

TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS  
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ  
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL  
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN  
EUROOPA ÜHENDUSTE KOHUS  
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ  
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE  
EIROPAS KOPIENU TIESA



3ENDRIJŲ TEISINGUMO TEISMAS  
J KÖZÖSSÉGEK BÍRÓSÁGA  
IL-QORTI TAL-ĠUSTIZZJA TAL-KOMUNITAJIET EWROPEJ  
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH  
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS  
SÚDNY DVOR EURÓPSKÝCH SPOLOČENSTIEV  
SODIŠČE EVROPSKIH SKUPNOSTI  
EUROOPAN YHTEISÖJEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS DOMSTOL

## Press and Information

### **PRESS RELEASE No 56/06**

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Judgment of the Court of Justice in Case C-432/04

*Commission of the European Communities v Edith Cresson*

### **THE COURT DECLARES THAT MRS EDITH CRESSON ACTED IN BREACH OF HER OBLIGATIONS AS A EUROPEAN COMMISSIONER**

*In the light of the circumstances of the case, the Court holds that the finding of that breach constitutes, in itself, an appropriate penalty*

Mrs Cresson was a member of the European Commission from 24 January 1995 to 8 September 1999, when the Commission left office, having resigned collectively on 16 March 1999. During her term of office at the Commission, Mrs Cresson's portfolio comprised: science, research and development, human resources, education, training and youth, together with the Joint Research Centre (JRC).

When Mrs Cresson took up her functions, she wished to appoint one of her close acquaintances, Mr Berthelot, a dental surgeon, as a 'personal adviser'.

Because he was 66 years old, Mr Berthelot could not be appointed as a member of a Commissioner's Cabinet, and Mrs Cresson was advised accordingly. Moreover, when Mrs Cresson took up office, her Cabinet was already fully staffed, as far as personal advisers were concerned. Mrs Cresson asked the administration to consider how it might be possible to appoint him. Mr Berthelot was then engaged as a visiting scientist from September 1995 until the end of February 1997. Although appointment as a visiting scientist implies that the person concerned is mainly to work either in the JRC or the services dealing with research, Mr Berthelot worked exclusively as a personal adviser to Mrs Cresson.

On the expiry of his contract on 1 March 1997, Mr Berthelot was offered another visiting scientist's contract, for a period of one year expiring at the end of February 1998. His appointment as a visiting scientist thus lasted for a total period of two and a half years, whereas the rules specify a maximum duration of 24 months. On 31 December 1997, Mr Berthelot requested the termination of his contract from that date, on medical grounds. His application was accepted.

Following a complaint by a Member of Parliament, a criminal investigation concerning Mr Berthelot's file was opened in Belgium in 1999. In June 2004, the Chambre du conseil of the Tribunal de première instance de Bruxelles (Court of First Instance, Brussels) decided that no further action should be taken in the case, taking the view that there was no ground for continuing the criminal procedure.

At the same time, in January 2003, the Commission sent Mrs Cresson a statement of the complaints against her as regards the breach of her obligations as a Commissioner in relation to Mr Berthelot's appointment. After hearing Mrs Cresson, the Commission brought, on 19 July 2004, an action before the Court of Justice of the European Communities, based on Article 213 EC<sup>1</sup>.

The Court notes, first, that Article 213 EC requires Members of the Commission to respect the 'obligations arising from [their office]'. As there is nothing which restricts that concept, it falls accordingly to be understood as extending, not only to the duties of integrity and discretion expressly mentioned in that article, but also to all of the duties which arise from the office of Member of the Commission, which include the obligation to be completely independent, to act in the general interest of the Community, and to observe the highest standards of conduct. It is therefore the duty of Members of the Commission to ensure that the general interest of the Community takes precedence at all times not only over national interests but also over personal ones.

However, while Members of the Commission are under an obligation to conduct themselves in a manner which is beyond reproach, a breach of a certain gravity is required, if a breach of Article 213(2) is to be committed.

The Court went on to hold that Mrs Cresson acted in breach of the obligations arising from her office as a Member of the Commission in relation to the appointment of Mr Berthelot and the terms under which he worked. It essentially held that Mr Berthelot's appointment constituted a circumvention of the rules relating to the appointment of Members of a Cabinet and of visiting scientists.

Having regard to her personal involvement in that appointment, since it took place at her express request, after she had been informed that she could not recruit Mr Berthelot to her Cabinet, Mrs Cresson must be held responsible for that appointment and the circumvention of the rules which it involved.

**Thus, in appointing a close acquaintance, Mr Berthelot, as a visiting scientist, when he was not going to be engaged in the activities associated with that position, in order to allow him to undertake the role of personal adviser within her Cabinet, even though the latter was fully-staffed and, moreover, Mr Berthelot had passed the permitted age-limit for performing that role, Mrs Cresson became liable for a breach of her obligations of a certain degree of gravity.**

The Commission had also argued that Mrs Cresson had acted in breach of the obligations arising from her office as Commissioner in offering work contracts to another of her personal

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<sup>1</sup> Article 213(2) EC lays down the obligations and functions of Members of the Commission. The third subparagraph of Article 213(2) EC provides that the Council and the Commission may bring an action before the Court of Justice seeking a ruling that the Member concerned be, according to the circumstances, either compulsorily retired or deprived of his right to a pension or other benefits in its stead. This is the first occasion on which the Court of Justice has decided a case based on that provision.

acquaintances, Mr Riedinger, a commercial lawyer, but the Court considered that the information brought to its attention did not justify such a finding.

In addition, the Court held that all of the pleas raised by Mrs Cresson relating to procedural issues and to compliance with various rights, especially the rights of the defence, fell to be rejected. As regards, in particular, Mrs Cresson's claim that where the conduct complained of in criminal and disciplinary proceedings is the same, the findings of the criminal court are binding on the disciplinary authorities, the Court held that it is not bound by the legal characterisation of facts made in the context of the criminal proceedings and that it is for the Court, exercising its discretion to the full, to investigate whether the conduct complained of in proceedings brought under Article 213(2) EC constitutes a breach of the obligations arising from the office of Commissioner. Accordingly, the decision of the Chambre du conseil of the Tribunal de première instance de Bruxelles that there was no evidence of criminal conduct on Mrs Cresson's part cannot bind the Court.

Lastly, while the breach of the obligations arising from the office of Member of the Commission calls, in principle, for the imposition of a penalty, the Court held that, having regard to the circumstances of the case, the finding of breach constitutes, of itself, an appropriate penalty and, accordingly, not to impose on Mrs Cresson a penalty in the form of a deprivation of her right to a pension or other benefits in its stead.

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

*Languages available: CS, FR, DE, EN, ES, EL, HU, IT, NL, PL, PT, SK, SL*

*The full text of the judgment 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 judgment is delivered.*

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