

- an error of law in so far as the Tribunal treated the failure to take account of the provisions of Article 8(3) of the GIP as an infringement of an essential procedural requirement and/or a substantial irregularity resulting in the annulment of the CDR in dispute before the Tribunal.

### **Action brought on 5 May 2009 — Z v Commission**

**(Case T-173/09)**

(2009/C 167/30)

*Language of the case: German*

#### **Parties**

*Applicant:* Z (Hannover, Germany) (represented by: C. Grau and N. Jäger, lawyers)

*Defendant:* Commission of the European Communities

#### **Forms of order sought**

- Grant the applicant, through access to the file in Case COMP/39406 — 'Marine Hoses' — in particular through the provision of a copy of the Commission Decision of 28 January 2009, which imposed a fine on Dunlop Oil & Marine/ContiTech AG/Continental AG for their alleged participation in the marine hoses cartel between 1986 and 2007, information about whether it is identified by name in that decision and — if so — in what context the identification of the applicant takes place, in particular the extent to which relevant cartel- or criminal law representations relating to the applicant are included in the Commission decision;
- Remove, after the granting of access to the file, any references, yet to be defined, identifying the applicant by name, in particular relevant cartel- and criminal law representations relating to the applicant in the Commission Decision of 28 January 2009, which imposed a fine on Dunlop Oil & Marine/ContiTech AG/Continental AG for their alleged participation in the marine hoses cartel between 1986 and 2007;
- Remove the identification by name of the applicant and any references to the applicant in the version of the decision to be published;
- Order the defendant to pay the costs.

#### **Pleas in law and main arguments**

The applicant contests the Commission's refusal of 5 March 2009 to grant it access to the documents on the file in Case COMP/39.406 — 'Marine Hoses'. The applicant also requests the removal of possible references to itself in the Commission decision of 28 January 2009 in this case and the removal of references to itself in the version of the decision to be published.

The applicant asserts in support of the action that the right to be granted access to the file and the removal of any references to the applicant are based on the infringement of the applicant's fundamental procedural rights, namely the right to a fair hearing and the right of access to the file, and on the principle of the presumption of innocence. A right of access to the file is based also on the right of public access to Commission documents under Regulation (EC) No 1049/2001 <sup>(1)</sup>.

<sup>(1)</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

### **Appeal brought on 27 April 2009 by the Council of the European Union against the judgment of the Civil Service Tribunal delivered on 17 February 2009 in Case F-51/08, Stols v Council**

**(Case T-175/09 P)**

(2009/C 167/31)

*Language of the case: French*

#### **Parties**

*Appellant:* Council of the European Union (represented by M. Bauer and G. Kimberley, acting as Agents)

*Other party to the proceedings:* Willem Stols (Halsteren, Netherlands)

#### **Form of order sought by the appellant**

- Set aside the judgment of the CST of 17 February 2009 in Case F-51/08 *Willem Stols v Council*,
- Dismiss the action of 21 May 2008 by which Mr Stols had sought annulment of the decision of 16 July 2007 by which the Council refused to include him on the list of officials promoted to grade AST 11 for the 2007 promotion exercise, together with the decision of 5 February 2008 by which the Deputy Secretary-General of the Council had rejected, as the appointing authority, Mr Stols' complaint submitted in accordance with Article 90(2) of the Staff Regulations,
- Order the defendant to pay all the costs incurred at first instance and on appeal.

#### **Pleas in law and main arguments**

By the present appeal, the Council of the European Union seeks to have set aside the judgment of the Civil Service Tribunal (CST) of 17 February 2009 in Case F-51/08 *Stols v Council*, by which the CST annulled the Council decisions refusing to promote Mr Stols to grade AST 11 in the context of the 2007 promotion exercise.