

Appeals 22/44

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COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

Reasoned Order of 25 August 2022

In the case registered with the Registry of the Complaints Board under No **22/44**, concerning an appeal lodged on 29 July 2022 by Ms ██████████ and Mr ██████████, residing together at ██████████, legal representatives and parents of ██████████, and brought against the decision dated 15 July 2022 by which the applicants were offered a place at the European School, Brussels II – EVERE site instead of the European Schools, Brussels II – WOLUWE site, the school of their first choice.

Mr. Aindrias Ó CAOIMH, judge rapporteur designated by the Chairman of the Complaints Board to rule by means of a reasoned order under the conditions laid down in Article 32 of the Rules of Procedure, according to which: *"Where the Complaints Board is manifestly lacking in jurisdiction to hear a complaint or where a complaint is manifestly inadmissible or manifestly unfounded in law, a ruling may be given, without continuing the proceedings, by way of a reasoned order made by the Chairman or the rapporteur designated by him",*

assisted by Ms Nathalie Peigneur, registrar, and Mr Thomas van de Werve d'Immerseel, legal assistant,

issued the reasoned order on 25 August 2022, the grounds for and operative part of which appear below.

Main facts of the case and arguments of the appeal

1.

The applicants submitted an enrolment application for their daughter [REDACTED] for P3 of the EN section at the European School, Brussels II – WOLUWE site for the 2022-2023 school year.

They did not invoke any particular circumstances to justify a priority criterion within the meaning of Article 8.4. of the Policy on Enrolment for the 2022-2023 school year (hereinafter the PE).

2.

With its decision dated 15 July 2022, the Central Enrolment Authority (hereinafter the CEA) informed the applicants that, in accordance with Articles 6.1., 6.17., 6.18., 6.19.b) and 11.3.1.g) of the PE, it cannot offer a place to their daughter at the school of her first and second preference according to the ranking order at the time when their enrolment application was dealt with.

The CEA therefore offered the applicants a place in P3 of the EN section at the European School, Brussels II – EVERE site, instead of the European School, Brussels II – Site WOLUWE, which was the school they expressed as being their first preference.

3.

It is against this decision that this application is lodged, by which the applicants request that the Complaints Board reassesses the situation and to grant [REDACTED] a place at the European School, Brussels II – WOLUWE site.

In support of their appeal, the applicants submit, in essence, the following arguments:

- The school of their first preference is only 2 km away from their home instead of 7 km for the EVERE site;
- Their child does not speak French and they will have to manage to take care of the journeys from school back home; and,
- The father is very often outside Brussels/abroad for Professional and family reasons (the other two daughters live, one in Greece and the other in the Philippines) so they believe it is essential that the school is near their residence and the mother's job.

Thus, it is essential to avoid any further burden/stress to their daughter with long journeys to school and back home.

Assessment of the designated judge rapporteur

Regarding the merits,

4.

Though certain particular circumstances allow an applicant for enrolment to obtain a priority criterion with a view to the enrolment of a pupil at the school of first preference, Article 8.4.2. of the PE expressly identifies those which are not relevant for this purpose, notably the location of the home or place of residence of the child and/or of his/her legal representatives; constraints due to the professional activities of the legal representatives and practical constraints on the organisation of travel.

In this regard, it is important to remember that, in accordance with the established case law of the Complaints Board, though it is clear from the objectives of the Convention defining the Statute of the European Schools that the children of employees of European institutions have a right to access the education provided by these Schools, such a right does not necessarily imply that it be exercised in the school of their choice, based solely on the location of their home or their place of work, the organisation of travel and professional or practical constraints relating to the organisation of familial life (see decisions 16/23, 18/10, 19/46, 20/26, 21/06, 21/14, 21/15 and 21/16).

Whatever the consequences, even cumulative, that such constraints may have, these cannot constitute in and of themselves a particular priority criterion allowing those who invoke them to obtain the enrolment of their child in the school of their choice.

The enrolment rules are necessary in view of the overcrowding in the European Schools and the accommodation capacities (reasonable and objective grounds) and apply to all applicants for enrolment, regardless of the location of the home, which cannot be a priority criterion as it depends upon the free choice of the parents, and over which the CEA has no power (see decision of principle 07/14, point 35: *'While it can be readily accepted that an excessive distance between the school and the home may be particularly detrimental to a child of nursery or primary school age, it must be stated that the Board of Governors of European Schools has no control over the location of said Schools, which requires the agreement of the host Member State, or over the location of the pupils' homes, which depends exclusively on their parents'*). Therefore, where there are several schools in the same city, as is the case in Brussels, the geographic location of each of them cannot, on the grounds that the parties concerned are free to choose the location of their home, constitute the exclusive criterion for the exercise of their right to access the education provided by these schools.

The European School system, which cannot be compared to national educational systems, has a limited number of establishments located in cities with European institutions or bodies as agreed with the national authorities and not a network within these cities allowing for all pupils concerned, no matter the location of their home, to be provided with education in their vicinity, according to the criteria provided by the applicant for enrolment or transfer.

Furthermore, it is worth noting that, in cities where there is only one European School, the distances between this school and the pupils' homes may, on a case-by-case basis, be as great as those presented in this appeal, though the issue may not be raised due to the fact that there is only one school.

5.

It is for all of these reasons that Article 8.4.2. of the PE provides that the location of the home or the professional or practical constraints for the organisation of familial life cannot be considered a relevant particular circumstance for granting a priority criterion, no more so than the difficulties in organising transport between the home and the school.

Because the Complaints Board can only assess the legality of the decisions contested before it, and because the regulatory framework within which the disputed decision was taken clearly excludes the location of the home and the constraints on the organisation of familial or professional life, the Board must reject the applicants' argument that the distance between the home and the assigned school is too great.

It follows that the applicant's arguments cannot be accepted as well-founded given that they are essentially based on the location of the School in relation to their home or the father's workplace and the consequences thereof, direct and indirect.

ON THESE GROUNDS, the designated judge rapporteur

D E C I D E S

Article 1: The appeal of Ms [REDACTED] and Mr [REDACTED] registered under No **22/44**, is dismissed.

Article 2: This reasoned order shall be notified in accordance with the conditions under Articles 26 and 28 of the Rules of Procedure.

A. Ó Caoimh

Brussels, on 25 August 2022

Original version: EN

On behalf of the Registry,

Nathalie Peigneur

Under Article 40a of the Rules of Procedure, this order "may exceptionally be referred to a section composed of three members at the express request of a party based on a particularly serious ground and made within one month after notification of the decision given."