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Press and Information

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Judgment of the Court of First Instance in Case T-193/04

Hans-Martin Tillack v Commission of the European Communities

THE COURT OF FIRST INSTANCE DECLARES INADMISSIBLE THE ACTION FOR ANNULMENT BROUGHT AGAINST THE FORWARDING OF INFORMATION HELD BY OLAF TO NATIONAL JUDICIAL AUTHORITIES AND DISMISSES THE APPLICATION FOR DAMAGES IN COMPENSATION FOR THE HARM ALLEGEDLY SUFFERED BY THE APPLICANT

The forwarding of information by OLAF to national judicial authorities in accordance with the regulation concerning investigations which it conducts does not have binding legal effect and is not the direct cause of the damages alleged by the applicant

In February and March 2002, Mr Tillack, a journalist employed by the German magazine *Stern*, published two articles in which he described irregularities within the European institutions to which attention had been drawn by an official of the European Communities, namely Mr Van Buitenen.

After having carried out an investigation to identify the officials or servants of the European Communities at the source of the leak of the memorandum written by Mr Van Buitenen and two internal notes, the European Anti-Fraud Office (OLAF) stated in a press release of 27 March 2002 that ‘it is not excluded that payment may have been made to somebody within OLAF (or possibly another EU institution) for these documents’.

Stern, for its part, admitted to being in possession of the Van Buitenen memorandum but denied having paid any money to obtain documents.

Mr Tillack brought the matter of the OLAF press release of 27 March 2002 before the European Ombudsman, who, in a recommendation to OLAF, stated that making allegations of bribery without a factual basis constituted an instance of maladministration.

In February 2004, OLAF forwarded, in accordance with the regulation concerning investigations which it conducts¹, information concerning suspicions of breach of

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

professional secrecy and bribery to the public prosecutor in Brussels and Hamburg. An investigation into alleged corruption and for breach of professional secrecy was opened in Belgium where a search was carried out at Mr Tillack's home and office and documents were seized.

Mr Tillack then requested the Court of First Instance of the European Communities to annul the act by which OLAF forwarded information to the public prosecutor in Brussels and Hamburg, and to order compensation for the harm suffered.

The action for annulment of the act of forwarding information

The Court points out that only measures the legal effects of which are binding on and capable of affecting the interests of a person by bringing about a distinct change in his legal position may be the subject of an action for annulment.

The Court considers that **the forwarding of information by OLAF**, even though it has to be dealt with seriously by the national authorities, **has no binding legal effect** on them in so far as they remain free to decide what action is to be taken following an OLAF investigation. Consequently, the possible initiation of legal proceedings following the forwarding of information by OLAF, and the subsequent legal acts, are the sole and entire responsibility of the national authorities.

The forwarding of information is thus a **non-legally binding measure** in respect of Mr Tillack and, for that reason, it cannot be regarded as a measure capable of changing his legal position.

On those grounds, the **Court dismisses** as inadmissible **the action for annulment** of the act by which OLAF forwarded information to the German and Belgian judicial authorities.

The action for damages

According to Mr Tillack, OLAF's actions (the forwarding of information and its statements on the ongoing investigation) seriously harmed his reputation. In addition, it is much more difficult for him to gain information from his sources and to sell his articles to newspapers and magazines.

The Court draws attention to the fact that the non-contractual liability of the Community depends on the fulfilment of **three conditions: the unlawfulness of the conduct** alleged against the institutions, **the fact of damage** and the existence of a **causal link** between that conduct and the damaged complained of.

The Court considers that **there is not a sufficiently direct causal link between the forwarding of the information** by OLAF to the Belgian judicial authorities **and the damage claimed in order for liability to be established on that basis**.

In relation to the press release published by OLAF on 27 March 2002, the Court points out that the allegations contained therein, formulated in a hypothetical way, without indicating Mr Tillack's name or the name of the magazine for which he worked, do not constitute a manifest and grave disregard, by OLAF, of the limits of its discretion. In particular, the classification as an 'act of maladministration' by the Ombudsman does not mean, in itself, that OLAF's conduct constitutes a sufficiently serious breach of a rule of law.

For those reasons, the Court **dismisses the action for damages.**

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

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

Languages available: FR, CS, DE, EN, ES, HU, PL, SK, SL

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-193/04>*

It can usually be consulted after midday (CET) on the day judgment is delivered.

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
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