

**Judgment of the Court (Second Chamber) of 16 July 2009
(reference for a preliminary ruling from the Tribunale di
Napoli — Sezione Lavoro (Italy)) — Raffaello Visciano v
Istituto nazionale della previdenza sociale (INPS)**

(Case C-69/08) ⁽¹⁾

*(Social policy — Protection of workers — Insolvency of
employer — Directive 80/987/EEC — Obligation to pay all
outstanding claims up to a pre-established ceiling — Nature
of an employee's claims against a guarantee institution —
Limitation period)*

(2009/C 220/13)

Language of the case: Italian

Referring court

Tribunale di Napoli — Sezione Lavoro

Parties to the main proceedings

Applicant: Raffaello Visciano

Defendant: Istituto nazionale della previdenza sociale (INPS)

Re:

Reference for a preliminary ruling — Tribunale di Napoli
Sezione Lavoro — Interpretation of Articles 3 and 4 of Council
Directive 80/987/EEC of 20 October 1980 on the approxi-
mation of the laws of the Member States relating to the
protection of employees in the event of the insolvency of their
employer (OJ 1980 L 283, p. 23) — Guarantee corre-
sponding to the last three months' salary under the employment
contract, subject to a maximum amount fixed in advance —
Deduction from the compensation paid of advances on salary
received from the employer — National legislation permitting
the same benefit to be given a different legal classification
according to the party required to pay that benefit and also
permitting a change in the limitation period for bringing an
action

Operative part of the judgment

- Articles 3 and 4 of Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer do not preclude national legislation which allows employees' outstanding claims to be classified as 'social security benefits' where they are paid by a guarantee institution.
- Directive 80/987 does not preclude national legislation which uses the employee's initial claim relating to pay merely as a basis of comparison for the determination of the benefit to be guaranteed by the intervention of a guarantee fund.
- In the context of an application by an employee for payment by a guarantee fund of outstanding claims relating to pay, Directive 80/987 does not preclude the application of a limitation period of one year (principle of equivalence). However, it is for the national

court to examine whether it is framed in such a way as to render impossible in practice or excessively difficult the exercise of the rights recognised by Community law (principle of effectiveness).

⁽¹⁾ OJ C 107, 26.4.2008.

**Judgment of the Court (Second Chamber) of 16 July 2009
(references for a preliminary ruling from the Hof van
Cassatie van België — Belgium) — Gilbert Snauwaert,
Algemeen Expeditiebedrijf Zeebrugge BVBA, Coldstar NV,
Dirk Vlaeminck, Jeroen Den Haerynck, Ann De Wintere
(C-124/08), Géry Deschaumes (C-125/08) v Belgische Staat**

(Joined Cases C-124/08 and C-125/08) ⁽¹⁾

*(Regulation (EEC) No 2913/92 — Community Customs Code
— Customs debt — Amount of duty — Communication to
the debtor — Act that could give rise to criminal court
proceedings)*

(2009/C 220/14)

Language of the cases: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Appellants: Gilbert Snauwaert, Algemeen Expeditiebedrijf
Zeebrugge BVBA, Coldstar NV, Dirk Vlaeminck, Jeroen Den
Haerynck, Ann De Wintere (C124/08), Géry Deschaumes (C-
125/08)

Respondent: Belgische Staat

Re:

Reference for a preliminary ruling — Hof van Cassatie van
België — Interpretation of Article 221(1) and (3) of Council
Regulation (EEC) No 2913/92 of 12 October 1992 establishing
the Community Customs Code (version in force in 1992) (OJ
1992 L 302, p. 1) — Post-clearance recovery of import or
export duties — Whether or not the amount of the duty
owed must be entered in the accounts before being
communicated to the debtor — Limitation period — Customs
fraud — Finding of joint and several liability

Operative part of the judgment

- Article 221(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that the amount of import or export duty due may be validly communicated to the debtor by the customs authorities, in accordance with appropriate procedures, only if the amount of that duty has been entered in the accounts beforehand by those authorities.