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The good Samaritan principle or the perlocutionary cooperative principle as a guiding rule for the preliminary ruling proceedings

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Abstract

In the field of pragmatics, Salvatore Attardo formulated the perlocutionary cooperative principle; the definition of this principle, given by its author, is "to cooperate in *whatever goals the speaker* may have in initiating a conversational exchange, including any non-linguistic, practical goal". This paper essentially aims to analyse the modality in which this principle, along with the classic Gricean cooperative principle, shapes the judgments of the Court of Justice of the European Union. In fact, the article reveals the pragmatic mechanisms used by the Court of Justice in achieving certain legal interpretations, required by the national courts in order to provide practical solutions for specific cases. In this regard, it is important to remember that every case supposes individual 'needs' that are nothing else than "practical goals".

Keywords: pragmatics, principles, law, CJEU, linguistics

Introduction. From pragmatics…

To introduce the principle of perlocutionary cooperation, it seems necessary to remember two preliminary moments, which lay the foundations of modern pragmatics; they are linked to two philosophers of language who became the founders of modern pragmatics, J.L. Austin and H.P. Grice. In 1962, J.L. Austin formulated the Speech Act Theory. The core of this new theoretical field is found in the statement "to say something is to do something." Noting that what we say is more than a simple organisation of words into sentences and phrases, Austin distinguishes three types of speech acts.

First, the act of speaking has locutionary value, that is, it represents a string of words organized in sentences and phrases, which have a certain meaning and an identifiable reference. We greet our colleagues, ask them what else they are doing, share projects, for instance, and they can capture the sounds and meaning of our words.

At the same time, our greeting, interrogation or presentation may have a certain intonation, through which we wish to convey something else, our intention, our attitude towards a person or a situation. So, together with a locutionary act, we can perform acts through which we request or provide information (about ourselves or others), promise, warn, give verdicts, pronounce sentences, criticise, identify, describe, ironize, etc. These acts that wear on their sleeve the intention with which they are performed are called illocutionary acts.

Austin remarked several types of illocutionary acts. An elaborated classification considering more criteria was made by John Searle, who distinguishes assertive, directive, commissive, expressive and declarative acts (Searle 1969, 1976).

The effect of one specific act performed by a speaker becomes manifest in the reply received from the hearer. In this idea, the answer is also a speech act, named perlocutionary act. Regardless of the intention with which the illocutionary act was performed, the perlocutionary act is an effect, an answer, which is not required to fit within the waiting horizon of the speaker. In the previous framework, the response of the colleagues to our greeting or to our question / presentation (silence or cold, maybe cheerful greeting) represents a perlocutionary act[1].

Almost a decade later, Herbert Paul Grice (1975) will bring in the open field of pragmatics the idea of cooperation born in the heart of the philosophy of language. We do not pursue unrelated ideas, disparate words,

[1] "Saying something will often, or even normally, produce certain consequential effects upon the feelings, thoughts, or actions of the audience, or of the speaker, or of other persons: and it may be done with the design, intention, or purpose of producing them; and we may then say, thinking of this, that the speaker has performed an act in the nomenclature of which reference is made either (C. a), only obliquely, or even (C. b), not at all, to the performance of the locutionary or illocutionary act. We shall call the performance of an act of this kind the performance of a perlocutionary act or perlocution (Austin 1962: 101).

but aim that all our contributions to a conversation are consistent with the direction of the verbal exchange in which we are engaged.

As an assumed social activity, communication also involves the willingness to participate in a conversation or dialogue and exchange of information of all kinds, so that the first and most important pragmatic principle is considered the principle of cooperation (Cooperative Principle). It has been argued in the literature that there are several meanings for cooperation and therefore a distinction must be made between the meaning of the *vocabula* in common language and the theory imagined by H.P. Grice. First, the principle of cooperation or the cooperative principle is one of the pragmatic universals, the framework law of verbal communication.

Originally formulated in *Logic and Conversation*, the principle was repeated and refined in the following contributions. Grice considered that verbal activity is a manifestation of rational behaviour and aims to achieve objectives/producing effects of a practical or fatal nature. However, it has been constantly stressed that Grice's meaning of the term remains unexplained, because the concept it proposes in pragmatics is contaminated with the common understanding. One of the proposals was that it should be linked to rationality or reason and read through the grid of meanings that the latter conveys to it.

As Bethan Devies (2000) observes and Jacques Moeschler will strengthen (2012), the concern for the context within which a conversation takes place and the logic of verbal exchanges implies a reference to reason and rationality. Moreover, the maxims which he will subsume to the cooperative principle (maxim of quality, maxim of quantity, maxim of relevance and maxim of manner) reveal his closeness and appreciation for Kantian philosophy, for rationality, as a source of morals and aesthetics. Thus, Devies reference to Grandy (1989) is also relevant given that the principle at issue is one that governs rational agents as Kant conceives them, not from a practical but from a moral perspective.

The principle of cooperation is built on four maximums, which are, in fact, requirements for consistency and balance applicable to verbal exchanges. As I already pointed out, H.P. Grice, at the time of the formulation of the theory onto the study "Logic and Conversation" (1975), takes on a Kantian taxonomy and motivates that the main concern of the participants in a conversation is or should be that of cooperation; Briefly, each participant knows that every statement implies an intrusion into an intimate space of "conversational rights", that they protect the autonomy and personal desires of others, therefore the way the conversation proceeds must take into account these rights[2].

I resume below the role of the maxims in order to examine, according to their content, the requirement that CJEU imposes to the referrals sent by domestic courts.

The maxim of quality is related to the care that the speaker shows for the accuracy of the observations transmitted, so he says only what he thinks is true or based on evidence. Violation of the maxim of quality occurs in all types of messages (the situation in which the speaker knows the reality but distorts it), including the use of metaphor, irony or euphemisms. The maxim of quantity means that the conversational exchange shouldn't be redundant or unnecessary and it implies that only useful, sufficient, helpful information is required to convey. Compliance with this maxim also depends on the space intended to be cover, because it could be applied differently.

The maxim of relevance means appropriateness to a conversational exchange, ability to connect, so that the speech or conversation remains consistent. Inserting a dystopian information that is impossible to connect to a context violates the requirement of relevance. The maxim of manner penalises vague and discursive/conversational ambiguity, which should have the property of being clear, short and orderly. When the speaker wants to take advantages through a message, he can appeal to vagueness, euphemism or irony. The addressee, however, is indebted to restore a clear and unequivocal message that forms its basis for reaction.

Horn (1984) and Levinson (1987) amended and reformulated the Gricean system of maxims, but the main ideas remain in the corpus of the principles Q and R (Horn) or the principles of quantity, informativity and manner (Levinson).

To further emphasise the perlocutionary speech act as practical effect of conversation, in 1997, Salvatore Attardo combined Austin's theory and Grice's theory and differentiated the principle of linguistic cooperation from the principle of perlocutionary cooperation. If, according to Grice, the principle of cooperation focuses on conveying and interpreting the message, the perlocutionary cooperation characterises the type of cooperation sought by the actors involved in a conversation to satisfy the purpose pursued by the speaker, which is relevant in a particular situational context. For instance, a dialogue where a speaker asks for information may sound like this:

[2] Somewhat like moral commandments, these maxims are prevented from being just a disconnected heap of conversational obligations by their dependence on a single supreme Conversational Principle, that of cooperativeness. (Grice 1989: 370).

Is there a coffee shop nearby?
You don't have to buy coffee; we offer you one.

Or (Ionescu-Ruxăndoiu et al. 2023: 340):

- Where do I get the subway for the Roman Square?
- For Roman Square you do not need subway, it is at the end of this street, two minutes' walk.

Both situations show up that the addressee understands and provides the speaker with the best solution for his need. In fact, for Attardo, the principle of perlocutionary cooperation means to cooperate with the interlocutor "to achieve his or her intended purpose when initiating the verbal exchange, including practical, non-linguistic purposes."

The maxims are as follows:

I. If someone wants or needs something, give it to him.

II. If someone is doing something, help out.

III. Anticipate people's needs, i.e. provide them with what they need, even if they do not know that they need it.

Given the incongruent nature of perlocution (Monaco 2022, Kang 2013, Liu 2008, Marcu 2000) and the high degree of generalization, the principle and its maxims may support clarification, criticism and various application, as proposed bellow.

2. …**to the preliminary ruling proceeding. The cooperation**

The preliminary ruling proceeding encounters its basic meaning in dialogue. First stage of the procedure initiates before the domestic court and the dialogue supposes a judge/ a panel of judges, on one hand, and the parties and their representatives, on the other hand. The outcome of that dialogue may lead to a referral for a preliminary ruling under some conditions (Art. 267 TFEU): if interpretation or validity of EU law is required and EU law is applicable to the case in the main proceedings. The reference for a preliminary ruling must be referred as soon as it becomes clear that the interpretation of the CJEU is necessary for a national court to decide in a specific case and when the court is able to define with sufficient precision the legal and factual framework of the case and the legal questions it raises.

The core of the referral consists in the juridical questions that are supposed to open the dialogue between the domestic courts, which search for an answer, and CJEU. Besides of the questions, the recommendations provided by the European legislation impose that the request for a preliminary ruling must be drafted simply, clearly and precisely (https://eur-lex.europa.eu/EN/legal-content/summary/preliminary-ruling-proceedings-recommendations-to-national-courts.html). Other several requirements are laid down in Article 94 of the Rules of Procedure of the CJEU. In addition to the clear text of the questions, the referral must contain:

(a) a summary of the subject-matter of the dispute and of the relevant facts, as established by the referring court, or at least a statement of the factual circumstances on which the questions are based.

(b) the content of the national provisions which could be applied in the case and, where appropriate, the relevant national case-law.

(c) the reasons which led the referring court to have doubts about the interpretation or validity of certain provisions of EU law and the link which the referring court establishes between those provisions and the national legislation applicable to the dispute in the main proceedings.

These recommendations are very transparent from a pragmatic point of view. In other words, the domestic court which drafts the referral and initiates dialogue with the CJEU must set out the subject matter of the dispute in accordance with the maxims set by H.P. Grice – the data or the practical information of the main proceedings must be set out accurately, in summary terms, the court should respect the maxim of quality (i.e. the factual circumstances of the case are based on evidence) and the maxim of quantity (the data must be clear and simple). Similarly, the applicable national legislation should also be provided together with information about relevant national case-law, meaning in respect with the maxim of relevance. The connection between the provisions of EU law and the applicable national law must also be stated in compliance with this maxim.

It follows also from the provisions of Article 94 that the request for a preliminary ruling must have a particular structure, must be sent in typewritten form and the pages and paragraphs of the order for reference must be numbered, in compliance with the maxim of manner.

The grounds for inadmissibility of a request for a preliminary ruling [in interpretation], developed over the years by the Court of Justice, arise, in fact, when the four maxims of cooperation are not respected by domestic courts (cf. Order of the CJEU *Bailă*, C-377/10, of 6 December 2010, *Facebook Ireland and Schrems*, C-311/2018, hot. of 16 July 2020, p. 73, *Viva Telecom Bulgaria*, C-257/20, hot. of 24 February 2022, p. 41 *TJ against the Territorial Inspectorate for Immigration*, C-392/21 of 22 December 2022, p. 25), precisely when: the dispute is not genuine, but created artificially in order to draft a referral for a preliminary ruling (i.e. the maxim of quality is, in this case, violated), the request for a preliminary ruling does not contain an adequate description of the factual and legal situation (i.e. the most common ground for rejection – the maxim of quantity and the maxim of manner are disregarded); the referring court does not adequately explain why the Court's answer to the dispute is necessary or the questions are not relevant to the outcome of the dispute before them or are hypothetical (i.e. it lacks the maxim of relevance). However, in the cases cited above, it is pointed out that 'questions from national courts enjoy a presumption of relevance'.

The answer given by the Court to the national court is also guided by the principle of cooperation, particularly, by the principle that Attardo named *the perlocutionary cooperative principle*. However, the "answer" is provided in a judgement (a ruling), given on cases brought before CJEU, it is an effect of the interrogative speech acts of the domestic courts, in order to fulfil the practical, judicial, non-linguistic purposes.

The concern of the Court of Justice for being a source of practical and useful answers for the referring courts is constantly noted. The Court of Justice often reformulate the questions referred for a preliminary ruling in order to give them "what they need, even if they do not realise that they need it".

3. Applying the maxims

Before giving a judgement, the Court of Justice must understand clearly what the domestic courts really need, the juridical issue, the missing link necessary to the referral court in settling a trial/lawsuit. However, sometimes, the questions of the national courts lack clarity or even go beyond the frame of the national case, which is a reason for the Court of Justice to re-write the questions referred. Two judgements and an ordinance shall exemplify the process of reaching the needs of the domestic courts.

Case 1. Judgment of the Court (Grand Chamber) of 21 December 2021 in Case C-497/20 (Reference for a preliminary ruling – Second subparagraph of Article 19(1) TEU – Obligation of Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law – Public procurement – Directive 89/665/EEC – Article 1(1) and (3) – Article 47 of the Charter of Fundamental Rights of the European Union – Judgment of a Member State's highest administrative court declaring inadmissible, in breach of the case-law of the Court of Justice, an action brought by a tenderer excluded from a public procurement procedure – No remedy against that judgment before the highest court in that Member State's judicial order – Principles of effectiveness and equivalence)

The basis for the dispute is the exclusion of a tenderer (Randstad) from a procedure for the award of a public contract and the regularity of that procedure.

The questions raised by the referring court are as follows:

> (1) Do Article 4(3) TEU, Article 19(1) TEU, Article 2(1) and (2) TFEU, and Article 267 TFEU, read in the light of Article 47 of the [Charter], preclude an interpretative practice such as that regarding the eighth paragraph of Article 111 of the Italian Constitution, Article 360(1) … and Article 362(1) of the Italian Code of Civil Procedure, and Article 110 of the Italian Code of Administrative Procedure – under which provisions an appeal in cassation against a judgment of the Consiglio di Stato (Council of State) may be brought for "reasons of jurisdiction" – such as that which emerges from Judgment No 6/2018 of the Corte costituzionale (Constitutional Court) …, in which it has been held, marking a departure from the approach previously taken, that the remedy of an appeal in cassation, on grounds of a "lack of jurisdiction", is not available for the purpose of challenging judgments in which the Consiglio di Stato (Council of State) has applied interpretative practices developed nationally but in conflict with judgments of the Court of Justice, in sectors governed by EU law (in the present case, public procurement) and with regard to which the Member States have waived their right to exercise sovereign powers in a manner incompatible with EU law, with the effect of consolidating infringements of EU law that might have been rectified using the remedy of an appeal in cassation and of undermining the uniform application of EU

law and the effectiveness of the judicial protection afforded to individuals in legal situations of EU significance, contrary to the requirement that EU law be fully and duly applied by every court in a manner necessarily consistent with its correct interpretation by the Court of Justice, regard being had to the limits on the "procedural autonomy" of the Member States in the structuring of their rules of procedure?

(2) Do Article 4(3) TEU, Article 19(1) TEU, and Article 267 TFEU, read in the light of Article 47 of the [Charter], preclude the eighth paragraph of Article 111 of the Italian Constitution, Article 360(1) … and Article 362(1) of the Italian Code of Civil Procedure, and Article 110 of the Italian Code of Administrative Procedure from being interpreted and applied, as they have been in national judicial practice, in such a manner that an appeal in cassation before the Combined Chambers [of the Corte suprema di cassazione (Supreme Court of Cassation)] for "reasons of jurisdiction", on grounds of a "lack of jurisdiction", cannot be brought for the purpose of challenging a judgment in which the Consiglio di Stato (Council of State), ruling in a dispute involving issues concerning the application of EU law, refrains, without reason, from making a reference to the Court of Justice for a preliminary ruling, where the conditions relieving a national court of that obligation, which have been exhaustively listed by the Court of Justice [in its judgment of 6 October 1982, *Cilfit and Others* (283/81, EU:C:1982:335)] and which must be strictly interpreted, are absent, contrary to the principle that national rules and procedural practices, even those arising from legislation or the Constitution, are incompatible with EU law if they prevent a national court (of last instance or otherwise), even temporarily, from making a reference for a preliminary ruling, with the effect of usurping the Court of Justice's exclusive jurisdiction to interpret EU law correctly and in binding fashion, of making any conflicts of interpretation between the law applied by national courts and EU law irremediable (and promoting the consolidation of such conflicts of interpretation), and of undermining the uniform application and effective judicial protection of the rights enjoyed by individuals under EU law?

(3) Do the principles expressed by the Court of Justice in its judgments of 5 September 2019, *Lombardi* [(C-333/18, EU:C:2019:675)], of 5 April 2016, *PFE* [(C-689/13, EU:C:2016:199)], and of 4 July 2013, *Fastweb* [(C-100/12, EU:C:2013:448)], in connection with Article 1(1) and (3) and Article 2(1) of Directive [89/665], as amended by Directive [2007/66], apply to the case in the main proceedings in which an undertaking has challenged its exclusion from a tendering procedure and the award of the contract to another undertaking and the Consiglio di Stato (Council of State) has examined the substance only of the ground of appeal whereby the excluded undertaking disputed the points awarded to its technical offer, which were below the "minimum threshold", and has examined as a matter of priority the cross-appeals brought by the contracting authority and the successful tenderer, has upheld them and has declared inadmissible (and refrained from examining the substance of) the other grounds of the main appeal disputing the outcome of the tendering procedure for other reasons (imprecise tender assessment criteria in the tendering specifications, failure to justify the marks awarded, unlawful appointment and composition of the tender committee), in accordance with national judicial practice according to which an undertaking that has been excluded from a tendering procedure has no standing to bring a claim disputing the award of the contract to a competitor undertaking, even by way of the lapse of the tendering procedure, it being necessary to determine the compatibility with EU law of the effect of depriving the undertaking of the right to submit for the court's examination each and every reason for which it disputes the outcome of the tendering procedure, in a situation where that undertaking's exclusion has not been definitively established and where every competitor may argue a similar legitimate interest in the exclusion of its competitors' tenders, which could make it impossible for the contracting authority to choose a regular tender and make it necessary to launch a new tendering procedure in which every tenderer might participate?'

Although the domestic court refers three extensive, detailed questions, the European Court redrafts and concentrates them, simply, precisely, and clearly, into a single question (in accordance with the Gricean maxims), which should lead to the needed answer, that the CJEU could provide to the national court. The Court of Justice does not answer automatically to the questions of the national court but anticipates and rewrites the question in order to provide the 'necessary' answer to the national judge for the purposes of domestic procedure, even though the national judge did not adequately capture the matter but provided sufficient evidence to enable the subject matter in front of the Court. According to the pragmatic theory noted above, the Court applies the perlocutionary cooperative principle or the Good Samaritan principle.

Expressis verbis, the Court of Justice states:

As a preliminary point, it should be borne in mind that, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court, it is for the latter to provide the national court with an answer which will be of use to it and will enable the national court to determine the case before it. To that end, the Court may have to reformulate the questions referred to it (judgment of 15 July 2021, *The Department for Communities in Northern Ireland*, C-709/20, EU:C:2021:602, paragraph 61 and the case-law cited) (para 42)

Accordingly, the first question must be reformulated so as to remove Article 2(1) and (2) and Article 267 TFEU from the substance of that question. (para 47)

Accordingly, the first question must also be reformulated to encompass Article 1(1) and (3) of Directive 89/665, which must be read in the light of Article 47 of the Charter. (para 50)

It follows from the foregoing considerations that the first question must be understood as seeking to establish whether Article 4(3) and Article 19(1) TEU, and Article 1(1) and (3) of Directive 89/665, read in the light of Article 47 of the Charter, must be interpreted as precluding a provision of a Member State's domestic law which, according to national case-law, has the effect that individual parties, such as tenderers who participated in a procedure for the award of a public contract, cannot challenge the conformity with EU law of a judgment of the highest court in the administrative order of that Member State by means of an appeal before the highest court in that Member State's judicial order. (para 51)

With regard to the remaining questions, the Court concludes on their inadmissibility or on that the answer is already outlined in the re-written question: *Since it bears no relation to the subject matter of the dispute in the main proceedings, the second question is, in accordance with settled case-law, inadmissible* (see, to that effect, judgment of 15 July 2021, *Ministrstvo za obrambo*, C-742/19, EU:C:2021:597, paragraph 30 and the case-law cited – para 85).

Case 2. Another judgement, encountered more frequently in recent lawsuits, is TJ against the GENERAL INSPECTORATE FOR Immigration, Case C-392/21, Decision of 22 December 2022 (Reference for a preliminary ruling – Social policy – Protection of the safety and health of workers – Directive 90/270/EEC – Article 9(3) – Work with display screen equipment – Protection of workers' eyes and eyesight – Special corrective appliances – Spectacles – Acquisition by the employee – Arrangements for the employer to meet the costs). The matter of the dispute regard the minimum safety and health requirements for work with display screen equipment.

The CJEU proceeds to group the questions and to concentrate the answers. Even the Court does not express the intention, as in the first example, the questions are reformulated.

The questions raised by the Romanian Court of Appeal are four (4) as follows:

(1) Is the expression "special corrective appliances", used in Article 9 of [Directive 90/270], to be interpreted as excluding spectacles with corrective lenses?

(2) Must the expression "special corrective appliances", used in Article 9 of [Directive 90/270], 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 [Directive 90/270], 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 [Directive 90/270] 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"?'

In order to reach an answer, the Court simply and clearly concentrates the first two questions in a single one. It can be easily noted, because expressions are re-written highlighting the reverse meaning: for instance, "as excluding" [spectacles with corrective lenses] in the former question is substituted by "include" [corrective spectacles]:

[By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence,] whether Article 9(3) of Directive 90/270 must be interpreted as meaning that 'special corrective appliances', within the meaning of that provision, include corrective spectacles and, moreover, if such appliances are restricted to appliances used exclusively for professional purposes. (para 28)

The Court use the same manner of re-writing the questions 3 and 4, in one single, simple, shorter and clear sentence:

[By its third and fourth questions, which it is also appropriate to examine together, the referring court asks, in essence,] whether Article 9(3) and (4) of Directive 90/270 must be interpreted as meaning that the employer's obligation, laid down in that provision, to provide the workers concerned with a special corrective appliance, may be met by the direct provision of the appliance to the worker, by reimbursement of the necessary expenses incurred by the worker or by the payment of a general salary supplement to the worker.

To these two problems, reduced to two essential questions, the Court of Justice will finally answer:

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)

must be interpreted as meaning that 'special corrective appliances' provided for in that provision include spectacles aimed specifically at the correction and prevention of visual difficulties relating to work involving display screen equipment. Moreover, those 'special corrective appliances' are not limited to appliances used exclusively for professional purposes.

Article 9(3) and (4) of Directive 90/270

must be interpreted as meaning that the employer's obligation, laid down in that provision, to provide the workers concerned with a special corrective appliance, may be met by the direct provision of the appliance to the worker by the employer or by reimbursement of the necessary expenses incurred by the worker, but not by the payment of a general salary supplement to the worker.

Moreover, in that judgment, by using an attenuate language, in compliance with the principle of politeness, the Court of Justice offers many details, providing an accurate and practical interpretation to the domestic court, by setting out specific facts of the case. Even unsolicited, the assistance in giving the decision for the referring court is undeniable, the latter should only apply it:

45. In the present case, it is apparent from the order for reference that the applicant in the main proceedings performed his tasks at the General Inspectorate on display screen equipment. Claiming to have been exposed, in the performance of those tasks, to discontinuous visible light, an absence of natural light and mental overload, he suffered a sharp fall in his visual acuity, which led the medical specialist to prescribe a change to his spectacles and, more particularly, to his corrective lenses.
46. Although it is not for the Court of Justice, in a reference for a preliminary ruling, but rather for the national court to decide whether the spectacles for which the applicant seeks reimbursement should be classified as 'special corrective appliances' within the meaning of Article 9(3) of Directive 90/270, it must nevertheless be pointed out, first, that the applicant in the main proceedings was entitled, because of the sharp deterioration in his eyesight, to an ophthalmological examination carried out by a specialist doctor, which appears to correspond to the examinations referred to in Article 9(1) and (2) of Directive 90/270.
47. Second, the fact that that specialist doctor recommended that the applicant in the main proceedings change spectacles and, more particularly, corrective lenses, in order to correct the severe deterioration in his eyesight, also seems to indicate that his former corrective lenses could no longer be used to perform his tasks on display screen equipment, in particular because of the visual acuity difficulties which had been diagnosed in the applicant in the main proceedings. It is, however, for the referring court to determine whether the spectacles concerned serve to correct visual difficulties relating to his work rather than generic visual problems not necessarily linked to his working conditions.

Case 3. Not only the judgements, but also the ordinances of the Court of Justice use the same manner of compressing the questions and responding to the reformulated one (case C-658/23, *Investcapital Ltd versus TK*):

> 30. By its first and second questions, which it is appropriate to examine together, the referring court wishes to know, in essence, whether Article 5(2) of Directive 2008/52, read in conjunction with the principle of the primacy of EU law, must be interpreted as precluding the courts of a Member State from not being able to disapply a decision of the constitutional court of that Member State invalidating national legislation under which the admissibility of certain actions, which may fall within the scope of that directive, is subject to compliance, by the applicant, with the obligation to participate in an information meeting on the benefits of mediation.

The final answer will be able to reopen a dialogue that could have been definitively closed in the national jurisdiction by a previous decision of a constitutional court: the problem of mandatory mediation. The CJEU simply established:

> Article 5(2) of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, read in conjunction with the principle of the primacy of EU law,
>
> must be interpreted as meaning that:
>
> it does not preclude the courts of a Member State from not being able to disapply a decision of the constitutional court of that Member State invalidating national legislation under which the admissibility of certain actions, which may fall within the scope of that directive, is subject to compliance by the applicant with the obligation to participate in an information meeting on the benefits of mediation, since such a decision does not fall within that provision and cannot therefore be contrary to it.

Following the arguments of the ordinance, GEMME (Groupement Européen des Magistrats pour la Médiation) – Romanian Section, asked for an establishment by law of mandatory mediation as an immediate solution to avoid convictions at the European Court of Human Rights due to natural delays in solving civil cases lato sensu, in the coordinates of the acute lack of personnel in the judiciary[3].

4. Conclusions

The way the Court of Justice understand to be useful not only to domestic judges, but also to individuals appears as a manifestation of the third maxim of the perlocutionary cooperation principle: *Anticipate people's needs or provide them with what they need, even if they do not know that they need it*.

As a rule, a distinction is made between *interpretation*, which belongs to the Court of Justice, and application, which belongs to domestic courts, in the light of the division of jurisdiction. However, as the legal literature points out, there are judgments in the case law of the CJEU in which the Court has made a detailed interpretation (*Cristini c. SNCF* 32/75-1975 – ECR 1085, *Marleasing SA v La Comercial Internacional de Alimentacion SA* C-106/89-1990 – ECR 1-4135), mitigating the difference between interpretation and application (of EU law). The same doctrine stated that the reason was to maintain a 'maximum control over the development of the law in a given area', so that, in the case of a detailed judgment, the national court had only to take over the interpretation and 'execute it'.

A broader and closer look will see that the effect of the interpretation of the Court of Justice, especially in detailed judgments, is not limited to a 'dialogue between courts', ultimately to the application of the European law by national courts; the protected interest/right belongs to a person (natural or legal) or some persons (*peoples, not courts*), in other cases, to a community – they are the beneficiaries of the judgement that national court will finally give.

The second case concerns the protection of the safety and health of workers, their eyes and vision, not a non-personal law applied by a court. In the first example, the interest pertains to a tenderer excluded from a procedure for the award of a public contract; the applicant's 'desire', clearly identified by the Court, aims the application to be examined on the merits. Finally, the third case is the most interesting: an ordinance offers the national legislative body the opportunity to introduce mandatory mediation as a solution of a congested, overwhelmed judiciary. Based on that mere finding, it may be stated that the defining principle which runs through the entire procedure

[3] https://www.forumuljudecatorilor.ro/index.php/archives/6839, https://www.juridice.ro/751339/gemme-sectiunea-romana-solicita-din-nou-reglementarea-medierii-obligatorii-in-romania-solutie-sustinuta-si-de-hotararile-cjue.html, 05 November 2024).

of the reference for a preliminary ruling and, at the same time, defines us culturally, is the principle of the 'good Samaritan' or, in the specialised terms of pragmatics, the *perlocutionary cooperative principle*.

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