ECLI:EU:C:2022:1020

Provisional text

JUDGMENT OF THE COURT (Second Chamber)

22 December 2022 (*)

(Reference for a preliminary ruling – Social policy – Protection of the safety and health of workers – Directive 90/270/EEC – Article 9(3) – Work with display screen equipment – Protection of workers' eyes and eyesight – Special corrective appliances – Spectacles – Acquisition by the employee – Arrangements for the employer to meet the costs)

In Case C-392/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania), made by decision of 12 April 2021, received at the Court on 24 June 2021, in the proceedings

TJ

v

Inspectoratul General pentru Imigrări,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, M.L. Arastey Sahún (Rapporteur), F. Biltgen, N. Wahl and J. Passer, Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– TJ, by I. Kis, avocat,

– the Inspectoratul General pentru Imigrări, by M.-G. Creţu, C. Vasilache and S.-I. Voicu, acting as Agents,

– the Romanian Government, by E. Gane, acting as Agent, and by L. Baţagoi, conseiller,

– the Italian Government, by G. Palmieri, acting as Agent, and by P. Garofoli, avvocato dello Stato,

– the European Commission, by A. Armenia and D. Recchia, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 July 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 9 of Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment (fifth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1990 L 156, p. 14).

2 The request has been made in proceedings between TJ and the Inspectoratul General pentru Imigrări (General Inspectorate for Immigration, Romania) ('the General Inspectorate') concerning the latter's rejection of TJ's request for reimbursement of the costs associated with the acquisition of spectacles.

Legal context

European Union law

Directive 89/391/EEC

3 Article 16(1) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1), as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008 (OJ 2008 L 311, p. 1), reads as follows:

'The Council, acting on a proposal from the Commission based on Article [153 TFEU], shall adopt individual Directives, inter alia, in the areas listed in the Annex.'

Directive 90/270

4 The fourth recital of Directive 90/270 states as follows:

'Whereas compliance with the minimum requirements for ensuring a better level of safety at workstations with display screens is essential for ensuring the safety and health of workers'.

5 Article 1 of that directive, entitled 'Subject', provides in paragraph 1 thereof:

‘This Directive, which is the fifth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC, lays down minimum safety and health requirements for work with display screen equipment as defined in Article 2.’

6 Under Article 9 of that directive, entitled ‘Protection of workers’ eyes and eyesight’:

‘1. Workers shall be entitled to an appropriate eye and eyesight test carried out by a person with the necessary capabilities:

– before commencing display screen work,

– at regular intervals thereafter, and

– if they experience visual difficulties which may be due to display screen work.

2. Workers shall be entitled to an ophthalmological examination if the results of the test referred to in paragraph 1 show that this is necessary.

3. If the results of the test referred to in paragraph 1 or of the examination referred to in paragraph 2 show that it is necessary and if normal corrective appliances cannot be used, workers must be provided with special corrective appliances appropriate for the work concerned.

4. Measures taken pursuant to this Article may in no circumstances involve worke[r]s in additional financial cost.

5. Protection of workers’ eyes and eyesight may be provided as part of a national health system.’

Romanian law

7 Article 7(i) of Legea-cadru nr. 153/2017 privind salarizarea personalului plătit din fonduri publice (Framework Law No 153/2017 on the remuneration of staff paid from public funds) of 28 June 2017 (*Monitorul Oficial al României*, Part I, No 492 of 28 June 2017) is worded as follows:

‘For the purposes of this Law, the following terms shall have the following meanings:

…

(i) “pay supplement” means an element of the monthly salary/wage, paid as a percentage of the basic salary, wage, employment allowance, under the conditions laid down by law, to each category of staff’.

8 Article 12 of Chapter II of Annex VI to that law, entitled ‘Professional group of budgetary functions “Defence, public order and national security”’, provides:

‘…

2. Military personnel, police officers, civil servants of the prison service with special status and civil personnel shall receive, depending on their working conditions, the following allowances:

…

(b) a pay supplement for arduous working conditions, of up to 15% of the basic salary/wage corresponding to the time worked in the respective places of work;

…

3. The places, working conditions, operations and the percentages granted shall be fixed by order of the chief authorising officer, within the limits of the provisions of the regulation laid down pursuant to this Law, on the basis of the determination reports or, where appropriate, an expert's report issued by the authorities empowered to do so.'

9 Under Article 12 of Hotărârea Guvernului nr. 1028/2006 privind cerinţele minime de securitate şi sănătate în muncă referitoare la utilizarea echipamentelor cu ecran de vizualizare (Government Decision No 1028/2006 on the minimum safety and health requirements for work with display screen equipment) of 9 August 2006 (*Monitorul Oficial al României*, Part I, No 710 of 18 August 2006):

'Workers shall be entitled to an appropriate eye and eyesight test carried out by a person with the necessary capabilities:

(a) before commencing display screen work, during the medical examination on taking up of a position;

(b) at regular intervals thereafter;

(c) and if they experience visual difficulties which may be due to display screen work.'

10 Article 13 of Government Decision No 1028/2006 provides:

'Workers shall be entitled to an ophthalmological examination if the results of the test referred to in Article 12 show that this is necessary.'

11 Under Article 14 of Government Decision No 1028/2006:

'If the results of the test referred to in Article 12 or of the examination referred to in Article 13 show that it is necessary, and if normal corrective appliances cannot be used, workers must be provided with special corrective appliances appropriate for the work concerned.'

12 Article 15 of Government Decision No 1028/2006 provides:

'Measures taken pursuant to Articles 12 to 14 shall under no circumstances involve financial costs to workers.'

13 Article 16 of Government Decision No 1028/2006 provides:

'The protection of workers' eyes and eyesight may be ensured, as regards the related costs, within the framework of the national health system, in accordance with the rules in force.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

14 TJ is employed by the General Inspectorate, in the Immigration Service of the administrative territory of Cluj (Romania). He carries out his work on display screen equipment.

15 TJ asserts that on-screen work and other risk factors, such as discontinuous visible light, the absence of natural light and mental overload caused a significant deterioration in his eyesight. He therefore had to, on the recommendation of a specialist, change his glasses in order to correct the decline in his visual acuity.

16 Arguing that the Romanian national health insurance system did not provide for reimbursement of the sum of 2 629 Romanian lei (RON) (approximately EUR 530), representing the value of the cost of the spectacles, namely the cost of lenses, frames and labour, TJ asked the General Inspectorate to reimburse him with that sum. That request was rejected.

17 TJ then brought an action before the Tribunalul Cluj (Regional Court, Cluj, Romania) seeking an order that the General Inspectorate pay him that sum. That court dismissed that action on the ground that the conditions for obtaining the reimbursement sought were not satisfied, since Article 14 of Government Decision No 1028/2006 gives rise not to the reimbursement of the cost of a special corrective appliance, but only to the provision of such an appliance if its use is considered necessary.

18 TJ brought an appeal against that judgment before the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania), which is the referring court, seeking to have it set aside and to have the substance of the dispute reviewed.

19 The referring court considers that, in order to rule on the dispute before it, the concept of 'special corrective appliances', which appears in Article 9(3) of Directive 90/270 and which is not defined in that directive, needs to be interpreted. That court is of the view that that term should be interpreted as including spectacles, in so far as these are necessary for employees suffering from deterioration in their eyesight as a result of their working conditions.

20 The referring court also asks whether the special corrective appliances referred to in that Article 9(3) refer to appliances used exclusively at the workplace or whether they may also refer to appliances which can be used outside the workplace. In that regard, it is inclined towards the view that, in order to determine whether that provision is applicable, the only relevant factor is that a special corrective appliance is used at the workplace, since whether such an appliance is also used outside the workplace is irrelevant.

21 As regards the methods of supplying special corrective appliances, the referring court submits that, while it is true that Directive 90/270 refers expressly only to the provision by the employer of those appliances, a similar result would be achieved if the employer reimbursed the employee for the cost of purchasing such an appliance. Such a solution would also have the advantage of enabling the employee to take in due time the measures necessary to correct his or her eyesight.

22 Lastly, the referring court is uncertain whether the obligation to make special corrective appliances available to employees who need them is satisfied by the grant of a pay supplement paid on account of the existence of difficult working conditions.

23 In these circumstances, the Curtea de Apel Cluj (Court of Appeal, Cluj) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the expression "special corrective appliances", used in Article 9 of [Directive 90/270], to be interpreted as excluding spectacles with corrective lenses?

(2) Must the expression “special corrective appliances”, used in Article 9 of [Directive 90/270], be understood solely to mean appliances used exclusively at the place of work and/or in the performance of employment duties?

(3) Does the obligation to provide a special corrective appliance, provided for by Article 9 of [Directive 90/270], refer exclusively to the acquisition of the appliance by the employer, or may it be interpreted more broadly, namely to include an obligation upon the employer to reimburse the costs incurred by the worker in purchasing the appliance him or herself?

(4) Is it consistent with Article 9 of [Directive 90/270] for an employer to cover such costs by means of a general increase in remuneration which is paid on a continuing basis and referred to as an “increase for arduous working conditions”?’

Consideration of the questions referred

Admissibility

24 The General Inspectorate disputes the admissibility of the second to fourth questions, on the ground that the correct application of EU law is so obvious that it leaves no room for reasonable doubt.

25 In that regard, it must be noted, as follows from settled case-law of the Court, that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions referred concern the interpretation or the validity of a rule of EU law, the Court is in principle bound to give a ruling. It follows that questions referred by national courts enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it appears that the interpretation sought bears no relation to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 24 February 2022, *Viva Telecom Bulgaria*, C-257/20, EU:C:2022:125, paragraph 41 and the case-law cited).

26 In the present case, it should be noted, as regards the claim based on the clarity of the provisions of Directive 90/270 which is the subject of the second to fourth questions, that a national court is in no way prevented from referring questions to the Court of Justice for a preliminary ruling, the answer to which, in the submission of one of the parties to the main proceedings, leaves no scope for reasonable doubt. Accordingly, even if that were the case, the reference for a preliminary ruling containing such questions does not thereby become inadmissible (judgment of 24 February 2022, *Viva Telecom Bulgaria*, C-257/20, EU:C:2022:125, paragraph 42 and the case-law cited).

27 Therefore, the second to fourth questions are admissible.

The first and second questions

28 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 9(3) of Directive 90/270 must be interpreted as meaning that ‘special corrective appliances’, within the meaning of that provision, include corrective spectacles

and, moreover, if such appliances are restricted to appliances used exclusively for professional purposes.

29 Under Article 9(3) of Directive 90/270, if the result of the appropriate eye and eyesight test referred to in Article 9(1) of that directive or of the ophthalmological examination referred to in Article 9(2) of that directive show that it is necessary, and if normal corrective appliances cannot be used, workers are to be provided with special corrective appliances appropriate for the work concerned.

30 It must be noted that Directive 90/270 does not define the expression ‘special corrective appliances’, used in Article 9(3).

31 In accordance with the Court’s settled case-law, for the purpose of interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 24 February 2022, *Airhelp (Delay of re-routing flight)*, C-451/20, EU:C:2022:123, paragraph 22 and the case-law cited).

32 In the first place, it should be noted that Directive 90/270 was adopted, as is clear from its title, as a fifth individual directive within the meaning of Article 16(1) of Directive 89/391, which was itself adopted on the basis of Article 118 A of the EEC Treaty (now, after amendment, Article 153 TFEU), to encourage improvements in the safety and health of workers at work.

33 In the second place, it is apparent from the title of Directive 90/270 and from Article 1 thereof that the purpose of that directive is to lay down minimum safety and health requirements for work with display screen equipment. Furthermore, in accordance with the fourth recital of that directive, compliance with the minimum requirements for ensuring a better level of safety at workstations with display screens is essential for ensuring the safety and health of workers.

34 In the third and last place, it should be noted that Article 9 of Directive 90/270 gives concrete expression to the objective of that directive as regards the need to protect the eyes and eyesight of workers, in particular their right to be provided with special corrective appliances appropriate for the work concerned if the result of the test referred to in Article 9(1) or the result of the examination referred to in Article 9(2) shows that this is necessary.

35 In that regard, it is important to stress that Article 9(3) of Directive 90/270 draws a distinction between, on the one hand, ‘normal corrective appliances’ and, on the other hand, ‘special corrective appliances appropriate for the work concerned’, namely work with display screen equipment.

36 As regards, first, the concept of ‘corrective appliances’ within the meaning of Article 9(3) of Directive 90/270, it should be noted that that term substituted that of ‘spectacles’ which appeared in the second paragraph of Article 9 of the Proposal for a Council Directive concerning the minimum safety and health requirements for work with visual display units (OJ 1988 C 113, p. 7). It thus follows from the *travaux préparatoires* for Directive 90/270 that ‘corrective appliances’, within the meaning of Article 9(3) of that directive, must be understood in a broad sense, inasmuch as they cover not only spectacles but also other types of appliances capable of correcting or preventing visual difficulties.

37 As regards, second, the concept of ‘normal corrective appliances’, within the meaning of Article 9(3) of that directive, which refer to appliances which do not correct visual difficulties established by the examinations referred to in Article 9(1) and (2), it must be held that, as the Advocate General observes, in essence, in point 30 of her Opinion, such appliances are appliances

which are worn outside the workplace and which are therefore not necessarily linked to working conditions. Thus, such appliances are not used to correct visual difficulties relating to work and may not be specifically linked to work with display screen equipment.

38 As regards, third, the concept of 'special corrective appliances appropriate for the work concerned' within the meaning of Article 9(3) of Directive 90/270, it should be noted, first, that workers must be provided with such special corrective appliances if normal corrective appliances cannot be used to correct the visual problems found following the examinations provided for in paragraphs 1 and 2 of that article. Therefore, a special corrective appliance must necessarily seek to correct or prevent visual problems which a normal corrective appliance cannot correct or prevent.

39 Second, the special nature of the corrective appliance presupposes that it is linked to work with display screen equipment, in that it serves to correct or prevent visual problems specifically linked to such work and found following the examinations provided for in Article 9(1) and (2) of that directive.

40 In that regard, it does indeed follow from the judgment of 24 October 2002, *Commission* v *Italy* (C-455/00, EU:C:2002:612, paragraph 28), that the 'special corrective appliances' provided for in Article 9(3) of Directive 90/270 concern the correction of 'existing damage'.

41 However, as the Advocate General observes, in essence, in point 37 of her Opinion, it cannot be deduced from the judgment cited in the previous paragraph, as the applicant in the main proceedings and the Commission submitted in reply to a written question put by the Court, that that 'damage' must have been caused by work carried out on display screen equipment. Although visual difficulties must be found during the tests referred to in Article 9(1) and (2) of Directive 90/270 in order to give rise to a right to be provided with a special corrective appliance, in accordance with paragraph 3 of that article, the display screen work need not necessarily be the cause of those difficulties.

42 It is apparent in particular from the first indent of Article 9(1) of Directive 90/270 that the examination referred to in that paragraph may take place before commencing display screen work, which means that the visual difficulties leading to an employee being entitled to a special corrective appliance under Article 9(3) of that directive need not necessarily have been caused by display screen work.

43 In the light of those considerations, it must be held, as observed, in essence, by the Advocate General in point 39 of her Opinion, that Article 9 of Directive 90/270 cannot be interpreted as requiring a causal link between display screen work and potential visual difficulties, since each of the three indents of Article 9(1) of that directive may lead to the provision of special corrective appliances under Article 9(3) of that directive.

44 Special corrective appliances within the meaning of the latter provision are thus aimed at correcting or preventing visual difficulties relating to work involving display screen equipment.

45 In the present case, it is apparent from the order for reference that the applicant in the main proceedings performed his tasks at the General Inspectorate on display screen equipment. Claiming to have been exposed, in the performance of those tasks, to discontinuous visible light, an absence of natural light and mental overload, he suffered a sharp fall in his visual acuity, which led the medical specialist to prescribe a change to his spectacles and, more particularly, to his corrective lenses.

46 Although it is not for the Court of Justice, in a reference for a preliminary ruling, but rather for the national court to decide whether the spectacles for which the applicant seeks reimbursement should be classified as 'special corrective appliances' within the meaning of Article 9(3) of Directive 90/270, it must nevertheless be pointed out, first, that the applicant in the main proceedings was entitled, because of the sharp deterioration in his eyesight, to an ophthalmological examination carried out by a specialist doctor, which appears to correspond to the examinations referred to in Article 9(1) and (2) of Directive 90/270.

47 Second, the fact that that specialist doctor recommended that the applicant in the main proceedings change spectacles and, more particularly, corrective lenses, in order to correct the severe deterioration in his eyesight, also seems to indicate that his former corrective lenses could no longer be used to perform his tasks on display screen equipment, in particular because of the visual acuity difficulties which had been diagnosed in the applicant in the main proceedings. It is, however, for the referring court to determine whether the spectacles concerned serve to correct visual difficulties relating to his work rather than generic visual problems not necessarily linked to his working conditions.

48 Furthermore, the fact that 'special corrective appliances', within the meaning of Article 9(3) of Directive 90/270, must, under that provision, be 'appropriate for the work concerned' does not mean that they must be used exclusively at the workplace or in the performance of professional tasks, since that provision does not provide for any restriction on the use of those appliances.

49 In the light of all the foregoing considerations, the answer to the first and second questions is that Article 9(3) of Directive 90/270 must be interpreted as meaning that the 'special corrective appliances' provided for in that provision include spectacles aimed specifically at the correction and prevention of visual difficulties relating to work involving display screen equipment. Moreover, those 'special corrective appliances' are not limited to appliances used exclusively for professional purposes.

The third and fourth questions

50 By its third and fourth questions, which it is also appropriate to examine together, the referring court asks, in essence, whether Article 9(3) and (4) of Directive 90/270 must be interpreted as meaning that the employer's obligation, laid down in that provision, to provide the workers concerned with a special corrective appliance, may be met by the direct provision of the appliance to the worker, by reimbursement of the necessary expenses incurred by the worker or by the payment of a general salary supplement to the worker.

51 As is apparent from paragraph 29 above, workers must be provided with special corrective appliances appropriate for the work concerned, in accordance with Article 9(3) of Directive 90/270, provided that the examinations referred to in paragraphs 1 and 2 show that it is necessary and normal corrective appliances cannot be used.

52 It must thus be held that, although that provision imposes on the employer an obligation intended to ensure that the workers concerned are provided, where appropriate, with a special corrective appliance, the way in which the employer is required to comply with that obligation is not apparent from the wording of Article 9 of Directive 90/270.

53 However, it should be noted, first, that Directive 90/270 lays down, in accordance with Article 1(1) thereof, as recalled in paragraph 33 above, only minimum requirements.

54 Second, reimbursement by the employer of the cost of purchasing a special corrective appliance is consistent with the objective of Directive 90/270 in that it guarantees a better level of protection of the safety and health of workers.

55 Moreover, the expression ‘must be provided with’ in Article 9(3) of Directive 90/270, read in the light of paragraph 4 of that article, which provides that ‘measures taken pursuant to [Article 9] may in no circumstances involve workers in additional financial cost’, does not preclude national law from providing that the worker may choose, instead of obtaining a special corrective appliance directly from his or her employer, to advance the cost of that appliance and subsequently obtain reimbursement for it from his or her employer.

56 It follows that the objective of Article 9(3) and (4) of Directive 90/270, inasmuch as it seeks to ensure that workers are provided with special corrective appliances when they are needed, at no financial cost, can be achieved either directly, by the provision of such an appliance to the worker concerned by the employer, or indirectly, by reimbursement of the cost of that appliance by the employer.

57 In the light of those considerations, it must also be held that Article 9(3) of Directive 90/270 does not, in principle, preclude national law from providing that the employer makes special corrective appliances available to the workers concerned, as required by that provision, by means of a pay supplement enabling the worker himself or herself to acquire such an appliance.

58 However, it must be pointed out that such a supplement must necessarily cover the costs specifically advanced by the worker concerned in order to acquire the special corrective appliance under Article 9(3) of Directive 90/270.

59 As a result, subject to verification by the referring court, a general salary supplement, paid permanently in respect of the arduous nature of the working conditions, such as that at issue in the main proceedings, does not appear to meet the obligations imposed on the employer by Article 9(3), since it does not appear to be intended to cover the costs advanced by the worker concerned for the purposes of such an acquisition.

60 In the light of all the foregoing considerations, the answer to the third and fourth questions is that Article 9(3) and (4) of Directive 90/270 must be interpreted as meaning that the employer’s obligation, laid down in that provision, to provide the workers concerned with a special corrective appliance, may be met by the direct provision of the appliance to the worker by the employer or by reimbursement of the necessary expenses incurred by the worker, but not by the payment of a general salary supplement to the worker.

Costs

61 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 9(3) of Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment (fifth individual Directive within the meaning of Article 16(1) of Directive 87/391/EEC)**

must be interpreted as meaning that 'special corrective appliances' provided for in that provision include spectacles aimed specifically at the correction and prevention of visual difficulties relating to work involving display screen equipment. Moreover, those 'special corrective appliances' are not limited to appliances used exclusively for professional purposes.

2. **Article 9(3) and (4) of Directive 90/270**

must be interpreted as meaning that the employer's obligation, laid down in that provision, to provide the workers concerned with a special corrective appliance, may be met by the direct provision of the appliance to the worker by the employer or by reimbursement of the necessary expenses incurred by the worker, but not by the payment of a general salary supplement to the worker.

[Signatures]

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* Language of the case: Romanian.