

Case T-193/04

Hans-Martin Tillack

v

Commission of the European Communities

(Investigation by the European Anti-Fraud Office (OLAF) into the publication of confidential information — Suspicions of bribery and breach of professional secrecy — Communication to national judicial authorities of information relating to situations liable to lead to criminal proceedings — Search of the home and office of a journalist — Action for annulment — Admissibility — Action for damages — Causal link — Sufficiently serious breach)

Judgment of the Court of First Instance (Fourth Chamber), 4 October 2006 II - 3999

Summary of the Judgment

1. *Actions for annulment — Actionable measures — Meaning — Measures producing binding legal effects*
(Art. 230 EC; European Parliament and Council Regulation No 1073/1999, Art. 10(2))

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2. *Actions for damages — Autonomy in relation to action for annulment and action for failure to act*
(Arts 230, fourth para., EC, 235 EC and 288, second para., EC)
3. *Non-contractual liability — Conditions — Sufficiently serious breach of Community law*
(Art. 288, second para., EC)

1. Measures the legal effects of which are binding on and capable of affecting the interests of the applicant by bringing about a distinct change in his legal position are acts or decisions which may be the subject of an action for annulment in terms of Article 230 EC.

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.

Such is not the case for an act by which the European Anti-Fraud Office (OLAF), on the basis of Article 10(2) of Regulation No 1073/1999 concerning investigations conducted by OLAF, forwards to the national judicial authorities information concerning suspicions of breach of professional secrecy and bribery.

That Article 10(2) merely provides for the forwarding of information to national judicial authorities, which remain free, in the context of their own powers, to assess the content and significance of that information and, thus, the action to be taken if necessary.

That freedom of the national judicial authorities is not called into question by the duty to cooperate in good faith which implies that, when OLAF forwards them information pursuant to Article 10(2) of Regulation No 1073/1999, the national judicial authorities have to examine that information carefully and draw the appropriate consequences from it in order to comply with Community law. Such a duty of careful examination does not, however, require an interpretation to the effect that the forwarded information in dispute has binding effect, in the sense that the national authorities are obliged to take specific measures, since such an interpretation would alter the division of tasks and responsibilities as prescribed

for the implementation of Regulation No 1073/1999.

title 235 EC and the second paragraph of Article 288 EC, where such conduct is of such a nature as to entail liability for the Community.

(see paras 67, 68, 70, 72)

(see paras 97, 98)

2. The action to establish liability is an autonomous form of action, with a particular purpose to fulfil within the system of legal remedies and subject to conditions of use dictated by its specific purpose. Although actions for annulment and for failure to act seek a declaration that a legally binding measure is unlawful or that such a measure has not been taken, an action to establish liability seeks compensation for damage resulting from a measure or from unlawful conduct, attributable to a Community institution or body.
3. The non-contractual liability of the Community for the unlawful acts of its bodies, for the purposes of the second paragraph of Article 288 EC, depends on fulfilment of a set of conditions, namely: 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 damage complained of. As regards the first of those conditions, it is required that there be a sufficiently serious breach of a rule of law intended to confer rights in individuals.

Thus, individuals who, by reasons of the conditions as to admissibility laid down under the fourth paragraph of Article 230 EC, cannot contest directly certain Community acts or measures, none the less have the opportunity of putting in issue conduct lacking the features of a decision, which accordingly cannot be challenged by way of an action for annulment, by bringing an action for non-contractual liability under Ar-

In that regard, the principle of sound administration does not, in itself, confer rights upon individuals, except where it constitutes the expression of specific rights such as the right to have affairs handled impartially, fairly and within a reasonable time, the right to be heard, the right to have access to files, or the obligation to give reasons for decisions, for the purposes of Article 41 of the

Charter of fundamental rights of the European Union.

Moreover, the classification of the conduct of a Community institution as an 'act of maladministration' by the European Ombudsman does not mean, in itself, that that conduct constitutes a sufficiently serious breach of a rule of law. In the institution of the Ombudsman, the Treaty has given citizens of the

Union, and more particularly officials and other servants of the Community, an alternative remedy to that of an action before the Community Courts in order to protect their interests. That alternative non-judicial remedy meets specific criteria and does not necessarily have the same objective as judicial proceedings.

(see paras 116, 117, 127, 128)