JUDGMENT OF THE COURT (Fifth Chamber)
12 December 1996 *

In Joined Cases C-74/95 and C-129/95,

REFERENCES to the Court under Article 177 of the EC Treaty by the Procura della Repubblica presso la Pretura Circondariale di Torino, Italy, and by the Pretura Circondariale di Torino, for a preliminary ruling in the criminal proceedings against

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on the interpretation 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),

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida (Rapporteur), President of the Chamber, L. Sevón, D. A. O. Edward, P. Jann and M. Wathelet, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

* Language of the case: Italian.

after considering the written observations submitted on behalf of:

— the Austrian Government, by Wolf Okresek, Ministerialrat in the Bundeskanzleramt, acting as Agent, and

— the Commission of the European Communities, by Laura Pignataro and Isabel Martinez del Peral, of its Legal Service, and Horstpeter Kreppel, a national official made available to that service, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 18 June 1996,

gives the following

Judgment

1 By orders of 10 March and 18 April 1995 respectively, received at the Court on 13 March and 20 April 1995, the Procura della Repubblica (Office of the Public Prosecutor) to the Pretura Circondariale di Torino (District Magistrate's Court, Turin) in Case C-74/95 and the Pretura Circondariale itself in Case C-129/95 referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a number of questions on the interpretation 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, hereinafter 'the Directive').

2 Those questions were raised in criminal proceedings against persons unknown for a presumed breach of Legislative Decree No 626 of 19 September 1994 (*Gazzetta Ufficiale della Repubblica Italiana* No 265, 12 November 1994, hereinafter 'the Decree'), in particular Title VI thereof ('Use of display screen equipment'), which implements the provisions of the Directive in Italian law.

3 In the context of those proceedings, inspectors from the Unità Sanitaria Locale (Local Health Authority), Turin, had collated information at the request of the Procura della Repubblica on the use of display screens at the headquarters of Telecom Italia in Turin. It transpired that certain workers used such screens more than four hours per day for fewer than the full number of days per working week, whereas others used a display screen less than four hours per day every day of the working week.

4 In its reference, the Procura della Repubblica observes that, in order to decide whether it should, in this case, take measures falling within its competence, such as a summons to appear or a precautionary sequestration in order to prevent the exacerbation or prolongation of the effects of any possible offences, it must ascertain whether the constitutive elements of an offence are present and in particular whether Articles 50 to 59 of the Decree have been infringed.

5 Article 51 of the Decree defines a worker for the purposes of Title VI as one who 'systematically and habitually uses display screen equipment for at least four consecutive hours daily, discounting the breaks referred to in Article 54, every day of the working week'. The other provisions of Title VI concern employers' obligations, the organization of work, daily working conditions, arrangements for medical checks, information and training for workers, consultation of workers and worker participation. Title IX of the Decree provides for a system of criminal penalties.

6 The Procura della Repubblica considers that in order to interpret the relevant provisions of the Decree it is first necessary to ascertain the precise scope of the definition of 'worker' given in Article 2(c) of the Directive. For the purposes of the Directive, that provision gives the following definition:

'(c) *worker*: any worker as defined in Article 3(a) of Directive 89/391/EEC who habitually uses display screen equipment as a significant part of his normal work'.

7 The Procura della Repubblica wishes to know in particular whether that definition excludes workers who use display screens every day of the working week but not necessarily for four consecutive hours every day or those who use such screens for at least four consecutive hours on every day but one of the working week.

8 It points out that Article 51 of the Decree implementing the Directive defines a worker as one who 'systematically and habitually uses display screen equipment for at least four consecutive hours daily, discounting the breaks referred to in Article 54, every day of the working week' and that Articles 54 and 55 of the Decree require breaks or changes of activity to provide relief from display screen work and impose health monitoring for those who 'work for at least four consecutive hours'.

9 The Procura della Repubblica then seeks further enlightenment on the scope of Article 9(1) and (2) of the Directive, according to which:

'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.'

10 The Procura della Repubblica wishes to know in particular whether Article 9(1) provides for regular eye and eyesight tests for all workers or whether such tests are confined to specific categories of workers, and also whether Article 9(2) requires ophthalmological examinations following the regular medical examinations as well as after the initial medical examination. It points out that, under Article 55 of the Decree, regular medical examinations concern only workers who have been classified as fit subject to certain reservations and those who have reached the age of 45; furthermore, it appears to require specialist checks only after the initial medical examination, and an ophthalmological examination only at a worker's request, whenever he or she suspects, and a doctor confirms, that there has been a deterioration in eyesight.

11 Finally, the Procura della Repubblica raises questions regarding the extent of the employer's obligation to bring workstations into conformity with the minimum requirements laid down in the Annex to the Directive, since the investigation in the present case has revealed possible infringements of Section 2 thereof ('Environment'). Those questions relate to Articles 4 and 5 of the Directive.

12 Article 4 provides: 'Employers must take the appropriate steps to ensure that workstations first put into service after 31 December 1992 meet the minimum requirements laid down in the Annex'; while Article 5 provides: 'Employers must take the appropriate steps to ensure that workstations already put into service on or before 31 December 1992 are adapted to comply with the minimum requirements laid down in the Annex not later than four years after that date'.

13 The Procura della Repubblica asks, first, whether the abovementioned provisions apply only where the 'workstation' as defined in Article 2 of the Directive is actually used by a 'worker' as also defined therein. Secondly, it wishes to know whether Articles 4 and 5 of the Directive require workstations to be adapted to comply only with the minimum requirements laid down in Section 1 of the Annex ('Equipment') or whether they must also meet the requirements in Sections 2 ('Environment') and 3 ('Operator/computer interface'). It points out that under Article 58 of the Decree workstations must comply with the minimum requirements laid down in Annex VII thereto, which concerns only equipment.

14 The Procura della Repubblica therefore decided, by decision of 10 March 1995, to refer those questions to the Court of Justice.

15 By decision of 18 April 1995, anticipating the possibility that the Court might consider that the Procura della Repubblica was not entitled to request a preliminary ruling under Article 177 of the EC Treaty, the Pretura Circondariale referred the same questions to the Court for a preliminary ruling.

16 The Pretura Circondariale considers that the request for a preliminary ruling concerns questions to which it needs an answer in order to be able to decide whether the application made to it by the Procura della Repubblica — for an order requiring an expert opinion for the purpose of determining whether the breaks accorded to the workers in question are sufficient, whether the medical tests are appropriate and whether the workstations comply with the minimum requirements — is well founded. The national court observes that, before making such an order, it must determine in particular whether the presumed infringements of the Decree have been committed. The interpretation of the Decree, which implements the Directive, depends on the answer to the questions referred for a preliminary ruling.

Case C-74/95

17 The Commission considers that the request in this case must be held inadmissible because the Procura della Repubblica is not a court or tribunal within the meaning of Article 177 of the Treaty.

18 The Court has held that reference may be made to it under Article 177 only by a body required to give a ruling in complete independence in proceedings which are intended to result in a judicial decision (see, for example, Case 14/86 *Pretore di Salò* v *Persons Unknown* [1987] ECR 2545, paragraph 7, Case C-393/92 *Almelo and Others* v *Energiebedrijf Ijsselmij* [1994] ECR I-1477, paragraph 21, Case 138/80 *Borker* [1980] ECR 1975, paragraph 4, and Case 318/85 *Greis Unterweger* [1986] ECR 955, paragraph 4).

19 That is not the case here. As the Advocate General has observed in points 6 to 9 of his Opinion, the role of the Procura della Repubblica in the main proceedings is not to rule on an issue in complete independence but, acting as prosecutor in the proceedings, to submit that issue, if appropriate, for consideration by the competent judicial body.

20 The Procura della Repubblica cannot, therefore, be regarded as a court or tribunal within the meaning of Article 177 of the Treaty, and its questions must be held inadmissible.

Case C-129/95

21 It must first be noted that the Court cannot, in proceedings under Article 177 of the Treaty, rule whether a measure of national law is valid from the point of view of Community law, as it might in proceedings under Article 169 (see, for example,

Case 6/64 *Costa* v *ENEL* [1964] ECR 585). It is, however, competent to provide the national court with all criteria for the interpretation of Community law which may enable that court to determine the issue of compatibility for the purposes of the decision in the case before it (see, for example, Case 223/78 *Grosoli* [1979] ECR 2621, paragraph 3).

22 In the present case, however, it is clear from the order for reference that the national court does not rule out the possibility that the effect of taking the provisions of the Directive into account might be to determine or aggravate the liability in criminal law of persons who act in contravention of those provisions, although no such liability would arise out of the interpretation of the legislation specifically adopted to implement the Directive.

23 It has consistently been held (see, for example, Case C-168/95 *Arcaro* [1996] ECR I-4705, paragraph 36) that a directive may not of itself create obligations for an individual and that a provision of a directive may not therefore, as such, be relied upon against such a person.

24 It is true that the national court must apply its domestic law as far as possible in the light of the wording and the purpose of the Directive so as to achieve the result it seeks to achieve and thereby comply with the third paragraph of Article 189 of the Treaty (see, for example, Case C-91/92 *Faccini Dori* v *Recreb* [1994] ECR I-3325, paragraph 26). However, that obligation on the national court to refer to the content of the Directive when interpreting the relevant rules of its national law is not unlimited, particularly where such interpretation would have the effect, on the basis of the Directive and independently of legislation adopted for its implementation, of determining or aggravating the liability in criminal law of persons who act in contravention of its provisions (see, in particular, Case 80/86 *Kolpinghuis Nijmegen* [1987] ECR 3969, paragraph 13).

25 More specifically, in a case such as that in the main proceedings, which concerns the extent of liability in criminal law arising under legislation adopted for the specific purpose of implementing a directive, the principle that a provision of the criminal law may not be applied extensively to the detriment of the defendant, which is the corollary of the principle of legality in relation to crime and punishment and more generally of the principle of legal certainty, precludes bringing criminal proceedings in respect of conduct not clearly defined as culpable by law. That principle, which is one of the general legal principles underlying the constitutional traditions common to the Member States, has also been enshrined in various international treaties, in particular in Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms (see, *inter alia*, the judgments of the European Court of Human Rights in *Kokkinakis* v *Greece*, 25 May 1993, Series A, No 260-A, paragraph 52, and in *S. W.* v *United Kingdom* and *C. R.* v *United Kingdom*, 22 November 1995, Series A, No 335-B, paragraph 35, and No 335-C, paragraph 33).

26 The national court must therefore ensure that that principle is observed when interpreting, in the light of the wording and the purpose of the Directive, the national legislation adopted in order to implement it.

27 Subject to those observations, an answer must be given to the questions raised by the national court.

Interpretation of Article 2(c) of the Directive

28 The national court seeks to ascertain whether the phrase 'worker ... who habitually uses display screen equipment as a significant part of his normal work' in Article 2(c) of the Directive is to be interpreted as referring (i) to workers who habitually use such screens for four consecutive hours on every day of the week

but one and (ii) to those who use display screens every day of the week for less than four consecutive hours.

29 The Directive does not specify what is to be understood by 'habitual [use of] display screen equipment as a significant part of his normal work' for the purposes of Article 2(c).

30 It is clear from the wording of that provision that the question whether the time habitually spent by a worker at a display screen amounts to a significant part of his work is to be assessed in relation to that person's normal work. The phrase cannot be defined in the abstract, and it is for the Member States to specify its import when adopting national measures implementing the Directive.

31 In view of the vagueness of the phrase in issue, the Member States must be accorded a broad discretion when adopting such implementing measures, which in any event, by virtue of the principle of legality in relation to crime and punishment recalled at paragraph 25 above, precludes any reference by the competent national authorities to the relevant provisions of the Directive when contemplating the institution of criminal prosecutions in the field covered by the Directive.

32 Consequently, without there being any need to consider whether the Austrian Government and the Commission are correct in submitting that a period of four consecutive hours habitually spent at a display screen on every day of the week but one clearly constitutes a significant part of a worker's normal work within the meaning of Article 2(c) of the Directive, it is unnecessary to answer this question.

Interpretation of Article 9(1) and (2) of the Directive

33 The national court then asks whether Article 9(1) of the Directive is to be interpreted as requiring regular eye and eyesight tests for all workers to whom the Directive applies or only for certain categories of worker. It also asks whether Article 9(2) means that workers are entitled to an ophthalmological examination in all cases where the results of the test referred to in Article 9(1) show that this is necessary.

34 As regards Article 9(1), it need merely be pointed out that there is nothing in its wording, which refers without distinction to 'workers' within the meaning of the Directive, to support the view that entitlement to an appropriate eye and eyesight test thereunder does not extend to all workers as defined in Article 2(c).

35 Article 9(2) specifically provides that workers are to be entitled to an ophthalmological examination where 'the results of the test referred to in paragraph 1 show that this is necessary', and does not introduce any limitation in that regard. Consequently, in accordance with Article 9(1), to which Article 9(2) refers, the test in question may be that carried out prior to the commencement of display screen work, that carried out at regular intervals thereafter or that carried out in the event of visual difficulties which may be due to display screen work.

36 The answer to the national court must therefore be that Article 9(1) of the Directive is to be interpreted as meaning that the regular eye tests for which it provides are to be carried out on all workers to whom the Directive applies and that Article 9(2) is to be interpreted as meaning that workers are entitled to an ophthalmological examination in all cases where the eye and eyesight test carried out pursuant to Article 9(1) shows that this is necessary.

Interpretation of Articles 4 and 5 of the Directive

37 Finally, the national court asks whether, on a proper construction of Articles 4 and 5 of the Directive, the obligations they impose apply to all workstations as defined in Article 2(b) which may be used by workers as defined in Article 2(c), even if they are not in fact used by such workers. It also wishes to know whether Articles 4 and 5 are to be interpreted as requiring workstations to be adapted to comply with all the minimum requirements laid down in the Annex or whether it is sufficient that they comply merely with those relating to equipment.

38 Articles 4 and 5 of the Directive, which require employers to take the appropriate steps to ensure that workstations meet 'the minimum requirements laid down in the Annex', refer without distinction to all the requirements laid down in the three sections of that annex, entitled respectively 'Equipment', 'Environment' and 'Operator/computer interface'. Furthermore, as the Commission has rightly pointed out, those requirements complement each other and seek to ensure that a given workstation meets a minimum level of safety and protection.

39 It is further clear from the wording of Articles 4 and 5 that those provisions concern all 'workstations' within the meaning of the Directive, irrespective of whether they are used by workers within the meaning of Article 2(c).

40 That interpretation is corroborated in particular by the fourth recital in the preamble to the Directive, according to which 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 the seventh recital,

according to which ergonomic aspects are of particular importance for a 'workstation' with display screen equipment.

41 The answer to the national court must therefore be that, on a proper construction of Articles 4 and 5 of the Directive, the obligations they impose apply to all workstations as defined in Article 2(b), even if they are not used by workers as defined in Article 2(c), and that workstations must be adapted to comply with all the minimum requirements laid down in the Annex.

Costs

42 The costs incurred by the Austrian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

Declares that the questions referred to it by the Procura della Repubblica presso la Pretura Circondariale di Torino are inadmissible;

and, in answer to the questions referred to it by the Pretura Circondariale di Torino, by order of 18 April 1995, rules:

1. **Article 9(1) 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) must be interpreted as meaning that the regular eye tests for which it provides are to be carried out on all workers to whom the Directive applies and Article 9(2) is to be interpreted as meaning that workers are entitled to an ophthalmological examination in all cases where the eye and eyesight test carried out pursuant to Article 9(1) shows that this is necessary.**

2. **On a proper construction of Articles 4 and 5 of Directive 90/270, the obligations they impose apply to all workstations as defined in Article 2(b), even if they are not used by workers as defined in Article 2(c), and workstations must be adapted to comply with all the minimum requirements laid down in the Annex.**

Moitinho de Almeida Sevón Edward

Jann Wathelet

Delivered in open court in Luxembourg on 12 December 1996.

R. Grass J. C. Moitinho de Almeida

Registrar President of the Fifth Chamber