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Bonn, 11.11.2005

Dear Mr. Cornelissen,

I am answering your letter of 09.08.05 in detail.

As you pointed out in your letter, the new rules adopted by the Administration Council of the Max-Planck Society (MPS) on 18.11.04 replace those I enclosed as evidence in annex A and B of my complaint. You concluded that “*there is in general no more discrimination between German nationals and migrant workers*” (your letter of 09.08.05).

I disagree with your conclusion.

In my complaint of 10.05.04 concerning the discriminatory treatment of community doctoral students at the Max-Planck Society, I reported that “*according to statistics collected in March 2003 this difference of treatment affects several hundred foreign students*”.

The change of the written rule does not imply that the problem is solved in practice. I provide indications below that the contractual conditions offered to the students hired after 18.11.04 continue to be discriminatory. The change of rule also neither removes the entrenched discrimination nor improves the conditions for the several hundred students hired under the discriminatory policy prior to 18.11.04. For that discrimination to be redressed, the students affected must be compensated for their financial losses and lack of social security benefits. Before jumping to the conclusion that the problem is solved it would be necessary to collect new statistics concerning all the contracts (Fellowships and BAT IIa/2) granted after the adoption of the new rules to confirm that the new rules are being applied in practice such that foreign and German students are now being treated equally.

I present here indications that the old illegal policy is still being applied and that the adoption of the new rules did not take place immediately after 18.11.04 but their implementation is following an unjustifiably slow process. In an article published in "Max Planck Inside", a section of "Max Planck Intern", the internal magazine of the Max-Planck Society, Mr. Dirk Hartung on behalf of the Gesamtbetriebsrat of the MPS writes about the different payments based on nationality as a still on-going problem. He states: "*Die deutschen Promovierenden der MPG werden in Regelverfahren als ArbeitnehmerInnen nach ½ BAT IIa bezahlt, die ausländischen sind StipendiatInnen. (...) Ein weiteres Problem ist die **bislang noch unterschiedliche Bezahlung von Deutschen und Ausländern** (...),,*" The article, of which I enclose a copy as annex 1 to this letter, was published in February 2005 and therefore after the adoption of the new rules. It is worth noting that in the final version of the article before publication (circulated internally to the Society and enclosed as annex 2 to this letter) the Gesamtbetriebsrat clearly indicates that even for community students the possibility the equality of financial condition is not mandatory but remains an "option". In that article Mr. Hartung states: "*(...) Inzwischen kann aufgrund rechtlicher Vorgaben zur Gleichbehandlung von Deutschen und zumindest EU-AusländerInnen zwischen Stipendium und Arbeitsvertrag **„gewählt“** werden,*"

Mrs Nicola Von Hammerstein, from the general management of the MPS, told the magazine "The Scientist" that the change after the new rules of 18.11.04 took effect at the beginning of this year (2005) and that she expected "*at least **some non-German students** (...) to be awarded regular employment contracts in autumn. However, she said it was impossible to predict at this stage how many **would eventually benefit***". I enclose a copy of the article from "The Scientist" as annex 3 and my response, published in The Scientist on April 11, 2005, as annex 4. It remains to be explained why stopping a policy that was clearly classified as a violation of art. 39 of the European Treaty should take that long.

You stated that "*the new rules provide that Germans and non-Germans are equally entitled to be hired on BAT IIa/2 posts or to receive a scholarship.*" However, the choice whether to offer a contract or a fellowship to any given student is left to the institute directors and the rules impose no requirement that the directors avoid discrimination. This is an unacceptable situation because as illustrated by the following quote: "*Von Hammerstein rejected the idea that the MPG had been discriminating against non-German PhD students*" ("The Scientist", cited article), the organization does not acknowledge even the proven case of discrimination and therefore their judgement cannot be trusted to voluntarily deal equally with students.

In consideration of what stated above, I ask the Commission:

- 1) To request the Max-Planck Society to provide detailed data, including nationality of the student and type of contract, on the financial conditions granted to all the doctoral students hired after 18.11.04.
- 2) To request the Max-Planck Society to enclose in the new rules a statement to explicitly prohibit the institutes any discrimination based on nationality.
- 3) To provide me a copy of all the records concerning my complaint, including the answer of the German Authorities which requested this long evaluation of the Commission.

Given the many months required for you to respond and the still open points that require proper consideration, I would like to accelerate this process and so I kindly request an appointment to discuss the issue in person.

I also renew the request which was contained in my original complaint and which was not addressed in your response that the Commission should solicit a financial compensation for the losses experienced by the foreign doctoral students who have been victims of the discriminatory policy of the Max-Planck Society.

Yours sincerely,

Andrea Raccanelli