

Appeal 20-20

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COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS (2nd section)

Decision of 03 August 2020

In the case registered with the Registry of the Complaints Board under No 20-20, the subject of which is an appeal lodged on 27 May 2020 by Ms ■■■■■■■■■■ and Mr ■■■■■■■■■■ seeking annulment of the decision of 14 May 2020 of the Secretary-General of the European Schools whereby he rejected their administrative appeal against the decision of 14 April 2020 of the Director of the European School, Brussels I refusing a change of language section for their daughter, ■■■■■■■■■■, from the Slovak section to the Polish section,

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

- Mr Andréas Kalogeropoulos, Chairman (rapporteur),
- Mr Mario Eylert, member,
- Mr Paul Rietjens, member,

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

after having decided, as allowed by Article 19 of the Rules of Procedure, that the case would not be heard at a public hearing on account of the health measures taken in the context of the Covid-19 pandemic, the parties having been duly notified,

after examination of the written observations of the applicants and of the written observations of Mr Marc Snoeck, barrister at the Brussels Bar, on behalf of the European Schools,

handed down the following decision, the grounds for and the operative part of which appear below, on 03 August 2020.

Facts of the dispute and arguments of the parties

1.

The female applicant (■■■■■'s mother) is of Slovak nationality and the male applicant (■■■■■'s father) is of Polish nationality.

For the beginning of the 2020-2021 school year, they submitted an application for the enrolment of their younger daughter in the nursery cycle of the Polish section of the European School, Brussels I – Uccle Site.

Their elder daughter, ■■■■■, has been attending the European School, Brussels I – Berkendael Site, in the Slovak language section, since the 2019-2020 school year.

They applied for a change of language section for ■■■■■, when she was due to go up into primary year 1, from the Slovak section to the Polish section.

Their application was rejected on 14 April 2020 by the Director of the Brussels I School, following the report of an extraordinary Class Council that had convened on 11 March 2020, which concluded that there were no compelling pedagogical reasons justifying a change of L1, in the light of the report produced by the pupil's class teacher.

By decision of 14 May 2020, the Secretary-General of the European Schools rejected the applicants' administrative appeal, lodged on 21 April 2020.

The applicants lodged this appeal seeking annulment of the decision to reject their administrative appeal and of the decision of 14 May 2020.

2.

Without claiming any procedural irregularity whatsoever or a manifest error of assessment vitiating the contested decision, the applicants put forward a first argument based on the fact that their daughter [REDACTED] was admitted to the Slovak section without language tests and that Polish has now allegedly become the family's dominant language.

With their second argument, the applicants claim that it would be easier for their child to be provided with pedagogical support in Polish by her father (of Polish nationality), since her mother, whose mother tongue is Slovak, is absent for one week per month because of her professional obligations.

As their third argument, the applicants maintain that on account of their younger daughter's enrolment in the Polish section of the Brussels I School – Uccle Site, Slovak would no longer be used, apart from in their older daughter's school environment alone; furthermore, the fact that their daughters would be attending different Schools (one at Berkendael and the other at Uccle) would create organisational difficulties that would oblige them to take them out of the European School system.

As their fourth argument, the applicants claim that the pedagogical assessment made by the school fails to take account of family preferences and of the long-term prospects with respect to both the possibility of the family relocating to and settling in Poland and the status of the Slovak language section of the European School, Brussels I – Berkendael Site, whose future is allegedly uncertain (possible transfer or closure).

Finally, they consider that the approach and the rejection of their request by strict and rigid application of the provisions of Article 47(e) of the General Rules is excessive and fails to take account of their preferences and of their family situation, or of their daughter's well-being and pedagogical development.

3.

The European Schools invoke the provisions of Article 47(e) of the General Rules (hereinafter referred to as the GRES or the GR) and the Complaints Board's case law concerning their interpretation with respect to the various aspects of their application.

To respond to and to reject the applicants' arguments, they point out first of all that determination of L1 is definitive in principle, that the School has sole authority to determine L1 and that in the case in point, the procedure followed by the School and the extraordinary Class Council of 11 March 2020 is free from any irregularity or error of assessment.

The Schools thus contend that in the absence of "*compelling pedagogical reasons*", the refusal of a change of language section for the applicants' daughter cannot be annulled, either on account of the fact that Polish has allegedly become the family's dominant language, or on account of the increased possibilities of support in Polish, or on account of the prospect of the family's relocation to Poland, or in consideration of the family organisational difficulties on account of the children of the family attending different schools, or even on account of the possible prospects of the Slovak language section of the European School, Brussels I – Berkendael Site, or, finally, on account of allegedly excessively strict application of Article 47(e) of the General Rules with respect to the "*compelling pedagogical reasons*" criterion, to the exclusion of any other consideration.

Findings of the Complaints Board

On the legality of the contested decision

4.

It is important first of all to point out that in accordance with the settled and consistent case law of the Complaints Board (see its decisions on appeal 18/10 of 5.6.2018 and on appeal 19/46 of 29.8.2019), whilst it follows clearly from the objectives of the Convention defining the Statute of the European Schools that the children of the staff of the European institutions have a right of access to the education provided in those Schools, such a right does not necessarily imply that it must be exercised in the school of their choice, the sole consideration being the location of their home or of their place of work, the organisation of travel and occupational or practical constraints on the organisation of family life.

Whatever the consequences, even cumulative, of such constraints may be, they cannot in themselves constitute a special priority criterion allowing people who invoke it to obtain their child(ren)'s enrolment at the school of their choice. Enrolment and transfer rules are required in view of the overcrowding in the European Schools and the accommodation capacity (objective and reasonable reasons) and are applicable to all applicants for enrolment or transfer who invoke in support of their applications circumstances that cannot be priority criteria in so far as they are dependent on parents' freedom of choice, over which the CEA has no power.

Those same considerations also apply to transfer from one language section to another after admission and initial determination of L1, which is definitive in principle.

In the case in point, it should be noted that the arguments put forward by the applicants refer essentially to substantive considerations other than compelling pedagogical reasons as referred to in Article 47(e) of the General Rules of the European Schools (hereinafter referred to as the GR or the GRES), which are required to allow a change of language section / of L1.

Those considerations must therefore be rejected.

5.

Secondly, the decision of the Complaints Board of 28.8.2018 in case 18/08 clearly summarises the principles of Article 47(e) of the GRES and the settled and consistent case on the subject, namely that:

- a) a fundamental principle of the European Schools is the teaching of mother tongue / dominant language as first language, which implies the pupil's enrolment in the section of his/her mother tongue / dominant language where such a section exists;
- b) it is up to the European Schools to determine, following the prescribed procedure, the language section appropriate for the child for whose enrolment an application has been submitted;
- c) the GRES do not recognise parents' right to have their child admitted to the language section of their choice, as that decision lies with the School, which must admit the child to the appropriate section (decisions of 14 July 2011, appeals 11/05 and 11/08, and of 3 August 2012, appeal 12/23);
- d) Article 47(e) lays down that Language 1 is determined at the time of the pupil's enrolment and is definitive in principle and valid throughout schooling.

In its decision of 24 October 2019 (appeal 19/51), it is further reiterated that:

"In accordance with the Complaints Board's settled and consistent case law, it is clear from those provisions that the choice of language section is not a matter for the parents alone but must result from a pedagogical assessment by the school, made in the child's best interests, in the light of the information provided by his or her parents. The pedagogical assessment in question is a matter for the teachers, whose judgement cannot be superseded by either the SGES or the Complaints Board, unless there has been a manifest error of assessment or an infringement of the rules of procedure. A change of L1 may only be authorised by the Director for compelling pedagogical reasons, duly established by the Class Council and on the initiative of one of its members (see, for example, decision 18-08 of 28/08/2018)."

As regards the concept of *"compelling pedagogical reasons"*, the Complaints Board has already pointed out that *"By using this wording ("compelling pedagogical reasons"), the GR require more than the mere existence of pedagogical reasons or aspects: the reasons must clearly bring to light the fact that the change of language is essential or fundamentally necessary for the child's pedagogical development."* (Decision of 15 December 2015, appeal 15/47).

It is in the light of the above that the applicants' arguments must be examined.

6.

The applicants claim firstly that Polish has now become the family's dominant language, something which would allegedly justify the change of L1 requested.

However, the mother tongue/dominant language of their daughter [REDACTED] was determined at the time of her enrolment as being Slovak and that determination, not contested at the time of enrolment, has in principle been definitive since her enrolment in the Slovak section.

As the Schools rightly point out, whilst the predominant language in the family environment can constitute an element to be taken into consideration, a change of Language 1 must be looked at only from the angle of a pupil's ability to continue his or her education successfully in the language considered to be his or her mother tongue/dominant language on enrolment, i.e. in the case in point, Slovak – something which the extraordinary Class Council of 11 March 2020 specifically found.

The family's future relocation to Poland, uncertain and hypothetical at this stage, cannot be accepted as a relevant argument: the Complaints Board has indeed already had occasion to describe such grounds, related to applicants' professional prospects or future relocation plans, as inadequate to compromise application of the principles established by Article 47(e) of the General Rules (decision 16/20 of 12 August 2016 and aforementioned decision 18/08 of 28 August 2018).

Moreover, as the Schools point out, the Polish lessons that the pupil has on Wednesdays and the exchanges within the family ought to be sufficient to maintain the pupil's proficiency in Polish at a high level.

7.

The applicants also claim that the pedagogical support with which they could provide their daughter will be easier to provide in Polish, by the male applicant, in so far as the professional obligations of the female applicant, whose mother tongue is Slovak, mean that she has to be absent for one week per month.

14. The Complaints Board considers that even if the male applicant cannot help his daughter in Slovak (which is not certain), the situation described does not represent a real risk for their daughter's education and proper pedagogical development: her class teacher confirms her good proficiency level in Slovak and, as the Schools themselves contend, if necessary, it will

also be possible for her to be provided with pedagogical support by the School.

8.

The applicants also draw attention to their younger daughter's enrolment in the Polish section of the European School, Brussels I – Uccle Site for the 2020-2021 school year, with the result that command of Slovak would no longer be of any interest for [REDACTED] since they claim that this language would hardly be used any longer by her, outside the school context.

However, that consideration cannot be regarded as a *"compelling pedagogical reason"*, within the meaning of Article 47(e) of the General Rules, which might justify a change of L1.

On the one hand, the fact that Polish has allegedly become the family's dominant language does not mean that Slovak will no longer be used at all in personal relationships (in particular with the mother and her family). On the other, the applicants cannot argue that practical difficulties will arise should their daughters attend different Schools and be in different language sections since that situation results from a choice on their part.

Finally, it should be pointed out that determination of a pupil's mother tongue/dominant language on enrolment, like the existence of *"compelling pedagogical reasons"* justifying a change of language 1, must be the outcome of a pedagogical assessment specific to each pupil.

As the Complaints Board has already ruled, *"the mere fact that a pupil's brother or sister is being educated in another language section cannot be regarded as a particular circumstance which, in accordance with Article 50 of the General Rules, could be taken into consideration by the Director to waive the principle of a pupil's admission to the language section corresponding to his or her mother tongue/dominant language"* (decision 18/27 of 20 August 2018).

Similarly, the Complaints Board has pointed out that *"the most important reason is that determination of mother tongue/dominant language involves a pedagogical appraisal of each pupil, which can, therefore, vary even between children who belong to the same group of siblings; the decision on the language section involves consideration on a case by case basis, something which may justify different results, as follows from the evidence in the file"* (decision of 25.1.2016, appeal 15/51).

Finally, it should be added that the fact that children belonging to the same family attend different schools and the considerations of a practical nature resulting therefrom are not relevant arguments: *"in accordance with Article 8.4.2(a), (e) and (g) of the Enrolment Policy, the distance between the place of residence (home) and the European School, Brussels IV and complicated organisation of family life if [...] attends that school cannot constitute particular circumstances that have to be taken into consideration to grant a priority criterion for purposes of admission to the first choice school"* (decision of 20.8.2018, appeal 18/27).

9.

Furthermore, the applicants contend that the School's pedagogical assessment allegedly fails to take account of family preferences and of the long-term prospects with respect to the Slovak language section of the European School, Brussels I – Berkendael Site.

Those arguments cannot be accepted.

It should be reiterated once again in this connection that *"the choice of language section is not a matter for the parents alone but must result from a pedagogical assessment by the school, made in the child's best interests, in the light of the information provided by his or her parents"* (decision of 24 October 2019, appeal 19/51) and the same applies to the assessment concerning the existence of *"compelling pedagogical reasons"* justifying a change of Language 1 for the pupil (decision of 18.9.2019, appeal 19/26).

The finding that there are "*compelling pedagogical reasons*" means that the teachers have to determine whether a change of L1 appears essential or fundamentally necessary for the child's pedagogical development.

For that reason, moreover, the seventh paragraph of Article 47(e) of the GRES provides that it is only on the initiative of a member of the Class Council that compelling pedagogical reasons can be duly established, which was not the case here, even though the Class Council kindly agreed to consider the request made by the parents alone.

10.

As regards the applicants' considerations concerning the allegedly uncertain future of the Slovak language section of the European School, Brussels I – Berkendael Site and the problems of integration, atmosphere and organisation of classes, the contested decision rightly regarded them as irrelevant, in so far as by enrolling the pupil in one of the European Schools, they accepted the system in general and any change in its organisation and operation.

In that connection, the Complaints Board has explained that a pupil's parents do not have the right "*to control questions pertaining to the internal organisation of the school chosen or the right to oppose the changes or adaptations required to allow the school to achieve more effectively the objectives which led to its setting up, even though these parents have a right of intervention, through the channels foreseen by the provisions governing the organisation of the European Schools. Once the educational system has been chosen, the child's enrolment means acceptance of that system by parents, and also of any changes in its organisation and operation which may be justified by the circumstances and requirements of the establishment in question*" (decisions of the Complaints Board of 12.4.2019 (appeal 19/02) and of 10.12.2012 (appeal 12/60)).

11.

Finally, the applicants denounce the assessment, deemed by them to be excessively strict or over-rigid, of the "*compelling pedagogical reasons*" criterion by the School's Director, without taking account of the pupil's interests, particularly at the time of her going up into the primary cycle.

It should be pointed out, however, that the criterion established by the seventh paragraph of Article 47(e) is intended to apply to all changes of language, irrespective of the year or the cycle in question.

Furthermore, the Complaints Board believes that there is no reason to consider that the decision of the School's Director or of the Class Council, in the light of [REDACTED]'s class teacher's report, might not have taken account of the fact that she would be going into primary year 1 in 2020-2021.

12.

Since the Complaints Board is only able to review the legality of decisions contested before it and since the regulatory framework in which the disputed decisions were taken very clearly excludes any consideration other than the existence of "*compelling pedagogical reasons*" justifying a change of language section, it has no alternative but to reject the applicants' arguments and to dismiss their appeal as unfounded.

On the legal and other costs

13.

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.”*

Pursuant to those provisions, and in view of the parties’ submissions, the applicants, who are the unsuccessful party in this case, must be ordered to pay the legal and other 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 of €500 *ex aequo et bono*.

**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 Ms [REDACTED] and by Mr [REDACTED], registered under No 20-20, is hereby dismissed.

Article 2: The applicants will 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

M. Eylert

P. Rietjens

Brussels, 03 August 2020

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pp. The Registry
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