

Case C-392/21**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

24 June 2021

Referring court:

Curtea de Apel Cluj (Romania)

Date of the decision to refer:

12 April 2021

Appellant (applicant at first instance):

TJ

Respondent (defendant at first instance):

Inspectoratul General pentru Imigrări

Subject matter of the main proceedings

Appeal brought by the appellant (applicant at first instance), T.J., against the respondent (defendant at first instance), Inspectoratul General pentru Imigrări (the Romanian Inspectorate-General for Immigration), against the civil judgment delivered by the Tribunalul Cluj (Regional Court, Cluj, Romania) in an administrative and fiscal case concerning established civil servants.

Subject matter and legal basis of the request

In accordance with Article 267 TFEU, interpretation is sought 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.

Questions referred for a preliminary ruling

1. Is the expression ‘special corrective appliances’, used in 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, to be interpreted as excluding spectacles with corrective lenses?

2. Must the expression ‘special corrective appliances’, used in Article 9 of Council Directive 90/270/EEC, 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 Council Directive 90/270/EEC, 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 Council Directive 90/270/EEC 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’?

Provisions of European Union law relied on

Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment, Article 9

Provisions of national law relied on

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; ‘Decision No 1028/2006’), which transposed Directive 90/270 into Romanian law.

‘Article 12

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, in the course of a medical examination upon employment;
- (b) at regular intervals thereafter;
- (c) if they experience visual difficulties which may be due to display screen work.

Article 13

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

Article 14

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.

Article 15

Measures taken pursuant to Articles 12, 13 and 14 may in no circumstances impose financial burdens on workers.'

Legea nr. 319/2006, privind securitatea și sănătatea în muncă (Law No 319/2006 on safety and health at work), Article 5(j) of which provides that 'personal protection equipment' means 'any equipment designed to be worn or used by a worker in order to protect him or her against one or more risks which could threaten his or her safety or health at the workplace, including any supplemental or ancillary items intended for such purpose'.

Succinct presentation of the facts and procedure in the main proceedings

- 1 By application lodged on 19 June 2020 at the Tribunalul Cluj (Regional Court, Cluj), the applicant, TJ, issued proceedings against the defendant, Inspectoratul General pentru Imigrări, asking the court to order it to pay the sum of 2 629 Romanian lei (RON), representing the value of the special vision correction appliance and tax receipts for the cost of spectacles, lenses, spectacle frames and labour.
- 2 The applicant stated that he was employed by the Inspectoratul General pentru Imigrări, at the Immigration Service for the County of Cluj, and that, as part of his duties, he was required to work in front of display screen equipment, with the following additional risk factors: intermittent illumination, a lack of natural light, neuro-psychiatric overload and decreased visual acuity.
- 3 The applicant alleged that all of those circumstances had 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, because of an alteration in dioptries and a diagnosis of slight hypermetropia and presbyopia.
- 4 The applicant stated that these costs could not be reimbursed by the national health system, but that Decision No 1028/2006 had transposed into national law Directive 90/270, which states that workers who regularly use display screen equipment for a significant part of their normal working time are exposed to the risk of visual impairment and mental stress. The applicant asserted that Article 15

of Decision No 1028/2006 is intended to ensure that employees are not required to bear the financial burden of preventing and treating occupational problems which develop through work, such as visual impairment. He asked his employer to bear the cost of his spectacles, but the employer refused.

- 5 The defendant argued that the applicant had failed to prove that his visual difficulties could not have been corrected using normal spectacles, and that the legislation stipulated that employees must be provided with special vision correction appliances, but not that they must be reimbursed the cost thereof.
- 6 The Tribunalul Cluj (Regional Court, Cluj) dismissed the applicant's claim, ruling that, in accordance with Article 14 of Decision No 1028/2006, where special corrective appliances are needed, an employee must be provided with them, but not with any reimbursement of the cost of such appliances.
- 7 The applicant brought an appeal against that judgment before the referring court, the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania).
- 8 The appellant (the applicant at first instance) has requested the appellate court to make a reference to the Court of Justice of the European Union, pursuant to Article 267 TFEU, for a preliminary ruling on the interpretation of Article 9 of Directive 90/270.

The essential arguments of the parties in the main proceedings

- 9 In the grounds of his appeal, the appellant has alleged that the wording of Article 14 of Decision No 1028/2006 stipulates that workers must be provided with special corrective appliances, without imposing any restriction on how that is to be achieved. The appellant has asserted that the legislation which is relevant to the case does not expressly mention the manner in which such appliances are to be provided.
- 10 He has also stated that he approached the respondent to request information about the funds needed for compliance with the obligation to provide special corrective appliances and was told that there was no specific budget to cover such costs and was referred to the legal instrument which provides for a 10% increase on account of arduous working conditions.
- 11 The appellant considers that interpretation of Article 9 of the directive is necessary for the resolution of the dispute and that a uniform interpretation throughout the European Union of the concept of 'special corrective appliance' is needed, especially since the directive itself is insufficiently clear about that concept. In his view, it is necessary to establish whether spectacles with corrective lenses that are used when facing a display screen come within the scope of that concept and whether a special corrective appliance is necessarily something that is used solely at the place of work, or may also be something that is used for other activities, pursued during free time. He also considers that a uniform interpretation is needed

with regard to the manner in which such costs are to be covered, that is, whether the employer must reimburse such expenditure or is merely required to purchase the appliances.

- 12 The appellant asserts that there is no sufficient national practice with regard to this situation, that the Court of Justice has never been called upon to give a preliminary ruling on the question and that, in the Member States of the European Union, the concepts have been interpreted in different ways.
- 13 The respondent has requested that the request for a reference to be made to the Court of Justice for a preliminary ruling be refused, since, by Civil Judgment No 1009/2017, the Curtea de Apel Cluj (Court of Appeal, Cluj) already ruled that the concept of special corrective appliance covers appliances which workers need and use solely at the place of work, for the operation of equipment and machinery, in order to protect themselves from harm, danger or pollution. The respondent considers that, since spectacles with corrective lenses are not a corrective appliance used solely at the place of work, but are also used in daily life, they cannot be regarded as a special corrective appliance within the meaning of Article 14 of Decision No 1028/2006.
- 14 In the view of the respondent, it is true that there is no legal definition of 'special corrective appliance', but this type of device must be characterised rigorously and in such a way as to distinguish such appliances from 'normal corrective appliances', into which category spectacles with corrective lenses fall. The mere fact that a person's need to wear spectacles became clear after an occupational health medical examination does not render that type of appliance 'special' for the purposes of Article 14 of Decision No 1028/2006.
- 15 The respondent considers that a further argument to the same effect may be drawn from the definition, given in Article 5(j) of Law No 319/2006 on safety and health at work, of 'personal protection equipment'. Accordingly, special corrective appliances can only be appliances that are strictly related to the tasks carried out at the place of work.

Succinct presentation of the reasoning in the reference for a preliminary ruling

- 16 The referring court observes that, in the absence of any definition in the directive of special corrective appliances and normal corrective appliances, a court is unable to determine what special vision correction appliances may be included in the category of appliances that must be provided by the employer. It is therefore necessary to establish whether or not the expression may include spectacles with corrective lenses.
- 17 The referring court considers that it would be helpful also to clarify whether a special vision correction appliance, as referred to in Article 9 of Directive 90/270, is something that is used exclusively at the place of work and/or in the

performance of employment duties, or something that may also be used outside the place of work.

- 18 The difficulty of interpretation arises from the fact that Directive 90/270 refers to workers' rights and employers' obligations according to the results of the ophthalmological tests carried out on the commencement of employment and in the course of the employment relationship. Consequently, one possible interpretation is that, since Article 9 of the directive governs an aspect of the employment relationship, the corrective appliance provided must necessarily relate to that employment relationship and so must be one that is used exclusively at the place of work. On the other hand, there are vision correction appliances, such as spectacles with corrective lenses (at issue in the present case), which may be used both in the workplace and outside of it. Consequently, it could be held that the relevant factor is that the corrective appliance is used at the place of work and that the question of whether it is also used outside the workplace is irrelevant.
- 19 Another relevant aspect of the present case is the obligation imposed on the employer by Article 9 of Directive 90/270 to provide workers with special corrective appliances and to relieve workers of the cost thereof. On the one hand, the directive makes express reference only to the provision by the employer of vision correction appliances, but, on the other hand, the same result is achieved if the employer covers the cost of a corrective appliance which the worker has purchased. The latter situation also offers the advantage of allowing the employee to take the necessary steps to correct his or her eyesight promptly, without having to wait for the employer to take the necessary steps, and to request reimbursement from the employer subsequently.
- 20 Lastly, the question arises in this case as to whether the obligation to provide special vision correction appliances can be regarded as fulfilled when an increase in remuneration is awarded on account of working conditions. Indeed, the provision of corrective appliances by the employer presupposes that the employer will bear the related cost or, if it is possible to reimburse the worker the cost of an appliance which he has purchased, pay a sum of money to the worker. In circumstances where the worker is paid an increase on account of working conditions on the basis of which a deterioration of vision is assumed to have occurred, the question arises as to whether or not that removes the obligation upon the employer to provide the vision correction appliance.