



Press and Information

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Judgment of the Civil Service Tribunal in Joined Cases F-5/05 and F-7/05

*Violetti and Others v Commission
Schmitt v Commission*

THE DECISION BY OLAF TO SEND INFORMATION OBTAINED IN AN INTERNAL EUROPEAN COMMISSION INQUIRY TO THE NATIONAL JUDICIAL AUTHORITIES CONSTITUTES AN ACT ADVERSELY AFFECTING AN OFFICIAL

The Tribunal has annulled OLAF's decision and ordered the Commission to pay damages to each of the officials concerned

The European Anti-Fraud Office (OLAF) is responsible, in particular, for carrying out internal administrative inquiries within the European Community institutions to investigate serious matters linked to the performance of professional activities which may constitute a breach of obligations by officials and servants of the Communities liable to give rise to disciplinary and, in appropriate cases, criminal proceedings.

In 2002 the internal audit service of the Joint Research Centre ('JRC') drew up a report concerning the accident declarations made by staff of the JRC based in Ispra.

Pointing out that the working conditions at the Ispra site could not warrant the high number of accidents declared and that there was suspicion as to the sincerity of the accident declarations, the internal audit report of the JRC concluded that OLAF should be informed of the facts. It suggested, in addition, that a comparison should be made between the frequency of accident declarations made by the staff of the JRC posted to Ispra and the frequency of declarations made by the rest of the staff of the Commission.

In the course of the internal inquiry concerning the implementation in Ispra of the accident insurance scheme, OLAF sent to the public prosecutor of Varese (Italy) information liable, in the view of the Office, to give rise to criminal proceedings. This information included matters concerning 42 officials of the JRC who had each declared at least nine accidents in the period from January 1986 to July 2003. The officials concerned were informed nearly a year later that OLAF had sent that information note to the prosecutor.

The medical and legal expert report ordered by the prosecutor concluded that the evidence of a medical nature was not sufficient to establish that the accident declarations were fraudulent. Consequently, the judge responsible for preliminary investigations of the District Court of Varese decided to shelve the proceedings.

As the complaints against the decision of OLAF to send information to the Italian judicial authorities were rejected, some of the officials concerned brought an action before the Court of

First Instance which referred the actions to the Civil Service Tribunal, which has jurisdiction in this matter.

The first question which the Tribunal had to answer was whether the decision by OLAF to send information to the Italian judicial authorities constituted an act adversely affecting an official within the meaning of the Staff Regulations of Officials of the European Communities¹, liable to be the subject of a complaint and a subsequent action.

The Tribunal answered this question, which has not been put before the court previously, in the affirmative.

The Tribunal first held that the provisions of the Staff Regulations which allow an official to submit to the Director of OLAF a complaint against an act of OLAF adversely affecting him in connection with investigations by OLAF were adopted by the Community legislature in 2004 in order to guarantee judicial protection for persons covered by the Staff Regulations and that those provisions constituted the corollary of the new powers conferred on OLAF by the legislature when the reform of the Staff Regulations was adopted.

Next, the Tribunal essentially observed that, having regard to the requirements resulting from the principle of effective judicial protection and given the consequences liable to be entailed by a decision to send information to national judicial authorities, it was hardly possible to refuse to classify such a decision as an act adversely affecting an official within the meaning of the Staff Regulations, when the Community legislature itself provided for the attachment of strict procedural guarantees to internal inquiries in order to ensure, amongst other things, respect for the fundamental principle of the right to be heard.

The second question before the Tribunal was whether, in this case, the decision to send information to the Italian judicial authorities was adopted lawfully.

In that regard, the Tribunal observed that where the Director of OLAF plans to send information to national judicial authorities, he is obliged, if the information comprises conclusions referring by name to a Member, an official or a servant of the Commission to give that person the opportunity to comment on facts concerning him before the information is sent. Thus, in this case, the applicants should, in principle, have been informed and heard regarding the facts concerning them before the note was sent to the Italian judicial authorities. OLAF could have dispensed with this formality if the needs of the inquiry justified it, provided that it obtained the authorisation of the Secretary General of the Commission.

Having found that none of those procedural guarantees had been respected, the Tribunal annulled the contested decision and ordered the Commission to pay each of the applicants EUR 3000 to make good their loss.

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

Languages available: FR EN IT

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=F-5/05>

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

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¹ Article 90a.