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Press and Information

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Judgment of the Court of First Instance in Case T-48/05

Yves Franchet and Daniel Byk v Commission

IN HANDING OVER INFORMATION TO THE JUDICIAL AUTHORITIES AND THE PRESS, OLAF AND THE COMMISSION HAVE COMMITTED WRONGFUL ACTS CAPABLE OF RENDERING THE COMMUNITY LIABLE

As a result of this unlawful conduct Mr Franchet, former director-general, and Mr Byk, former director of Eurostat, have suffered damage to their honour and reputation.

The European Anti-Fraud Office (OLAF) is responsible inter alia for conducting administrative investigations within the institutions for the purpose of detecting serious facts which may constitute breaches of the obligations of officials and agents of the Communities that can lead to disciplinary and, in some cases, criminal proceedings.

The controls, checks and actions undertaken by the agents of OLAF in the exercise of their duties are governed by a regulation from 1999¹. That regulation provides that the investigations must be conducted in accordance with the Treaty, in particular with full respect for human rights and fundamental freedoms and for the right of persons involved to express their views on the facts concerning them.

A number of internal audits of Eurostat (Statistical Office of the European Communities) brought to light possible irregularities in financial management. As a consequence, OLAF opened a number of investigations relating in particular to contracts concluded by Eurostat with various companies. In 2002 and 2003, OLAF sent to the Luxembourg and French judicial authorities files relating to investigations implicating Mr Yves Franchet and Mr Daniel Byk, respectively former director-general and former director of Eurostat, in those irregularities.

Mr Franchet and Mr Byk brought an action in damages before the Court of First Instance, alleging wrongful acts on the part of both OLAF and the Commission in the course of the investigation, serious pecuniary and non-pecuniary damage, and a direct causal link between the wrongful acts and the harm arising therefrom.

¹ Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OJ 1999 L 136, p. 1.

In today's judgment the Court of First Instance **rejects** the Commission's argument that the **action for damages is premature in part**. The Court of First Instance points out that the present proceedings do not concern the question whether the facts alleged are proven or not. **On the contrary, these proceedings concern the way in which OLAF conducted and concluded an investigation** which refers to Mr Franchet and Mr Byk by name and possibly attributes to them responsibility for the irregularities declared publicly well before a final decision, as well as the way the Commission behaved in the context of that investigation.

The Court finds that **OLAF should have informed Mr Franchet and Mr Byk of the handing over of the files to the Luxembourg and French judicial authorities** and that the conditions of the exception for cases requiring absolute secrecy to be maintained for the purposes of the investigation were not satisfied. Accordingly, **OLAF infringed the rights of defence** of Mr Franchet and Mr Byk. Furthermore, the fact that OLAF referred to them publicly – including through leaks to the press – as guilty of criminal offences **is in breach of the principle of presumption of innocence, the principle of the obligation of confidentiality in investigations and the principle of sound administration**. As a result, **OLAF committed several wrongful acts capable of rendering the Community liable**.

The Court next examines whether the Commission behaved unlawfully when it disclosed various pieces of information in the context of the investigations at issue. While noting that the institutions cannot be prevented from informing the public about ongoing investigations, the Court finds that, in the present case, **it cannot be considered that the Commission did so with all the required discretion and reserve** and maintaining a fair balance between the interests of Mr Franchet and Mr Byk and those of the institution. As a result, the **Commission committed sufficiently serious breaches of the principle of presumption of innocence to render the Community liable**.

Finally, the Court finds that as a result of the wrongful acts of OLAF and the Commission **Mr Franchet and Mr Byk were confronted with feelings of injustice and frustration and suffered damage to their honour and professional reputation through that unlawful conduct**. The Court considers it appropriate, taking into account the particular circumstances of the present case and the fact that their reputation has been very seriously affected, **to assess the quantum of that non-pecuniary damage at EUR 56 000**.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against the 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: EN, FR, DE, ES

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-48/05>

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

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