OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER
delivered on 18 June 1996 *

1. The present references for a preliminary ruling have been joined by the Court of Justice after being received from the Procura della Repubblica (Office of the Public Prosecutor) to the Pretura Circondariale (District Magistrate's Court), Turin, Italy, and the Giudice per le Indagini Preliminari (Magistrate in charge of Preliminary Enquiries) of the same Pretura Circondariale.

2. The questions from the Magistrate have been referred only as an alternative, should the Court of Justice find that those referred by the Public Prosecutor are inadmissible.

Inadmissibility of the questions from the Procura della Repubblica

3. I shall begin by pointing out that the Italian Public Prosecutor's Office is not a court or tribunal authorized to make use of Article 177 of the EC Treaty and therefore the questions which he wishes to refer to the Court in this case must be ruled inadmissible.

4. The Court has defined the term 'court or tribunal' for the purpose of Article 177 of the EC Treaty by specifying the criteria which a forum of that kind should satisfy: it must be established by law, have a permanent existence, exercise binding jurisdiction, be bound by rules of adversary procedure and apply the rule of law. The Court has extended those criteria, pointing out in particular the need for the court or tribunal in question to be independent. [1]

5. Although the Italian Public Prosecutor's Office may at times have been able to perform functions characteristic of examining magistrates in addition to its own as a State office responsible for instituting criminal proceedings, [2] this was not the case at the time in question (April 1995).

1 — See Case C-393/92 *Municipality of Almelo and Others* v *Energiebedrijf IJsselmij* [1994] ECR I-1477, paragraph 21; Case 61/65 *Vaassen* v *Beambtenfonds voor het Mijnbedrijf* [1966] ECR 261; Case C-24/92 *Corbiau* v *Administration des Contributions* [1993] ECR I-1277; and Case 338/85 *Pardini* v *Ministero del Commercio con l'Estero* [1988] ECR 2041.

2 — This was the case at the material time in Case 14/86 *Pretore di Salò* v *Persons Unknown* [1987] ECR 2545. At that time the functions performed by the Pretore were both those of a public prosecutor and those of an examining magistrate. The Pretore carried out preliminary investigations in his capacity as public prosecutor and, where they disclosed no grounds for continuing the proceedings, made an order accordingly in the place of an examining magistrate. Therefore the Court of Justice found that the Pretori were judges who, in proceedings such as those in which the questions referred to the Court in that case were raised, combined the functions of a public prosecutor and an examining magistrate. Accordingly requests for a preliminary ruling from the Pretori were admissible because such requests were from 'a court or tribunal which has acted in the general framework of its task of judging, independently and in accordance with law, cases coming within the jurisdiction conferred on it by law, even though certain functions of that court or tribunal in the proceedings which gave rise to the reference for a preliminary ruling are not, strictly speaking, of a judicial nature'.

* Original language: Spanish.

6. Here, the Italian Public Prosecutor's Office is a party in the criminal proceedings, authorized as a public body which institutes criminal prosecutions. Therefore it does not decide cases but brings them before the competent court or tribunal.

7. In the present case, therefore, at least two of the basic requirements of the Court of Justice for the admissibility of the questions referred are not met:

(a) the Public Prosecutor's Office is not a court or tribunal with binding jurisdiction since it is not even a court or tribunal having *iurisdictio* in the strict sense;

(b) the Public Prosecutor's Office does not decide after hearing the parties in an adversary procedure, but is itself a party in that procedure.

8. In fact, the part played by the Public Prosecutor's Office in the preliminary investigations which have given rise to the questions referred was to request the Magistrate, by application of 11 April 1995, to order an immediate expert's report, which only he could do, [3] as is clear from the Magistrate's order of 18 April 1995.

9. Therefore it is clear that the function of the Public Prosecutor's Office in these preliminary investigations is merely that of a party requesting the Magistrate to obtain evidence. This function is not of a judicial nature and consequently does not permit questions to be referred to the Court of Justice. [4]

10. A ruling that the questions submitted by the Public Prosecutor's Office are inadmissible will furthermore assist in clarifying the term 'court or tribunal' used in Article 177 of the Treaty, which in certain cases should perhaps be interpreted more rigorously by the Court of Justice. [5]

3 — In its written observations, the Commission points out that Article 392 of the (Italian) Code of Criminal Procedure allows both the Public Prosecutor and the person who is the subject of investigations 'to request the Magistrate to order expert evidence or a judicial inspection in relation to persons, things or places whose status is subject to inevitable alteration'.

4 — The Italian Public Prosecutor's Office likewise has no standing to refer questions of unconstitutionality to the Italian Constitutional Court, as that court has ruled in its judgment of 9 April 1963 and its order of 22 January 1979.

5 — The Court has on occasions accepted preliminary references from administrative authorities whose independence was doubtful and whose decisions furthermore were open to review by genuine courts. This occurred in Joined Cases C-260/91 and C-261/91 *Diversinte and Iberlacta* v *Administración Principal de Aduanas* [1993] ECR I 1885, with regard to a Spanish financial administrative tribunal, which was an organ of the tax authorities and was not of a judicial nature.

Questions referred by the Giudice per le Indagini Preliminari

11. The questions raised by the Magistrate have arisen in the course of preliminary investigations of a criminal nature against persons unknown, which began after an investigation by inspectors of the Unità Sanitaria Locale (Local Health Authority), Turin, into the use of visual display screens at the headquarters of Telecom Italia.

12. The Public Prosecutor's Office, acting on the presumption that the legislation for the protection of workers using display screens had been contravened, requested the Giudice per le Indagini Preliminari to obtain the evidence which I mentioned above.

13. The Magistrate considers that, before deciding on the application by the Public Prosecutor's Office for an immediate expert's report, it is necessary to ascertain whether an offence may be supposed to have been committed here, in particular any offence under Articles 50 to 59, Title VI, of Legislative Decree No 626 of 19 September 1994 [6] concerning the use of equipment fitted with display screens.

14. Therefore the Magistrate considers it necessary to seek a preliminary ruling from the Court on various questions concerning 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 87/391/EEC) ('the Directive'). [7]

15. The questions from the Magistrate are worded as follows:

'Of particular importance is the interpretation of Article 2(c) regarding any worker who "habitually uses display screen equipment as a significant part of his normal work" in order to ascertain whether that provision excludes the specific situations described above (use throughout the working week but not always for four consecutive hours daily, or use in excess of four consecutive hours, but not throughout the working week: for example, use for several consecutive hours on every day but one of the working week).

Having regard to Article 55 of Legislative Decree No 626/94 providing for periodic medical examinations only in the case of

6 — *Gazzetta Ufficiale della Repubblica Italiana* No 265, 12 November 1994, Supplemento Ordinario No 141.

7 — OJ 1987 L 156, p. 14.

workers classified as fit subject to certain reservations and workers who have reached 45 years of age, which appears to provide for specialist checks only after the initial medical examination and for further ophthalmological examinations only if the worker so requests, and given that the Public Prosecutor's Office has requested the Magistrate to assess whether Telecom workers are granted sufficient breaks and are subject to adequate health controls, a preliminary ruling is also needed with regard to the scope of Article 9(1) and (2) of Directive 90/270/EEC in order to ascertain whether Article 9(1) provides for an "appropriate eye and eyesight test" for all workers, or only for certain categories (possibly by reference to personal data), and whether Article 9(2) requires the ophthalmological examination not only after the initial medical examination, but also after periodic examinations.

Lastly, since the technical investigations have disclosed the possibility of problems related to lighting and microclimatic conditions, in view of which it is necessary to assess whether any offences have been committed, and given that Article 58 of Legislative Decree 626/94 requires workstations to be brought into conformity with the minimum requirements set out in Annex VII — which, containing only one paragraph, lays down rules in respect of the equipment used — the question is whether Articles 4 and 5 of Directive 90/270/EEC call for compliance with those requirements in the case of all workstations (Article 2(b)) or only in the case of those used by workers as defined in Article 2(c) and, in particular, whether such compliance must also extend to the minimum requirements set out in Sections 2 (Environment) and 3 (Operator/Computer Interface) of the Annex to the directive.'

Contrast between the Directive and the national legislation defining punishable offences

16. As I have said, the domestic measure applicable to the present case is Legislative Decree No 626 of 19 September 1994 which, according to the order for reference, 'implements Directive 90/270/EEC'.

17. The Directive in turn meets the requirements of Article 118a of the Treaty, under which the Council is to adopt, by means of directives, minimum requirements designed to encourage improvements, especially in the working environment, to ensure a better level of protection of workers' safety and health.

18. Specifically, it is an individual directive within the meaning of 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. [8]

19. A reading of the questions from the national court shows, in my opinion, in spite of certain statements apparently to the contrary, that the national court's purpose is not so much to obtain an interpretation of the Directive, but to show the points on which the Legislative Decree differs from the Directive and to ask what effect this may have.

20. The three questions submitted start from a common assumption: the contrast between the Directive and the Legislative Decree, the provisions of which are said to differ partly in respect of the following points:

(a) the term 'worker who habitually uses display screen equipment';

(b) the persons to whom eye and eyesight tests apply, and the circumstances in which they are compulsory;

(c) the scope of the minimum requirements of the Annex with regard to the workstations to which it refers.

21. I shall now examine each of these three points, in respect of which the national court sets out the national rule (Articles 51, 55 and 58 of the Legislative Decree) and immediately compares it with the requirements of the Directive.

22. With regard to the first point, Article 51(c) of the Legislative Decree defines a worker for the purpose of Title VI as any person 'who systematically and habitually uses display screen equipment for at least 4 consecutive hours daily, discounting the breaks referred to in Article 54, throughout the working week'.

23. On the same point Article 2(c) of the Directive defines a worker as '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'.

24. It follows that the Italian 'definition' of protected worker is more restrictive than the

8 — OJ 1989 L 183, p. 1.

Community definition. The Legislative Decree excludes numerous employees, who, according to the Directive, should be included, from the category of 'workers' for the purposes of its Title VI — with the result that their health at work is not protected under the Decree.

25. This applies in particular to workers who use video terminals for, say, three-and-a-half hours daily throughout the week, or even for more than four hours daily but not every day of the working week.

26. Such persons, as the Commission and the Austrian Government point out in their observations, should come within the ambit of the Directive because a significant part of their normal work is done in front of display screens. Nevertheless, the Legislative Decree excludes them from the protective measures laid down by Title VI because they are not deemed to be 'workers' for the purposes of that Title.

27. On the second point (health monitoring), Article 55 of the Legislative Decree requires periodic medical examinations only in the case of workers classified as 'fit subject to certain reservations' and workers who have reached 45 years of age. In addition, according to the national court, it 'appears' to provide for specialist checks only after the initial medical examination, and for ophthalmological examinations only if the worker so requests, provided he suspects, and a doctor confirms, that his sight has deteriorated.

28. On the same question Article 9 of the Directive provides as follows:

'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.'

29. Once again, the Italian provision appears to restrict the protection of health at work as required by the Directive because, while under the latter all workers within its ambit are entitled to periodic examinations of their eyes and eyesight, the Legislative Decree does not confer this right on all workers, but only on certain categories.

30. Finally, regarding the third point, Article 58 of the Legislative Decree provides that workstations must meet the minimum requirements of Annex VII, which consists of only one paragraph and lays down provisions concerning installations or equipment with video terminals.

31. On this point the Directive clearly requires employers to take appropriate steps to ensure that workstations meet the minimum requirements laid down in the Annex, [9] which relate not only to equipment [10] (paragraph 1), but also to the environment of the workstation [11] (paragraph 2) and the 'operator/computer interface' [12] (paragraph 3).

32. As on the other two points which I have already examined briefly, here again the Directive seems to be more rigorous than the Italian Legislative Decree which, once again, lowers the minimum level of requirements for health at work laid down by the Directive.

33. Whereas the Directive lays down certain minimum requirements concerning workstations incorporating video terminals, their environment and the computer programmes, the Legislative Decree confines itself to the first of those three aspects and omits the requirements for the other two. [13]

9 — Articles 4 and 5 of the Directive refer respectively to workstations first put into service after 31 December 1992, which must meet the requirements from the outset, and workstations already in service on 31 December 1992, which must be adapted to comply with the requirements within a maximum of four years.

10 — The minimum requirements in this paragraph relate to the display screen, the keyboard, the work desk or work surface and the work chair.

11 — This paragraph of the Annex contains minimum requirements concerning the environment of the work station: space requirements, lighting, reflections and glare, noise, heat, radiation and humidity.

12 — This paragraph of the Annex sets out a number of ergonomic requirements which the employer must take into account in designing, selecting, commissioning and modifying software and in designing tasks using display screen equipment.

13 — This omission was pointed out by Silvia Bertocco in her work *La sicurezza del lavoratore nelle fonti internazionali del lavoro. Il recipimento dalla direttiva CEE 89/391 nell'ordinamento nazionale*, 1995, p. 127, in which she states that 'the Legislative Decree concerning safety is a detailed, complex legislative measure which has the technical defect of cumbersome language and is not improved by certain errors of substance such as the absence of two paragraphs in Annex VII: a) the ergonomic requirements concerning the work environment and the operator/computer interface, as set out in paragraphs 2 and 3 of the Annex to Directive 90/270, have been omitted ...'.

34. The conclusion from all this — I venture to say that it was anticipated by the national court when making the reference — would be a possible finding that the Italian authorities have failed to implement the Directive properly, by lowering the minimum level of protection of health at work required by Community law. [14]

35. As I shall show below, such a conclusion would however be irrelevant in the context of criminal proceedings with the purpose of establishing whether the employer in question has incurred criminal liability by contravening Italian legislation, not Community law.

36. The interpretation and application of national law are tasks for the domestic courts exclusively. Without wishing to interfere with their jurisdiction in this respect, I think it necessary to point out that, to obtain a ruling on the existence of the offence the suspicion of which has given rise to the preliminary investigations, the Italian court cannot take into account rules of law outside its own criminal law, if such rules bring to light conduct — as in this case — which is incompatible with the health of workers and does not comply with the Community rules, but is not punishable under national law.

37. The conduct of an Italian employer who does not adopt protective measures — say, with regard to eyesight examinations or the minimum requirements concerning the workstation environment — in relation to certain employees who are within the definition of protected 'workers' under the Directive, but who are excluded from that category under the Legislative Decree, would not be punishable.

38. Undeniably, proper implementation of the Directive requires protection for those persons and the Italian State must ensure that it is provided. But if national law does not include a particular kind of conduct among the relevant types of offence, neither the implementation nor the interpretation of the Directive can be sufficient to justify a criminal penalty in such cases. [15]

39. Article 89 of the Legislative Decree lays down penalties of fine and imprisonment for 'any offence under Article 58' committed by

14 — For that to be true in the strictest sense desirable, an action would have had to be duly brought against the Italian Republic (which furthermore has not appeared in these proceedings upon a reference) for failing to fulfil its obligations. The Court of Justice has consistently held that, within the scope of application of Article 177 of the Treaty, it has no jurisdiction to rule on the compatibility of national measures with Community law.

15 — This does not mean that, in other than a purely criminal context, the application and interpretation of the Directive does not entail any consequences. Thus, with regard to the employment and social security aspects, workers could, even against their own State, claim the measures of protection which the Directive is intended to guarantee.

employers or managers of an enterprise. Article 90 lays down penalties of the same kind for 'non-compliance with the minimum requirements referred to by Article 55, paragraphs 1, 3 and 4, and Article 58' if it is attributable to the persons in charge of the enterprise.

40. Therefore, by the combined effect of its various provisions, the Italian Law defines quite precisely the conduct which it seeks to punish by fine and imprisonment; any other specific types of conduct relating to the safety and health at work of video terminal workers fall outside the scope of the criminal provisions.

41. That being the statutory reality — which may be the result of a conscious decision or of a mere lacuna — it cannot be rectified by means of an interpretation of the Legislative Decree which makes it say more than it does, albeit in order to bring it into conformity with the Directive. [16]

42. Perhaps these observations necessitate a rather more detailed examination of the relationship between the implementation of the directives and national criminal law.

16 — In no way, moreover, does the Directive require compliance to be secured by means of criminal penalties.

Effect of directives on the interpretation of national criminal law

43. The starting point for my reasoning is the overriding principle of legality in criminal law (*nullum crimen, nulla poena sine lege*), with its corollary that an extensive interpretation to the disadvantage of the defendant is prohibited. I think no one will now deny that this is a principle common to the constitutional traditions of all the Member States.

44. It is, furthermore, a principle which must be upheld in accordance with Article 7(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome Convention of 4 November 1950): 'No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed'. [17]

45. The Italian criminal courts must, in accordance with that principle, apply

17 — In its judgment of 25 May 1993 *Kokkinakis* v *Greece* (A 260-A 1993) the European Court of Human Rights points out that Article 7(1) of the Convention is not limited to prohibiting retrospective application of criminal law to a defendant: it also enshrines the general principle that crimes can be defined and penalties prescribed only by law, as well as the principle that the criminal law cannot be interpreted extensively to the disadvantage of the defendant — by way of analogy, for example.

national legislation defining punishable offences (crimes and serious, minor or petty offences) according to its own terms, and criminal liability cannot be incurred in respect of conduct which, although it ought to have been made a statutory offence, has not in fact been made an offence in Italy.

46. The fact that a State has not thus defined conduct which, under Community law, ought to be considered unlawful could at the most give rise to an assumption that the State has failed to fulfil its obligations, [18] in respect of which an action could be brought by the Commission or another Member State under Articles 169 or 170 of the Treaty, but it does not allow citizens of that State to be prosecuted for acts which, though unlawful under Community rules, are not punishable under national law.

47. This reasoning has been approved by the Court in successive judgments which show that Community directives which have not been incorporated into national law cannot be relied upon as against individuals, specifically in the criminal field.

48. In Case 152/84 *Marshall* v *Southampton and South-West Hampshire Area Health Authority* [19] the Court stated that a directive may not of itself impose obligations on an individual and a provision of a directive may not be relied upon as such against such a person.

49. In the *Pretore di Salò* judgment, cited above, the Court stated that 'a directive which has not been transposed into the internal legal order of a Member State may not therefore give rise to obligations on individuals either in regard to other individuals or, *a fortiori*, in regard to the State itself'.

50. In the *Pretore di Salò* case the national court asked whether the Italian legislation in force at that time concerning the protection of water from pollution was consistent with the principle and quality objectives laid down by a Community directive. [20] The

18 — For this the elements referred to by the Court of Justice in Case C-36/94 *Siesse* v *Director da Alfândega de Alcântara* [1995] ECR I-3573, paragraph 20, must be present: 'it is settled case-law, confirmed in Case C-382/92 *Commission* v *United Kingdom* [1994] ECR I-2435, paragraph 55, and Case C-383/92 *Commission* v *United Kingdom* [1994] ECR I-2479, paragraph 40, that where Community legislation does not specifically provide any penalty for an infringement or refers for that purpose to national legislation, Article 5 of the Treaty requires the Member States to take all measures necessary to guarantee the application and effectiveness of Community law. For that purpose, while the choice of penalties remains within their discretion, they must ensure in particular that infringements of Community law are penalized under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive.'

19 — [1986] ECR 723, at p. 737.

20 — Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life (OJ 1978 L 222, p. 1).

question was deemed necessary for the purpose of a possible prosecution in respect of conduct which was not punishable under domestic law but which could be unlawful from the viewpoint of the Directive.

51. The Court's reply in that case was that a directive cannot, of itself, and independently of a national law adopted by a Member State for its implementation, have the effect of determining or aggravating the liability in criminal law of persons who act in contravention of the provisions of that directive. Consequently the Court refused to compare the internal measure with the Community directive, which was the main object of the reference.

52. In *Kolpinghuis Nijmegen* [21] the Court repeated that a directive cannot, of itself and independently of a national law adopted for its implementation, have the effect of determining or aggravating the liability in criminal law of persons who act in contravention of the provisions of that directive. [22]

53. In this way the Court's case-law respects the protection afforded to citizens of the Member States by the principle of legality in criminal law. As a fundamental right of the individual, that principle gives all persons the legal certainty that their conduct will lead to criminal liability only if it contravenes a national provision which defined it beforehand as an offence of that kind.

54. In the judgments cited above the Court therefore chose to consider the principle of legality in criminal law as an inherent limit to the effectiveness of Community directives.

55. Can that case-law, which refers to situations where a directive has not been incorporated in national law, be extended also to cases where the directive has already been implemented?

56. In my opinion, the answer must be in the affirmative if the consequences of applying or interpreting the directive would either give rise to criminal liability on the part of the person concerned or aggravate such liability, in cases where that would not otherwise occur.

57. It has already been observed that, in the legal systems of the different Member States,

21 — Case 80/86 [1987] ECR 3969.

22 — In that case the Netherlands court asked whether a national authority could rely as against nationals of the same State on a provision of a directive in a case which was not covered by the State's own legislation or implementing provisions.

the principle of legality plays a key part in criminal law which extends not only to the prior definition of offences (*lex previa*) but also to the interpretation thereof (*lex certa*).

58. The legal basis for the imposition of penal sanctions must thus be clear and unequivocal, that is to say, unambiguous. No doubt a criminal provision also requires interpretation by the courts, but they are not permitted to fill any lacunae in the definitions of offences by resorting to an extensive interpretation.

59. It is clear that where national legislation has been introduced in implementation of a directive, it is a general requirement of Community law that national courts must in principle interpret their national legislation in the light of the directive. [23]

23 — The Court made a statement to this effect in Case 14/83 *Von Colson and Kamann* v *Land Nordrhein-Westfalen* [1984] ECR 1891, adding that 'the Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty under Article 5 of the Treaty to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation, is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts'. The same line is taken in the judgment in Case C-106/89 *Marleasing* v *Comercial Internacional de Alimentación* [1990] ECR I-4135.

60. If such interpretation results in determining or aggravating the liability of the person concerned, in cases where that would not otherwise occur, a conflict arises between two principles: the prohibition of extensive interpretations in the criminal law and the obligation of national courts to interpret their own law in conformity with directives.

61. This conflict was resolved by the Court in paragraphs 12 and 13 of the *Kolpinghuis Nijmegen* judgment cited above as follows:

— on the one hand, it is true that, in applying the national law and in particular the provisions of a national law specifically introduced in order to implement a directive, national courts are required to interpret their national law in the light of the wording and the purpose of the directive in order to achieve the result referred to in the third paragraph of Article 189 of the Treaty;

— however, the obligation on the national court to refer to the content of the directive is limited by the general principles of law which form part of Community law and in particular the principles of legal certainty and non-retroactivity.

62. National criminal law must therefore be construed in accordance with the principles and criteria of interpretation specific to that field of law, a marked feature of which is the concern for safeguards, outstanding among them being the principle of legal certainty — in the form, in the criminal field, of the principle of legality.

63. The principle of legal certainty, when understood in this way, precludes resorting to a Community directive in order to extend the definition of an offence, to the disadvantage of the accused, to situations different from those which strictly match the definition of the punishable acts given by national criminal law. [24]

64. All this has nothing to do with the converse situation where the application of Community law leads to the result that conduct which is classified as an offence by national law is not unlawful. In such a case the primacy of Community law means that the internal criminal provision is inapplicable and for that reason it cannot legitimately constitute a basis for criminal liability. [25]

Application of the principle of legality in criminal law to the present case

65. Examination of the present case shows clearly that interpretation of the Directive, as requested by the Italian court, could never reduce any hypothetical criminal liability, quite the contrary.

66. I have already explained the difference between the Directive and the Italian Legislative Decree, which lowers the minimum level of protection for health at work required by the Directive.

24 — Advocate General Jacobs takes the same view in his Opinion in Joined Cases C-206/88 and C-207/88 *Vessoso and Zanetti* [1990] ECR I-1461, paragraphs 25 and 26: 'that rule must, in my view, be qualified in criminal proceedings where the effect of interpreting national legislation in that way [in the light of the directive] would be to impose criminal liability in circumstances where such liability would not arise under the national legislation taken alone. The reason for that qualification is that an extensive interpretation of penal legislation runs counter to the fundamental principle of legality (*nullum crimen, nulla poena sine lege*). ... I do not consider that national courts are required, as a matter of Community law, to interpret domestic legislation in the light of the wording and purpose of directives where the result would be to impose criminal liability which would not otherwise arise. It is for the referring courts to consider whether the national legislation at issue here can be interpreted consistently with the relevant directives, without resorting to an extensive interpretation which would be contrary to the principle of legality.'

25 — The most recent cases examined by the Court in this connection are Joined Cases C-358/93 and C-416/93 *Ministerio Fiscal* v *Bordessa and Others* [1995] ECR I-361. The Spanish court submitted a question on the compatibility with Community law of a national law which required prior administrative authorization for capital transfers and laid down penalties for non-compliance. The Court replied that Articles 1 and 4 of Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (OJ 1988 L 178, p. 5) preclude the export of coins, banknotes or bearer cheques being made conditional on prior authorization and that Article 1 in conjunction with Article 4 of Directive 88/361 may be relied on before national courts and render inapplicable rules which conflict with those provisions.

67. What the national court really wishes to know is not so much the interpretation of certain provisions of the Directive, which are clear enough, but whether the Directive permits the exclusion from its ambit of certain situations for which the Legislative Decree does not provide a penalty, either by not defining them as offences or by defining the elements of the offence in different terms from those of the Directive.

68. The interpretation of the provisions of the Directive to which the national court's questions refer follows from the terms of the questions themselves, and all the parties which have submitted observations agree in that regard:

(a) The phrase 'worker who habitually uses display screen equipment as a significant part of his normal work' (Article 2 of the Directive) applies to persons who habitually work in front of such screens for four hours a day, even if not every day of the working week. It may also apply to persons working in front of such screens every day of the week, but not necessarily for four consecutive hours, and it is for the national court to assess in each case whether the time spent by a given worker in front of the equipment in question is 'significant'.

(b) The eye and eyesight tests apply to all workers covered by the Directive, and mean both the test before commencing display screen work and the test at regular intervals thereafter (Article 9(1) of the Directive). The ophthalmological examination referred to in Article 9(2) may be shown to be necessary in any of the three situations referred to in Article 9(1).

(c) Articles 4 and 5 of the Directive refer expressly to the 'workstations' defined in Article 2(b) and require compliance with all the minimum requirements set out in the Annex in relation to the equipment, environment and operator/computer interface.

69. If, in the context of this case, the Court of Justice were to consent to examine the Italian law by comparison with the Directive and if it were to make a formal finding that the latter does not permit the definition of 'worker who habitually uses display screen equipment' to be restricted or the ophthalmological examinations to be limited, or the minimum requirements to be reduced to only one instead of the three paragraphs in the Annex, there would still be no question that conduct complying with the Legislative Decree could not be the subject of a prosecution.

70. In other words, although the Legislative Decree excludes a criminal penalty for conduct which, on a correct interpretation of the Directive, would be contrary to Community law, this fact cannot make persons who have complied with the domestic measure guilty of an offence, however inadequately the Directive may have been implemented.

71. It follows that the Court need not give a detailed reply on each of the articles of the Directive referred to in the question, in the manner requested by the national court. On the contrary, it is sufficient to take one more step on the same lines as the *Pretore di Salò* and the *Kolpinghuis Nijmegen* judgments.

72. The Court established in those judgments that directives could not create or aggravate criminal liability where they had not been implemented in national law, and the same principle must be extended to situations where there is defective implementation, that is to say, where domestic law has already been adapted. [26]

73. Where the national law which has been adopted in order to implement the directive omits to define as a punishable offence certain conduct which ought to have been penalized [27] or defines the elements of the offence in different terms from those of the Directive, the legal reasoning underlying those judgments also applies to situations of this kind.

74. The legal reasoning being the same, the conclusion must also be the same: no one may be punished by virtue of an extensive interpretation of national criminal law to bring it into conformity with a Community directive, or for acts which are not punishable under national law.

75. In these cases too, the principle of legality in criminal law forms the same insuperable barrier to the effectiveness of directives and to the need to interpret national law in conformity with them.

76. This does not arise from any imaginary supremacy of national criminal law (which the Member State in question will have to amend when its failure to comply with

26 — This may also serve to avoid the proliferation of preliminary references of this kind in relation to criminal proceedings similar to those in the present case. There are at present pending before the Court a number of cases — Case C-168/95 and Joined Cases C-304/94, C-330/94, C-342/94 and C-224/95 — all seeking a preliminary ruling on questions concerning the effect of various directives on the environment in certain criminal proceedings before Italian courts. The opinion of Advocate General Elmer delivered on 14 March 1996 in the first of those cases repeats once again the reasoning of the *Pretore di Salò* judgment.

27 — In the sense referred to by the judgments cited in footnote 18.

Community law has been proved), but from compliance with one of the principles common to the constitutional traditions of the Member States, which is at the same time a fundamental right of the citizens of those States and a basic principle of Community law itself.

77. In any case, if the Court considers it appropriate to provide the national court with the detailed interpretation of each of the paragraphs of the Directive referred to in the questions, in my opinion the reply should be in the terms I have set out above.

Conclusion

78. In accordance with the foregoing, I propose that the Court reply as follows:

(1) The questions referred by the Procura della Repubblica presso la Pretura Circondariale, Turin in Case C-74/95 are inadmissible because they have not been submitted by a court or tribunal authorized to do so under Article 177 of the EC Treaty.

(2) 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 cannot determine or aggravate the criminal liability of persons who infringe its provisions if a Member State's national law adopted to implement the directive either omits to define certain conduct as a punishable offence or defines the elements of an offence in different terms from those of the Directive.

(3) In the alternative:

(a) The phrase 'worker who habitually uses display screen equipment as a significant part of his normal work' (Article 2 of Directive 90/270/EEC) applies to persons who habitually work in front of such screens for four hours a day, even if not every day of the working week. It may also apply to persons working in front of such screens every day of the week, but not

necessarily for four consecutive hours, and it is for the national court to assess in each case whether the time spent by a given worker in front of the equipment in question is significant.

(b) The eye and eyesight tests apply to all workers covered by the Directive, and mean both the test before commencing display screen work and the test at regular intervals thereafter (Article 9(1) of Directive 90/270/EEC). The ophthalmological examination referred to in Article 9(2) may be shown to be necessary in any of the three situations referred to in Article 9(1).

(c) Articles 4 and 5 of Directive 90/270 refer expressly to the 'workstations' defined in Article 2(b) and require compliance with all the minimum requirements set out in the Annex in relation to the equipment, environment and operator/computer interface.