

Facts of the case and arguments of this application

1.

On 5 June 2024, the applicant lodged an appeal against the decision of the Central Enrolment Authority dated 25 April 2024, disputing the linguistic section in which her daughter, [REDACTED], was offered a place.

This case was registered under No 24/40.

By reasoned order dated 9 July 2024, the rapporteur appointed by the Chairman pursuant to Article 32 of the Rules of Procedure (hereinafter, the "RP") has rejected this appeal as inadmissible *ratione temporis*, stating that:

"In this instance, the disputed CEA decision was notified on 25 April 2024 and indicated clearly that the deadline for lodging an appeal expired on 10 May 2024.

The initial appeal was lodged on 5 June 2024, manifestly after the deadline for receipt of same.

The applicant herself recognises that "Indeed, the deadline to launch an appeal was clearly indicated and I oversaw(sic) it because I was busy with urgent tasks at work".

The fact that the European School, Brussels III would have extended several times - as alleged - the administrative delay to complete the enrolment file with the father's consent is not relevant.

The rules governing the deadlines for lodging legal procedures before a judicial authority are a matter of public policy and mandatory; the Complaints Board is required to dismiss any appeal which fails to comply with these rules, notwithstanding what the administration may have allowed previously".

2.

It is against this reasoned order 23/40 that the applicant is now lodging an application for referral to a section composed of three members, pursuant to Article 40a of the RP, which requires "*a particularly serious ground*".

3.

In support of her application, the applicant claims the following:

"In line with Article 40a of the Rules of Procedure I request that this reasoned order is referred to a section composed of three members based on a particularly serious ground, namely discrimination and violation of the Treaty on the Functioning of the European Union (Articles 10, 18 and 19) and the Charter of Fundamental Rights of the European Union (Articles 21 and 22), as well as violation of Article 47 of the General Rules of the European Schools.

The European School is discriminating and treating applicants unequally by extending the official deadlines to serve the interests of some, while refusing to extend the official deadlines for others.

I firmly contest the claim in the reasoned opinion from 9 July 2024 that the repeated extension of the official deadline for submitting a complete, valid and admissible application by the European School (Ms [REDACTED]) is not relevant for my appeal.

I insist that the unjustified and repeated extension of the official deadline for submitting a complete, valid and admissible application, made to serve the interests of Mister [REDACTED], is highly relevant and directly related to my appeal in the following ways:

- 1) If the European School (Ms [REDACTED]) would not have repeatedly extended the official deadline for submitting a complete, valid and admissible application, I would not have had to appeal the language decision of the European School
- 2) If the European School (Ms [REDACTED]) would not have extended the already extended deadline for submitting a complete, valid and admissible application, I would not have been forced to educate my daughter in French, while I speak five other languages, four of which on a daily basis and while I have been communicating with the father of [REDACTED] exclusively in English.

I insist that the primary evidence I have provided to the Complaints Board (see attached email exchanges with Ms [REDACTED] and Ms [REDACTED]) is carefully and thoroughly examined by the complaints board and the section composed of three members.

Here is what happened in chronological order:

- On 30 January 2024 the European School received an incomplete and inadmissible application for enrolment, which did not contain the requested "unconditional consent by the second legal representative" as the father of [REDACTED], Mister [REDACTED], who lives in the Flemish part of Belgium, refused to give such unconditional consent, insisting that [REDACTED] is educated in French.

- On 1 February 2024 the European School wrote that the application was not admissible and that in order to be admissible the second legal representative should send an “unconditional consent”.
- On 1 February 2024 the second legal representative, Mister [REDACTED], replied to the European School that he will not give an “unconditional consent” and that [REDACTED] should be educated in French
- On 12 February 2024 the European school wrote, again, that it needed an “unconditional consent”, because without it the application was inadmissible. The European School announced in writing that the extended deadline for Mister [REDACTED] to submit this unconditional consent was 26 February 2024.
- On 27 February 2024 I wrote to the European School that the extended deadline (namely 26 February 2024) had passed and that Mister [REDACTED] failed to provide an unconditional consent by that extended deadline. I requested from the European School proof that the enrolment application was inadmissible, due to the fact that the second legal representative Mister [REDACTED] repeatedly refused to submit an unconditional consent, arguing that our daughter, whom he sees only every second weekend, should be educated in French.
- On 27 February 2024, instead of providing proof for the expiration of the extended deadline as requested by me, the European School (Ms [REDACTED]) again extended the already extended deadline to 28 February 2024, 4 pm, including in copy Mister [REDACTED]
- On 28 February 2024 Mister [REDACTED] sent to the European School “Document de reprises des energies Electricite et/ou gaz” instead of the “unconditional consent” that the European school requested.
- On 28 February 2024 the European School again wrote to Mister [REDACTED], reminding him that the document he submitted is not the “unconditional consent” which is needed for a complete, valid and admissible application. Ms [REDACTED] did that, even though she knew that I am appealing the decisions of the French speaking family court, which 1) did not recognise my German citizenship, arguing I was not a German citizen even though I had presented a copy of my German ID, 2) did not allow the enrolment of our daughter in a German speaking kindergarden, 3) did not allow the removal of our daughter to [REDACTED] together with me (140 km away from Brussels), while at the same time failing to order the removal of our daughter to the Flemish part of Belgium where the father of [REDACTED] lives, thus effectively preventing me from exercising my right to a reside in the country that I am a citizen of, where my partner and my father live.
- On 28 February 2024 Mister [REDACTED] wrote in his email to the European School: “*Dans le cas d’ une inscription en langue allemande, je serai contraint de mettre mon véto à l’ inscription de [REDACTED] conformément aux décisions des tribunaux Belge* », which is definitely not an unconditional consent.

The unjustified and repeated extension of official deadlines by the European School (Ms [REDACTED]), made to serve the interests of the Belgian citizen Mister [REDACTED], created significant damage to me. I would like to ask the complaint board to carefully examine the attached complaint sent by Dr. [REDACTED] to the European Court of Human Rights, who found severe violation of my human rights, namely of my right to a fair trial, my right to a fair evidence collection and evidence interpretation, my right to an effective legal remedy, my right to family life, my right to reside in the country that I am citizen of etc.

Furthermore, I contest the claim in the reasoned order that my appeal should be dismissed because I received the language I wanted.

Frist of all, the European School received evidence that I was forced by the Belgian French speaking family and appeal courts to indicate French as the main language of education of [REDACTED], as stipulated in the 6 July 2023 judgement.

Second, the language policy of the European School is not to enrol children in the wish language of their parents, but to enrol children in their mother/dominant language. See Article 47 of the General Rues of the European Schools, which stipulates: (...)

Many colleagues and parents told me that I cannot enrol my daughter in the English-speaking section of the European school, because English is not her mother/dominant language, even though the father of [REDACTED] and I have communicated exclusively in English.

I understand from the reasoned order that my appeal of the language decision was rejected due to the fact that I had missed the official deadline. Due to my failure to meet the official deadline to launch an appeal against the language decision of the European school, which determined French as a first language, the European School refuses to examine my complaint on substance and the evidence that I have presented, namely that: 1) I am a German and Bulgarian national; 2) I speak five languages other than French, four of which I speak on a daily basis; 3) the father of [REDACTED] is according to official information by the Belgian national register a Dutch speaking Belgian, living in the Flemish part of Belgium, whose two sons from two different mothers live in the Flemish part of Belgium attending a Dutch speaking school/nursery; 4) the common language of [REDACTED]'s parents has exclusively been English.

Should the complaints board refuse to examine my appeal on substance due to the fact that I had failed to meet the official deadline for launching an appeal, I request that the complaint board declares the enrolment application for [REDACTED] inadmissible, due to the fact that the second legal representative Mister [REDACTED] refused to submit an “unconditional consent” even within the extended deadline, 26 February 2024, as stipulated by the European school.

Otherwise, the decisions by the European school to insist on the respect of official deadlines for some applicants, while repeatedly extending official deadlines to serve the interests of others, would be discriminating.

I would like to ask the complaint board, the section composed of three members, to give in its reasoned order clear answers to the following questions:

- 1) Why was the enrolment application of [REDACTED] admitted when it was not admissible?
- 2) Why was the official deadline for the submission of a complete, valid and admissible application extended to 26 February 2024, when it was clear from the emails by Mister [REDACTED] that he refuses to give an unconditional request?
- 3) Why did the European School refuse to give me proof on 27 February 2024 that the extended deadline for the submission of a complete, valid and admissible enrolment application (namely 26 February 2024) had expired?
- 4) Why did the European School again extend the already extended deadline to 28 February 2024, when it was clear from the emails Mister [REDACTED] sent to the European School that he systematically refuses to give an unconditional consent and insists that our daughter is educated in French?
- 5) Why did the European School on 28 February 2024 again remind Mister [REDACTED] to submit an “unconditional request” after he submitted a “Document de reprises des energies Electricite et/ou gaz”?
- 6) Why did the European School declare the enrolment application for [REDACTED] admissible when Mister [REDACTED] wrote in his email from 28 February 2024: “*Dans le cas d’ une inscription en langue allemande, je serai contraint de mettre mon veto à l’ inscription de [REDACTED] conformément aux décisions des tribunaux Belge* », which is definitely not an unconditional consent.
- 7) Why is the European school extending the official deadlines to serve the interests of some applicants and not extending official deadlines for others, refusing to examine appeals on substance?
- 8) If I request from the Belgian courts that [REDACTED] is educated in English, the common language of her parents, would the European school agree to that and give [REDACTED] a place in an English-speaking section? Please see the judgement from 6 July 2023, which you had received previously, arguing that I had not requested the education of the child in English and that therefore the child should be educated in French, the favourite language of Mister [REDACTED], which according to the French speaking family judge is the most popular language in the capital of a country with 3 official languages.

Assessment of the Chairman of the Complaints Board

4.

Article 40a of the Rules of Procedure of the Complaints Board states the following:

"1. Irrespective of the revision procedure provided for in Articles 39 and 40, decisions taken in accordance with the conditions laid down in Articles 20a and 32 of these Rules 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.

2. The decision to refer or to reject the request for referral shall be taken by the Chairman of the Complaints Board or, should the case have been heard by the latter, by the Chairman of the section to which it could be assigned. There shall be no right of appeal against this decision.

3. In the event of referral, the section composed of three members may not include the member of the Complaints Board who sat as a single judge. It shall give a ruling in the form of a decision in accordance with the ordinary Rules of Procedure."

5.

This application, duly assessed as being an application for referral to a section composed of three members, has been lodged within the given deadline of one month after notification of the order of 9 July 2024: it is admissible *ratione temporis*.

It remains to examine whether the grounds invoked by the applicant are "*particularly serious*", a phrase that must be interpreted in light of the exceptional, and therefore restrictive, nature of these proceedings once the Complaints Board was granted jurisdiction to rule "*in the first and final instance*"

(Article 27.2 of the Convention defining the statute of the European Schools).

Referral to a section composed of three members cannot be assimilated to any form of remedy, a case taken to the Appeal Court, or an appeal lodged by any other means organised within many national legal systems for the purpose of raising the dispute with a superior court.

This is why the application for referral must be based on "*a particularly serious ground*" regarding the application or interpretation of the Convention defining the statute of the European Schools or provisions used to give it effect, or of a serious question of a general nature, not limited to a particular case, which merits examination (see, by way of analogy, Article 73 of the Rules of Court of the European Court of Human Rights which outlines requests for referral to the Grand Chamber, and Paragraph 2 thereof which states that "*Reasons need not be given for a refusal of the request.*").

6.

In this instance, it must be acknowledged that the elements alleged by the applicant do not meet the conditions required by Article 40a of the RP as her application does not pose a particularly serious or novel question of a general nature.

The applicant actually far exceeds this purpose: in the questions she asks, she is requesting additional explanations or justifications related to the grounds for the reasoned order, which she is fundamentally challenging.

Her requests and questions demonstrate in themselves a misunderstanding of the legal considerations underpinning the reasoned order of 9 July 2024 and/or

unfamiliarity with the rules of admissibility, within the limits of the jurisdiction granted to the Complaints Board by Article 27 of the Convention defining the statute of the European Schools and of the devolved role of each instance within the *sui generis* system of the European Schools (Central Enrolment Authority and Complaints Board amongst others).

7.

Indeed, the applicant's initial application, lodged under application no. 24/40, was rejected as inadmissible *ratione temporis*.

The reasoned order of 9 July 2024 cites the relevant articles of the Rules of Procedure and the factual reasons for which it was declared inadmissible.

This decision is in line with the constant case-law of the Court of Justice of the European Union according to which “*questions concerning the admissibility of an action for annulment constitute a question of public policy which the EU Courts may consider at any time, even on their own initiative*” (Judgment of the Court of 21 September 2023, C-478/21 P and case-law cited).

Once it had been established that the appeal had been lodged after the deadline, the decision could only declare the appeal inadmissible, motivating as it did.

8.

The right to an effective remedy (or to a fair trial) - a general legal principle that is applied within the legal system of the European Schools - must be considered to be satisfied given that means of appeal are available to contest decisions

adopted by the various bodies of the European Schools, under the conditions set out in Article 27 of the Convention defining the statute of the European Schools and in the legislation made to give it effect.

The material content of this right to an effective remedy can be resumed as constituting the right to receive a reasoned legal response from a competent jurisdiction - which is not, however, required to respond to all the pleas and arguments invoked by the parties; in this context, a simple decision of inadmissibility already satisfies the right to an effective remedy, even if it does not make reference to the alleged substantive pleas.

9.

For all these reasons, the applicant's request for a referral to a section composed of three members must be rejected.

FOR THESE REASONS, the Chairman of the Complaints Board

D E C I D E S

Article 1: The application for referral to a section composed of three members, lodged by Ms [REDACTED] and registered under no. 24/54, is rejected.

Article 2: The parties shall be notified of this decision under the conditions set out in Articles 26 and 28 of the Rules of Procedure.

Eduardo Menéndez Rexach

Brussels, 5 September 2024.

Original version: EN

For the registry,

N. Peigneur

In virtue of Article 40a Para. 2 of the Rules of Procedure, ***"There shall be no right of appeal against this decision."***