

Or, if it is not, is national case-law according to which the court is to carry out a more detailed and specific examination of the evidence and to give a clear answer to the arguments put forward by the accused's lawyer, even if it thus takes the risk that it will be unable to examine the case or deliver a final decision on guilt if the case is assigned to it for the purposes of the substantive examination, — which implies that another judge will examine the substance of the case — compatible with the abovementioned provisions?

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<sup>(1)</sup> Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1).

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**Request for a preliminary ruling from the Svea hovrätt (Sweden) lodged on 9 May 2018 — Dacom Limited v IPM Informed Portfolio Management AB**

**(Case C-313/18)**

(2018/C 268/31)

*Language of the case: Swedish*

**Referring court**

Svea hovrätt

**Parties to the main proceedings**

*Appellant:* Dacom Limited

*Respondent:* IPM Informed Portfolio Management AB

**Questions referred**

- 1.1 What criteria are to determine whether material constitutes such preparatory design material as is referred to in Article 1(1) of Directive 2009/24/EC <sup>(1)</sup> of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs? Can documents which set out the requirements as to the functions which are to be performed by a computer program and the result which the computer program must achieve, for example detailed descriptions of investment principles or risk models for asset management including mathematical formulae to be applied in the computer program, constitute such preparatory design material?
- 1.2 Must material, in order to constitute preparatory design material within the meaning of the directive, be so complete and detailed that in practice it requires no independent choices on the part of the person who actually writes the code of a computer program?
- 1.3 Does the exclusive right to preparatory design material within the meaning of the directive mean that the computer program in which the preparatory design material subsequently results is to be regarded as an adaptation of the preparatory design material and therefore a dependent work for the purpose of copyright (Article 4(1)(b) of Directive 2009/24/EC), or that the preparatory design material and software are to be regarded as different forms of expression of the same work, or that they are two independent works?
- 2.1 Can a consultant employed by another company, but who has been working for a number of years for the same client and, in the execution of his duties or following the instructions given by the client, has created a computer program, be deemed to be an employee [of the client company] for the purpose of Article 2(3) of Directive 2009/24/EC?

- 2.2 On the basis of which criteria should it be assessed whether someone is an employee for the purposes of that provision?
- 3.1 Does Article 11 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights <sup>(2)</sup> mean that there must be a possibility of obtaining an injunction, even in a situation where the claimant holds the intellectual property right at issue jointly with the party against whom that injunction is directed?
- 3.2 If the answer to question 3.1 is in the affirmative, does that lead to any other conclusion if the exclusive right concerns a computer program and that computer program is not disseminated or made available to the public, but used only in a joint owner's own business?

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<sup>(1)</sup> OJ 2009 L 111, p. 16.

<sup>(2)</sup> OJ 2004 L 157, p. 45.

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**Request for a preliminary ruling from the Tribunal Judicial da Comarca de Faro (Portugal) lodged on  
14 May 2018 — Cátia Correia Moreira v Município de Portimão**

**(Case C-317/18)**

(2018/C 268/32)

*Language of the case: Portuguese*

**Referring court**

Tribunal Judicial da Comarca de Faro

**Parties to the main proceedings**

*Applicant:* Cátia Correia Moreira

*Defendant:* Município de Portimão

**Questions referred**

- a. On the premiss that ‘worker’ must be taken to mean any person who, in the Member State in question, is protected as such by the national employment legislation, can a person who has a contract for a position of trust with the transferor be regarded as a ‘worker’ for the purposes of Article 2(1)(d) of Council Directive 2001/23/EC <sup>(1)</sup> of 12 March 2001 and can that person, accordingly, enjoy the protection which that legislation confers?
- b. Does EU legislation, in particular Directive 2001/23/EC, in conjunction with Article 4(2) of the Treaty on European Union, preclude a national rule which, even in the case of a transfer falling within the scope of that directive, requires that workers in all cases undergo a public selection procedure and become bound by a new relationship with the transferee where that transferee is a municipality?

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<sup>(1)</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16).