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Press and Information

PRESS RELEASE No 83/04

15 October 2004

Order of the President of the Court of First Instance in Case T-193/04 R

Hans-Martin Tillack v Commission of the European Communities

THE PRESIDENT OF THE COURT OF FIRST INSTANCE HOLDS IN PROCEEDINGS FOR INTERIM MEASURES THAT, PRIMA FACIE, THE APPLICATION FOR ANNULMENT OF THE FORWARDING TO THE NATIONAL JUDICIAL AUTHORITIES OF INFORMATION HELD BY OLAF AND THE APPLICATION FOR COMPENSATION IN RESPECT OF DAMAGE ALLEGEDLY SUFFERED CANNOT BE UPHELD

The forwarding of information from OLAF to the national judicial authorities does not, prima facie, give rise to any binding legal effect, and a causal link between the forwarding of the information and the damage suffered has not been established at this stage.

The case concerns the extent to which journalists' sources are protected. The President of the Court of First Instance has had to examine in proceedings for interim measures, whether at first sight, the forwarding by a Community organ to national judicial authorities of information liable to result in the disclosure of a journalist's sources may be the subject of an action for annulment and/or such as to cause harm to the career and reputation of the journalist who used those sources.

Facts

Mr Tillack, a journalist employed by the German magazine *Stern*, had two articles published, in February and March 2002, concerning allegations of irregularities exposed by a European Communities official, Mr Van Buitenen.

After conducting an inquiry in order to identify the European Communities officials or other servants at the source of the disclosure of a memorandum drafted by Mr Van Buitenen and of two internal notes, OLAF (the European Anti-Fraud Office) stated in a press release of 27 March 2002 that 'it was not excluded that payment may have been made to somebody within OLAF (or possibly another EU institution) for these documents'.

Stern confirmed that it was in possession of the Van Buitenen memorandum and the internal notes but denied that it had paid money to obtain them.

After requesting OLAF to withdraw the accusations allegedly contained in the press release of 27 March 2002, Mr Tillack complained to the European Ombudsman. In a recommendation to OLAF, the European Ombudsman stated that the making of allegations of bribery without a reliable factual basis constituted an instance of maladministration.

In February 2004 OLAF forwarded the results of its internal investigation to the prosecuting authorities in Brussels and Hamburg, in accordance with the regulation concerning investigations conducted by OLAF¹. An investigation for breach of professional secrecy was opened in Belgium, where Mr Tillack's home and office were searched and documents were seized.

Mr Tillack then applied to the Court of First Instance of the European Communities for annulment of the measure forwarding the information to the Brussels and Hamburg prosecuting authorities and for compensation in respect of the damage suffered.

By separate document, Mr Tillack applied for the suspension of any further implementation or action pursuant to OLAF's complaint to the Belgian and German judicial authorities and for an order that OLAF refrain from obtaining, inspecting, examining or hearing the contents of any documents and information in the possession of the Belgian judicial authorities.

The International Federation of Journalists, a trade union organisation working to protect journalists and to defend freedom of information, was permitted to intervene in support of the applicant.

The application for annulment of the measure forwarding the information

The act challenged is the measure by which OLAF forwarded to the Belgian and German authorities information obtained during an internal investigation into matters liable to result in criminal proceedings.

The President of the Court recalls that the annulment can be sought only of measures which produce binding legal effects such as to affect the interests of an applicant by bringing about a distinct change in his legal position.

He finds that even though **the forwarding of information** must be treated seriously by the national authorities, it **does not give rise to any binding legal effect** in relation to them since they remain free to decide what action should be taken following OLAF's investigations.

The forwarding of information therefore prima facie remains **a measure with no binding legal effect** for the applicant and, for that reason, is **not challengeable** before the Community judicature.

The application for damages

Mr Tillack stated that OLAF's actions (the forwarding of information, and statements on the investigation in progress) have seriously harmed his reputation and that it will be much more difficult for him to obtain information from sources and to sell his articles to magazines and newspapers.

The President of the Court points out that in order for the Community to incur non-contractual

¹ Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 (OJ 1999 L 136, p. 1).

liability **three conditions** must be met: the rule of law infringed must confer **rights on individuals**, the **breach** must be **sufficiently serious**, and there must be a **direct causal link** between the breach and the damage sustained.

The President of the Court finds that prima facie **the causal link between the forwarding of information** by OLAF to the national authorities **and the damage alleged has not been established**.

Nor does the application for interim measures contain material enabling an assessment as to whether the issue by OLAF of the press release of 27 March 2002 was contrary to the principles of good administration and of proportionality. In particular, the mere fact that the European Ombudsman found an 'instance of maladministration' does not mean that the principle of good administration as interpreted by the Community judicature has been infringed.

For all those reasons, the President of the Court **dismisses the application for interim measures**.

REMINDER: The Court of First Instance will deliver final judgment on the substance of the case at a later date. An order as to interim measures is without prejudice to the outcome of the main proceedings. An appeal, limited to points of law only, may be brought before the President of the Court of Justice of the European Communities against the decision of the President of the Court of First Instance within two months of notification of the decision.

Unofficial document for media use, which is not binding on the Court of First Instance.

Languages available: FR, EN, DE, NL, ES, IT

The full text of the order may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

In principle it will be available from midday CET on the day of delivery.

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