JUDGMENT OF THE COURT (Sixth Chamber)

24 October 2002 *

In Case C-455/00,

Commission of the European Communities, represented by A. Aresu, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Italian Republic, represented by U. Leanza, acting as Agent, assisted by D. Del Gaizo, avvocata dello Stato, with an address for service in Luxembourg,

defendant,

* Language of the case: Italian.

APPLICATION for a declaration that:

— by failing to ensure regular eye and eyesight tests for all workers who use display screen equipment for the purposes of Article 2(c) 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);

— by failing to ensure a supplementary opthalmological examination in all cases where regular eye and eyesight tests show that this is necessary; and

— by failing to specify the circumstances in which the workers concerned are to be provided with special corrective appliances appropriate for the work concerned,

the Italian Republic has failed to fulfil its obligations under Article 9(1), (2) and (3) of that directive,

THE COURT (Sixth Chamber),

composed of: R Schintgen, President of the Second Chamber, acting as President of the Sixth Chamber, V. Skouris, F. Macken, N. Colneric (Rapporteur) and J.N. Cuhna Rodrigues, Judges,

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

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 21 March 2002,

gives the following

Judgment

1 By an application lodged at the Court Registry on 13 December 2000, the Commission of the European Communities brought an action under the second paragraph of Article 226 EC for a declaration that:

— by failing to ensure regular eye and eyesight tests for all workers who use display screen equipment for the purposes of Article 2(c) 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);

— by failing to ensure a supplementary opthalmological examination in all cases where regular eye and eyesight tests show that this is necessary; and

— by failing to specify the circumstances in which the workers concerned are to be provided with special corrective appliances appropriate for the work concerned,

the Italian Republic has failed to fulfil its obligations under Article 9(1), (2) and (3) of that directive.

Legal background

Community legislation

2 Article 16(1) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p.1) provides as follows: 'The Council, acting on a proposal from the Commission based on Article 118a of the Treaty, shall adopt individual Directives, inter alia, in the areas listed in the Annex'. The Annex to Directive 89/391 includes a reference to '[w]ork with visual display units'.

3 Article 9(1) to (4) of Directive 90/270, entitled 'Protection of workers' eyes and eyesight', 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.

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 workers in additional financial cost.'

Italian legislation

4 Article 377 of Presidential Decree No 547 of 27 April 1955 (GURI No 158 of 12 July 1955, ordinary supplement, hereinafter 'PD No 537/55') provides as follows:

'The employer shall provide the worker with personal means of protection appropriate to the risks associated with the work and tasks performed.'

5 Article 16(2) of Decree Law No 626 of 19 September 1994 implementing Directives 89/391/EEC, 89/654/EEC, 89/655/EEC, 89/656/EEC, 90/269/EEC, 90/270/EEC, 90/394/EEC, and 90/679/EEC on the improvement of the safety and health of workers at work (GURI No 265 of 12 November 1994, ordinary supplement No 141), as amended by Decree Law No 242 of 19 March 1996 (GURI No 104 of 6 May 1996, ordinary supplement No 75, hereinafter 'Decree Law No 626/94') provides that a medical examination is to be carried out by the competent doctor and is to include:

'(a) prior medical examination in order to establish that there are no contra-indications for the work which the worker will be doing so as to evaluate his capacity to perform the specific task entrusted to him;

(b) regular examinations to evaluate his state of health and assess his capacity to perform the specific task entrusted to him'.

6 Article 41 of Decree Law No 626/94, which appears in Title IV and is entitled 'Use of personal protective equipment', provides for the mandatory use of personal protective equipment (hereinafter 'PPE') 'where the risks cannot be prevented or sufficiently reduced by technical preventive measures, collective preventive measures, or measures, methods or procedures for organising the work'.

7 Articles 43 and 44 of Decree Law No 626/94, which are also contained in Title IV, provide as follows:

'*Article 43*

Employer's obligations

1. For the purposes of selecting PPE, the employer shall:

(a) carry out an analysis and evaluation of such risks as cannot be prevented by other means;

(b) establish what kind of PPE is needed in order to prevent the risks referred to in paragraph (a), having regard to any other risks posed by the PPE itself;

(c) assess, on the basis of the information provided by the manufacturer of the PPE and the instructions for use referred to in Article 45, the features of the PPE available on the market and compare them with those identified pursuant to paragraph (b);

(d) adapt his choice in the event of any significant change in the relevant factors.

2. The employer, once again on the basis of the instructions for use referred to in Article 45, shall determine the manner in which PPE should be used, with particular reference to duration of use, by reference to the following factors:

(a) significance of the risk;

(b) frequency of exposure to that risk;

(c) characteristics of each worker's work station;

(d) performance of the PPE.

3. The employer shall provide the worker with PPE that complies with the requirements of Article 42 and the Decree referred to in Article 45(2).

4. The employer shall:

(a) ensure that PPE is operational and hygienic by maintaining and repairing it and providing necessary replacements;

(b) ensure that PPE is used only for the prescribed purposes, other than in specific exceptional circumstances, in accordance with the information provided by the manufacturer;

(c) provide intelligible instructions for workers;

(d) ensure that all PPE is for personal use and, where the circumstances require that PPE be used by more than one person, adopt appropriate measures to ensure that such use does not pose any risk to health or hygiene for any user;

(e) inform the worker in advance of the risks from which the PPE protects them;

(f) make available, at the undertaking's premises or at the manufacturing site, appropriate information on each piece of PPE;

(g) provide appropriate training and if necessary organise specific practical courses on good practice and use of PPE.

5. Practical courses shall in any event be necessary

(a) in respect of any PPE which, in application of Decree Law No 475 of 4 December 1992, belongs to the third category;

(b) in respect of equipment for the protection of hearing.

Article 44

Workers' obligations

1. Workers shall attend the training programmes and practical courses organised by the employer in cases where it is deemed necessary under Article 43(4)(g) and Article 43(5).

2. Workers shall use PPE provided for them in accordance with the information and training received by them and any practical courses.

3. Workers:

(a) shall handle the PPE provided with care;

(b) shall not alter it of their own accord.

4. When they have finished using PPE, workers shall follow the procedures laid down in regard to its return.

5. Workers shall inform their employer or manager or person in charge immediately of any defect or fault affecting any PPE provided for them.'

8 Article 55 of Decree Law No 626/94, which appears in Title VI, entitled 'Work on visual display units', provides as follows:

'Health supervision

1. Before being assigned to any of the activities listed under this title, workers shall undergo a medical examination, for the purpose of detecting possible structural malformation, and an eye and eyesight test, all carried out by the competent doctor. If the results of the medical examination show that it is necessary, other specialist tests shall be carried out.

2. Depending on the results of the examinations provided for in paragraph 1, workers will be placed in one of the following two categories:

(a) fit, with or without corrective lenses;

(b) unfit.

3. Workers classified as "fit, with or without corrective lenses", and also those over 45 years of age, shall undergo regular medical check-ups at least every two years.

4. A worker shall, on request, undergo an opthalmological examination if he suspects that his eyesight has been affected and this has been confirmed by the competent doctor.

5. Expenditure in respect of providing special corrective appliances appropriate for the work concerned is to be borne by the employer.'

Pre-litigation procedure

9 Since it took the view that Article 9(1), (2) and (3) of Directive 90/270 had not been correctly transposed into Italian law, the Commission initiated the

procedure for failure to fulfil obligations under the first paragraph of Article 226 EC. After giving the Italian Republic formal notice to submit its observations, the Commission issued a reasoned opinion on 9 July 1999, requesting it to adopt the measures necessary to comply with the opinion within a period of two months from the date of its notification.

10 Since the Italian Government did not respond to that opinion, the Commission decided to bring the present action.

The action

11 In its defence the Italian Republic informed the Court that Law No 422 of 29 December 2000 containing provisions adopted in order to fulfil Italy's obligations as a Member of the European Communities — Community Law 2000 (GURI No 16 of 20 January 2001, ordinary supplement No 14, p. 14, hereinafter 'Law No 422/2000') replaced (*inter alia*) Article 55(3) and (4) of Decree Law No 626/94 with new provisions, namely Article 55(3), (3a) (3b) and (4).

12 After examining the national implementing provisions, the Commission informed the Court in its reply that it was withdrawing two pleas, together with the corresponding heads of the forms of order sought by it.

13 By the plea it maintained, the Commission alleges that the Italian Republic has infringed Article 9(3) of Directive 90/270 by failing to establish the circumstances in which special corrective appliances are to be provided for workers as required by the task they are performing.

Arguments of the parties

14 The Commission claims that Article 55 of Decree Law No 626/94 contains no provision explicitly entitling workers to 'special corrective appliances appropriate for the work concerned' where this proves to be necessary following medical examinations and normal corrective appliances cannot be used. For the safety and the health of workers, the right to such appliances must be clearly stated. The Italian legislation, however, is ambiguous and imprecise.

15 Article 55(5) of Decree Law No 626/94 merely states that '[e]xpenditure in respect of providing special corrective appliances appropriate for the work concerned is to be borne by the employer', which is clear but not sufficient to determine the 'precise condition establishing' the worker's entitlement to such appliances.

16 The Italian Government argues that the employer's obligation to provide the worker with appropriate personal means of protection is laid down in Title IV of Decree Law No 626/94. Articles 41, 43 and 44 of the Decree, in conjunction with the new Article 55 of the Decree, as amended by Law No 422/2000, require the employer to provide the worker with any corrective appliances prescribed by the competent doctor in the course of a preventive or regular check-up.

17 The Italian Government also maintains that national law already had such an obligation in Article 377 of PD No 547/55.

18 The Commission replies that the Italian Republic is clearly confusing 'special corrective appliances' under Directive 90/270 in respect of work that requires use of display screen equipment with 'personal protective equipment' provided for and governed by Council Directive 89/656/EEC of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (third individual directive within the meaning of Article 16(1) of Directive 89/391) (OJ 1989 L 393, p. 18).

19 In its rejoinder the Italian Government reiterates that, in view of the amendments effected by Law No 422/2000 to Article 55 of Decree Law No 626/94, it has transposed Article 9(3) of Directive 90/270 correctly. It submits that the general principle of the logical and coherent interpretation of law, according to which the meaning and rationale of provisions in a single legislative measure — and, *a fortiori*, in a single article, as in this case — cannot be inferred from a reading of those provisions alone, but must be based on an interpretation of each provision in the light of all the others, requires the measures laid down in Article 55(3), (3a), (3b) and (4) of Decree Law No 626/94, as amended by Law No 422/2000, to be construed in the light of Article 55(1), (2) and (5) and Article 16 of that Decree, which are also referred to in Article 55(3).

20 Those provisions state that a worker is entitled to special corrective appliances where, following check-ups by specialists, the competent doctor prescribes their use, and that the costs incurred in providing such appliances are to be borne by the employer.

Findings of the Court

21 It must first of all be recalled that the Court has consistently held that the question whether there has been a failure to fulfil obligations must be examined on the basis of the position in which the Member State found itself at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes (see, inter alia, Case C-103/00 *Commission* v *Greece* [2002] ECR I-1147, paragraph 23, and Case C-323/01 *Commission* v *Italy* [2002] ECR I-4711, paragraph 8).

22 In this case, Law No 422/2000, of 29 December 2000, was adopted more than a year after the two-month period laid down in the reasoned opinion of 9 July 1999 expired. The amendments it made to the Italian legal order cannot therefore be taken into consideration in the Court's appraisal of the merits of this application for a declaration of failure to fulfil obligations.

23 It should also be borne in mind in that connection, that, according to settled case-law on the transposition of directives into national law, it is essential that the national law effectively guarantees application of the directive in full, that the legal position under national law will be sufficiently precise and clear and that individuals are made fully aware of their rights and, where appropriate, may rely on them before the national courts (see, inter alia, Case C-365/93 *Commission* v *Greece* [1995] ECR I-499, paragraph 9, and Case C-144/99 *Commission* v *Netherlands* [2001] ECR I-3541, paragraph 17).

24 In view of the foregoing considerations, it is necessary to assess whether Italian law in force at the time when the period laid down in the reasoned opinion expired met the requirements of the Directive.

25 It is clear from that assessment that the provisions of PD No 547/55 and Decree Law No 626/94, on which the Italian Government relied, do not state in a sufficiently clear and precise manner that workers must be provided with special corrective appliances appropriate for the work concerned if the results of the eye or eyesight test or, where necessary, the opthalmological test, show this to be necessary, and if normal corrective appliances cannot be used.

26 It is true that Article 55(5) of Decree Law No 626/94 provides that expenditure in respect of providing special corrective appliances appropriate for the work concerned is to be borne by the employer, but that provision merely transposes Article 9(4) of Directive 90/270 into Italian law. It is not by itself sufficient to implement Article 9(3) of the Directive because it does not state, as required by Article 9(3), that workers must be provided with special corrective appliances appropriate for the work concerned if the results of the eye or eyesight test, or of the opthalmological test, show this to be necessary

27 No other conclusion is possible from a reading of Article 55 of Decree Law No 626/94, taken in conjunction with Article 16.

28 As to the argument of the Italian Government that Article 55 of Decree Law No 626/94 must be interpreted in conjunction with Article 41 et seq. of that Decree, suffice it to note that the 'special corrective appliances' provided for in Article 9(3) of Directive 90/270 are to correct existing damage, whereas the 'personal protective equipment' to which those articles refer are to prevent such damage.

29 Nor can the Italian Government's argument that the requirement in Article 9(3) of Directive 90/270 was already laid down by national law in Article 377 of PD No 547/55 be accepted. The personal means of protection to which that provision refers are once again simply ways of preventing risk.

30 In the light of all of those considerations it must be concluded that, by failing to lay down the conditions in which the workers concerned are to be provided with special corrective appliances appropriate for the work concerned, the Italian Republic has failed to fulfil its obligations under Article 9(3) of Directive 90/270.

Costs

31 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

32 Since the Commission has applied for costs, and the Italian Republic's defence has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber),

hereby:

1. Declares that, by failing to specify the circumstances in which the workers concerned are to be provided with special corrective appliances appropriate for the work concerned, the Italian Republic has failed to fulfil its obligations under Article 9(3) of Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment (fifth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC);

2. Orders the Italian Republic to pay the costs.

Schintgen Skouris Macken

Colneric Cuhna Rodrigues

Delivered in open court in Luxembourg on 24 October 2002.

R. Grass J.-P. Puissochet

Registrar President of the Sixth Chamber