



EUROPEAN COMMISSION

DIRECTORATE-GENERAL JUSTICE, FREEDOM AND SECURITY

Directorate C : Civil justice, rights and citizenship

Brussels, 17 JAN 2005

JLS/C3/KG D(2005) 189

Mr Walter Keim

Torshaugv. 2 C

N – 7020 Trondheim

Dear Mr Keim,

I would like to thank you for your letter of 17 November 2004 addressed to Commissioner Vitorino in which you describe an alleged violation of the right to access to public documents in Germany. You also attach several articles with regard to this matter.

You mention that you approached the Commissioner for Human Rights at the Council of Europe in order to inform him about the situation in Germany. In addition, you allege that the fact that judgments of the European Court of Human Rights are not followed by German courts shows a lack of commitment to Europe.

As you confirm in your letter, the Commission already replied to your previous email on the same subject dated 27 February 2004. In this respect, may I also remind you of the letters on the same subject, dated 8 and 24 May 2002 that you received from the Secretariat General of the European Commission (SG.B.2/MM D(2002) 330166, SG.B.2/MAB/ig/D(2002) 330194), in reply to your e-mails to President Prodi. In your letter you suggest to add your material to the complaint to President Prodi dated 18 May 2004 on the start of investigation under Article 7 of the Treaty on the European Union.

In the above-mentioned context, I must once again reiterate what was said in the previous letters. Article 255 of the Treaty establishing the European Community, implemented through Regulation 1049/2001 of 30 May 2001, grants a right of access to European Parliament, Council and Commission documents to any Union citizen and to any natural or legal person residing, or having its registered office, in a Member State. The same scope of application is mentioned in Article 42 of the Charter of Fundamental Rights of the European Union. The above-mentioned EU provisions apply only to access to EU documents. Therefore, it is beyond the Commission's remit to take any form of action against the Member States that fail to pass laws on freedom of information and there is no way in which the EU Institutions could compel Germany to adopt rules granting access to official information.

It is also worth repeating that the scope of competence of the Ombudsman of the Union is limited to cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role (see: Article 195 of the Treaty EC and Article 43 of the Charter). In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds

grounds, either on his own initiative or on the basis of complaints submitted directly to him or via a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings.

I would also like to inform you that in case you do not provide the Commission with new or complementary information showing a violation of human rights in the scope of the Community law, the Commission will not be able to reply to your future correspondence.

I hope the above-mentioned information will be of help.

Yours sincerely,



Francisco FONSECA MORILLO

*Received 22 January 2005*