

Case C-212/04

Konstantinos Adeneler and Others

v

Ellinikos Organismos Galaktos (ELOG)

(Reference for a preliminary ruling from the
Monomeles Protodikio Thessalonikis)

(Directive 1999/70/EC — Clauses 1(b) and 5 of the framework agreement on fixed-term work — Successive fixed-term employment contracts in the public sector — Concepts of ‘successive contracts’ and ‘objective reasons’ justifying the renewal of such contracts — Measures intended to prevent abuse — Sanctions — Scope of the obligation to interpret national law in conformity with Community law)

Opinion of Advocate General Kokott delivered on 27 October 2005	I - 6062
Judgment of the Court (Grand Chamber), 4 July 2006	I - 6091

Summary of the Judgment

1. *Preliminary rulings — Jurisdiction of the Court — Limits*
(Art. 234 EC)

2. *Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Directive 1999/70*
(Council Directive 1999/70, annex, clause 5(1)(a))
3. *Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Directive 1999/70*
(Council Directive 1999/70, annex, clause 5)
4. *Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Directive 1999/70*
(Council Directive 1999/70, annex, clause 5(1))
5. *Acts of the institutions — Directives — Implementation by Member States*
(Arts 10, para. 2, EC and 249, para. 3, EC)

1. The procedure provided for by Article 234 EC is an instrument of cooperation between the Court of Justice and national courts by means of which the former provides the latter with interpretation of such Community law as they need to give judgment in cases upon which they are called to adjudicate. In the context of that cooperation, the national court seised of the dispute, which alone has direct knowledge of the facts giving rise to the dispute and must assume responsibility for the subsequent judicial decision, is, having regard to the particular circumstances of the case, in the best position to assess both the need for a preliminary ruling in order to enable it to give judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of Community law,

the Court of Justice is, in principle, bound to give a ruling.

Nevertheless, the Court considers that it has the task of examining the circumstances in which cases are referred to it by national courts, in order to assess whether it has jurisdiction. The spirit of cooperation which must prevail in the preliminary ruling procedure requires the national court for its part to have regard to the function entrusted to the Court of Justice, which is to contribute to the administration of justice in the

Member States and not to give advisory opinions on general or hypothetical questions.

(see paras 40-42)

2. Clause 5(1)(a) of the framework agreement on fixed-term work concluded on 18 March 1999 which is annexed to Directive 1999/70 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, a provision that relates to objective reasons capable of justifying the renewal of fixed-term employment contracts or relationships, is to be interpreted as precluding the use of successive fixed-term employment contracts where the justification advanced for their use is solely that it is provided for by a general provision of statute or secondary legislation of a Member State. On the contrary, the concept of 'objective reasons' within the meaning of that clause requires recourse to this particular type of employment relationship, as provided for by national legislation, to be justified by the presence of specific factors relating in particular to the activity in question and the conditions under which it is carried out.

A national provision which merely authorises recourse to successive fixed-

term employment contracts in a general and abstract manner by a rule of statute or secondary legislation carries a real risk that it will result in misuse of that type of contract and, accordingly, is not compatible with the objective of the framework agreement and the requirement that it have practical effect. Thus, to admit that a national provision may, automatically and without further precision, justify successive fixed-term employment contracts would effectively have no regard to the aim of the framework agreement, which is to protect workers against instability of employment, and render meaningless the principle that contracts of indefinite duration are the general form of employment relationship. More specifically, recourse to fixed-term employment contracts solely on the basis of a general provision of statute or secondary legislation, unlinked to what the activity in question specifically comprises, does not permit objective and transparent criteria to be identified in order to verify whether the renewal of such contracts actually responds to a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose.

(see paras 71-75, operative part 1)

3. Clause 5 of the framework agreement on fixed-term work concluded on 18 March 1999 which is annexed to Directive 1999/70 concerning the framework agreement on fixed-term work con-

cluded by ETUC, UNICE and CEEP, a provision that relates to measures designed to prevent the misuse of successive fixed-term employment contracts, is to be interpreted as precluding a national rule under which only fixed-term employment contracts or relationships that are not separated from one another by a period of time longer than 20 working days are to be regarded as 'successive' within the meaning of that clause.

largely negating the objective pursued by them, but also of permitting the misuse of such relationships by employers.

(see paras 84-86, 89, operative part 2)

A national rule of that kind must be considered to be such as to compromise the object, the aim and the practical effect of the framework agreement, for the reason that so inflexible and restrictive a definition of when a number of subsequent employment contracts are successive would allow insecure employment of a worker for years since, in practice, the worker would as often as not have no choice but to accept breaks in the order of 20 working days in the course of a series of contracts with his employer. Furthermore, a national rule of that type could well have the effect not only of in fact excluding a large number of fixed-term employment relationships from the benefit of the protection of workers sought by Directive 1999/70 and the framework agreement,

4. The framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Directive 1999/70 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, is to be interpreted as meaning that, in so far as domestic law of the Member State concerned does not include, in the sector under consideration, any other effective measure to prevent and, where relevant, punish the misuse of successive fixed-term contracts, that framework agreement precludes the application of national legislation which, in the public sector alone, prohibits absolutely the conversion into an employment contract of indefinite duration of a succession of fixed-term contracts that, in fact, have been intended to cover 'fixed and permanent needs' of the employer and must therefore be regarded as constituting an abuse.

(see para. 105, operative part 3)

5. In cases where a directive is transposed belatedly into a Member State's domestic law and the relevant provisions of the directive do not have direct effect, the national courts are bound to interpret domestic law so far as possible, once the period for transposition has expired, in the light of the wording and the purpose of the directive concerned with a view to achieving the results sought by the directive, favouring the interpretation of the national rules which is the most consistent with that purpose in order thereby to achieve an outcome compatible with the provisions of the directive.

menting measures actually enter into force in the Member State concerned does not constitute the relevant point in time. Such a solution would be liable seriously to jeopardise the full effectiveness of Community law and its uniform application by means, in particular, of directives. Furthermore, from the date upon which a directive has entered into force, the courts of the Member States must refrain as far as possible from interpreting domestic law in a manner which might seriously compromise, after the period for transposition has expired, attainment of the objective pursued by that directive.

It necessarily follows that, in such cases, the date on which the national imple-

(see paras 115, 116, 123, 124, operative part 4)