

General Court: No Unlawful Conduct by OLAF vis-à-vis Former European Commissioner

News

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On 6 June 2019, the General Court dismissed the action brought by former Maltese European Commissioner *John Dalli* in which he claimed compensation for non-material damage caused to him by alleged unlawful conduct against him by OLAF and the Commission ([case T-399/17](#)).

OLAF opened investigations against Dalli in 2012, alleging him of being involved in an attempt of bribery. Dalli was appointed European Commissioner in 2010 for the portfolio health and consumer protection. It was claimed that Dalli knew about the behaviour of a Maltese entrepreneur who sought to obtain pecuniary advantage from a Swedish tobacco company in return for a more lenient legislative proposal on tobacco products by Dalli's department. The final OLAF report prompted *José Manuel Barroso*, President of the Commission at that time, to urge Mr. Dalli to resign from office.

In 2015, the General Court dismissed Dalli's first action in which he sought annulment of the "oral decision of 16 October 2012 of termination of his office" and compensation for damage suffered from that decision ([case T-562/12](#)). Dalli addressed the General Court again in 2017 and applied that the Commission be ordered to compensate for the damage, in particular the non-material damage, estimated (on a provisional basis) at €1,000,000.

The Court first rejected the argumentation by the Commission that the present action of 2017 is inadmissible as the matter is *res judicata* following the judgment of 2015. The Court held that the present action has a different cause of action. Whereas the first action related to the decision of the President of the Commission terminating the office of the applicant, the new action mainly related to OLAF's wrongful conduct, which had not actually and necessarily been settled by the first judgment.

As regards the substance of the case, the Court, however, did not find any unlawful conduct on the part of OLAF and the Commission. The Court emphasised that non-contractual liability of the European Union can only be established if the following conditions are fulfilled:

- The unlawfulness of the conduct of which the institutions are accused;
- The fact of damage; and
- The existence of a causal link between that conduct and the damage complained of.

According to case law, the first condition – unlawfulness of the conduct of the institutions – requires a sufficiently serious breach of a rule of law intended to confer rights on individuals to be established. The

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Published in
2019, Vol. 14(2) *eu crim* pp 87 –
88

ISSN: 1862-6947
<https://eu crim.eu>



breach must be one that implies that the institution concerned manifestly and gravely disregarded the limits set on its discretion.

In this context, the Court rejected each of the seven complaints put forward by Mr Dalli concerning the unlawfulness of OLAF's conduct. Those complaints, *inter alia*, concerned the following:

- Unlawfulness of the decision to open an investigation;
- Flaws in the characterisation of the investigation and its unlawful extension;
- Breach of the principles governing the gathering of evidence and distortion and falsification of the evidence;
- Infringement of the rights of the defence, of the principle of presumption of innocence, and of the right to the protection of personal data.

The Court also dismissed two complaints claiming unlawful conduct by the Commission. They concerned:

- Violation of the principle of sound administration and of the duty to behave in a loyal, impartial, and objective manner and to respect the principle of independence;
- Violation of OLAF's independence.

By way of a complementary remark, the Court ultimately held that the applicant did not establish the existence of a sufficiently direct causal link between the conduct complained of and the damage alleged, or even the existence of the latter. Therefore, the third condition of non-contractual liability was not fulfilled either.

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The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).



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