force should be interpreted on the basis of the Community directives. His doggedness paid off, and the case was decided in his favour in December 2006.

In Robb, Lord Clyde expresses misgivings about whether the Work Equipment Regulations are compliant with the framework directive's provisions (paragraphs 45 to 48 of the judgement). He notes that article 5.4 of the framework directive is "significantly different", and that it "may be difficult to construe the words of the Regulation to equate with this language" (paragraph 47).

This judgement exemplifies the potential influence of Community law in moving the case law on. But that in no way detracts from the importance of the infringement proceedings brought by the Commission. The UK precedent is uncertain and divided. The traditional approach restricting the duty to ensure safety has never been called into question where criminal liability is concerned. The HSE is reluctant for political reasons to push the issue of non-compliance with Community law. In HTM, although it brought the prosecution of the employer, the HSE declined to rely on the framework directive, notwithstanding the glaring discrepancy involved between UK law and the Community provisions. A reference to the ECJ for a preliminary ruling could have brought this to the fore. Given the excellence of the lawyers instructed by the HSE, the obstacle is probably political. Raising this issue would have called into question the government's commitment to minimising the impact of directives on UK law. The HSE cut the ground from under its own feet in the case rather than advance a very uncomfortable argument. The administrative case law is limited in the same way for the same reasons. Where civil liability is concerned, the movement started with English, McGhee, Skinner and Robb is far from being the dominant trend. Only a ruling that the government has failed to fulfill its obligations will pave the way for this case law to be unified on a basis of compliance with the framework directive.

Conclusions

The most scathing criticism of the UK defence and the Advocate General's Opinion comes from an English judge. Uttered more than fifty years ago, his words come as a pithy rebuttal of their analyses.

"First, it appears to be an illegitimate method of interpretation of a statute, whose dominant purpose is to protect the workman, to introduce by implication words of which the effect must to be reduce that protection.
Second, where it has been thought desirable to introduce such qualifying words, the legislature has found no difficulty in doing so..."[46]

These two sentences marry an ethical approach to the judicial function with rigorous principles of statutory interpretation. The ruling that the ECJ will hand down before the end of this year will tell how far this lesson remains a living source of the law for the Community judiciary. ■

[46] Summers v Frost (1955).

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