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IL-QORTI TAL-GUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
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Advocate General's Opinion in Case C-432/04

Commission of the European Communities v Edith Cresson

**IN THE OPINION OF ADVOCATE GENERAL GEELHOED, MRS CRESSON IS
CORRECTLY ACCUSED OF FAVOURITISM BY THE COMMISSION, IN BREACH
OF HER OBLIGATIONS AS A COMMISSIONER**

*He proposes that such actions merit a pecuniary sanction and therefore suggests that the
Court deprive Mrs Cresson of fifty percent of her pension rights.*

Mrs Edith Cresson was a Member of the European Commission from 24 January 1995 until 8 September 1999 when the Commission left office after having collectively resigned on 16 March 1999. During her time at the Commission her portfolio included the fields of science, research and development, the Joint Research Centre and human resources, education, training and youth.

During her time in office the Commission alleges that she showed favouritism to two of her acquaintances, Mr René Berthelot and Mr Timm Riedinger. Mr Berthelot, a 66 year old dentist from Mrs Cresson's home town, was recruited at her insistence to serve as her personal adviser, despite warnings that this was not possible. Formally, he was granted the post of visiting scientist from September 1995 to the end of 1997. This stay of 28 months exceeded the 24 month limit imposed by the Commission on the employment of visiting scientists. Mr Riedinger, a commercial lawyer, was offered three contracts in 1995 from Commission services under Mrs Cresson's control. At least two of these were offered at her express request. No payment was ever made for any of these contracts to Mr Riedinger, which were never performed.

In January 2003 the Commission decided to commence proceedings against Mrs Cresson and addressed a notice of objections to her accusing her of breach of the obligations arising from her office either intentionally, or at least as a result of gross negligence. Having heard the

response from Mrs Cresson the Commission decided to apply to the Court under Article 213 EC Treaty on 19 July 2004¹.

Parallel to these proceedings, a case was brought before the Belgian authorities but ultimately dismissed in June 2004 by the Chambre du conseil of the Tribunal de première instance in Brussels which decided that there were no grounds for continuing the criminal proceedings.

In his Opinion today, Advocate General Leendert Adrie Geelhoed first notes that Article 213(2) EC Treaty is essential to the proper functioning of the Community institutions. Persons holding high office must, not only be regarded as competent from a professional point of view, but are also seen as being of irreproachable behaviour. The personal qualities of the Commissioners, their perceived independence, impartiality and integrity, reflect directly on the confidence the general public has in the Community institutions and therefore impacts directly upon their efficacy.

As regards admissibility, Advocate General Geelhoed concludes that the case brought by the Commission is admissible. In his opinion, the Commission may request the Court to deprive a former Member of the Commission of his or her pension rights as a consequence of actions whilst in office. Furthermore, the decision of the Belgian Court not to proceed with a criminal case has no bearing on the Article 213 proceeding initiated by the Commission and brought before the Court of Justice, as the two are completely distinct. Finally the fact that the sums of money which were paid to Mr Berthelot were modest has no bearing on the question of admissibility. There is no requirement as to the degree of seriousness of the alleged breach of a Commissioner's obligations under Article 213(2). What matters is whether the conduct concerned was likely to damage the Commission's authority and credibility.

Next, the Advocate General suggests that the objections raised by Mrs Cresson as regards breach of various fundamental rights during the procedure conducted by the Commission and against the procedure of Article 213(2) EC as such should be rejected as unfounded. In particular the Advocate General points out that the Commission, in the absence of any clear procedural framework under Article 213(2), did adopt a prudent approach by preparing a notice of objections and giving Mrs Cresson the opportunity to respond in both writing and orally.

As to the substance of the allegations, Advocate General Geelhoed notes that the facts are not seriously disputed by Mrs Cresson and that the arrangements made were unusual. Whilst Mrs Cresson contends that Community rules were complied with, the Advocate General stresses that the various facts are symptomatic of a basic attitude indicating that she was willing, whilst in office as a Member of the Commission, to use that office to extend benefits to personal friends at the expense of the Community budget. He therefore concludes that **Mrs Cresson is correctly accused of favouritism by the Commission, in breach of her obligations as a Commissioner.**

As a result of this breach of obligations Advocate General Geelhoed states that **a pecuniary sanction is appropriate.** In his opinion, whilst the severity of the charges against Mrs

¹ Article 213(2) of the EC Treaty sets out the obligations and duties of Members of the Commission. The third section of this paragraph, in conjunction with Article 216 EC Treaty, provides that the Council or the Commission may apply to the Court of Justice for a ruling that the Member concerned be, according to the circumstances, compulsorily retired or deprived of his pension rights or other benefits. This procedure has only be commenced in relation to one other Member of the Commission, Mr Bangemann (Case C-290/99 Council v Bangemann), which was, however, withdrawn by the Council prior to the Court delivering its judgment.

Cresson warrant a full deprivation of pension rights a number of factors, including the lapse of time between her leaving office and proceedings being brought, the damage which has already occurred to her reputation and the general administrative culture in the Commission at the time mitigate against such a severe sanction. As a consequence of this he **suggests that the Court deprive Mrs Cresson of 50% of her pension rights as of the date of the Court judgment.**

IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

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

Languages available: CS, DE, EN, ES, FR, HU, IT, NL, PL, SK

The full text of the Opinion may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-432/04>

It can usually be consulted after midday (CET) on the day of delivery.

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*Pictures of the delivery of the Opinion are available on EbS "Europe by Satellite",
a service provided by the European Commission, Directorate-General Press and
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