

Reference for a preliminary ruling from the High Court of Justice (England and Wales), Chancery Division, by order of that court of 22 June 2005, in 1) Carol Marilyn Robins 2) John Burnett v Secretary of State for Work and Pensions

(Case C-278/05)

(2005/C 243/09)

(Language of the case: English)

Reference has been made to the Court of Justice of the European Communities by order of the High Court of Justice (England and Wales), Chancery Division, of 22 June 2005, received at the Court Registry on 6 July 2005, for a preliminary ruling in the proceedings between 1) Carol Marilyn Robins 2) John Burnett and Secretary of State for Work and Pensions on the following questions:

- (1) Is Article 8 of Directive 80/987/EEC<sup>(1)</sup> to be interpreted as requiring Member States to ensure, by whatever means necessary, that employees' accrued rights under supplementary company or inter company final salary pension schemes are fully funded by Member States in the event that the employees' private employer becomes insolvent and the assets of their schemes are insufficient to fund those benefits?
- (2) If the answer to Question (1) is no, are the requirements of Article 8 sufficiently implemented by legislation such as that in force in the United Kingdom as described above?
- (3) If the UK legislative provisions fail to comply with Article 8, what test should be applied by the national court in considering whether the consequent infringement of Community law is sufficiently serious to attract liability in damages? In particular, is the mere infringement enough to establish the existence of a sufficiently serious breach, or must there also have been a manifest and grave disregard by the Member States for the limits on its rule making powers, or is some other test to be applied and if so which?

<sup>(1)</sup> Council 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 (OJ L 283, 28.10.1980, p. 23).

Reference for a preliminary ruling from the Bundesgerichtshof by order of that court of 2 June 2005 in Montex Holdings Ltd. v Diesel S.p.A.

(Case C-281/05)

(2005/C 243/10)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesgerichtshof (Germany) of 2 June 2005, received at the Court Registry on 13 July 2005, for a preliminary ruling in the proceedings between Montex Holdings Ltd. and Diesel S.p.A. on the following questions concerning the interpretation of Article 5(1) and (3) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks<sup>(1)</sup> and concerning Articles 28 to 30 EC:

- (a) Does a registered trade mark grant its proprietor the right to prohibit the transit of goods with the sign?
- (b) If the answer is in the affirmative: may a particular assessment be based on the fact that the sign enjoys no protection in the country of destination?
- (c) If the answer to (a) is in the affirmative and irrespective of the answer to (b), is a distinction to be drawn according to whether the article whose destination is a Member State comes from a Member State, an associated State or a third country? Is it relevant in this regard whether the article has been produced in the country of origin lawfully or in infringement of a right to a sign existing there held by the trade-mark proprietor?

<sup>(1)</sup> OJ 1989 L 40, p. 1.