

Appeal 20-69

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Translation

COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

(2nd section)

Decision of 26 October 2020

In the case registered with the Registry of the Complaints Board under **No 20-69**, the subject of which is an appeal lodged on 18 August 2020 by Mr ■■■■■ and Ms ■■■■■, residing at D ■■■■■ against the decision of the Secretary-General of 7 August 2020 whereby he rejected their administrative appeal against the decision of the Director of the European School, Frankfurt of 24 June 2020 offering their son ■■■■■ a place in the German language section as a Bulgarian SWALS,

the Complaints Board of the European Schools, 2nd section, composed of:

- Mr Andreas KALOGEROPOULOS, Chairman of the 2nd section and rapporteur,
- Mr Pietro MANZINI, member,
- Mr Michel AUBERT, member,

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

in the light of the written observations presented on the one hand, by the applicants and on the other, on behalf of the European Schools, by Mr Marc

Snoeck, barrister at the Brussels Bar,

after having decided, as allowed by Article 19 of the Rules of Procedure, that the case would not be heard at a public hearing, in view of the impossibility of organising such a hearing on account of the health conditions,

delivered, on 26 October 2020, the following decision, the grounds for and the operative part of which appear below.

Facts of the dispute and arguments of the parties

1.

The applicants and their children, who are all of Bulgarian nationality and whose mother tongue is Bulgarian, settled in Germany in July 2016 with their older daughter and their son, ■■■■■, who was a year old at the time; ■■■■■ went to a German crèche and then to a German nursery school. Their older daughter attends the European School, Frankfurt, where she is on roll in the primary cycle of the German language section as a Bulgarian SWALS (L1 Bulgarian and L2 German).

2.

In February 2020, the applicants submitted an application for their son ■■■■■'s enrolment at the European School, Frankfurt, in the nursery cycle (N2) of the German language section (L1 German and L2 English), claiming that ■■■■■'s dominant language is German.

In the light of the information given on the enrolment form, a doubt emerged regarding the language section (L1) requested and the School decided that [REDACTED] should take comparative tests in German and Bulgarian.

After having met the parents, the School's Management notified the applicants during March of its decision to admit the pupil to the second year of the nursery cycle in the German language section and to get him to take comparative German and Bulgarian language tests to determine his Language 1.

On 19 May 2020, the School's Director invited the applicants and their son [REDACTED] to comparative language tests, which were conducted on 3 June 2020 (first the test in German and then the test in Bulgarian).

3.

The results and assessments of these tests were as follows:

In German:

1. Listening skills: 5/10 (average).

2. Speaking skills:

2.1. Fluency: 6/10 (average).

2.2. Vocabulary: 6/10 (average).

2.3. Grammar: 4/10 (below average).

Conclusions: 5/10 (average). The pupil would be capable of going into the language section requested and the year group requested: With some difficulty.

In Bulgarian:

1. Listening skills: 7/10 (above average).

2. Speaking skills:

2.1. Fluency: 6/10 (average).

2.2. Vocabulary: 7/10 (above average).

2.3. Grammar: 5/10 (average).

Conclusions: 7/10 (above average). The pupil would be capable of going into the language section requested and the year group requested: With some difficulty.

4.

On 24 June 2020, the School's Deputy Director notified the applicants of the decision, taken following the tests (attached to that decision), and following a meeting held on 15 June between the Director and the teachers who had administered the tests, to enrol the applicants' son in the German language section as a Bulgarian SWALS (L1 Bulgarian and L2 German).

5.

On 8 July 2020, the applicants lodged an administrative appeal against that decision, which was rejected by the Secretary-General as being unfounded on 7 August 2020.

6.

It was against that decision, and that of 24 June 2020, that this contentious appeal was lodged on 18 August 2020.

The applicants request the Complaints Board to annul the decision of 24 June 2020 and that of the Secretary-General of the European Schools of 7 August 2020.

They also request that the Complaints Board bring its decision to be taken to the attention of the Board of Inspectors and of the Board of Governors of the

European Schools, so that those bodies change the procedures and regulatory provisions designed to determine a pupil's mother tongue / dominant language at the time of his or her enrolment, in order to guarantee the examiners' independence and impartiality, their supervision and the child's best interests.

7.

In support of their appeal, the applicants put forward a line of argument that calls into question both the decision to recognise Bulgarian as their child's dominant language and the methods and criteria applied to that end. Their arguments can essentially be regarded as together intended to support the following pleas:

1) An infringement of Article 47(e) of the GRES and a manifest error of assessment, in that the disputed decision allegedly takes account solely of the result of the comparative tests (*lack of "comprehensive evaluation" of the dominant language*).

2) A manifest error of assessment, in that the contested decision allegedly fails to take account of the particular circumstances associated with the Covid-19 health crisis (case of *force majeure*) and of their negative consequences, which explains why [REDACTED] was not able to demonstrate his full potential in the test in German, namely:

- a) the reduction in social contacts during the lockdown period: [REDACTED] had no longer been attending the German nursery school since early March 2020 and had been deprived of his social activities, which are mainly in German;
- b) the lengthy period of time between the enrolment application (February) and the comparative language tests (June);

c) the negative effect of the number of examiners present during the language tests (intimidating for a five-year-old child after four months of social isolation).

3) Procedural irregularities affecting the Bulgarian language test and not allowing a comparison with the one in German; the digital form of the report on the Bulgarian language test calls into question its authenticity and its integrity.

4) A lack of comments justifying the marks in the report on the German language test, meaning that the results are not comparable with those in the Bulgarian language test; the applicants see in this a failure to state reasons, thus infringing the document '*Quality Assurance and Development in the European Schools*' (2006-D-102-en-6).

5) A manifest error of assessment affecting the result of the Bulgarian language test, the final mark in which, in their view, is an over-assessment.

6) An infringement of Article 47(e) of the GRES, in that the contested decision of 24 June 2020 was allegedly not adopted by the School's Director and in that the test results were not signed by the Director.

7) A failure to state reasons, in that the wording of the decision of the Director (the only person responsible in the process of determination of the dominant language) allegedly does not enable it be demonstrated that he determined the dominant language on the basis of a comparative examination, taking account of the test results and of the information provided by the parents.

8) A failure to state reasons and a manifest error of assessment in that the contested decision does not show that the Director took account of the

particular circumstances declared by the parents, when the test results are not significantly different (they maintain that they are even identical).

9) The existence of a conflict of interest on the part of the Bulgarian language teachers who administered the language test, a lack of internal control and non-compliance with high competence criteria; the applicants call into question here the professionalism, the impartiality and the integrity of the teachers concerned (hence, according to them, the over-assessment of the final mark for the Bulgarian language test), on account of the fact that their post is allegedly dependent on the number of pupils on roll as Bulgarian SWALS in the School. Finally, the applicants complain that the Director's decision does not mention the procedures open to them to appeal against it.

8.

In their response, the European Schools request the Complaints Board to rule that the appeal is unfounded and to order the applicants to pay the costs of the proceedings, evaluated at the sum of €800.

They contend first of all that the appeal is inadmissible *ratione materiae* in that it requests the Complaints Board to bring its decision to the attention of the Board of Inspectors and of the Board of Governors of the European Schools, with a view to inviting those bodies to review the process of determination of mother tongue/dominant language.

As regards the substance, the European Schools reject the nine pleas as being unfounded: they contend essentially that the procedure provided for in Article 47(e) of the GRES and the Language Policy of the European Schools were

respected and that the methodology used in conducting the comparative language tests complies in all respects with the guidelines disseminated internally in the document '*Establishment of a harmonised procedure for the organisation of language tests (Article 47(e) of the General Rules of the European Schools)*' (2018-09-D-23).

They contend that the disputed decision of the Director of the European School, Frankfurt of 24 June 2020 is not vitiated by any procedural irregularity or any manifest error of assessment.

9.

In their reply, the applicants essentially maintain their initial claims, developing them at length, in response to the line of argument developed by the European Schools.

Findings of the Complaints Board

The appeal's admissibility

10.

This appeal's admissibility *ratione temporis* will not be discussed.

11.

The appeal is also admissible in that it seeks annulment of the contested

decisions.

On the other hand, it is inadmissible *ratione materiae* in that it requests the Complaints Board to bring its decision to be taken to the attention of the Board of Inspectors and of the Board of Governors of the European Schools, so that those bodies change the procedures and regulatory provisions designed to determine a pupil's mother tongue / dominant language at the time of his or her enrolment in the European School system.

Article 27.2 of the Convention defining the Statute of the European Schools, confirmed by the settled and consistent case law of the Complaints Board, states that it has sole jurisdiction in the first and final instance in any dispute regarding "*the legality of any act based on the Convention or rules made under it adversely affecting*" all persons covered by it. It is only when a dispute of a financial character is concerned – which is not the case here – that the Complaints Board has "*unlimited jurisdiction*", allowing it not only to annul an administrative decision but also to change it (see, *inter alia*, decisions of the Complaints Board 13-43 of 30 September 2013, 14-42 of 24 September 2014, 15-49 of 10 October 2015 and 19-59 of 21 February 2020).

In its capacity as a judicial body, the Complaints Board has jurisdiction to annul an *individual act* adversely affecting a person, but it does not have jurisdiction to either issue injunctions to the other bodies of the European Schools or challenge the Board of Governors or the Board of Inspectors.

Moreover, whilst judgments of the Complaints Board are binding, pursuant to Article 27.6 of the Convention, this is "*on the parties*", i.e. solely on the parties to the proceedings, and not on third parties, such as the Board of Governors

or the Board of Inspectors in this particular case.

Substance

12.

The regulatory framework in which the language section of a pupil at the time of his or her enrolment in the European School system is determined first needs to be recalled.

Article 47(e) of the GRES is worded as follows:

"A fundamental principle of the European Schools is the teaching of mother tongue/dominant language as first language (L1).

This principle implies the pupil's enrolment in the section of his/her mother tongue/ dominant language where such a section exists.

This principle may be waived only where the child has been educated in a language other than his/her mother tongue/dominant language for a minimum of two years at primary or secondary level. The European Schools will presume in that case that the child will be capable of continuing his/her schooling in the language in question.

In schools where the section corresponding to a pupil's mother tongue/dominant language does not exist, he/she will generally be enrolled in one of the vehicular language sections. He/She will attend the classes in his/her mother tongue/ dominant language organised for so-called SWALS (Students Without A Language Section) as L1.

Parents will not be free to choose their child's first language (L1), its determination being the responsibility of the school's Director. L1 must

correspond to the child's mother tongue or dominant language, in the case of multilingual children, the dominant language being the one of which they have the best command.

Should there be any dispute about the pupil's L1, it will be the Director's responsibility to determine which language it is, on the basis of the information provided by the pupils' legal representatives on the enrolment form and by requiring the pupil to take comparative language tests, organised and under the control of the school's teachers. The tests will be organised whatever the pupil's age and teaching level, i.e. including the nursery cycle.

(...)."

13.

The Complaints Board has already occasion numerous times to rule on the nature, the scale and the outlines of the provisions applicable to determination of the language section (see in particular its decisions 14/17, 15/51 and 18/27). It is thus worth reiterating the following:

A fundamental principle of the European Schools is the teaching of mother tongue/dominant language as first language (L1), i.e. the language of which the child has the best command, so as to give him or her a solid grounding that will enable him or her to have a well-rounded education and will facilitate, subsequently, gradual learning of other languages. This principle must be regarded as being specifically conceived in the child's best interests (see, to that effect, decision 16/20 – point 24).

The GRES do not recognise the parents' right to have their child admitted to the language section of their choice, as that decision lies with the School's Director, who must determine, following the procedure prescribed, the

language section that is appropriate for the child (see decisions 11/05-08, 13/61 (point 14), 13/37, 14/17 and 18/21: *"6. It follows from the provisions reiterated above that parents are not free to choose the dominant language. Should there be any dispute, the decision is taken by the Director of the School. The decision must be taken on the basis of comparative language tests and of the information provided by the child's legal representatives on the enrolment form."*

The appropriate language section must be the one corresponding to the child's mother tongue or dominant language, those languages not necessarily being the same; the child's dominant language is the one of which he or she has the best command, *"the first language learned by the child and serving as a basis for the structuring of his or her learning"*; or the language of which the child has a sufficient command to be able to follow the curriculum successfully and in the best possible conditions, in order to ensure his or her academic success.

To determine that language, and hence the appropriate language section, the School's Director can validly take as a basis the facts indicated by the parents on the enrolment form and, should there be any doubt or dispute, the result of a comparative language test *"organised and under the control of the School's teachers"* (decision 14/15 – point 17):

"In accordance with the settled and consistent case law of the Complaints Board, it clearly follows from those provisions that the choice of language section is not a matter for the parents alone but must result from a pedagogical assessment made by the school in the child's best interests, in the light of the information provided by his or her parents and of the opinion of experts (see decision 14/17 of 28 July 2014)." This decision is pedagogical in nature and cannot, therefore, be subject to judicial review, unless there has been a

procedural irregularity or a manifest error of assessment (see decisions 12/23, 12/31, 12/48, 13/41 and 17/13).

Pedagogical assessment is a matter for the teaching staff and neither pupils' legal representatives nor the Complaints Board can supersede them in that regard (see decision 19/55 – point 7: *"7. According to the settled and consistent case law of the Complaints Board, pedagogical and academic assessments of pupils, both generally and with respect to language tests designed to determine the language section at the time of enrolment, are a matter solely for teachers and cannot be submitted to the Complaints Board for judicial review" (...).*

14.

It should further be added that the Language Policy of the European Schools, approved by the Board of Governors at its meeting of 9 to 12 April 2019, states that *"In this policy, the term dominant language will be used as the language in which a bi- or multilingual child "has the highest level of proficiency in especially education-related domains of language use, and which he/she uses most often (or is likely to use most often) with significant interlocutors (e.g. parents, siblings, caregivers, close friends, teachers)". This term neither replaces, nor diminishes the significance of the concept of mother tongue or home language."*

Moreover, as regards the arrangements for the organisation of language tests, the Complaints Board has on several occasions established the principle whereby teachers enjoy a degree of autonomy, provided that the comparable character of the test results is guaranteed: thus, in its decision 16/22 of 1 August 2016, the following is stated: *"11. It is true that the different*

schools have autonomy to make practical arrangements for language tests and that the GRES do not prohibit teachers from shaping these tests in such a way as to form an opinion of the linguistic knowledge of the children who have to take the said tests. Nevertheless, the intention of the concept of 'comparative language tests', to which Article 47(e) of the said GRES refers, is for the methods used, even though they need not be identical, to guarantee that language skills are tested objectively, according to measurable and comparable standards, so that the results are truly comparative."

As reiterated in decision 17/23 of the Complaints Board of 2 August 2017, *"language tests must be conducted in such a way as to lead to an objective comparison of the results."*

15.

It is in that regulatory context thus recalled that the pleas put forward in support of this appeal need to be considered.

16.

The applicants invoke firstly an infringement of Article 47(e) of the GRES and a manifest error of assessment, in that the disputed decision allegedly takes account solely of the result of comparative tests (*lack of "comprehensive evaluation" of the dominant language*).

Firstly, it was in the light of the information given by the applicants on the enrolment form that a doubt emerged about the language section (L1) requested and the School therefore decided that [REDACTED] should be asked to

take comparative language tests in German and in Bulgarian: the procedure thus followed unquestionably complies with what is prescribed in the fifth paragraph of Article 47(e) of the GRES.

Secondly, not only did the information provided by the applicants themselves on the enrolment form justify those tests but it also corroborated the results of the tests and justifies ██████'s enrolment in the German section as a Bulgarian
SWALS: "*Pupil's nationality: Bulgarian, Pupil's mother tongue/dominant language: Bulgarian/German, Linguistic competences (number of years' study): German (3), Bulgarian (4), English (1), Languages spoken at home: Father: Bulgarian and Mother: Bulgarian, Schooling background (language): German, Parents' nationality: Bulgarian.*"

The applicants have no basis for changing that information in appeal terms, by asserting the following: *a. Mostly German with his Mother; b. Mostly German with his Father and sometimes a mixture of German and Bulgarian (in the same sentences); c. Only German with his Sister; d. Our Son speaks with his football teacher, friends and teammates only in German; e. With others German).*

The reason is that the legality of an administrative decision has to be assessed on the basis of the information available to the authority at the time when it took the decision.

In conclusion, this plea is unfounded.

17.

The applicants invoke a manifest error of assessment in that the contested

decision allegedly fails to take account of the particular circumstances associated with the Covid-19 health crisis and of their negative consequences, which explains why ██████ was not able to demonstrate his full potential in the test in German, namely:

- a) the reduction in social contacts during the lockdown period: ██████ had no longer been attending the German nursery school since early March 2020 and had been deprived of his social activities, which are mainly in German;
- b) the lengthy period of time between the enrolment application (February) and the comparative language tests (June);
- c) the negative effect of the number of examiners present during the language tests (intimidating for a five-year-old child after four months of social isolation).

It should be pointed out that since the amendment approved in December 2018, the end of Article 50 of the GRES has been worded as follows: *"with reference to the requirements set out in Articles 47 (a) to (d), 48 and 49 (c) and (d)."*

Point (e) of Article 47, concerning determination of mother tongue/dominant language, has therefore been removed from the scope of Article 50, which allows the Director to take account of particular circumstances; Article 50 is therefore no longer intended to be applicable to questions pertaining to determination of Language 1.

Decision 13/41 of the Complaints Board, quoted by the applicants, predates this amendment of Article 50 and is therefore inoperative in the case in point.

Moreover, and in any event, the circumstances associated with the health

crisis and with the mandatory lockdown affected everyone and are not, therefore, "*particular*" to [REDACTED]'s situation.

The language test reports did not have to mention any particular circumstances as the examiners were charged with assessing the pupil's language proficiency level and nothing else.

Finally, as the Schools point out, the presence of two examiners can be regarded as favourable in terms of objectivity and cannot have had an adverse effect, since two examiners were present for each of the two tests (the conditions were therefore indeed identical).

In conclusion, this plea is unfounded.

18.

The applicants also contend that procedural irregularities affect the result of the test in Bulgarian and do not allow a comparison to be made with the one in German; the digital form of the report for the test in Bulgarian thus allegedly calls into question its authenticity and its integrity.

The Complaints Board cannot see how the authenticity of the report on the test in Bulgarian could be called into question; the report is signed (handwritten signature) by the duly identified two examiners and contains their assessments; in addition, it allows perfect comparability with the report on the test in German.

In conclusion, this plea is unfounded.

19.

The applicants' fourth plea is based on a lack of comments justifying the marks in the report on the German language test, meaning that the results are not comparable with those in the Bulgarian language test; the applicants see in this a failure to state reasons.

Admittedly, the report on the test in German does not contain comments, unlike the report on the test in Bulgarian; nevertheless, the marks awarded for each of the skills tested in the two tests enable there to be an easy and objective comparison of the results.

Moreover, the marks can be sufficient in themselves, without needing to be *justified* by a comment; it should be remembered that comparative tests are only preparatory acts, preceding the decision that has to be taken subsequently by the Director; such tests are not in themselves decisions.

In conclusion, this plea is unfounded.

20.

The applicants go on to invoke a manifest error of assessment affecting the result of the Bulgarian language test, the final mark in which, in their view, is an over-assessment.

The applicants consider that the final mark in the Bulgarian test is an over-assessment (7 instead of 6), since the arithmetical mean is 6.25 / 10.

That is true, but compared with the arithmetical mean of the German test (5.25 /10), it is in any case higher and allows the conclusion to be drawn that the child's skills are better in Bulgarian than in German.

It should further be added that the final marks, albeit different, result in an identical conclusion ("*with some difficulty*"), but comparison of the marks awarded for each skill tested reveals a better command of Bulgarian.

In German:

1. Listening skills: 5/10 (average).
2. Speaking skills:
 - 2.1. Fluency: 6/10 (average).
 - 2.2. Vocabulary: 6/10 (average).
 - 2.3. Grammar: 4/10 (below average).

In Bulgarian:

1. Listening skills: 7/10 (above average).
2. Speaking skills:
 - 2.1. Fluency: 6/10 (average).
 - 2.2. Vocabulary: 7/10 (above average).
 - 2.3. Grammar: 5/10 (average).

Finally, it should be remembered that it is not up to the Complaints Board to review pedagogical assessments (hence, marks), unless there has been a manifest error of assessment – that the Complaints Board cannot find in the case in point.

In conclusion, this plea is unfounded.

21.

The applicants claim that Article 47(e) of the GRES was infringed, in that the contested decision of 24 June 2020 was allegedly not adopted by the School's Director and in that the test results were not signed by the Director.

The decision of 24 June 2020 was *notified* by the School's Deputy Director for the nursery and primary cycle (Ms [REDACTED]) but there is nothing to indicate that it might not have been *taken* by the School's Director (Mr [REDACTED]): on the contrary, it is clear from the wording of the decision itself that it was taken after consideration of the results of the comparative tests and on the basis of a discussion on 15 June between Mr [REDACTED] and the teachers who had been examiners.

Moreover, reports on tests have to be signed by their authors and by them alone (i.e. the examiners, who are responsible for the pedagogical assessment), something which is indeed the case; no provision requires them to be signed by the School's Director, and with good reason, since he is not their author.

In conclusion, this plea is unfounded.

22.

The applicants invoke further a failure to state reasons, in that the wording of the decision of the Director (the only person responsible in the process of determination of the dominant language) allegedly does not enable it be demonstrated that he *determined* the dominant language on the basis of a comparative examination, taking account of the test results and of the

information provided by the parents.

If the applicants' arguments are to be understood rightly, the existence of a "*comparative process*" has allegedly not been demonstrated.

This plea does not differ essentially from the first plea, which is unfounded.

It is difficult to understand how the "*comparative process*" might not have taken place, since the tests, conducted in comparable conditions (length, day, place, number of examiners, skills assessed), were carried out in the two languages concerned and the disputed decision specifically refers to the results of the tests, which were appended.

In conclusion, this plea is unfounded.

23.

The applicants also claim encore that there was a failure to state reasons and a manifest error of assessment in that the contested decision does not show that the Director took account of the particular circumstances declared by the parents, when the test results are not significantly different (*individual outcomes are neither compelling nor genuinely different*).

First of all, the test results are not identical, as the applicants attempt to contend.

Admittedly, the difference is not very marked, but it exists.

It is common for children who attend the European Schools to have good skills in several languages, which is exactly why it is difficult to determine their dominant language and why there is a need to administer comparative tests and to take account of the information provided by the parents on the enrolment form.

Nor is it rare for results to be very similar, especially in the case of very young children for whom tests cannot be as elaborate as those for older pupils, such as, for example, written analysis of a text read or an essay, which cannot be demanded of a nursery school pupil.

In the case in point, comparison of the marks awarded for each skill tested allows it to be considered that the conclusion that the pupil has a slightly better command of Bulgarian is not manifestly erroneous.

In conclusion, this plea is unfounded.

24.

Finally, the applicants claim that there is a conflict of interest on the part of the Bulgarian language teachers who administered the language test, a lack of internal control and non-compliance with high competence criteria.

The applicants call into question here the professionalism, the impartiality and the integrity of the teachers concerned – hence, according to them, the over-assessment of the final mark for the Bulgarian language test (fifth plea) – on account of the fact that their post is allegedly dependent on the number of pupils on roll as Bulgarian SWALS at the European School, Frankfurt.

First of all, it goes without saying that under no circumstances can the Complaints Board endorse those accusations, which are gratuitous and unsubstantiated and which commit only the applicants.

Secondly, teachers in the European School system are best suited to assess the competences required to follow the curricula in those schools successfully and in this particular case, Bulgarian teachers are best placed to assess linguistic competence in Bulgarian, something which is obviously applicable to all languages.

What the applicants would like in reality is for the examiners to be external to the European Schools or teachers from a European School other than the one that the pupil will attend. It is probably for cost and logistical constraints reasons that that is not what the Schools decided to put in place.

In any event, it is not for the Complaints Board to call into question the organisational arrangements for language tests, the Schools enjoying a fairly large measure of autonomy in making them, provided that there is compliance with the provisions applicable.

It should also be noted that the performance of European School teachers is regularly evaluated by the national Inspectors, something which guarantees internal control with respect to their professional skills – contrary to what is alleged by the applicants.

Furthermore, the applicants refer to practices that are allegedly contrary to the objectives introduced by Article 24 of the Charter of Fundamental Rights of the European Union establishing the fundamental principle of the child's best interests. The Complaints Board cannot see which practices are in question or

how the Schools might be accused of not respecting the child's best interests. The reason is that by the applicants' son being enrolled as a Bulgarian SWALS in the German language section, he will be educated in his mother tongue and the language spoken with his parents, whilst at the same time receiving advanced tuition in German as Language 2. He will thus have a command of the country of origin and of that of his country of residence. He will also be educated in the same conditions as his sister.

Finally, under this last plea, the applicants also complain that the decision of the School's Director does not mention the procedures open to them to appeal against it.

Whilst it is indeed regrettable that the disputed decision failed to mention, for the applicants' convenience, the appeal procedures and time periods, the fact remains that on the one hand, as the texts in force stand at present, no regulatory provision imposes such an obligation on the European Schools and on the other, the applicants were able to avail themselves of the remedies open to them, to lodge an appeal and to file a reply (more than 36 pages long); their defence rights were therefore properly respected and exercised.

In conclusion, this plea is unfounded.

25.

It follows from all the foregoing that all the pleas put forward must be rejected and the appeal dismissed in its entirety.

Legal and other costs

26.

Article 27 of the Rules of Procedure provides that: *“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.”*

It is clear from those provisions, which, incidentally, are fully comparable with those in force in most national and international courts, that the unsuccessful party must, in principle, bear the legal and other costs of the proceedings. However, the said provisions allow the Complaints Board to assess on a case by case basis the conditions in which this should be applied.

27.

Pursuant to those provisions and in the light of the European Schools' submissions, the applicants, who are the unsuccessful party in this case, should be ordered to pay the costs of the proceedings.

In the particular circumstances of this case, a fair assessment of the amount of those costs will be made by fixing them at the sum *ex aequo et bono* of €500, which the Complaints Board believes is more proportionate to the circumstances of the case.

ON THESE GROUNDS, the Complaints Board of the European Schools

H A S D E C I D E D A S F O L L O W S :

Article 1: The appeal lodged by Mr [REDACTED] and Ms [REDACTED]
[REDACTED], registered under No 20-69, is hereby dismissed.

Article 2: The applicants are ordered to pay to the European Schools the sum of €500, as legal and other costs of the case.

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

A. Kalogeropoulos

P. Manzini

M. Aubert

Brussels, 26 October 2020

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pp. The Registry,
Nathalie Peigneur