

**Appeal 22/33**

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## **COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS**

### **Reasoned Order of 19 July 2022**

In the case registered with the Registry of the Complaints Board under No **22/33**, concerning an appeal lodged on 5 July 2022 by M. ■■■■■■■■■■ and Ms ■■■■■■■■■■, residing ■■■■■■■■■■, brought against the decision of the Central Enrolment Authority dated 30 June 2022,

**Mr Andreas KALOGEROPOULOS**, Chairman of the 2<sup>nd</sup> section and 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 19 July 2022, the grounds for and operative part of which appear below,

## **Facts and arguments**

1.

During the second enrolment phase for the 2022-2023 school year, the applicants applied for their daughter [REDACTED] to be enrolled in the nursery cycle of the English section at the European School, Brussels I – Uccle.

To justify the submitting of their enrolment application during the second phase, they stated that [REDACTED] was supposed to move to Berlin this summer with her mother and brother; however, after months of intensively looking for affordable accommodation, and amid an inflation-rate of almost 10%, the family decided to stay in Brussels. The brother will continue to attend EEB1, and it is why an enrolment for [REDACTED] at the EEB1-UCC Site is requested.

2.

With its decision dated 30 June 2022, the Central Enrolment Authority (hereinafter the CEA) rejected the enrolment application on the grounds that it was inadmissible, deeming that the applicants had not demonstrated that a case of force majeure had prevented them from completing the enrolment formalities during the first phase.

Consequently, the applicants' daughter has not been granted a place at one of the Brussels European Schools for the 2022-2023 school year.

3.

The current contentious appeal is being lodged against this decision, as

permitted by Article 67, paragraph 2 of the General Rules of the European Schools and Article 14.1 of the Policy on Enrolment for the 2022-2023 school year (hereinafter the PE).

The applicants request that the Complaints Board “*reconsider*” the application, taking into account the following elements:

The applicants are going through a difficult divorce. The second applicant informed her husband in January that she had found a job in Berlin, working for a junior minister in the German government. She was sure to definitely be moving to Germany, with her son and their daughter [REDACTED]. A precautionary application to EEBl would have been superfluous and unnecessary, as [REDACTED] would no longer have lived in Brussels. However, the second applicant ([REDACTED]’s mother) decided unexpectedly in June that she could not afford to move to Berlin, and made the decision to stay in Brussels. These events are entirely beyond the first applicant’s control and explain why the application was submitted during the second phase.

It is added that [REDACTED] is an English native speaker; she should have then a certain priority in the English language section and her presence as a native speaker would enrich the section. Her brother already attends the Uccle school and the first applicant’s three sons (Finlay, [REDACTED] and [REDACTED]) are all graduates of the Uccle school, where they benefited from an outstanding education.

## **Assessment of the designated judge rapporteur**

### ***Regarding the merits,***

4.

This appeal is manifestly unfounded in law under the provisions of Article 32 of the Rules of Procedure for the Complaints Board mentioned above.

In Articles 2.15, 2.16 and 2.18, the 2022-2023 PE provides that:

2.15. *‘Except for applications based on Article 8.4.2.(k), applications for categories I and II pupils MUST be **submitted during the first phase**, from 10 January to 4 February 2022, failing which applications will be inadmissible and will automatically and as of right be rejected’.*

2.16. *‘Only applicants for the enrolment of categories I and II pupils who will be taking up a post with the European Union Institutions as from 1 January 2022 for a minimum period of one year will be allowed to submit their application during the second phase, i.e.*

- *either from 16 May to 10 June 2022,*
- *or from 4 July to 15 July 2022,*
- *or from 16 August to 19 August 2022’.*

2.18. *‘By way of derogation from Articles 2.15. and 2.16., applicants for enrolment will be allowed to submit their applications during the second phase either when the child concerned is being educated outside Belgium during at least half of the 2021-2022 school year (i.e. five months) or when the applicants are able to establish **a case of force majeure** on the basis of documentary*

*evidence produced – otherwise it will be disregarded – when their application is submitted. A case of force majeure consists of the reality of events that are purely objective and beyond the control of the applicant or of the pupil, of such a nature as to unquestionably impede submission of their application during the first phase’.*

5.

In view of the aforementioned provisions, parents already in post with the Institutions and who wish to register their child/children in one of the Brussels European Schools for the school year starting in September 2022 must therefore apply within a very narrow window: they must submit their enrolment application between 10 January and 4 February 2022, *‘failing which applications will be inadmissible and will automatically and as of right be rejected’*, as stated in Article 2.15.

The right to enrol at the European Schools does not exempt the interested parties from complying with the strict deadlines set for submitting enrolment applications, which are particularly important in Brussels given that there are several European Schools, covering numerous language sections and a very large number of pupils. Splitting enrolments into two phases and imposing strict deadlines for the submission of applications are essential measures for smoothly managing the Brussels European Schools and optimising the available places; they are necessary, reasonable and proportionate to their purpose.

As the Complaints Board has clarified on numerous occasions, *‘It is therefore the responsibility of the parents affected by this provision to act with due care, taking all of the necessary precautions to ensure that the application is submitted within the deadline’* (see decisions 19/32 (point 13), 20/58 and 20/64).

All parents who wish to enrol their child/children in the European Schools – or in other schools – must complete the necessary administrative steps while also fulfilling their work and family roles (see decision 19/44, point 10).

6.

In addition, it is the responsibility of the applicants pleading a case of force majeure to justify the submission of their application during the second phase by providing evidence, upon the submission of the application, of the purely objective events beyond their control of such a nature as to unquestionably impede, against their wishes, the submission of their application during the first phase.

It should be remembered that, in this respect, the legality of an administrative decision is assessed when the decision is made, according to the elements that the administrative authority knows or should know at that point in time (see decisions 16/24 (point 7), 16/33 (point 14), 19/21, 19/36, 19/39 and 21/21).

Force majeure is only admissible when an objective situation beyond the control of the applicants has prevented them from submitting the enrolment application during the first phase; according to the established case law of the European Court of Justice, this situation is characterised by the occurrence of unusual and unforeseeable circumstances, beyond the control of the party by whom it is pleaded, the consequences of which could not have been avoided even if all due care had been exercised (see, for example, Judgment of the Court of Justice of 5 February 1987, 145/85, Denkavit/Belgian State).

It is commonly accepted that force majeure is an unpredictable, unavoidable, insurmountable event beyond the control of the applicant that prevented him from fulfilling his obligation.

An event or situation that is the result of a voluntary action or inaction by the person pleading the case of force majeure is therefore not a case of force majeure.

7.

Therefore, within the above regulatory framework, the elements that the applicants plead as constituting a case of force majeure must be examined.

8.

In this case, it is undisputed that the enrolment application was submitted during the second phase, when it should have been submitted during the first phase.

The decision to stay in Brussels belong entirely to the applicants – or to one of them.

The circumstances invoked do not have the characteristics of a case of force majeure, i.e. being beyond the control of the party pleading the case of force majeure, being unforeseeable and being of a nature as to prevent the applicant from fulfilling his obligations.

None of the elements presented by the applicants is likely to seriously call into question the legality of the contested decision, since it dismisses the case of force majeure on the basis of Article 2.15 of the 2022-2023 PE.

In view of the above, the Complaints Board can only find that, by strictly applying the aforementioned provisions of the 2022-2023 PE, and on the basis of the elements and documents in its possession at the time at which its decision was made, the CEA could only reject the enrolment application on the grounds of its inadmissibility.

This appeal can therefore only be dismissed as unfounded.

**ON THESE GROUNDS, the designated judge rapporteur**

**D E C I D E S**

Article 1: The appeal of M. [REDACTED] and Ms [REDACTED], registered under No **22/33**, 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. Kalogeropoulos

Brussels, on 19 July 2022

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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.*"