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Judgment of the Court of Justice in Case C-212/04

Konstantinos Adeneler and Others v Ellinikos Organismos Galaktos (ELOG)

**THE COURT OF JUSTICE INTERPRETS THE FRAMEWORK AGREEMENT ON
FIXED-TERM WORK AND REINFORCES THE PROTECTION OF WORKERS**

*The use of successive fixed-term employment contracts, including in the public sector, must
meet certain strict conditions*

The purpose of Directive 1999/70 is to put into effect the framework agreement, concluded between the general cross-industry organisations (ETUC, UNICE and CEEP), on fixed-term work¹. The framework agreement is intended to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships. It provides that ‘objective reasons’ may justify the renewal of successive fixed-term employment contracts or relationships. It also lays down that Member States are to determine under what conditions fixed-term employment contracts or relationships are to be regarded as ‘successive’ and are to be deemed to be contracts or relationships of indefinite duration. The period for transposition of the directive expired on 10 July 2001, with the possibility of an extension of a maximum of one year.

Greek legislation transposing the directive into national law was adopted belatedly, in April 2003. So far as concerns private-sector employees, it provides that unlimited renewal of fixed-term employment contracts is permitted if justified by an **objective reason**, and specifies that an objective reason exists, amongst other cases, where the conclusion of a fixed-term contract is required by a provision of statute or secondary legislation. The legislation also states that fixed-term employment contracts or relationships are to be regarded as ‘successive’ if they are concluded between the same employer and worker under the same or similar terms of employment and **they are not separated by a period of time**

¹ OJ 1999 L 175, p. 43.

longer than 20 working days. The regime applicable to public-sector workers **precludes absolutely the conversion of fixed-term contracts into contracts of indefinite duration.**

Mr Adeneler and 17 other employees concluded with ELOG (the Greek Milk Organisation), a legal person governed by private law which falls within the public sector and is established in Thessaloniki, a number of successive fixed-term employment contracts the last of which came to an end without being renewed. Each of those contracts was concluded for a period of eight months and the various contracts were separated by a period of time ranging from a minimum of 22 days to a maximum of 10 months and 26 days. The employees brought proceedings before the Monomeles Protodikio (Court of First Instance), Thessaloniki, for a declaration that **those contracts had to be regarded as employment contracts of indefinite duration**, and the Monomeles Protodikio referred **four questions** to the Court of Justice of the European Communities **for a preliminary ruling.**

After making it clear that Directive 1999/70 and the framework agreement can apply also to fixed-term employment contracts and relationships concluded with the public authorities and other public-sector bodies, the Court of Justice states first of all that the framework agreement proceeds on the premiss that employment contracts of indefinite duration are the general form of employment relationship. From this angle, the framework agreement seeks to place limits on successive recourse to fixed-term employment contracts – which are regarded as a potential source of abuse to the disadvantage of workers – by laying down as a minimum a number of protective provisions designed to prevent the status of employees from being insecure. Under the framework agreement, use of fixed-term employment contracts that is justified by objective reasons is a way to prevent abuse. On the other hand, the use of successive fixed-term employment contracts solely on the basis that their use is provided for by a general provision of statute or secondary legislation of a Member State **is not consistent with the framework agreement’s objective of conferring protection.** The concept of ‘objective reasons’ requires there to be specific factors relating in particular to the activity in question and the conditions under which it is carried out.

Next, the Court holds that, although under the framework agreement it is left to the Member States to define when contracts are ‘successive’, the discretion of the Member States is not unlimited, because it cannot in any event go so far as to compromise the objective or the practical effect of the framework agreement. A national provision under which only fixed-term contracts that are separated by a period of time shorter than or equal to 20 working days are regarded as successive must be considered to be such as to compromise the object, the aim and the practical effect of the framework agreement. So inflexible and restrictive a definition 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 the directive and the framework agreement but also of permitting the misuse of such relationships by employers.

The Court further holds that, in so far as a Member State’s domestic law 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, the 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.

Finally, the Court makes it clear that, 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. The Court nevertheless adds that, **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.

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Languages available: FR, CS, DE, EN, ES, EL, HU, IT, NL, PL, PT, SK, SL

*The full text of the judgment may be found on the Court's internet site
<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-212/04>
It can usually be consulted after midday (CET) on the day judgment is delivered.*

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