

Dr. Andrea Raccanelli  
Bornheimer Str. 34  
53111 Bonn  
Germany

The Secretary-General  
European Commission  
B-1049 BRUXELLES

**Ref.: EMPL/E/3/US/JB/ba/D(05) 27722**

Bonn, 19.12.2005

Dear Sir/Madam,

I have received the reply of the Commission that denies the access to the documents I requested, motivated under Art. 4 N° 2 3<sup>rd</sup> point of regulation N° 1049/2001. That regulation states that access could be refused “*where disclosure would undermine the protection of (...) the purpose of inspection, investigation and audits (...) unless there is an overriding public interest in disclosure*”.

I argue here that access to the correspondence exchanged to date between the Commission services and the German authorities, and in particular the German letter of reply dating from 18.1.2005, would not undermine the investigation, and that there is an overriding public interest.

In the current case the Commission itself in its letter of 9.8.2005 (annex 1) had considered the investigation completed, and suggested the closure of the case unless the petitioner had new evidence to provide. This bears witness to the non-existence of a practical investigation to evaluate the actual persistence of a discriminatory treatment of the non-German PhD students. The Commission merely informed me of the existence at the MPG of new rules, which provide equal opportunities to access contracts and fellowships for German and non German PhD students. Thus the Commission itself considers its investigation to be substantially exhausted.

It follows that the release of documents cannot prejudice an ongoing investigation, first because there is no ongoing active investigation, and second because the former investigative phase ended with the verification of the written rules and is not policing their practical application.

Even were the release of documents prejudicial, the principle of proportionality obliges the Commission to allow access to those documents, or parts thereof, that are not detrimental to the ongoing investigation (compare, for principles applicable also to the current case, Court of Justice, Council / Hautala, Judgement of 6.12.2001 in the case-law C-353/99 P, in which it was underlined that “*the principle of proportionality also requires (...) to consider partial access to a document whose disclosure would endanger one of the interests protected (...)*” and that “*the principle of*

*proportionality requires that derogation remain within the limits of what is appropriate and necessary for achieving the aim in view”).*

The matter under discussion concerns injury to the rights of non German PhD students and so involves the fundamental principles of the Treaty and the inviolable human rights. There therefore exists in the current case an *overriding public interest in disclosure*.

In adherence to the principle of proportionality and to the inviolable rights of defence of the petitioner party, the knowledge of the documents is essential for conducting the case.

With my letter of 11.11.2005 (annex 2) I provided further evidence of ongoing discrimination and requested a more thorough practical investigation into this case. In the same letter I requested access to the documents of the past activity. This includes access to the answer given by the German authorities, which, by the arguments above, and in adherence to the fundamental principles of transparency of government and administrative activity, has to be disclosed.

In this particular case it is very important to have a fast and effective intervention of the Commission, due to the peculiarity of the rights being violated and due to the effect on the lives and on the careers of the young researchers who are victims of the discriminatory policy of the Max-Planck Society. I therefore renew my request for prompt access to the documents, which was refused in the letter of the Commission of 6.12.2005.

Yours sincerely,

Andrea Raccanelli