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REPORT

on the Special Report by the European Ombudsman following a complaint
against the European Schools (No 1391/2002/JMA)
(2005/2216(INI))

Committee on Petitions

Rapporteur: Proinsias De Rossa

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on the Special Report by the European Ombudsman following a complaint against the European Schools (No 1391/2002/JMA)
(2005/2216(INI))**

The European Parliament,

- having regard to the Special Report by the European Ombudsman to the European Parliament,
- having regard to Articles 13, 21 and 195 of the EC Treaty,
- having regard to Articles 1 and 6 of the Treaty on European Union,
- having regard to its Decision of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties¹,
- having regard to Article 3(7) of the Statute of the European Ombudsman,
- having regard to its previous resolutions of 16 July 1998², 17 November 2000³, 6 September 2001⁴ and 11 December 2001⁵ on the Special Reports by the European Ombudsman,
- having regard to the Convention of 17 June 1994 defining the statute of the European Schools,
- having regard to the Resolution of the Council and the Ministers for Education meeting within the Council of 31 May 1990 concerning integration of children and young people with disabilities into ordinary systems of education⁶, and in particular Article 4 thereof,
- having regard to the communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - Towards a Barrier-Free Europe for People with Disabilities (COM(2000)0284),
- having regard to the Charter of Fundamental Rights of the European Union⁷, and in particular Article 21(1) thereof,
- having regard to Rule 45 and Rule 195(2), first sentence, of its Rules of Procedure,

¹ OJ L 113, 4.5.1994, p. 15. Decision as amended by Decision 2002/262/EC, ECSC, Euratom of the European Parliament (OJ L 92, 9.4.2002, p. 13).

² OJ C 292, 21.9.1998, p. 103.

³ OJ C 223, 8.8.2001, p. 368.

⁴ OJ C 72 E, 21.3.2002, p. 331.

⁵ OJ C 177 E, 25.7.2002, p. 61.

⁶ OJ C162, 3.7.1990, p. 2.

⁷ OJ C 364, 18.12.2000, p. 1.

- having regard to the report of the Committee on Petitions (A6-0118/2006),
- A. whereas it is the duty of the European Ombudsman, pursuant to the Treaty establishing the European Community, to conduct on his own initiative, or on the basis of complaints submitted to him, and at his own discretion, inquiries in connection with maladministration in the activities of the bodies or institutions of the Community, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role,
- B. whereas, pursuant to Article 3(7) of his Statute, the European Ombudsman may subsequently submit to the European Parliament and the body or institution concerned a report with appropriate recommendations,
- C. whereas, in his Special Report on complaint No 1391/2002/JMA concerning the failure of the European Schools to provide for the special educational needs of the complainant's daughter, the Ombudsman sought to recommend ways of ensuring that the Commission should take the necessary steps to ensure that parents of children with special educational needs who are excluded from the European Schools because of their degree of disability should not be required to contribute to the educational costs of their children,
- D. whereas the Ombudsman conducted inquiries into a significant number of additional complaints against the European Schools involving similar facts and raising identical allegations,
- E. whereas the Special Report of the Ombudsman is an excellent opportunity for an in-depth consideration of the recommendations made to the Commission,
- 1. Welcomes the Ombudsman's Special Report and considers that it is based on in-depth inquiries into the complaint in question and a thorough analysis of the evidence at hand;
- 2. Notes that the Ombudsman's inquiry is an appropriate example of the exercise of his mandate pursuant to Article 195 of the Treaty;
- 3. Underlines that, as enshrined in Articles 14 and 21 of the Charter of Fundamental Rights of the European Union and in the EC Treaty, the right to education, the principle of non-discrimination and equal treatment and the prohibition of any type of discrimination based inter alia on grounds of disability constitute the principles and foundations of the EU legal order;
- 4. Notes that, whilst the Commission has repeatedly referred to the existence of financial and budgetary limitations which prevent it from covering the full educational costs of children with special educational needs who are excluded from the European Schools, the institution has made no effort to produce an estimate of the financial resources required to meet the obligations imposed by the EC Treaty;

5. Notes in the case of the complainant's family that while free education (which is compulsory) was provided for 3 of her children at the European School her eldest daughter, who has special educational needs, was excluded from that school and obliged to enrol at the privately run 'International School of Brussels' resulting in considerable costs being incurred by the family;
6. Notes measures outlined by the Commission to the Petitions Committee meeting of 22 February 2006 claiming significant increases in 2006 “complementary aid for disabled” resulting in a substantial reduction of the beneficiaries’ personal contributions;
7. Notes that the Commission provides a doubled dependent child allowance to assist officials with the non-educational costs arising from caring for a child with disabilities and condemns the Commission’s unilateral withholding of that allowance for the purpose of reducing the Commission's costs in meeting its obligations to the complainant's child;
8. Calls on the Commission to inform in advance the parents of children with special educational needs of their rights and obligations and to clarify the extent to which it takes responsibility for ensuring that children of officials have access to appropriate free compulsory education ;
9. Endorses the Ombudsman’s conclusions and calls on the Commission to take the necessary steps to reimburse to parents of children with special educational needs who are excluded from the European Schools because of their degree of disability the full cost of special educational provision for their children as part of a European social protection policy;
10. Considers that the Ombudsman's recommendation should also apply to the other complaints which he received in the course of his inquiry involving similar facts and identical allegations;
11. Instructs its President to forward this resolution to the Council, the Commission, the European Ombudsman, the Secretary-General and the Board of Governors of the European Schools and the Parliaments and Governments of the Member States.

EXPLANATORY STATEMENT

1. Introduction

The present report is based on the special report forwarded by the European Ombudsman to the President of the European Parliament on 27 May 2005 following the draft recommendation to the European Commission in complaint 1391/2002/JMA. The complaint concerns the fact that the European Schools did not provide for the special educational needs of the complainant's daughter and that the Commission was not willing to cover the full cost of her daughter's special education in the chosen alternative education system available to her, the 'International School' of Brussels.

The Ombudsman took the view that the integration of children with special educational needs into the ordinary education system remains a general policy goal, albeit without a mandatory character. In the absence of binding legal provisions, the Ombudsman did not find maladministration in the fact that the complainant's daughter could not be educated in a European School. The Ombudsman nevertheless found that the financial aspects of the situation constituted an unjustified discrimination, and he therefore made a recommendation that the Commission should take the necessary steps to ensure that parents of children with special educational needs who are excluded from the European Schools because of their degree of disability are not required to contribute to the educational costs of their children.

2. Summary of the complaint and the Ombudsman's inquiry

On 25 July 2002 a Commission official whose daughter has special educational needs complained to the Ombudsman. The complainant stated that her daughter joined the European School Brussels II in September 1997 and received assistance under that school's special educational needs programme during the school years 1998-99 and 1999-2000. In June 2000 the school's Board of Directors decided that the child's needs would not be met at the school and she was accepted in the Special Education Unit of the 'International School' of Brussels in September 2000. Based on Commission guidelines the complainant was obliged to pay a percentage of the costs of the child's education at that fee-paying school.

The complainant noted that the Statute of the European Schools, which provides that *their* role is to promote the education of European Institutions' staff, does not mention that some children with disabilities can be excluded because of their disabilities. According to the complainant the Commission is partly responsible for the situation, because it has a seat on the Board of Governors of the European Schools and is involved in issues concerning the Schools' budget.

In its opinion of 6 January 2003 the Commission addressed the allegations made by the complainant. The Commission underlined that European Schools, unlike most national education systems which have special centres for children with disabilities, only comprise standard educational establishments. Despite this limitation the European Schools are sympathetic towards the difficulties faced by children with special educational needs. Since 1987 remedial courses and guidance centres have been put in place, and since 1989 each school has "advisory groups", which assess the specific needs of each child. As a result of the

Commission's intervention, the section of the Schools' budget devoted to children with special educational needs has doubled from 1996 to 2002. As regards the particular case of the complainant's daughter, the European School Brussels II had concluded that it could not satisfy her needs, and the Commission considered that the policy of the School, having done everything it could in accordance with existing procedures, was not discriminatory. In relation to the financial contribution to be made by parents of certain children with special educational needs, the Commission underlined that if an official applies for assistance under budget line A-4103 ("supplementary aid for the disabled"), Article 5a of the provisional guidelines stipulates that he/she must make a contribution depending on taxable family income. According to the Commission the financial contribution of the complainant came to 5% of the expenses occurred. As regards the need to provide parents of children with special educational needs with information, the Commission stated that it will ensure that such details henceforward are included in the information given to new officials both before they take up their posts in the institutions and when they start work.

In her observations to the Commission's opinion the complainant considered that if the European Schools are unable to cater for some children with special educational needs their budget should entirely finance the education of those children in an alternative establishment. The complainant suggested that the European Schools should cover all educational costs of children with special educational needs who have to be transferred to an alternative education system. She underlined that the Commission, as guardian of the Treaties, should ensure implementation of Community legislation on combating all types of discrimination on the ground of disability, and that the European Schools are in breach of Article 14 of the Charter of Fundamental Rights of the European Union¹.

After an evaluation of the opinion and observations the Ombudsman did not consider that the Commission had responded adequately to the complaint. The Ombudsman concluded that by requesting a contribution from the complainant to the educational costs of her child who had been excluded from the European Schools because of her degree of disability the Commission did not ensure respect for the principle of equal treatment. The Ombudsman therefore proposed that the Commission should ensure that the complainant was not required to contribute to the educational costs of her child.

In its reply to the Ombudsman the Commission explained that, if approved, a new scheme involving certain changes in the current guidelines on additional help for people with disabilities was to enter into force on 1 May 2004. The Commission also argued that the present regime could not be viewed as discriminatory because parents of other children, who for pedagogical reasons cannot attend a European School, must also look for alternative schools and these alternative schools are also subject to charges which are not fully

¹ "Article 14

Right to education

1. *Everyone has the right to education and to have access to vocational and continuing training.*

2. *This right includes the possibility to receive free compulsory education.*

3. *The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right."*

reimbursed. Since requirements for parents to contribute to the educational costs are not necessarily linked to disability the Commission considered that the additional financial contribution should not be regarded as discriminatory and pointed out that if children with disabilities are excluded it is not because of their disability, but because the severity of their disability is beyond the school's ability to cope with them. Since the cost of alternative establishments is considerable, and having regard to the existing budgetary restrictions, a limited contribution is required by the parents based on their financial situation. However, the Commission announced its intention to decrease the financial burden for the complainant.

According to Article 3(5) of the Statute of the European Ombudsman¹ the Ombudsman shall as far as possible seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complainant. In this case the Ombudsman forwarded the Commission's reply to the proposal for a friendly solution to the complainant. The complainant restated the facts of the case and underlined that the obligation to contribute to her daughter's education was linked to the fact that her daughter has disabilities. She argued that the Commission's references to future initiatives are irrelevant as is the question of other children leaving the European Schools for other, pedagogical, reasons. Her situation concerns a child who was refused an education because of her disability, and thus was asked to pay for part of her education, and in contrast to the figures referred to by the Commission she noted that her contribution amounts to 15% of the costs. The discrimination occurs purely because of her disability and in the view of the complainant the Commission had been guilty of a complete neglect of its responsibilities to its staff and their dependants.

3. The Draft Recommendation

In accordance with Article 3(6) of the Statute of the Ombudsman, the Ombudsman addressed a draft recommendation to the European Commission on 27 February 2004.

In this connection the Ombudsman noted that children of EU staff, including children with special educational needs whose needs can be met by the European Schools, have the right to be admitted to the European Schools. Hence, these EU officials do not have to make any contribution to the costs of their children's education. In contrast, the Commission does not cover the full educational costs of children with special educational needs who are excluded from the European Schools because of their degree of disability.

The Ombudsman pointed out that the principle of non-discrimination and equal treatment is a fundamental principle of Community law. As laid down in Article 21(1) of the Charter of Fundamental Rights of the European Union² and Article 13(1) of the EC Treaty³, any type of

¹ Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, OJ L113, 04.05.1994, p. 15.

² "Article 21 (1)

Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."

³ "Article 13 (1)

Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the

discrimination based on grounds of disability is prohibited. The Ombudsman considered therefore that the different financial treatment which the Commission gives officials with children with special educational needs, who are excluded from the European Schools, is based solely on grounds of disability and thus discriminatory. As regards the exclusion of certain children from the European Schools for pedagogical reasons, the Ombudsman considered that the factual and legal circumstances of such children are not comparable to those of children with special educational needs, who are excluded from the European Schools because of their degree of disability. Concluding that the different financial treatment provided by the Commission to officials with children with special educational needs who are excluded from the European Schools because of their degree of disability is discriminatory, and consequently constitutes an instance of maladministration, the Ombudsman made the following draft recommendation:

"The Commission should take the necessary steps to ensure that parents of SEN children who are excluded from the European Schools because of their degree of disability are not required to contribute to the educational costs of their children."

In the absence of any legal provisions on the subject the Ombudsman could not conclude that the Commission had failed to act properly by not ensuring that the European Schools provide education programmes for all children with special educational needs of EU officials. The Ombudsman therefore concluded that there appeared to be no maladministration as regards this aspect of the complaint. In regard to the complainant's allegation that the Commission failed to make clear in the information concerning the European Schools that some children with special educational needs can be excluded the Ombudsman concluded, taking note of the Commission's assurance that all necessary steps would be undertaken to provide officials with appropriate information, that no further inquiry in relation to this aspect of the complaint seemed to be necessary.

In the course of the inquiry the Ombudsman received a significant number of additional complaints which involved similar facts and raised identical allegations. The Commission was informed and asked to submit an opinion on them. The Commission chose to reply jointly to all of them through its detailed opinion in the present case.

4. The European Commission's detailed opinion and additional information

After a number of postponements the Commission finally submitted its detailed opinion on 18 August 2004 stating that its detailed opinion replied to both the Ombudsman's draft recommendation and the individual complaints on the same problem. As regards the financial contribution of EU officials with excluded children with special educational needs the Commission referred to the new Article 1d(4)¹ of the Staff Regulations, which entered into

European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."

¹ Article 1d (4)

"For the purposes of paragraph 1, a person has a disability if he has a physical or mental impairment that is, or is likely to be, permanent. The impairment shall be determined according to the procedure set out in Article 33.

A person with a disability meets the conditions laid down in Article 28(e) if he can perform the essential functions of the job when reasonable accommodation is made.

force on 1 May 2004, and pointed out that the principle of proportionality which governs relations between the Appointing Authority and the potential official should also be taken into account *mutatis mutandis* in relation to the obligations of the Appointing Authority towards the child of an official when that child has disabilities. Referring to a number of other new elements, among others the obligation to give officials access to measures of a social nature, and arguing that the exclusion of children with disabilities from the European Schools results from the fact that their integration into the school environment goes beyond the material resources available, the Commission pointed out that steps could be taken to reinforce measures which benefit the children of officials who find themselves in the same situation as the complainant. The Commission considered nevertheless that the measures of the allowance scheme in place are appropriate and sufficient to offset the costs imposed on the parents by their children's disabilities and pointed out that 99% of the costs which the complainant incurred for the education of her daughter were covered by the scheme. The Commission underlined that budgetary resources are limited and that it does not have the possibility to cover all costs, although the budget has seen an exceptional increase of 40% in 2004. As social policy aimed at people with disabilities is a priority the Commission expressed its willingness to propose a "multi-annual programme" to the budgetary authority in order to give maximum possible budgetary security to this type of measures. The Commission expressed its intention to mention the Ombudsman's position in this matter when its proposals are submitted to the budgetary authority, but noted that it might help if the Ombudsman were to approach the budgetary authority directly. Finally the Commission stated its intention to take the necessary steps to obtain essential support from the budgetary authority so that children who demonstrably need to enter a special establishment can receive the greatest possible financial support.

In her observations on the Commission's detailed opinion the complainant repeated her previous allegations, stating that in her view the proposals and actions of the Commission deny her daughter access to free compulsory education. She also contested the figures presented by the Commission arguing that investment per child with special educational needs had decreased in 2003/2004. Her personal expenditures since 2000 had amounted to €19,205.

In December 2004 the Commission's Director-General for Personnel and Administration wrote to the Ombudsman restating the ideas set out in the detailed opinion and announcing that the Commission's multi-annual social policy programme will include a section on support for children with special educational needs. The programme would be submitted to the Commission in mid-2005, but the Director-General could not guarantee full reimbursement to parents of children with special educational needs.

5. The Ombudsman's evaluation and recommendation

The Ombudsman's draft recommendation was intended to ensure that the Commission would not discriminate financially against officials with children with special educational needs who

"Reasonable accommodation", in relation to the essential functions of the job, shall mean appropriate measures, where needed, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer."

are excluded from the European Schools because of their degree of disability. The Commission's detailed opinion was such that the Ombudsman did not find that this objective had been achieved. As regards the Commission's interpretation of the new Staff Regulations, whereby its power to limit the introduction of new measures because of their financial impact should also apply to any other measure involving people with disability, such as those regarding the education of children with special educational needs of EU officials, the Ombudsman considered that these provisions were solely confined to the recruitment of officials and not applicable to any other situation concerning the treatment of officials in connection with a situation of disability. The Ombudsman also found it striking that although the Commission repeatedly referred to the financial limitations preventing it from covering the full educational costs of excluded children with special educational needs, the institution has not produced any estimate which might illustrate the size of those limitations, such as the number of officials affected or the likely costs of a change of policy. Although he appreciated the positive remarks from the Commission's Director-General for Personnel and Administration, the Ombudsman considered that they do not appear to eliminate unambiguously any discrimination against officials with children with special educational needs who are excluded from the European Schools because of their degree of disability. As regards the Commission's invitation to approach the budgetary authority the Ombudsman takes the view that it is not for him to intervene directly in this type of budgetary procedure. Instead he considered it more appropriate to submit a special report on this matter to the Parliament as a means of drawing this issue to its attention, not only in its role as an institution responsible for scrutinising the Commission but also as part of the Community budgetary authority. On the basis of his evaluation the Ombudsman re-stated his draft recommendations as a recommendation to the Commission and considered that his recommendation should also apply to the additional complaints received in the course of his inquiry.

6. Conclusions

Your rapporteur notes that the Ombudsman carried out a thorough and comprehensive analysis of complaint 1391/2002/JMA. In the course of his inquiry he carried out a detailed examination of both the complainant's allegations and the statements submitted by the Commission.

The complainant has provided further testimony to your rapporteur about the impact of the Commission's actions on her family. As a Commission official the complainant cannot exercise certain rights, such as access to educational facilities, in her host country. In these circumstances the Commission and the European Institutions assume the role of "surrogate State" responsible for the provision of certain services, such as educational facilities. On this basis 3 of the complainant's children receive free compulsory education at the European School. But one child, who has special educational needs, has been excluded from that school and obliged to enrol in a fee-paying school at considerable cost to her parents. It is surely unacceptable that these parents suffer a significant financial penalty in having to pay school fees for one of their children while her siblings, and peers, are entitled to free education.

The family concerned incurred costs totalling €19,205 for the 4 school-years between 2000 and 2004, and are faced with the prospect of having to fund similarly high costs for an additional 7 years until their child reaches the age of 18.

Your rapporteur finds that the Commission has been particularly insensitive in arguing that 99% of the family's costs were covered by the scheme which pays double the dependent child allowance to an official whose child has a disability. The Commission has unilaterally withheld the sums due under that scheme from this particular family, to offset some of the educational costs resulting from their child's exclusion from the European School. The Commission has thus denied this particular family the financial resources available to others entitled to the double child allowance whose children with disabilities are educated free, leaving such families to allocate the extra allowance on non-educational costs.

The Commission has pointed out that if an official applies for assistance under budget line A-4103 ("supplementary aid for the disabled") it is stipulated in Article 5a of the provisional guidelines that he/she must make a contribution depending on taxable family income. However the Commission has failed to deal with the fact that budget line A-4103 is not intended to address educational needs, which should be covered free of cost for children with disabilities as they are in respect of children with no disabilities.

Your rapporteur therefore finds that the Ombudsman's conclusions **that the financial aspects of the situation constituted an unjustified discrimination** are based on a balanced appraisal and fully endorses his recommendation, namely that

"The Commission should take the necessary steps to ensure that parents of SEN children who are excluded from the European Schools because of their degree of disability are not required to contribute to the educational costs of their children."

PROCEDURE

Title	Report by the European Ombudsman following a complaint against the European Schools
Procedure number	2005/2216(INI)
Committee responsible Date authorisation announced in plenary	PETI 17.11.2005
Committee(s) asked for opinion(s) Date announced in plenary	CULT 17.11.2005
Not delivering opinion(s) Date of decision	CULT 23.11.2005
Enhanced cooperation Date announced in plenary	
Rapporteur(s) Date appointed	Proinsias De Rossa 13.9.2005
Previous rapporteur(s)	
Discussed in committee	11.10.2005 22.2.2006 21.3.2006
Date adopted	21.3.2006
Result of final vote	13 in favour, 0 against, 0 abstentions
Members present for the final vote	Robert Atkins, Carlos José Iturgaiz Angulo, Mairead McGuinness, Manolis Mavrommatis, Andreas Schwab, Marie Panayotopoulos-Cassiotou, Proinsias De Rossa, Inés Ayala Sender, Alexandra Dobolyi, David Hammerstein Mintz, Marcin Libicki,
Substitute(s) present for the final vote	Marie-Hélène Descamps
Substitute(s) under Rule 178(2) present for the final vote	María del Pilar Ayuso González
Date tabled	28.3.2006
Comments (available in one language only)	