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(1st section)

In the case registered with the Registry of the Complaints Board under No **22/34** concerning an appeal lodged on 6 July 2022 by Ms [REDACTED] and Mr [REDACTED], residing together at [REDACTED] [REDACTED], legal representatives and parents of [REDACTED] [REDACTED], and brought against the decision of the Central Enrolment Authority dated 1 July 2022 which rejects the application for enrolment of the pupil at the Brussels European Schools,

- Eduardo Menéndez Rexach, Chairman of the Complaints Board
- Mario Eylert, member and rapporteur
- Pietro Manzini, member

having regard to the written comments submitted, on the one hand, by the applicants and, on the other hand, for the European Schools, by Mr Marc Snoeck, lawyer registered with the Brussels Bar,

in light of the notification of the operative part on 31 August 2022, pursuant to Article 26, paragraph 2 of the Rules of Procedure,

issued the complete decision, the grounds for and operative part of which appear below,

Main facts and arguments of the parties

1.

The applicants are the parents of [REDACTED] born on 4 December 2009, who, during the 2021-2022 school year, attended the Brussels International Catholic School (BICS) in the 2nd year of secondary level, and of her elder brother, who is a pupil in the 6th class of the secondary level at the Brussels III European School (hereinafter ES BRX III) in the Spanish language section.

Since 1 September 2021, the applicant (and father of [REDACTED] has been the Spanish representative on the EU Military Committee.

2.

In mid-February, the applicants held telephone conversations with the enrolment secretariat of ES BRX III, the content of which is disputed between the parties.

3.

On 17 May 2022, the applicants submitted a request to enrol their daughter [REDACTED] in the 3rd class of secondary level in the Spanish language section at ES BRX III for the 2022/2023 school year. The request for enrolment included no information concerning the need for a "regrouping of siblings".

4.

Following the subsequent extensive exchange of correspondence between the applicants and the Secretariat of ES BRX III, the applicants, in a letter dated 21 June 2022, provided a certificate from the psychologist, Dr. [REDACTED], dated 17 June

2022 and a certificate from the paediatrician, Dr. [REDACTED], dated 21 June 2022, to the content of which, known to the parties, reference is made, and, referring to the medical opinions concerning the possible failure to observe the time limit, invoked "force majeure".

5.

In a letter date 1 July 2022, the Central Enrolment Agency (hereinafter CEA) rejected the request for enrolment of 17 May 2022 on the grounds that it had been submitted too late for a class 1 pupil. Furthermore, according to the information provided by the applicants, there was no case of force majeure.

6.

By their appeal, submitted to the Complaints Board on 6 July and their written reply, the applicants sought to annul the decision of the CEA and obtain admission for their daughter [REDACTED] to ES BRX III. To justify their appeal, they essentially stated that they could still effectively have submitted the request for enrolment in the second enrolment phase. The CEA failed to recognise that a case of force majeure pursuant to Article 2.18 of the "Policy on Enrolment in the Brussels European Schools for the 2022-2023 school year (hereinafter PoE) existed. The two medical statements provided testified to this. They only detected the school problems of their daughter in mid-February at a time when the first enrolment phase had already closed ten days earlier. Prior to this time, there had been no signs of a critical school situation for their daughter at the BICS. After an initial consultation with the psychologist on 14 February 2022, they recognised the problem and immediately contacted the enrolment secretariat of ES BRX III and attempted to find a solution. With respect to this, the secretariat informed them of the possibility of enrolment in the second phase and incorrectly stated that this would not be a problem. Furthermore, the decision of the CEA disregarded the welfare of [REDACTED] pursuant to Article 24 of the Charter of Fundamental Rights of the European Union.

7.

The European Schools nevertheless believe that the partially admissible appeal is unfounded and that the applicants should pay the costs and expenses of the proceedings, estimated at EUR 800.

To justify their submission to dismiss the appeal, they essentially state that the request to enrol ■■■ at ES BRX III is inadmissible, as only the CEA, and not the Complaints Board, has the authority to assign pupils to a specific ES in Brussels. Insofar as the applicants, by their appeal, sought to annul the decision of the CEA, the appeal is admissible but unfounded as the request for enrolment was only submitted during the second enrolment phase whereas, in accordance with the provisions of Articles 2.15 and 2.16 PoE, it had to be submitted during the first enrolment phase. Furthermore, there is no case of "force majeure" pursuant to Article 2.18 PoE. The (school) problems of their daughter had been known to the applicants for a longer period of time. Out of prudence and precaution, they should have submitted the request for enrolment during the first enrolment phase.

Assessment of the Complaints Board.

8.

The appeal though admissible is unfounded.

9.

The appeal is admissible insofar as the applicants are seeking to annul the decision of the CEA of 1 July 2022. Insofar as they are seeking a – positive – assignment of their daughter ■■■ to ES BRX III in the Spanish language section, the appeal is nevertheless inadmissible, as the Complaints Board can, in principle, only annul the decision of the CEA pursuant to Article 27 of the Convention defining the Statute of the European Schools and in accordance with the established case law of the Complaints Board, but cannot arrange for an actual assignment to a specific ES in Brussels and a specific language section (see, for example the decision of the Complaints Board of 24/09/2014 – 14/42).

On the substance of the application,

10.

While the appeal is admissible, it is nevertheless unfounded because the applicants missed the deadline for enrolling their daughter pursuant to Article 2.15 PoE. The decision of the CEA not to offer ■■■ a place in the school system of the ES is lawful and does not violate the applicants' rights. The decision of the CEA is not vitiated by any errors in law.

1) The applicants only submitted the request to enrol their daughter ■■■ in the Spanish language section at ES BRX III on 14 February, and therefore after the deadline for the first enrolment phase which expired on 4 February 2022 (Article 2.15 PoE).

According to Article 2.15 PoE,

*"Except for applications based on Article 8.4.2.(k) ... applications for categories I and II*9 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."*

Article 2.16 PoE furthermore stipulates that,

"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."*

From the above provisions, it is clear and unambiguous that to ensure appropriate handling of the broad and complex "allocation situation" of a wide-ranging school population in Brussels, applications for enrolment for category I pupils must be submitted during the first enrolment phase, and that non-compliance with the deadline will result in the mandatory rejection of enrolment (see also the decisions of the Complaints Board of 7/6/2019 – 19/21 – and 29/8/2019 – 19/39).

2) There is no cause for derogation pursuant to the preceding Article 2.16 PoE : the applicant indisputably took up his post in Brussels in September 2021.

3) Contrary to the opinion of the applicants, there is no case of "force majeure" pursuant to Article 2.18 PoE.

a. Article 2.18 PoE stipulates that,

"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.

b. ■■■ did not attend a school outside Belgium for half the 2021-2022 school year, as she was a pupil at the BICS in Brussels.

c. Furthermore, the conditions of Article 2.18 PoE are not met. The applicants presented neither "documentary evidence" of the existence of force majeure concerning their late application for enrolment nor grounds justifying the acceptance of a case of force majeure.

11.

There were no supporting documents for the late application for enrolment on 17 May 2022. The applicants only provided the two medical certificates in a letter dated 21 June 2022. The application is therefore unfounded in accordance with the clear provisions of Article 2.18 PoE.

12.

The applicants furthermore failed to demonstrate why they should have been prevented from submitting their application during the first phase – up to 4 February 2022. If they had already been aware of the school problems of their daughter and the resulting issues before 4 February 2022, reference to "force majeure" would therefore no longer apply because they could readily have submitted their application in good time. They did not provide any reason why there would have been prevented from doing this. They did not indicate when they were first made aware of their daughter's poor grades at school and the other problems, e.g. her insomnia. If, as they unconvincingly claim, they only subsequently became aware of these (from mid-February 2022), this does not explain why they were prevented from complying with the enrolment deadline for the first phase. In this case, they could have decided, in the period up to 4 February 2022, to leave their daughter at the BICS. Nevertheless, they were therefore not prevented by a case of "force majeure" from submitting the application for enrolment for the ES in good time. "Unexpected" developments occurring after the enrolment deadline do not, however, justify acceptance of a hindrance to the submission of an application during the statutory enrolment phase due to *"events that are purely objective (...) of such a nature as to unquestionably impede submission of their application during the first phase"*, as stipulated in Article 2.18 PoE.

13.

Furthermore, the medical certificates provided are not meaningful with regard to justifying a case of force majeure with regard to the missed deadline of 4 February 2022. It is not apparent that the certificate of the paediatrician, Dr. [REDACTED], dated 21 June 2022, can substantiate a case of "force majeure" with regard to non-compliance with the enrolment deadline, in particular as the applicants and their daughter only consulted him in May 2022 and as it is unclear from their explanations when exactly the school-related and health problems (first) arose. The certificate provided by the psychologist, Dr. [REDACTED], resident in Madrid, is also relatively insignificant as it is only based on a "tele-consultation" and no personal examination, beginning in February 2022. From this certificate, the exact date of the first consultation is unclear, information which could therefore be important because it

would provide a more decisive conclusion concerning the circumstances when the applicants became aware or must have become aware of the difficulties experienced by their daughter [REDACTED].

14.

Finally, the other circumstances cited by the applicants are not appropriate to call the decision of the CEA into question. Similarly, the parents' wishes or what they deem to be "best" for the welfare of their child, even taking account of child welfare pursuant to Article 24 paragraph 2 EU-GRC do not play any role in this respect (see, for example, the decision of 31/08/2021 - 21/38), as the category I pupils have access to the ES in Brussels within the provisions of the PoE. The fundamentally guaranteed "child welfare" nevertheless does not provide unlimited access to the ES system. Instead, the specified fundamental right tied to the community must be seen in the context of the fundamental rights of other pupils and parents within the school community and a constitutionally organised school administration, whereby it must be permitted, due to the necessary practical concordance of the different legal positions, to provide for specific procedural rules to be respected – such as application deadlines – which lead to a fundamentally permissible restriction of absolute basic freedoms.

15.

There is no identifiable potentially incorrect advice resulting from the discussions with the secretariat as claimed, to a certain extent, by the applicants and this could not, furthermore, lead to the annulment of the decision in the case at hand.

16.

It therefore follows that the applicants' appeal is unsuccessful due to the reasons presented above.

On the legal and other costs,

17.

Article 27 of the Rules of Procedure of the Complaints Board of the ES stipulates that the unsuccessful party shall be required to pay the costs. In view of the unsuccessful appeal of the applicants, it is appropriate that they be required to pay the legal costs totalling € 400.

ON THESE GROUNDS, the Complaints Board of the European Schools

D E C I D E S

Article 1: The contentious appeal of Ms [REDACTED] and Mr. [REDACTED] registered under the number **22/34**, is rejected.

Article 2: The applicants are required to pay to the European Schools the sum of € 400 in respect of costs and expenses of the application.

Article 3: This decision shall be notified in accordance with the conditions under Articles 26 and 28 of the Rules of Procedure.

E. Menéndez Rexach

M. Eylert

P. Manzini

Brussels, on 31 August 2022

Original version: DE

On behalf of the Registry,
Nathalie Peigneur