

From: **Kurt Weiss** (kurt.weiss@xxxxxxxxx)
Sent: Tuesday, October 01, 2013 9:00:04 AM
To: Court of Justice of the European Union (xxxxxxx@curia.europa.eu)

Dear Mr XXXXX,

Thank you for your response.

I would like to make a confirmatory application and therefore kindly request to review your decision. The Court replied that cannot grant me access to any of the documents because "the Court of Justice has no such documents".

However in line with relevant legislation applicable, the Court has the possibility to request the respective documents from Mr Tagaras, who by law was obliged to transmit all those documents to Court of Justice and to request authorization before to provide legal services in cases pending before Civil Service Tribunal (cases of Fundamental Rights Agency).

This is all the more necessary as the Agency was and still is in a middle of accusations of false accountings at Danish Institute for Human Rights, which became European Commission and FRA contractor.

This institute is mentioned in case F-58/10 and in Annual Report of Court of Justice. See the evidences stored in my email of 8/08/2013 07:21 and released to public domain. It is obvious that FRA provided incorrect or false statements to Court in case F-58/10. I raised this issue to Court here http://www.asktheeu.org/en/request/annual_report_cjeu_2012#incoming-2861

In this context I would like to make one additional request:

- to access relevant documents and attached information in relation to submissions of FRA to Court in the other case I mentioned in my previous email.

Apparently in that case there was the same misleading information provided to Court, and related as well to the same Danish Institute for Human Rights as in case F-58/10. Therefore already twice FRA provided incorrect information to Court. I provided some relevant links in that aspect in my initial application.

As Court might know the inaccurate statements in relation to same Institute (DIHR) were made also previously and you can find relevant information here http://www.asktheeu.org/en/request/2041st_meeting_of_the_commission#incoming-2799

http://www.asktheeu.org/en/request/parliamentary_question_on_false

Having regard to the above and to the content of my initial application, I kindly request the Court to request from Mr Tagaras the requested documents and to analyze the possibility to grant full or partial access to them.

As you can see here http://www.asktheeu.org/en/request/tender_file_for_provision_of_leg#outgoing-1052

Mr Tagaras acted as a consultant or lawyer of FRA in several cases. In some of these cases there were provided misleading information to Court. There are several restrictions in Court rules as to the conflict of interest, "revolving doors", etc.

I would appreciate if Court could provide relevant information if Mr Tagaras worked at FRA cases in his both qualities - as Judge at Civil Service Tribunal and as Lawyer or Consultant or Legal adviser at FRA. See the purchase orders containing the assignments to Mr Tagaras. Could Court of Justice confirm that Mr Tagaras acted strictly within the applicable rules for postemployment activities of judges? Could Court of Justice confirm that Mr Tagaras provided correct advice to FRA and that the issues as false accounting, IAS controls into false accounting, etc were not covered intentionally?

For example these two

evidences <http://www.asktheeu.org/en/request/573/response/1839/attach/2/reply%20Access%20to%20Document%20Nicholson.pdf>

<http://www.asktheeu.org/en/request/573/response/2198/attach/4/2nd%20part%20reply%20Access%20to%20Document%20Nicholson.doc.pdf> proves that FRA misled the Tribunal via its submissions to the Court. I would appreciate if this information could be checked and confirmed / infirmed. Thank you very much.

Best Regards,

Kurt Weiss

From: XXXXXX@curia.europa.eu

To: **kurt.weiss**@XXXXXX

Subject: Your application for access to documents no 0002/2013D

Date: Tue, 10 Sep 2013 14:27:49 +0000

Dear Mr. Weiss,

In response to your application for access to documents of 23rd of July 2013 and your e-mail of 8th of August 2013 clarifying this application, the Court of Justice of the European Union regrets to inform you that as regards the following requests:

- the list of institutions and/or companies on receipt of legal services and specialized advise from Mr. H. Tagaras;
- documents of Court showing when exactly Mr. Tagaras started to provide services to FRA and if this activity already ceased and
- the request submitted by Mr. Tagaras to ECJ followed by approval of the President or Secretary General, giving Mr. Tagaras authorization as suggested in Article 4,

the Court of Justice has no such documents.

As for your request for information on how the Court of Justice of the European Union addresses the issue of the prevention of conflicts of interest for its members ("revolving doors"), we refer you to the Official Journal of the European Union (C 223/1 of 22.08.2007) in which the Court of Justice of the European Union published its Code of Conduct. In the interests of transparency, this document is also available on our website: http://curia.europa.eu/jcms/jcms/T5_5242/

Yours sincerely,

XXXXXXXXXXXXXXXXXXXX

Head of Unit Press and Information

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From: xxxxxxxxxxxxxxxx@curia.europa.eu

Sent: lundi 19 août 2013 11:01

To: kurt.weiss@xxxxxxxxxxxx

Subject: Your application for access to documents no 0002/2013D

Dear Mr. Weiss

We hereby acknowledge receipt of your e-mail dated 8th of August 2013 relating to your request for access to documents of 23rd of July 2013.

The clarification that you provided has allowed us to register your application on 8th of August 2013.

You should receive a response within a maximum period of one month from the date the clarification of your application was received.

Please note that, in exceptional cases, this period may be extended under Article 5 (4) of the Decision of the Court of Justice of the European Union of 11 December 2012 concerning public access to documents held by the Court of Justice of the European Union in the exercise of its administrative functions

Under Article 6 (2) of this decision, in the event that you do not receive a response within this time period, you may, within one month of the expiry of the period fixed for the reply, make a confirmatory application using the same form which you used to send your initial application.

Your application has been registered as Application No 0002/2013D. Please cite this number in all further correspondence concerning your application.

Yours sincerely, XXXXXX

European Court of Justice / Press and Information
Head of Nordic Unit
(Denmark, Sweden, Finland, Estonia, Latvia and Lithuania)
Phone: +352 4303 3127
E-mail: XXXXXXXXXX@curia.europa.eu

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jeu. 8/08/2013 07:21

Dear Ms XXXXXXXXX,

Thank you for your email. Please find below the requested details.

Article 4 of Statute CJEU reads:

“Article 4

The Judges may not hold any political or administrative office.

They may not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Council, acting by a simple majority.

When taking up their duties, they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

Any doubt on this point shall be settled by decision of the Court of Justice. If the decision concerns a member of the General Court or of a specialised court, the Court shall decide after consulting the court concerned.”

Following a request to access documents from FRA, and subsequent publication by FRA of several contracts for legal services under this link http://www.asktheeu.org/en/request/tender_file_for_provision_of_leg#outgoing-1052 it became apparent that Mr Tagaras provides legal services to FRA . As shown in contracts/PO, this is a remunerated administrative work, performed within several cases existent at FRA. The details of

the respective cases were made anonymous by FRA so we do not know the ref. nr of case/ CST or CG or CJEU.

On 22 April 2013 Mr Tagaras was nominated as Interim Judge <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:111:0049:0049:EN:PDF>

We do not know whether Mr Tagaras ceased his activity at FRA.

What we know is that there were problems during the legal proceedings and apparently the Tribunal was misinformed about the facts, and those inaccurate facts weighted heavily in the Final Judgments of some cases as F-58/10. Please see details here http://www.asktheeu.org/en/request/annual_report_cjeu_2012

There is one other case where apparently FRA did not say the truth during public hearings in case F-38/12. (i.e. FRA stated that there was an IAS audit performed into Contracts concluded with Danish Institute for Human Rights / IMR in Judgment F-58/10 but IAS replied twice that this is not true. See here the two replies from IAS <http://www.asktheeu.org/en/request/573/response/1839/attach/2/reply%20Access%20to%20Document%20Nicholson.pdf>

<http://www.asktheeu.org/en/request/573/response/2198/attach/4/2nd%20part%20reply%20Access%20to%20Document%20Nicholson.doc.pdf>)

There is a possibility that EU court could be misled as to the facts, truth / mistruth, and the Judgment 58/10 could be vitiated by these factual inaccuracies.

I would like to access documents of Court showing when exactly Mr Tagaras started to provide services to FRA and if this activity already ceased. This is to assert if Mr Tagaras provided services in Case F-58/10. The Council replied via asktheeu that there was no authorization given to Mr Tagaras. If there was a Request submitted by Mr Tagaras to ECJ followed by approval of the President or Secretary General, giving Mr Tagaras authorization as suggested in Article 4 quoted above, I would like to access that document. In general, I would like to access any existent document showing how this issue on “revolving doors” is functioning for ex-Judges. In order to allow you to understand better the present request, please see in The Annual Report of CJEU page 209 the 2 paragraphs quoted below.

Shortly, the sequence is as follows:

- Mr Tagaras provided/provides legal services to FRA.
- The Council nominated Mr Tagaras as interim judge.
- Mr Tagaras could be reappointed as full judge.
- Some new or already existent FRA cases can be referred to Full court

-Mr Tagaras has to sit as full judge in Full Court and will have to judge a case where he provided legal advice – in other words to judge his own arguments provided in his quality as legal adviser of FRA for staff issues.

I would like to access any document showing how CJEU address this issue in line with EU principles related to impartiality, objectivity, legal certainty...etc...etc

According to jurisprudence emanated from Judges for EU Staff, the situation is as presented in CJEU – Annual Report. See below.

“2. Prevention of conflicts of interest

It follows from the judgment in *BD v Commission*, that Article 11a of the Staff Regulations is intended to guarantee the independence, integrity and impartiality of officials and, consequently, of the institutions which they serve by imposing on the persons concerned a preventive duty to inform the authority intended to allow that authority to take appropriate measures where necessary.

Having regard to the fundamental nature of the objectives of independence and integrity pursued ” by that provision and to the general nature of the obligation imposed on officials, the Tribunal held that Article 11a must be acknowledged to have a wide scope, covering any situation in the light of which the person concerned must reasonably understand, given the duties he performs and the circumstances, that it is such as to appear, in the eyes of third parties, to be a possible cause of impairment of his independence. In addition, it made clear that the independence of officials visa-

vis third parties must not be assessed only from a subjective viewpoint. Such independence also requires the avoidance, particularly in the management of the finances of the European Union, of any conduct objectively likely to affect the image of the institutions and undermine the confidence which they should inspire in the public.

3. Outside activity

As Article 12b of the Staff Regulations obliges officials wishing to engage in an outside activity, whether paid or unpaid, to obtain permission, the Tribunal recalled, in its judgment in *BD v Commission*, that that obligation applies without exception and no distinction is to be made according to the nature or extent of the activity. On that basis, it held that the obligation to obtain such permission applies not only to officials who, in the course of their career, envisage engaging in such activity, but also to recruits who wish to continue an activity which they pursued before being recruited and which becomes an ‘outside’ activity from the time they take up their duties.” Thank you very much in advance.

Yours faithfully,

Kurt Weiss

From: XXXXXXX@curia.europa.eu

To: kurt.weiss@XXXXXX

Subject: re: Request to access documents and information / Regulation 2001/1049

Date: Mon, 5 Aug 2013 13:38:56 +0000

Dear Mr. Weiss

Your application for access to documents of the Court of Justice of the European Union, received on the 23rd of July, cannot be registered and treated as it does not contain the necessary elements in order to identify all the documents requested.

We would therefore ask you to clarify your application by indicating, in particular, the nature and the origin of the documents you seek (e.g. drawn up by the Court, by Mr. Tagaras or by other natural/legal persons) when referring to 'documents on post-employment activities of Mr. Tagaras

Please be advised that, according to article 5, paragraph 5, of the Decision of the Court of Justice of the European Union of 11 December 2012 concerning public access to documents held by the Court of Justice of the European Union in the exercise of its administrative functions, the period for replying to your application shall not start to run until the Court has received additional information from you to make the application sufficiently precise.

Yours faithfully,

XXXXXXEuropean Court of Justice / Press and Information

Head of Nordic Unit

(Denmark, Sweden, Finland, Estonia, Latvia and Lithuania)

Phone: +352 4303 3127

E-mail: XXXX@curia.europa.eu

From: Kurt Weiss [mailto:kurt.weiss@XXXXX]

Sent: mardi 23 juillet 2013 2:41

To: Access Documents XXXX@curia.europa.eu

Subject: Request to access documents and information / Regulation 2001/1049

Dear Sir/Madame,

Please find attached a Request for access documents and information based on Regulation 2001/1049.

Yours Sincerely,

Kurt Weiss