Brussels Bar, and of Mrs Christmann, Secretary-General,

delivered on 22 July 2010 the following decision, the grounds for and the operative part of which are set out below.

Facts of the dispute and submissions of the parties

1. At its meeting of 21, 22 and 23 April 2009, the Board of Governors of the European Schools decided to change the arrangements for decision-making on the Administrative Boards of the schools as provided for in Article 65 of the General Rules of the European Schools. It provided in particular that should it prove impossible to reach a consensus and should a vote need to be taken, this would be passed by a simple majority and the representatives of two categories, namely the teachers' representatives, of whom there are two, and the parents' representatives, of whom there are also two, would each have a single vote. The same decision states that these new arrangements imply the revision of certain rules and that they will enter into force not later than 1 September 2010.

2. At its meeting of 2, 3 and 4 December 2009, the Board of Governors approved the amendments made to the Rules of Procedure for the Administrative Boards of the schools, including those involving Article 8, concerning the decision-making arrangements, the wording of which is identical, albeit expanded, with that adopted at the previous meeting. It is stated that the changes will enter into force on 1 September 2010.

3. On 21 December 2009, the Association of the Parents' Associations of the European Schools, known as 'Interparents', which is a non-profit-making association governed by Luxembourg law, lodged an administrative appeal against the latter decision with the Secretary-General of the European Schools. That appeal was rejected on 15 January 2010, on the ground that neither the Convention defining the Statute of the European Schools, nor any text adopted for the purposes of its application provides for the competence of the Secretary-General to check the validity of the decisions taken by the Board of Governors.

4. Interparents, acting on its own behalf and on behalf of the Parents' Associations of the different schools, then lodged this contentious appeal with the Complaints Board, requesting it to:

- declare this appeal admissible, if appropriate after having submitted the question of its competence to the Court of Justice of the European Union;
- declare the disputed decision void, in so far as it allocates a single vote to the parents' representatives on the Administrative Boards of the schools;
- rule that each party will bear its own costs.

5. In support of its submissions, the applicant association claims firstly that the Complaints Board is competent to give a ruling on its appeal, in so far as the disputed decision was taken pursuant to Article 20 of the Convention defining the Statute of the European Schools and that Article 27 of the Convention gives it sole jurisdiction in any dispute concerning its

application to all persons covered by it and regarding the legality of any act adversely such persons. Even though this type of appeal is not foreseen in Articles 66 and 67 of the General Rules of the European Schools, it must be possible for it to be accepted, by virtue of every person's right to an effective remedy, which is one of the fundamental rights recognised by the European Convention on Human Rights and the general principles of European Union law, which the Complaints Board has agreed should at least serve as a benchmark for the action of the organs of the European Schools.

6. Secondly, Interparents contends that the disputed decision was taken in breach of Articles 19, 20 and 23 of the Convention defining the Statute of the European Schools, the first determining the composition of the Administrative Boards, the second specifying the conditions in which the decision-making arrangements are laid down and the third establishing the place of the Parents' Associations' representatives. It believes in particular that the correlation between the number of representatives and the number of votes is clearly established by these provisions and that it is, moreover, confirmed by Articles 28 and 29 of the Convention, which provide for the possibility of granting a seat and a vote to certain organisations which have entered into an agreement with the European Schools.

7. Finally, the applicant association refutes the legal opinion expressed by the Office of the Secretary-General of the European Schools, according to which the disputed decision does not alter the composition of the Administrative Boards and is confined to introducing a procedure involving voting in groups. It contends that any rule which lays down a weighting of votes departs from the principle of equality amongst the members of a college and cannot, therefore, be based on a lower-ranking source of law than that which confers the status of member of the college.

8. In their response, the European Schools submit that the Complaints Board should declare the appeal inadmissible or at the very least unfounded.

9. In support of these conclusions, they firstly put forward four objections to the appeal, and hence plead its inadmissibility, based on:

a) the absence of legal capacity of the applicant association, in the absence of proof of the publication, in accordance with Luxembourg law, of the changes made to its articles of association;

b) the absence of interest in acting of Interparents, in so far as only the Parents' Associations of the schools have such an interest and as, in any event, it has not been established that the latter gave Interparents a special mandate to act on their behalf;

c) the absence of capacity to act of the president of Interparents, in so far as it has not been established that she has a special mandate from this association's general meeting;

d) the object of the appeal, in so far as it concerns a decision which is simply a measure implementing the decision of principle taken by the Board of Governors at its meeting of 21, 22 and 23 April 2009, against which no appeal was lodged.

10. Secondly, the European Schools contend that the Complaints Board, as it has itself already ruled, has jurisdiction which is strictly limited to the disputes mentioned in Article 27 of the Convention defining the Statute of the European Schools and which can be exercised only in the conditions and in accordance with the arrangements determined by the texts containing implementing provisions to which this article refers, the latter expressly providing that other disputes fall within national jurisdiction. They note, moreover, that the Complaints Board also ruled that it was not competent to declare void norms of general application laid down pursuant to the Convention and that it was only competent to check their legality by way of an exception on the occasion of an appeal lodged against an individual decision. There would therefore be no point in referring the matter to the Court of Justice of the European Union for a preliminary ruling.

11. Thirdly, the European Schools claim that while Article 19 of the Convention defining the Statute of the European Schools determines the composition of the Administrative Boards of the schools, Article 20 gives competence to the Board of Governors to lay down in particular the decision-making arrangements on these organs. In their view, the disputed decision is, therefore, in no way at variance with the Convention and cannot, moreover, be regarded as being seriously detrimental to the parents' power of representation by allocating to the parents one vote out of six instead of two out of eight.

12. In its reply, the Interparents Association upholds the submissions of its appeal, replying point by point to the defence arguments put forward by the European Schools.

13. Firstly, it refutes the four objections to its appeal, contending that:

a) its legal capacity does not stem from Luxembourg law but from the Convention defining the Statute of the European Schools, observing, moreover, that in any event, the changes made to its articles of associations have been regularly published in the Luxembourg *Mémorial* (Official Journal);

b) it has an interest in acting not only on its own behalf but also on that of the different Parents' Associations of the European Schools, which have authorised it to do so;

c) its president obtained permission from its general meeting to seek to have the disputed decision declared void;

d) the decision of principle invoked by the European Schools is a text of a purely political and policy nature without legal effects, and the decision taken at the end of a debate which could have resulted in a different decision cannot be regarded as a mere implementing measure.

14. Secondly, Interparents contends that the jurisdiction of the Complaints Board, as provided for by Article 27 of the Convention defining the Statute of the European Schools, cannot be restricted by the texts containing implementing provisions or by the absence of such texts. It also claims that the disputed decision has a direct effect on the legal position of the Parents' Associations and that referring the matter to the Court of Justice of the European Union for a preliminary ruling would be worthwhile, in order to determine whether the interpretation put on the Convention by the European Schools is compatible with the fundamental right to effective legal redress.

15. Finally, the applicant association returns to and develops its arguments regarding the detrimental effect of the disputed decision on the parents' representation as provided for by the Convention defining the Statute of the European Schools.

Assessment made by the Complaints Board

Jurisdiction of the Complaints Board

16. Article 27 of the Convention defining the Statute of the European Schools (Official Journal of the European Communities No L 212, 17 August 1994, hereinafter referred to as 'the Convention') states: (...) "2. The Complaints Board shall have sole jurisdiction in the first and final instance, once all administrative channels have been exhausted, in any dispute concerning the application of this Convention to all persons covered by it with the exception of administrative and ancillary staff, and regarding the legality of any act based on the Convention or rules made under it, adversely affecting such persons on the part of the Board of Governors of the Administrative Board of a school in the exercise of their powers as specified by this Convention. When such disputes are of a financial character, the Complaints Board shall have unlimited jurisdiction. The conditions and the detailed rules relative to these proceedings shall be laid down, as appropriate, by the Service Regulations for the teaching staff or by the conditions of employment for part-time teachers, or by the General Rules of the Schools. (...) 7. Other disputes to which the Schools are party shall fall within national jurisdiction. In particular, national courts' jurisdiction with regard to matters of civil and criminal liability is not affected by this article."

17. The Complaints Board ruled on several occasions that its jurisdiction was strictly limited to the disputes mentioned in the aforementioned provisions of the Convention and that this jurisdiction could only, in principle, be exercised in the conditions and in accordance with the detailed rules determined by the texts containing implementing provisions to which the said provisions of the Convention refer (see, for example, the decision of 28 July 2004, delivered on appeal No 03/09, or the reasoned decision of 19 July 2006, delivered on appeal No 06/04).

18. It is, moreover, as a result of this case law that the Board of Governors of the European Schools has been led gradually to amend the provisions of the General Rules of the said schools, in order to introduce into them different appeal procedures, which are mentioned in Articles 66 and 67 of the said General Rules. However, those provisions do not foresee a procedure allowing a parent or a Parents' Association to call into question directly the legality of a decision of the Board of Governors, such as the disputed decision in this case.

19. Furthermore, in its decision of 15 September 2005, delivered on appeal No 05/04, the Complaints Board acknowledged its competence not to declare general provisions void but simply to declare individual decisions void, on account of the illegality of the norms on which they are based. It subsequently always reserved judgment on the question of whether it was competent to declare void provisions of general or regulatory application adopted by the Board of Governors of the European Schools (see, for example, the aforementioned decision of 31 July 2007 on appeal No 07/14, point 17, or the decision of 25 May 2009, on appeals No 08/51 and 09/01, point 17).

20. It is therefore necessary, in order to rule on the plea of lack of competence put forward by the European Schools, to determine the exact significance of the disputed decision and to check whether, as the applicant association contends, the lack of competence of the Complaints Board to declare this decision void is of such a nature as to prejudice its right to effective legal redress.

21. The right to effective legal protection is indeed recognised by the Convention defining the Statute of the European Schools, the fourth recital of which states that "adequate legal protection against acts of the Board of Governors or the Administrative Boards should be provided to the teaching staff as well as other persons covered by it." It is, moreover, one of the fundamental rights recognised by the Convention for the Protection of Human Rights and Fundamental Freedoms (see Article 13 thereof) and one of the general principles of law of the European Union (see, for example, Judgment of the Court of Justice (Grand Chamber) of 13 March 2007, Unibet, C-432/05, ECR p. I-2271, point 73).

22. In that connection, it should be observed first of all that as this appeal calls into question the legality of a decision of the Board of Governors which affects a category of persons mentioned in the Convention, within the meaning of Article 27.2 thereof, it cannot, contrary

to what the European Schools contend, be classed amongst disputes falling within national jurisdiction, pursuant to Article 27.7.

23. It is a matter of record, moreover, that having regard to those provisions, national courts are themselves led to decline their jurisdiction to hear disputes concerning the legality of an act stemming from the European Schools, even where no appeal procedure has been foreseen by the texts containing provisions for implementing the Convention (see, for example, the judgment of the Federal German Court of Justice, the *Bundesgerichtshof*, given on 9 July 2009, with the reference number III ZR 46/08, which found that a dispute about the level of school fees called into question the legality of a decision of the Board of Governors within the meaning of Article 27.2 of the Convention and that the absence of any procedure foreseen for implementation of this text could not give competence to national courts on the basis of Article 27.7, which specifically only covers disputes not mentioned in Article 27.2).

24. Another point is that while the disputed decision appears to be a norm of general application, it directly affects a prerogative granted by the Convention to a category of persons, namely the parents' representatives, in whose case it has not been established that they would have the capacity to act, and an interest in doing so, against individual decisions allowing the new procedure laid down by the said decision to be called into question by way of exception. This means that the Complaints Board's lack of competence to rule directly on such a decision might be of such a nature as to be detrimental to the right of the persons concerned to adequate and effective legal redress, as stated in point 21 of this decision.

25. Finally, it is a fact that at least one of the texts containing provisions for implementing the Convention, namely the Regulations for Members of the Seconded Staff, allows a direct contentious appeal to be lodged against the decisions of the Board of Governors and against those of the Administrative Boards of the schools. The relevant article, Article 80, refers to "any dispute between the management organs of the School and members of staff regarding the legality of an act adversely affecting them." In the light of this provision, a representative of the teaching staff on the Administrative Board of a school could thus lodge a direct appeal against a decision such as the one which is disputed in this case.

26. Having regard to all these considerations, the Complaints Board believes that when a decision of the Board of Governors, albeit of general or regulatory application, directly affects a right or a prerogative granted by the Convention defining the Statute of the European Schools to a person or category of persons who or which is clearly identified and is distinguished from the other persons concerned, without its being certain that the said person or category is able to lodge an appeal against an individual decision taken on the basis of such a decision, the latter must be considered to constitute an act adversely affecting this person or this category of persons within the meaning of Article 27.2 of the Convention.

The Complaints Board is, therefore, competent in principle to rule on an appeal lodged against such an act.

27. This competence should normally be exercised in the conditions and in accordance with the arrangements determined by the texts containing implementing provisions to which the Convention refers. However, where no provisions are specifically laid down for that purpose, it should be ascertained whether it is possible, in order to respect the general principle of the right to adequate legal protection, to transpose by analogy the procedural rules foreseen for comparable appeals.

28. In the case in point, it is clear that the disputed decision, in so far as it changes the voting arrangements on the Administrative Boards of the school through the taking into account of a single vote for the two representatives of the parents and of a single vote for the two representatives of the teachers, not only directly affects two categories of members of the said Board but is also of such a nature as to be detrimental to their prerogatives as recognised by the Convention.

29. As the said decision can be directly disputed by the representatives of the teaching staff, pursuant to Article 80 of the Regulations for Members of the Teaching Staff, the rules laid down by that article can be transposed by analogy to an appeal lodged by the parents' representatives, who are in a strictly comparable situation in relation to the object of the dispute, even though no provision has been laid down to that effect in the General Rules of the European Schools.

30. The plea of lack of competence put forward by the European Schools, by way of an objection to the lodging of this appeal, must, therefore, be dismissed.

Admissibility of the appeal

As regards the capacity, status and interest of the applicant association

31. The documents and further details communicated by Interparents in response to the objections to its appeal put forward by the European Schools are sufficient to dismiss the latter's arguments pertaining to those questions.

32. Firstly, the applicant association, whose articles of association have regularly been published, was authorised by the Parents' Associations of the different schools to lodge this appeal on their behalf and its president received the same authorisation from its general

meeting. Secondly, as regards its interest in acting not only on its own behalf but also on that of the said associations, it is manifest, bearing in mind the significance of the disputed decision, which involves all the parents' representatives and is applicable to all the Administrative Boards of the different schools.

33. It can, moreover, be observed that coordination of the Parents' Associations of the different schools for parents' representation on the organs of the European Schools, which is the applicant association's object, specifically corresponds to the provisions of Article 23 of the Convention defining the Statute of the said school, which provide firstly, that each such recognised Association will designate two representatives on the Administrative Board and secondly, that the Parents' Associations of all the schools will designate a representative on the Board of Governors.

As regards the object of the appeal

34. It emerges from the documents in the case file that although the disputed decision follows a previous decision of principle taken by the same authority and with the same object and although it uses the same words, it has specific legal effects, if only by expanding the initial wording and by determining precisely the date of entry into force of the arrangements adopted, in accordance with the initial decision, which expressly left the date outstanding, indicating only that it should be not later than 1 September 2010.

35. It was, moreover, specified by the Secretary-General of the European Schools, during the public hearing, that the new wording of Article 65 of the General Rules of the said schools, the initial subject of the amendments in question, was in the end only adopted by the Board of Governors in April 2010, i.e. subsequent to the disputed decision.

36. Thus, even assuming that the so-called decision of principle adopted in April 2009 can be regarded as actionable, when its actual entry into force was conditioned by the amendments to be made to different texts, such a finding cannot result in the inadmissibility of appeals lodged against these amendments when they have become effective.

37. It follows from all these considerations that the objections to this appeal put forward by the European Schools must be dismissed.

Substance

38. Article 19 of the Convention defining the Statute of the European Schools states: “Subject to Articles 28 and 29, each Administrative Board provided for in Article 7 shall comprise eight members, as follows: 1. the Secretary-General, who shall be Chairman; 2. the Headteacher of the School; 3. the representative of the Commission of the European Communities; 4. two members of the teaching staff, one representing the staff of the secondary school and the other the staff of the primary and nursery schools jointly; 5. two members representing the Parents' Association as provided for in Article 23; 6. a representative of the administrative and ancillary staff. (...)”

39. The last paragraph of Article 20 of the said Convention states: “The procedures for the convening of meetings and for decision-making by the Administrative Boards shall be laid down in the General Rules of the schools provided for in Article 10.”

40. Article 23 of the Convention states: “For the purpose of maintaining relations between the pupils' parents and the School authorities, the Board of Governors shall recognise for each School the Association which is representative of the pupils' parents./ The Parents' Association so recognised shall designate each year two representatives on the Administrative Board of the School concerned./ Once a year the Parents' Associations of the Schools shall designate a member and an alternate to represent the Associations on the Board of Governors.”

41. Finally, Articles 28 and 29 of the Convention determine the conditions in which certain organisations or institutions which have entered into an agreement with Board of Governors of the European Schools can obtain a seat and a vote on the Administrative Board of the school concerned.

42. It emerges from all these provisions that the composition of the Administrative Boards of the European Schools is precisely determined by the Convention itself and that the Board of Governors is only competent to decide, in the General Rules, which it is responsible for laying down, pursuant to Article 10 of the Convention, on the arrangements for convening meetings of the said Board and for their decision-making.

43. By means of the disputed decision, the Board of Governors changed, with effect from 1 September 2010, the decision-making arrangements on the Administrative Boards, determined by Article 8 of the Rules of Procedure for the Administrative Boards of the European Schools. It provided in particular that should it prove impossible to reach a consensus, meaning that a vote needed to be taken, decisions would be taken by a simple majority instead of a two-thirds majority, and that two categories of persons, namely the teachers' representatives, of whom there are two, and the parents' representatives, of whom there are also two, would each have only a single vote.

44. While the decision no longer to require a qualified majority unquestionably comes under the powers delegated to the Board of Governors by the last paragraph of Article 20 of the Convention, the decision which restricts to a single vote the representation of certain categories of persons for which Article 19 has foreseen two representatives is necessarily at variance with this article. The reason is that the consequence of the said decision is to reduce the status of one of these two representatives to that of a mere observer and to change the relative weight of the different categories of members resulting from the composition of the Administrative Boards, which is precisely determined by the Convention.

45. The applicant association is therefore justified in contending that the disputed decision is tainted by illegality, in so far it foresees the allocation of a single vote to the parents' representatives, and in therefore seeking to have it declared void to that extent.

Legal and other costs

46. Article 27 of the Rules of Procedure states: "The unsuccessful party shall be ordered to pay the legal and other costs of the case if they have been applied for by the other party. However, if the particular circumstances of the case so warrant, the Complaints Board may order the latter party to pay the legal and other costs, or may order that they be shared between the parties. (...) If costs are not claimed, the parties shall bear their own costs."

47. Having regard to the parties' submissions, it should be decided that each of them will bear their own costs.

ON THESE GROUNDS, the Complaints Board of the European Schools

HAS DECIDED AS FOLLOWS:

Article 1: The decision of the Board of Governors of the European Schools, adopted at its meeting of 2, 3 and 4 December 2009, amending the Rules of Procedure for the Administrative Boards of the said schools, is hereby declared void, in so far as Article 8 of the said Rules of Procedure allocates a single vote to the two representatives of the parents on the Administrative Boards.

Article 2: Each party will bear its own costs.

Article 3: Notification of this decision will be given as provided for in Articles 26 and 28 of the Rules of Procedure.

H. Chavier
Rengakou

E. Menéndez Rexach

E. Koutoupa-

A. Kalogeropoulos

M. Eylert

P. Rietjens

Brussels, 22 July 2010

The acting registrar

N.Peigneur