Reports of Cases

OPINION OF ADVOCATE GENERAL
ĆAPETA
delivered on 14 July 2022 [1]

Case C-392/21

TJ
v
Inspectoratul General pentru Imigrări

(Request for a preliminary ruling from the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania))

(Reference for a preliminary ruling – Social policy – Protection of the health and safety of workers – Article 9(3) of Directive 90/270/EEC – Work with 'display screen equipment' – Protection of workers' eyes and eyesight – Concept of 'special corrective appliances')

I. Introduction

1. Enacted in 1990, when work with display screen equipment was not as widespread, Directive 90/270/EEC [2] ('the Display Screen Equipment Directive') lays down certain display-screen-related occupational health and safety requirements. From a contemporary perspective, that directive contains elements that may seem self-evident or even nostalgic, such as the exclusion of typewriters from its scope. [3] However, the Display Screen Equipment Directive also provides entitlements that have a lot more resonance at a time where display screen work is now ubiquitous. That is the case, for instance, with the entitlements arising from Article 9(3) of that directive, regarding an employee's right to 'special corrective appliances' for work at computer screens.

2. It is that right which is at issue in the present case. After visiting a medical specialist, the applicant, whose vision deteriorated, bought new glasses with corrective lenses. His employer refused to cover their costs. This led to a dispute before the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania), the referring court.

3. That court, is inter alia, uncertain whether the expression 'special corrective appliances', as it appears in Article 9(3) of the Display Screen Equipment Directive, covers spectacles with corrective lenses.

1 Original language: English.

2 Council Directive 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).

3 Article 1(3) of the Display Screen Equipment Directive.

4. While unimposing at first sight, the interpretation which the Court is to give to that term will have wider implications, not only for the health of the applicant, but also for the system of protection under national law of all workers required to work at computer screens.

II. Legal framework

5. Article 9 of the Display Screen Equipment Directive is entitled 'Protection of workers' eyes and eyesight', and provides:

'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 [additional financial cost to the worker].

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

III. The facts in the main proceedings and the questions referred

6. The applicant in the main proceedings is employed by the Romanian Inspectorate General for Immigration ('the Inspectorate'). As part of his duties, he is required to carry out work on display screen equipment. The applicant alleges that that work, combined with other risk factors, led to a significant deterioration in his vision, which had made it necessary for him, on the advice of a medical specialist, to change his spectacles.

7. The applicant states that the Romanian national health system could not reimburse the sum of 2 629 Romanian lei (RON) (approximately EUR 543 on the day that the proceedings were brought), representing the value of the special vision correction appliance and tax receipts for the cost of spectacles, lenses, spectacle frames and labour. The applicant submitted a request for that sum to the Inspectorate, his employer, which was rejected.

8. Following this, on 19 June 2020, the applicant brought a claim before the Tribunalul Cluj (Regional Court, Cluj, Romania) against his employer, seeking an order requiring that party to pay him the requested sum. That court rejected his request, on the basis that the legal conditions of such a reimbursement were not satisfied. The relevant law transposing the Display Screen

Equipment Directive[4] did not give rise to a right to reimbursement of the costs of special corrective appliances, but only to a right to be provided with such appliances if their use is necessary.

9. The applicant brought an appeal against that judgment before the Curtea de Apel Cluj (Court of Appeal, Cluj), the referring court in the present case.

10. That court considers an interpretation of 'special corrective appliances' under Article 9 of the Display Screen Equipment Directive necessary, that term not being defined in that directive. It also considers that that term must be interpreted as including spectacles, in so far as those would be necessary for employees suffering from deteriorations in sight as a result of their working conditions. Moreover, the referring court harbours doubts as to the question of whether the 'special corrective appliances' mentioned in Article 9 of the Display Screen Equipment Directive are appliances used exclusively at the workplace or if they can also be used outside of the workplace.

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

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

(2) Must the expression "special corrective appliances", used in Article 9 of [the Display Screen Equipment Directive], 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 [the Display Screen Equipment Directive], 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 [the Display Screen Equipment Directive] 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"?'

12. Written observations were submitted to the Court by the Inspectorate, the Italian and Romanian Governments as well as the European Commission. No hearing was requested, and none was held.

IV. Analysis

13. The Court requested that my Opinion focus only on the first question posed by the referring court. By that question, the referring court seeks guidance on whether the term 'special corrective appliances', as used in Article 9 of the Display Screen Equipment Directive, must be interpreted as excluding spectacles with corrective lenses.

[4] The national court refers to Article 14 of Hotărârea Guvernului nr. 1028/2006, privind cerințele minime de securitate și 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 in this respect).

14. In order to answer that question, I will proceed as follows. First, I will give some preliminary observations relating to the context within which the Display Screen Equipment Directive falls and which therefore influences its interpretation (A). Second, I will offer an interpretation of the term 'special corrective appliances', with a view to answering whether that expression encompasses corrective spectacles and of what kind (B).

A. Preliminary observations

15. The Display Screen Equipment Directive is 1 of 20[5] 'daughter directives'[6] enacted under Article 16(1) of the Directive 89/391/EEC[7] ('the Framework Directive').

16. Much like a mother shapes her child's outlook on life, the overarching aim of the Framework Directive has permeated the Display Screen Equipment Directive, including the specific area of working with display screen equipment.[8] It is, therefore, necessary briefly to present the Framework Directive.

17. The Framework Directive was adopted on the basis of Article 118a of the EEC Treaty (now Article 153 TFEU), the legal basis for social policy measures.[9] The Court considered that that provision confers broad powers on the EU for enacting measures for the protection of the health and safety of workers.[10]

18. By the entry in force of the Charter of Fundamental Rights of the European Union ('the Charter'), the health and safety of workers was confirmed as a fundamental right recognised by the EU legal system. Article 31(1) thereof provides that 'every worker has the right to working conditions which respect his or her health, safety and dignity'. It is interesting to note that the Explanations to the Charter state that Article 31(1) was inspired by the Framework Directive.[11] Therefore, it may be concluded that that directive was, since its adoption, an expression of a fundamental right, which was only codified by the Charter.

5 The European Agency for Safety and Health at Work provides a comprehensive list of those directives. See https://oshwiki.eu/wiki/General_principles_of_EU_OSH_legislation.

6 On the status of the Framework Directive as a 'framework', see judgment of 12 November 1996, *United Kingdom* v *Council* (C-84/94, EU:C:1996:431, paragraph 65); Opinions of Advocate General Léger in *United Kingdom* v *Council* (C-84/94, EU:C:1996:93, point 65 and the accompanying footnote 28); of Advocate General Ruiz-Jarabo Colomer in *Commission* v *Germany* (C-103/01, EU:C:2002:738, point 31); and of Advocate General Saugmandsgaard Øe in *Ministrstvo za obrambo* (C-742/19, EU:C:2021:77, point 25). See also Bercusson, B., *European Labour Law*, 2nd ed., CUP, Cambridge, 2009, p. 58; and Barnard, C., *EU Employment Law*, 4th ed., OUP, Oxford, 2012, p. 511.

7 Council Directive 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).

8 See, in particular, the fourth recital of the Display Screen Equipment 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') and Article 1 thereof (laying down minimum safety and health requirements for work with display screen equipment). See also judgment of 6 July 2000, *Dietrich* (C-11/99, EU:C:2000:368, paragraph 36) (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).

9 See, in that respect, Opinion of Advocate General Pitruzzella in *Academia de Studii Economice din București* (C-585/19, EU:C:2020:899, point 27) (the improvement, through minimum requirements, of the protection of health and safety at the workplace being a key element in the formation of EU social law).

10 See judgment of 12 November 1996, *United Kingdom* v *Council* (C-84/94, EU:C:1996:431, paragraph 15), where the Court held that concepts contained in Article 118a EEC, notably the words '"especially in the working environment" militate in favour of a broad interpretation of the powers which Article 118a [EEC] confers upon the Council [of the European Union] for the protection of the health and safety of workers'. See, also, Opinion of Advocate General Léger in *United Kingdom* v *Council* (C-84/94, EU:C:1996:93, points 39 to 62), where it is argued that the origins of the concepts contained in that Treaty article, as well as the high level of worker protection that seems to be sought through the language used in those concepts, justify a broad reading of the scope of Article 118a EEC.

11 The Explanations to Article 31(1) of the Charter provide as follows: 'Paragraph 1 of this Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.'

19. Consistent with the foregoing, the Court confirmed that the scope and provisions of the Framework Directive necessitate a broad reading.[12] At the same time, any exclusions from its scope, or the scope of other directives aimed at protecting the health and safety of workers, must be limited.[13]

20. Whereas the Framework Directive has the clear purpose of encouraging the improvement of health and safety conditions at work,[14] that purpose is achieved by two types of measures under the 'daughter directives': measures that prevent the risks of a hazardous work environment to workers' health,[15] and measures which aim at the correction of the health and safety conditions of specific groups of workers.[16]

21. It is in the light of that shared objective, to both correct and prevent situations related to the health and safety of workers,[17] that Article 9 of the Display Screen Equipment Directive must be interpreted.[18]

B. Interpretation of the term 'special corrective appliances'

22. The objectives of the Display Screen Equipment Directive, read in the light of the legislative framework of which it forms part, recognise the need to protect the health and safety of workers by identifying and correcting their visual difficulties.

23. Article 9 of that directive translates that overall protective goal into entitlements for the worker. Those entitlements include a right to diagnostic examinations and to special corrective appliances when their use is required.

[12] See, to that effect, judgments of 3 October 2000, *Simap* (C-303/98, EU:C:2000:528, paragraph 34), and of 5 October 2004, *Pfeiffer and Others* (C-397/01 to C-403/01, EU:C:2004:584, paragraph 52); Opinion of Advocate General Geelhoed in *Commission* v *Germany* (C-5/00, EU:C:2001:365, paragraphs 47 and 48).

[13] Thereby limiting the professions that can be considered 'specific public service activities, such as the armed forces or the police, or … certain specific activities in the civil protection services', within the meaning of Article 2(2) of the Framework Directive. See, to that effect, judgments of 5 October 2004, *Pfeiffer and Others* (C-397/01 to C-403/01, EU:C:2004:584, paragraph 54); of 20 November 2018, *Sindicatul Familia Constanța and Others* (C-147/17, EU:C:2018:926, paragraph 53); and of 15 July 2021, *Ministrstvo za obrambo* (C-742/19, EU:C:2021:597, paragraphs 55 and 56).

[14] See Article 1 thereof. See also, Klindt, T. and Schucht, T., 'Art. 1 Ziel der Richtlinie', in Franzen, M., Gallner, I. and Oetker, H., *Kommentar zum europäischen Arbeitsrecht*, 4th ed., C. H. Beck, Munich, 2022, p. 410, paragraph 1 with further references; where the authors consider the directive as the 'constitution' of EU occupational health and safety law.

[15] See, for example, Council Directive 90/269/EEC of 29 May 1990 on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers (fourth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1990 L 156, p. 9); and Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1998 L 131, p. 11).

[16] See, for example, Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1).

[17] See the Framework Directive, Article 1(2), Articles 6 and 7 and recitals 10 (referring to the need to introduce preventive measures) and 11 (referring to the need to reduce or eliminate risks to workers' safety and health). See also judgment of 22 May 2003, *Commission* v *Netherlands* (C-441/01, EU:C:2003:308, paragraph 38) (specifying those aims and adding that the EU legislature contemplated a number of means as suitable to facilitate their achievement).

[18] See, in that respect, judgment of 6 July 2000, *Dietrich* (C-11/99, EU:C:2000:368, paragraphs 37 and 38), in which the Court explained that interpreting the scope of the Display Screen Equipment Directive, under Article 2(a) thereof, 'narrowly, so as to exclude from its scope screens that display film recordings, would cause a significant number of workers to be deprived of the protection afforded by the directive' and would 'seriously undermine the directive's effectiveness'.

24. Thus, Article 9(1) first specifies that workers who use display screen equipment are entitled to receive eye and eyesight tests before and during their work with display screens. [19] Article 9(2) then entitles workers to a medical follow-up with an ophthalmologist, if required. If the results of any of those tests reveal it to be necessary, and provided that normal corrective appliances cannot be used, Article 9(3) envisages that workers are entitled to be provided with special corrective appliances, at no financial cost. [20]

25. The referring court, by its first question, asks whether the term 'special corrective appliance' also embodies corrective spectacles.

26. To start with, some light can be shed by the legislative history of the Display Screen Equipment Directive. As the Commission pointed out in its written observations, although the initial proposal for that directive used the term 'glasses', that was eventually replaced by the broader term 'corrective appliances'. [21] That term thus encompasses not only spectacles, but presumably also other kinds of appliance that might correct visual difficulties or prevent harm to eyesight (such as blue light screen filters, for example).

27. Thus, while the Display Screen Equipment Directive distinguishes between 'normal' and 'special' versions of the term 'corrective appliance', both terms encompass spectacles. However, what is understood under 'special' corrective appliance, or more simply, what 'special' spectacles are, is not defined and must therefore be interpreted. It is to that interpretation which I now turn.

28. The distinction between 'normal' and 'special' corrective appliances, as well the scheme of Article 9 – which only allows the provision of 'special' corrective appliances after their necessity has been noted in the examinations under paragraphs 1 and 2, where 'normal' corrective appliances are not an appropriate response to that necessity' – clearly denote criteria in the assessment of what kind of spectacles can fall under the term 'special' corrective appliances.

29. Those criteria are, first, that 'normal' corrective appliances cannot be used and, second, that the 'special' corrective appliance is 'appropriate to the work concerned'.

30. As regards the first criterion, an *a contrario* interpretation of the wording of Article 9(3) of the Display Screen Equipment Directive would appear to establish that 'normal' corrective appliances are those that are worn outside the workplace in daily life and have no specific relation to work on display screen equipment. On that reading, for example, an annual routine change of lenses for a person who already wears glasses and has been myopic since childhood would fall into the category of a 'normal corrective appliance'.

31. The second limb of the first criterion, that normal corrective appliances 'cannot be used', establishes that to qualify as a 'special corrective appliance', an appliance must go beyond what a normal corrective appliance would remedy in daily life, presumably being focused on remedying visual difficulties that inhibit the work concerned. Thus, lenses that are prescribed by a doctor or an optometrist that are aimed at correcting general eye problems or visual difficulties, but that are also suited for work with visual display equipment, without having been prescribed in

[19] In that sense acting as an expression of the preventive and risk-based approach to workers' health and safety, as adopted by Article 6 of the Framework Directive.

[20] Opinion of Advocate General Ruiz-Jarabo Colomer in *Commission* v *Italy* (C-455/00, EU:C:2002:211, point 18).

[21] See Article 9 of the Proposal for a Council Directive concerning the minimum safety and health requirements for work with visual display units (COM(88) 77 final) (OJ 1988 C 113, p. 7).

consideration of that work, would qualify as a 'normal corrective appliance'. On the contrary, so-called 'computer glasses', prescribed particularly because of work at a display screen, would qualify as a 'special corrective appliance'. [22]

32. The second criterion, the concept of 'appropriate to the work concerned', contained in Article 9(3) of the Display Screen Equipment Directive and immediately following the term 'special corrective appliances', seems to suggest that, following the assessments carried out in Article 9(1) and (2) of that directive, the prescription of a 'special corrective appliance' is necessary to correct the visual difficulty identified. The correction is necessary either to enable the start or continuation of work on display screens or to prevent further damage to eyesight. In other words, special corrective appliances are justified precisely because they enable a person to work with a display screen. If the person did not work with a display screen, different glasses would be suitable.

33. For the right to a special corrective appliance to arise, it is not necessary, as suggested by the defendant in the main proceedings, that without such glasses work on visual display equipment would be impossible. Such a reading would be in contradiction with both the preventive and corrective purpose of legislation on health and safety at work.

34. It would also be contrary to those purposes and to the broad interpretation which the Court applied in relation to legislation on safety and health at work [23] to insist that the right to a special corrective appliance arises only if damage to eyesight was caused by working at a display screen.

35. Such a causal link might, prima facie, seem to be suggested by paragraph 28 of the judgment of 24 October 2002, *Commission* v *Italy* (C-455/00, EU:C:2002:612). The Court noted there that the 'special corrective appliances' provided for in Article 9(3) of the Display Screen Equipment Directive 'are to correct existing damage'. That paragraph of the judgment cannot, however, be read outside of the context of that case. That judgment is a result of infringement proceedings which the Commission initiated against the Italian Republic for the improper implementation of Article 9 of the Display Screen Equipment Directive. The judgment concerned, inter alia, the alleged failure of the Italian Republic to transpose precisely the conditions, laid out in Article 9(3) of the Display Screen Equipment Directive, under which employers must provide special corrective appliances.

36. In paragraph 28, the Court was replying to the Italian Government's argument that the provisions of Italian law transposing Article 9 of the Display Screen Equipment Directive had to be interpreted in conjunction with the provisions of that national law relating to personal protective equipment (PPE), which specified the conditions under which the employer had to provide PPE. The use of the term 'damage' seems to arise from the Court's comparison, in that paragraph, between special corrective appliances and PPE, and the damage the latter seeks to prevent. This view is reinforced by paragraph 29 of that judgment, where the Court again emphasises the difference between special corrective appliances and PPE, and the risks which the latter seeks to prevent, [24] in order to refute the Italian Government's conflation of the two. Accordingly, paragraph 28 of that judgment must be viewed from this angle.

[22] Certain studies indicate that the variety of working distances involved in using different digital devices may justify the prescription of computer glasses with progressive lenses to correct presbyopia, rather than a more general correction of dioptres. See, for example, Sheppard, A. and Wolffsohn, J., 'Digital eye strain: prevalence, measurement and amelioration', *BMJ Open Ophthalmology*, vol. 3(1), BMJ, 2018, p. 6, and the studies cited therein.

[23] See points 17, 19 and 20 of the present Opinion.

[24] 'The personal means of protection to which [the provision of the Italian law] refers are once again simply ways of preventing risk.'

37. Even if, in the judgment at issue, the Court introduced the notion of 'damage' (a term that is not used by the Display Screen Equipment Directive itself), it did not specify that damage must have been caused by work on display screen equipment. Rather, the Court appears to state generally that such corrective appliances must correct 'existing' damage. Visual difficulties (the term used by the Display Screen Equipment Directive) indeed need to exist as a condition for the right to a special corrective appliance to arise, either to enable the work on the screen or to prevent further damage to eyesight. However, the cause of visual difficulties need not be the work on display screens.

38. The scheme of Article 9 itself also seems to suggest that visual difficulties need not be a result of working at a screen for the right to a special corrective appliance to arise. While the third indent of Article 9(1) of that directive specifically mentions that visual difficulties which may have been caused by work on screens justify initiating the ophthalmological testing procedure, and eventually may lead to the provision of a special corrective appliance under Article 9(3) thereof, that same procedure may also be initiated before work on a display screen commences, or at regular intervals thereafter, pursuant, respectively, to the first and second indents of Article 9(1) of the Display Screen Equipment Directive. [25]

39. Neither of those indents suggests a causal link between the potential visual difficulties and the display screen work. All three indents of Article 9(1) of the Display Screen Equipment Directive, however, can lead to the provision of special corrective appliances under Article 9(3) of that directive, provided that the link to the 'work concerned' may be established, pursuant to that same article.

40. Taking into account the two criteria noted above, do the spectacles obtained by the applicant in the present case fall within the Article 9(3) obligation of the defendant?

41. While that issue is ultimately for the national court to ascertain, it would appear to me that the answer ought to be in the affirmative.

42. First, it has been stated by the referring court that the applicant in the main proceedings indeed sought the advice of a medical specialist by reason of the significant deterioration in his vision. That appears to satisfy the alternative prerequisites under Article 9(1) and (2) of the Display Screen Equipment Directive. Second, the advice received during that consultation was to change the applicant's spectacles. Third, such a change of spectacles implies that the existing spectacles used by the applicant in the main proceedings were no longer adequate for correcting his vision, especially given his hypermetropia and presbyopia, as is necessary for work on display screen equipment.

43. In the light of the foregoing, the logic of the obligation contained in Article 9(3) of the Display Screen Equipment Directive appears applicable: the defendant must provide the applicant with spectacles that correct his deteriorated vision and continue to allow him to work on display screen equipment.

[25] As the Commission notes in its reply to the written question in the present case, the use of conditional language in the third indent of Article 9(1) of the Display Screen Equipment Directive ('which may be due') also seems to imply that visual difficulties resulting from work on display equipment may be one of the causes for which special corrective appliances have to be provided, but need not necessarily be the only cause.

V. Conclusion

44. In the light of the foregoing considerations, I propose that the Court answer the first question referred for a preliminary ruling by the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania) as follows:

The expression 'special corrective appliances', used in Article 9 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) should be interpreted as including spectacles with corrective lenses, provided that those spectacles are intended to correct specific visual difficulties in order to carry out work on visual display equipment.

It falls to the national court to ascertain whether the spectacles in the present case satisfy those requirements.