

ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)  
18 December 2003

Case T-215/02

**Santiago Gómez-Reino**  
**v**  
**Commission of the European Communities**

(Officials – Investigation carried out by the European  
Anti-Fraud Office (OLAF) – Duty to assist –  
Action for annulment and for damages clearly inadmissible  
and clearly unfounded in law)

Full text in French . . . . . II - 1685

**Application for:** first, annulment of a series of measures relating to investigations carried out by the European Anti-Fraud Office (OLAF) and to requests for assistance under Article 24 of the Staff Regulations of Officials of the European Communities and, second, for compensation in respect of the alleged damage.

**Held:** The action is dismissed as clearly inadmissible and as clearly unfounded in law. The parties are each to bear their own costs, including those incurred in the proceedings for interim relief in Case T-215/02 R and Case C-471/02 P(R).

## Summary

*1. Officials – Actions – Act adversely affecting an official – Definition – Preparatory act – Decision to initiate administrative inquiries – Inadmissible (Staff Regulations, Arts 90 and 91)*

*2. Officials – Duty of the administration to provide assistance – Scope – Public and personal defamation of an official in press articles – Obligation to adopt the measures necessary to restore the good name of the official – Limits (Staff Regulations, Art. 24)*

*3. Officials – Actions – Action for damages – Action invoking the duty of the administration jointly and severally to make good damage caused to an official by a third party – Admissibility – Conditions – Obligation for the official concerned to apply first to the national courts in order to obtain compensation from the person who caused the damage (Staff Regulations, Art. 24, second para. and Art. 91)*

1. The existence of an act adversely affecting a person within the meaning of Articles 90(2) and 91(1) of the Staff Regulations is a mandatory condition for the admissibility of any action brought by officials against the institution by which they are employed. Only measures which produce binding legal effects capable of directly and immediately affecting the applicant's interests by significantly altering his legal situation constitute acts or decisions against which actions for annulment may be brought. As regards staff cases, acts preparatory to a decision do not adversely affect the applicant and therefore can only be contested incidentally in an appeal against measures capable of being annulled. Although some purely preparatory measures may adversely affect an official inasmuch as they may influence the content of a subsequent challengeable act, those measures cannot be the subject of a separate action and must be challenged in support of an action brought against that act.

Decisions of the European Anti-Fraud Office (OLAF) to open or to re-open an administrative inquiry, its investigations into the administration's conduct of an internal inquiry concerning an official, and OLAF's forwarding to the administration of the report concluding the inquiry and containing the conclusions and recommendations of OLAF's director merely constitute measures preparing the way for a decision of the appointing authority. The same is true of, on the one hand, OLAF's refusal to notify the official concerned of certain acts relating to an internal inquiry allegedly conducted against him and to allow him to defend himself as part of that inquiry, and, on the other hand, the decision by the institution itself to institute and to conduct an internal inquiry.

(see paras 46-47, 50, 53, 55)

See: 32/68 *Grasselli v Commission* [1969] ECR 505, paras 4 to 7; 17/78 *Deshormes v Commission* [1979] ECR 189, para. 10; 346/87 *Bossi v Commission* [1989] ECR 303, para. 23; T-20/92 *Moat v Commission* [1993] ECR II-799, para. 39; T-391/94 *Baiwir v Commission* [1996] ECR-SC I-A-269 and II-787, para. 34; T-293/94 *Vela Palacios v ESC* [1996] ECR-SC I-A-305 and II-893, para. 22

2. The administration has, on the one hand, a discretion in the choice of the ways and means of implementing Article 24 of the Staff Regulations and, on the other hand, a duty, particularly when faced with serious and unfounded accusations, to take the necessary and appropriate steps, pursuant to the same article, to restore the good name of an official whose professional integrity has been called into question.

Where there has been alleged public and personal defamation of an official in press articles whose primary target was the institution itself, the official, in accordance with his duty to act in good faith which covers all relations between himself and the institution, must give the institution the right to defend his reputation in a way which does not harm the institution's own interests.

(see paras 62, 73)

See: T-59/92 *Caronna v Commission* [1993] ECR II-1129, paras 64, 65 and 92, and the case-law cited; T-34/96 and T-163/96 *Connolly v Commission* [1999] ECR-SC I-A-87 and II-463, para. 130

3. An action for damages brought by an official invoking the obligation of the administration under the second paragraph of Article 24 of the Staff Regulations jointly and severally to compensate an official for damage suffered by reason of his position or duties at the hands of a third party, may be declared admissible only if the official in question has not first been able to obtain compensation from the person who caused the damage, if necessary through the national courts.

(see para. 82)

See: *Caronna v Commission*, cited earlier, paras 31 to 33