JUDGMENT OF THE COURT (Grand Chamber)

4 July 2006 *

In Case C-212/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Monomeles Protodikio Thessalonikis (Greece), made by decision of 8 April 2004, received at the Court on 17 May 2004, in the proceedings

Konstantinos Adeneler,

Pandora Kosa-Valdirka,

Nikolaos Markou,

Agapi Pantelidou,

Christina Topalidou,

Apostolos Alexopoulos,

Konstantinos Vasiniotis,

* Language of the case: Greek.

Vasiliki Karagianni,

Apostolos Tsitsionis,

Aristidis Andreou,

Evangelia Vasila,

Kalliopi Peristeri,

Spiridon Sklivanitis,

Dimosthenis Tselefis,

Theopisti Patsidou,

Dimitrios Vogiatzis,

Rousas Voskakis,

Vasilios Giatakis

V

Ellinikos Organismos Galaktos (ELOG),

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas and J. Malenovský, Presidents of Chambers, J.-P. Puissochet, R. Schintgen (Rapporteur), N. Colneric, J. Klučka, U. Lõhmus and E. Levits, Judges,

Advocate General: J. Kokott,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 13 September 2005,

after considering the observations submitted on behalf of:

— Mr Adeneler and the 17 other claimants in the main proceedings, by V. Christianos, A. Kazakos and C. Nikoloutsopoulos, dikigori,

— Ellinikos Organismos Galaktos (ELOG), by K. Mamelis, P. Tselepidis and I. Tsitouridis, dikigori,

— the Greek Government, by A. Samoni-Rantou, E.-M. Mamouna, I. Bakopoulos and V. Kiriazopoulos, acting as Agents,

— the Commission of the European Communities, by M. Patakia and N. Yerrell, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 27 October 2005,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of clauses 1 and 5 of the framework agreement on fixed-term work concluded on 18 March 1999 ('the Framework Agreement'), which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43; corrigendum at OJ 1999 L 244, p. 64), and the extent of the obligation on the courts of the Member States to interpret national law in conformity with Community law.

2 The reference was made in proceedings brought by Mr Adeneler and 17 other employees against their employer, Ellinikos Organismos Galaktos (Greek Milk Organisation; 'ELOG'), concerning ELOG's failure to renew their fixed-term employment contracts.

Legal context

Community legislation

3 Directive 1999/70 is founded on Article 139(2) EC and its purpose, as provided in Article 1, is 'to put into effect the framework agreement ... concluded ... between the general cross-industry organisations (ETUC, UNICE and CEEP)'.

4 The 3rd, 6th, 7th, 13th to 15th and 17th recitals in the preamble to the directive, the first three paragraphs of the preamble to the Framework Agreement and paragraphs 3, 5 to 8 and 10 of the general considerations in the Framework Agreement state the following:

— the completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community by means of an approximation of those conditions while maintaining the improvement, in particular with regard to forms of employment other than open-ended contracts, in order to achieve a better balance between flexibility in working time and security for workers;

— those objectives cannot be sufficiently achieved by the Member States and it was therefore considered appropriate to have recourse to a legally binding Community measure, drawn up in close collaboration with the representatives of management and labour;

— the parties to the Framework Agreement recognise that contracts of indefinite duration are, and will continue to be, the general form of employment relationship, since they contribute to the quality of life of the workers concerned and improve their performance, but that fixed-term employment contracts respond, in certain circumstances, to the needs of both employers and workers;

— the Framework Agreement sets out the general principles and minimum requirements relating to fixed-term work, establishing, in particular, a general framework designed to ensure equal treatment for fixed-term workers by protecting them against discrimination and to prevent abuse arising from the use of successive fixed-term employment relationships, while referring back to the Member States and social partners (management and labour) for the detailed arrangements for the application of those principles and requirements, in order to take account of the realities of specific national, sectoral and seasonal situations;

— the Council of the European Union thus considered the proper instrument for implementing the Framework Agreement to be a directive, since a directive binds the Member States as to the result to be achieved, but leaves them the choice of form and methods;

— as regards, more specifically, terms used in the Framework Agreement but not specifically defined therein, Directive 1999/70 leaves it to the Member States to define them in conformity with national law or practice, provided that they respect the Framework Agreement;

— the use of fixed-term employment contracts founded on objective reasons is, according to the signatory parties to the Framework Agreement, a way to prevent abuse to the disadvantage of workers.

5 As provided in clause 1, the purpose of the Framework Agreement 'is to:

(a) improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination;

(b) establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships'.

6 Clause 2 of the Framework Agreement provides:

'1. This agreement applies to fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State.

2. Member States after consultation with the social partners and/or the social partners may provide that this agreement does not apply to:

(a) initial vocational training relationships and apprenticeship schemes;

(b) employment contracts and relationships which have been concluded within the framework of a specific public or publicly-supported training, integration and vocational retraining programme.'

7 Clause 3 of the Framework Agreement is worded as follows:

'1. For the purpose of this agreement the term "fixed-term worker" means a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.

2. For the purpose of this agreement, the term "comparable permanent worker" means a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills. Where there is no comparable permanent worker in the same establishment, the comparison shall be made by reference to the applicable collective agreement, or where there is no applicable collective agreement, in accordance with national law, collective agreements or practice.'

8 Clause 5 of the Framework Agreement states:

'1. To prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, after consultation with social partners in accordance with national law, collective agreements or practice, and/or the social partners, shall, where there are no equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors and/or categories of workers, one or more of the following measures:

(a) objective reasons justifying the renewal of such contracts or relationships;

(b) the maximum total duration of successive fixed-term employment contracts or relationships;

(c) the number of renewals of such contracts or relationships.

2. Member States after consultation with the social partners and/or the social partners shall, where appropriate, determine under what conditions fixed-term employment contracts or relationships:

(a) shall be regarded as "successive";

(b) shall be deemed to be contracts or relationships of indefinite duration.'

9 Clause 8 of the Framework Agreement provides:

'1. Member States and/or the social partners can maintain or introduce more favourable provisions for workers than set out in this agreement.

...

3. Implementation of this agreement shall not constitute valid grounds for reducing the general level of protection afforded to workers in the field of the agreement.

...'

10 The first and second paragraphs of Article 2 of Directive 1999/70 provide:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 10 July 2001, or shall ensure that, by that date at the latest, management and labour have introduced the

necessary measures by agreement, the Member States being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

Member States may have a maximum of one more year, if necessary, and following consultation with management and labour, to take account of special difficulties or implementation by a collective agreement. They shall inform the Commission forthwith in such circumstances.'

11 Article 3 of the directive states:

'This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.'

National legislation

12 According to information from the Commission, the Greek Government told that institution that it intended to make use of the option provided for in the second paragraph of Article 2 of Directive 1999/70, in order to have an extended period for the purpose of adoption of measures implementing the directive. That extension meant that the period did not expire until 10 July 2002.

13 The directive was transposed into Greek law in April 2003.

14 Presidential Decree No 81/2003 laying down provisions concerning workers employed under fixed-term contracts (FEK A' 77/2.4.2003), which constitutes the first measure transposing Directive 1999/70, entered into force on 2 April 2003.

15 Article 2(1) of the decree states that the latter 'applies to workers employed under a fixed-term contract or relationship'.

16 Subsequently, pursuant to Article 1 of Presidential Decree No 180/2004 (FEK A' 160/23.8.2004), which entered into force on 23 August 2004, Article 2(1) of Presidential Decree No 81/2003 was replaced by the following provision:

'This presidential decree applies to workers employed under a fixed-term contract or relationship in the private sector ...'.

17 As originally enacted, Article 5 of Presidential Decree No 81/2003, which is headed 'Rules to protect workers and to prevent circumvention of the law to their detriment', stated:

'1. Unlimited renewal of fixed-term employment contracts is permitted if justified by an objective reason.

(a) There is an objective reason in particular:

... if the conclusion of a fixed-term contract is required by a provision of statute or secondary legislation ...

(b) Unless the worker proves to the contrary, an objective reason is presumed to exist in sectors of activity where it is justified by reason of their nature and the work in them ...

...

3. Where the duration of successive fixed-term employment contracts or relationships exceeds two years in total, and no reason under paragraph 1 of this article applies, it will be presumed that they are aimed at covering the fixed and permanent needs of the undertaking or operation, and they shall consequently be converted into employment contracts or relationships of indefinite duration. Where there are more than three renewals of successive employment contracts or relationships, as defined in paragraph 4 of this article, within the space of two years, and no reason under paragraph 1 of this article applies, it will be presumed that they are aimed at covering the fixed and permanent needs of the undertaking or operation, and the contracts concerned shall consequently be converted into employment contracts or relationships of indefinite duration.

It shall fall to the employer in each case to prove otherwise.

4. Fixed-term employment contracts or relationships shall 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 longer than 20 working days.

5. The provisions of this article shall apply to contracts, renewals of contracts or employment relationships entered into or effected after this decree has come into force.'

18 Since the entry into force of Presidential Decree No 180/2004, Article 5 has been worded as follows:

'1. Unlimited renewal of fixed-term employment contracts is permitted if justified by an objective reason. There is an objective reason in particular:

if the renewal is justified by the form or the type or the activity of the employer or undertaking, or by special reasons or needs, provided that those circumstances are apparent, whether directly or indirectly, from the contract concerned; such circumstances include the temporary replacement of a worker, the carrying out of transient work, the temporary accumulation of work, or circumstances in which the fixed duration is connected with education or training, or where a contract is renewed with the aim of facilitating a worker's transfer to related employment or carrying out a specific piece of work or programme, or the renewal is connected with a particular event ...

...

3. Where the duration of successive fixed-term employment contracts or relationships exceeds two years in total, it will be presumed that they are aimed at covering the fixed and permanent needs of the undertaking or operation, and they shall consequently be converted into employment contracts or relationships of indefinite duration. Where there are more than three renewals of successive employment contracts or relationships, as defined in paragraph 4 of this article, within the space of two years, it will be presumed that they are aimed at covering the fixed and permanent needs of the undertaking or operation, and the contracts concerned shall consequently be converted into employment contracts or relationships of indefinite duration.

It shall fall to the employer in each case to prove otherwise.

4. Fixed-term employment contracts or relationships shall 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 longer than 45 days, including non-working days.

In the case of a group of undertakings, the term "the same employer", for the purposes of the preceding subparagraph, shall include undertakings in the group.

5. The provisions of this article shall apply to contracts, renewals of contracts or employment relationships entered into or effected after this decree has come into force.'

19 Article 21 of Law No 2190/1994 establishing an independent authority for selecting staff and regulating management issues (FEK A' 28/3.3.1994) provides:

'1. Public services and legal persons ... may employ staff on fixed-term employment contracts governed by private law in order to cope with seasonal or other periodic or temporary needs, in accordance with the conditions and the procedure laid down in the following paragraphs.

2. The period of employment of staff referred to in paragraph 1 may not exceed eight months in the course of an overall period of 12 months. When staff are taken on temporarily to meet, in accordance with the provisions in force, urgent needs, because of staff absences or vacant posts, the period of employment may not exceed four months for the same person. Extension of a contract, conclusion of a new contract in the same calendar year or conversion into a contract of indefinite duration shall be invalid.'

20 Presidential Decree No 164/2004 laying down provisions concerning workers employed under fixed-term contracts in the public sector (FEK A' 134/19.7.2004) transposed Directive 1999/70 as regards Greek law applicable to staff employed by the State and in the public sector in the broad sense. It entered into force on 19 July 2004.

21 Article 2(1) of Presidential Decree No 164/2004 provides:

'The provisions of this decree shall apply to staff in the public sector ... and to the staff of municipal and communal undertakings who work under a fixed-term

employment contract or relationship, or under a works contract or other contract or relationship concealing a relationship between employer and employee.'

22 Article 5 of Presidential Decree No 164/2004 includes the following provisions:

'1. Successive contracts concluded between and performed by the same employer and worker in the same or similar professional activity and under the same or similar terms of employment shall be prohibited if the contracts are separated by a period of less than three months.

2. Such contracts may be concluded by way of exception if justified by an objective reason. There is an objective reason if the contracts succeeding the original contract are concluded for the purpose of meeting similar special needs which are directly and immediately related to the form, the type or the activity of the undertaking.

...

4. The number of successive contracts shall not, in any circumstances, be greater than three ...'

23 Article 11 of Presidential Decree No 164/2004 contains the following transitional provisions:

'1. Successive contracts within the meaning of Article 5(1) of this decree which were concluded before, and are still valid at the time of, the entry into force of this decree shall henceforth constitute employment contracts of indefinite duration if each of the following conditions is met:

(a) the total duration of the successive contracts must amount to at least 24 months up to the entry into force of this decree, irrespective of the number of contract renewals, or there must be at least three renewals following the original contract, for the purposes of Article 5(1) of this decree, with a total duration of employment of at least 18 months over a total period of 24 months calculated from the date of the original contract;

(b) the total period of employment under subparagraph (a) must in fact have been completed with the same body, in the same or similar professional activity and under the same or similar terms of employment as specified in the original contract ...;

(c) the contract must relate to activities directly and immediately connected with the body's fixed and permanent needs as defined by the public interest that the body serves;

(d) the total period of employment for the purposes of the preceding subparagraphs must be completed on a full-time or part-time basis and in duties identical or similar to those specified in the original contract ...

4. The provisions of this article shall apply to workers employed in the public sector ... and in municipal ... undertakings ...

5. The provisions of paragraph 1 of this article shall also apply to contracts which expired during the three months immediately preceding the entry into force of this decree; such contracts shall be regarded as successive contracts valid up to its entry into force. The condition set out in paragraph 1(a) of this article must be met upon expiry of the contract.

...'

The main proceedings and the questions referred for a preliminary ruling

24 It is apparent from the documents in the case which have been forwarded by the referring court that, from May 2001 and before the final date by which Directive 1999/70 should have been transposed into Greek law, that is to say 10 July 2002, the claimants in the main proceedings, who pursue the professions of sampler, secretary, technician or vet, concluded with ELOG, 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 between June and September 2003 without being renewed ('the contracts at issue'). Each of those contracts, that is to say both the initial contract and the following successive 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 claimants in the main proceedings were on each occasion reappointed to the same post as that in respect of which the initial contract had been concluded. All the workers concerned had a fixed-term contract of that kind on the date upon which Presidential Decree No 81/2003 entered into force.

25 Since the failure to renew their employment contracts, the persons concerned have been either unemployed or employed by ELOG on a provisional basis following judicial decisions granting interim relief.

26 The claimants brought proceedings before the Monomeles Protodikio Thessalonikis (Court of First Instance (Single Judge), Thessaloniki) for a declaration that the contracts at issue had to be regarded as employment contracts of indefinite duration, in accordance with the Framework Agreement. To this end, they submitted that they carried out for ELOG regular work corresponding to 'fixed and permanent needs' within the meaning of the national legislation, so that the conclusion of successive fixed-term employment contracts with their employer was an abuse, and no objective reason justified the prohibition, laid down in Article 21(2) of Law No 2190/1994, on converting the employment relationships at issue into employment contracts of indefinite duration.

27 According to the referring court, such reclassification of the contracts at issue is a necessary prerequisite for other claims made by the claimants in the main proceedings, such as their reinstatement and payment of their outstanding earnings.

28 Taking the view that clause 5 of the Framework Agreement confers on the Member States a wide margin of appreciation as regards its transposition into their domestic law and is not sufficiently precise and unconditional to have direct effect, the referring court is uncertain, first of all, as to the date from which national law must be interpreted in conformity with Directive 1999/70 in the event of its being transposed belatedly. It envisages a number of dates, namely the date on which that directive was published in the *Official Journal of the European Communities* and which corresponds to the date on which it entered into force, the date on which the time-limit for transposing the directive passed and the date on which Presidential Decree No 81/2003 entered into force.

29 It then raises the question of the scope of the concept of 'objective reasons', within the meaning of clause 5(1)(a) of the Framework Agreement, capable of justifying the renewal of fixed-term employment contracts or relationships, in the light of Article 5(1)(a) of Presidential Decree No 81/2003 which permits the unlimited renewal of fixed-term employment contracts inter alia when a fixed-term contract is required by a provision of statute or secondary legislation.

30 The referring court is also uncertain whether the conditions governing the renewal of fixed-term employment contracts, as resulting from Article 5(3), read in conjunction with Article 5(4), of Presidential Decree No 81/2003, are consistent with the principle of proportionality and with the requirement for Directive 1999/70 to have practical effect.

31 Finally, after finding that the recourse in practice to Article 21 of Law No 2190/94 as a basis for the conclusion of fixed-term employment contracts governed by private law, when those contracts are intended to cover 'fixed and permanent needs', constitutes an abuse, the referring court is uncertain whether in such a situation the prohibition, set out in the final sentence of Article 21(2), on converting contracts concluded for a fixed term into contracts of indefinite duration impairs the effectiveness of Community law and whether it is consistent with the objective set out in clause 1(b) of the Framework Agreement of preventing abuse arising from the use of a succession of fixed-term employment contracts.

32 In those circumstances, the Monomeles Protodikio Thessalonikis decided to stay proceedings and to refer the following questions, as rectified by its decision of 5 July 2004, to the Court for a preliminary ruling:

'1. Must a national court — as far as possible — interpret its domestic law in conformity with a directive which was transposed belatedly into national law from:

(a) the time when the directive entered into force, or

(b) the time when the time-limit for transposing it into national law passed without transposition being effected, or

(c) the time when the national measure implementing it entered into force?

2. Does clause 5(1)(a) of the Framework Agreement ... mean that, in addition to reasons connected with the nature, type or characteristics of the work performed or other similar reasons, the fact solely and simply that the conclusion of a fixed-term contract is required by a provision of statute or secondary legislation may constitute an objective reason for continually renewing or concluding successive fixed-term employment contracts?

3. (a) Is a national provision, specifically, Article 5(4) of Presidential Decree No 81/2003, which lays down that successive contracts are contracts concluded between the same employer and worker under the same or similar terms of employment, the contracts not being separated by a period of time longer than 20 days, compatible with clause 5(1) and (2) of the Framework Agreement ...?

(b) May clause 5(1) and (2) of the Framework Agreement ... be interpreted as meaning that the employment relationship between the worker and his employer is presumed to be of indefinite duration only when the requirement laid down in national legislation in Article 5(4) of Presidential Decree No 81/2003 is met?

4. Is the prohibition, in Article 21 of Law No 2190/1994, on the conversion of successive fixed-term employment contracts into a contract of indefinite duration, where those contracts are said to have been concluded for a fixed term to cover the exceptional or seasonal needs of the employer but are aimed at covering its fixed and permanent needs, compatible with the principle of effectiveness of Community law and the purpose of clause 5(1) and (2) in conjunction with clause 1 of the Framework Agreement ...?'

Admissibility of the reference for a preliminary ruling

Observations submitted to the Court

33 The Commission does not explicitly raise the issue of whether the first question is admissible, but considers that its relevance to a decision in the main proceedings is not evident. It bases its doubts on the fact that the contracts at issue did not expire until after the entry into force of Presidential Decree No 81/2003, the very purpose of which was to implement Directive 1999/70 in Greek law. It is therefore not clear why the referring court raises the question of the obligation, which it already owed before the directive was transposed, to interpret national law in conformity with the directive.

34 The Greek Government doubts the relevance of the second and third questions for the purposes of a decision in the main proceedings.

35 It observes in this regard that, as is apparent from Article 2(1) of Presidential Decree No 81/2003, as amended by Presidential Decree No 180/2004, the provisions of the first of those decrees applied only to private-sector workers having a fixed-term contract with their employer.

36 In the case of staff employed by the State and in the public sector in the broad sense, on the other hand, Directive 1999/70 was transposed by Presidential Decree No 164/2004. In view of the transitional provisions set out in Article 11 thereof, that decree rectified the consequences resulting from the belated transposition of the directive.

37 Article 11 of Presidential Decree No 164/2004 converts successive employment contracts concluded with staff in the public sector as at July 2002 — the final deadline laid down for transposition of Directive 1999/70 — into contracts of indefinite duration, provided that the contracts were still running on 19 July 2004, the date on which Presidential Decree No 164/2004 entered into force, or expired during the three months preceding that date.

38 Consequently, the second and third questions, asked by reference to the provisions of Presidential Decree No 81/2003, have been devoid of purpose since the entry into force of Presidential Decree No 164/2004, since the first of these two decrees is inapplicable to the dispute in the main proceedings. Besides, nine of the 18 claimants in the main proceedings fulfil the conditions required for conversion of their employment relationships into contracts of indefinite duration in accordance with Article 11 of Presidential Decree No 164/2004.

Findings of the Court

39 Pursuant to Article 234 EC, where a question on the interpretation of the EC Treaty or of subordinate acts of the institutions of the Community is raised before any court or tribunal of a Member State, that court or tribunal may or, as the case may be, must, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon (see, inter alia, Case C-451/99 *Cura Anlagen* [2002] ECR I-3193, paragraph 22, and Case C-144/04 *Mangold* [2005] ECR I-9981, paragraph 33).

40 As is apparent from settled case-law, 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 (see, inter alia, Case C-112/00 *Schmidberger* [2003] ECR I-5659, paragraph 30, and the case-law cited).

41 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 (see, inter alia, *Schmidberger*, paragraph 31, and *Mangold*, paragraphs 34 and 35).

42 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, inter alia, *Mangold*, paragraph 36, and the case-law cited).

43 It is in the light of that function that the Court has considered that it has no jurisdiction to give a preliminary ruling on a question raised before a national court where the interpretation of Community law clearly has no connection whatever with the circumstances or purpose of the main proceedings (see, inter alia, *Mangold*, paragraph 37).

44 In the present case, however, it is not clear that the questions submitted by the referring court constitute such a case.

45 As regards, first, the doubts expressed by the Commission concerning the relevance of the first question, it is apparent from the documents in the case which have been forwarded by the referring court that, in the case of a not insignificant number of the claimants in the main proceedings, the first eight-month employment contract was concluded by them with ELOG before 10 July 2002, which was the final date laid down for transposition of Directive 1999/70, or even before 10 July 2001, the normal date envisaged for implementation of the directive in Member States' national law. It is also apparent from those documents that, in the case of some of the claimants, the subsequent fixed-term employment contracts with the same employer were concluded only 22 days after the preceding contract had expired.

46 In addition, even assuming that the Hellenic Republic complied with the procedural requirements necessary for valid exercise of the option to extend the period for transposition of Directive 1999/70 until 10 July 2002, transposition was in any event belated, as the Greek Government has itself acknowledged, since the first implementing measure entered into force in that Member State only in the course of April 2003 (see paragraphs 13 and 14 of this judgment). The first question is, moreover, clearly submitted having regard to such belated transposition of the directive into national law. Nor do the provisions of Article 5 of Presidential Decree No 81/2003 apply to contracts concluded before that decree entered into force.

47 In those circumstances, the referring court is justified in raising the question of the date from which courts in the Member States are obliged to interpret national law in conformity with a directive and, in particular, whether such an obligation exists from the directive's entry into force or, at the very least, from expiry of the period which the Member States are allowed for transposing it.

48 Nevertheless, the question relating to the scope of the obligation on national courts to interpret national law in conformity with a directive can usefully be examined only in so far as the answer given by the Court to one or more of the other questions submitted is liable to lead the referring court to examine whether a provision of domestic law is in conformity with the requirements of Community law. Accordingly, the first question will, if relevant, have to be examined last.

49 Next, so far as concerns the second and third questions, the issue as to which of Presidential Decrees Nos 81/2003, 164/2004 and 180/2004 falls to be applied to the situation of the claimants in the main proceedings is still being debated before the referring court, and it alone has the task of deciding this point.

50 Nor is it in dispute that not all of the claimants in the main proceedings are able to benefit from the transitional provisions set out in the legislation adopted in 2004 by the Hellenic Republic to govern the public sector specifically.

51 In light of all the foregoing considerations, it cannot validly be asserted that in the present case the Court is being asked to rule on questions that are irrelevant for the purposes of the decision which the referring court is called upon to give.

52 The order for reference and the documents in the case which have been forwarded by the referring court contain nothing liable to cast doubt on the genuineness of the dispute in the main proceedings and on the assessment made by the referring court as to the need for a preliminary ruling to enable it to resolve that dispute in light of the Court's answers to the questions submitted.

53 The reference for a preliminary ruling must therefore be held to be admissible.

Consideration of the questions

Preliminary remarks

54 With a view to giving a helpful answer to the questions submitted, it should be made clear at the outset 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.

55 The provisions of those two instruments contain nothing to permit the inference that their scope is limited to fixed-term contracts concluded by workers with employers in the private sector alone.

56 On the contrary, first, as is apparent from the very wording of clause 2(1) of the Framework Agreement, the scope of the Framework Agreement is conceived in broad terms, covering generally 'fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State'. In addition, the definition of 'fixed-term workers' for the purposes of the Framework Agreement, set out in clause 3(1), encompasses all workers without drawing a distinction according to whether their employer is in the public, or private, sector.

57 Second, clause 2(2) of the Framework Agreement, far from providing for the exclusion of fixed-term employment contracts or relationships concluded with a public-sector employer, merely gives the Member States and/or the social partners the option of making the Framework Agreement inapplicable to 'initial vocational training relationships and apprentice schemes' and employment contracts and relationships 'which have been concluded within the framework of a specific public or publicly-supported training, integration and vocational retraining programme'.

Question 2

58 This question relates to the interpretation of the concept of 'objective reasons' which, in accordance with clause 5(1)(a) of the Framework Agreement, justify the successive renewal of fixed-term employment contracts or relationships.

59 More specifically, the referring court asks whether, as in the case of a national rule such as that set out in Article 5(1)(a) of Presidential Decree No 81/2003, in its initial version, the mere fact that the conclusion of a fixed-term contract is required by a provision of statute or secondary legislation of a Member State may constitute an objective reason of that kind.

60 As this concept of 'objective reasons' is not defined by the Framework Agreement, its meaning and scope must be determined on the basis of the objective pursued by the Framework Agreement and of the context of clause 5(1)(a) thereof (see, to this effect, inter alia Case C-17/03 *VEMW and Others* [2005] ECR I-4983, paragraph 41, and the case-law cited, and Case C-323/03 *Commission* v *Spain* [2006] ECR I-2161, paragraph 23).

61 The Framework Agreement proceeds on the premiss that employment contracts of indefinite duration are the general form of employment relationship, while recognising that fixed-term employment contracts are a feature of employment in certain sectors or in respect of certain occupations and activities (see paragraphs 6 and 8 of the general considerations in the Framework Agreement).

62 Consequently, the benefit of stable employment is viewed as a major element in the protection of workers (see *Mangold*, paragraph 64), whereas it is only in certain circumstances that fixed-term employment contracts are liable to respond to the needs of both employers and workers (see the second paragraph of the preamble to the Framework Agreement and paragraph 8 of the general considerations).

63 From this angle, the Framework Agreement seeks to place limits on successive recourse to the latter category of employment relationship, a category 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.

64 Thus, clause 5(1) of the Framework Agreement is intended specifically to 'prevent abuse arising from the use of successive fixed-term employment contracts or relationships'.

65 To this end, clause 5 imposes on Member States the obligation to introduce into domestic law one or more of the measures listed in clause 5(1)(a) to (c) where equivalent legal provisions intended to prevent effectively the misuse of successive fixed-term employment contracts do not already exist in the Member State concerned.

66 Among those measures, clause 5(1)(a) envisages 'objective reasons justifying the renewal of such contracts or relationships'.

67 The signatory parties to the Framework Agreement considered that the use of fixed-term employment contracts founded on objective reasons is a way to prevent abuse (see paragraph 7 of the general considerations in the Framework Agreement).

68 It is true that the Framework Agreement refers back to the Member States and social partners for the detailed arrangements for application of the principles and requirements which it lays down, in order to ensure that they are consistent with national law and/or practice and that due account is taken of the particular features of specific situations (see paragraph 10 of the general considerations in the Framework Agreement). While the Member States thus have a margin of appreciation in the matter, the fact remains that they are required to guarantee the result imposed by Community law, as follows not only from the third paragraph of Article 249 EC, but also from the first paragraph of Article 2 of Directive 1999/70 read in conjunction with the 17th recital in its preamble.

69 In those circumstances, the concept of 'objective reasons', within the meaning of clause 5(1)(a) of the Framework Agreement, must be understood as referring to precise and concrete circumstances characterising a given activity, which are therefore capable in that particular context of justifying the use of successive fixed-term employment contracts.

70 Those circumstances may result, in particular, from the specific nature of the tasks for the performance of which such contracts have been concluded and from the inherent characteristics of those tasks or, as the case may be, from pursuit of a legitimate social-policy objective of a Member State.

71 On the other hand, 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 does not accord with the requirements as stated in the preceding two paragraphs.

72 Such a provision, which is of a purely formal nature and does not justify specifically the use of successive fixed-term employment contracts by the presence of objective factors relating to the particular features of the activity concerned and to the conditions under which it is carried out, 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.

73 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.

74 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.

75 Consequently, the answer to the second question must be that clause 5(1)(a) of the Framework Agreement 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.

Question 3

76 By its third question, which is in two parts that are closely interlinked and should for that reason be considered together, the referring court seeks explanation of the concept of 'successive' fixed-term employment contracts or relationships within the meaning of clause 5 of the Framework Agreement.

77 It is apparent from the grounds of the order for reference that this question essentially concerns the condition, laid down in Article 5(4) of Presidential Decree No 81/2003, in its initial version, that fixed-term employment contracts can be regarded as successive only in so far as they are not separated by a period of time longer than 20 working days.

78 More specifically, the referring court asks whether so restrictive a definition of when employment relationships between the same employer and the same worker, under the same or similar terms of employment, are successive is such as to compromise the objective and the practical effect of the Framework Agreement, especially as fulfilment of the aforementioned condition constitutes a necessary requirement in order for such a worker to benefit from the conversion into a contract of indefinite duration, pursuant to Article 5(3) of that presidential decree, of fixed-term employment relationships exceeding a total of two years which have been renewed more than three times in the course of that period.

79 In order to rule on this question, it should be noted that the Framework Agreement, as stated in clauses 1(b) and 5(1) thereof, has the purpose of establishing a framework intended to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.

80 To this end, the Framework Agreement sets out, in particular in clause 5(1)(a) to (c), various measures intended to prevent such abuse, and the Member States are required to introduce at least one of those measures in their national law.

81 As to the remainder, clause 5(2) in principle leaves it to the Member States to determine the conditions under which fixed-term employment contracts or relationships are to be regarded, first, as successive and, second, as contracts or relationships of indefinite duration.

82 While such a reference back to national authorities for the purpose of establishing the specific rules for application of the terms 'successive' and 'of indefinite duration' within the meaning of the Framework Agreement may be explained by the concern to preserve the diversity of the relevant national rules, it is, however, to be remembered that the margin of appreciation thereby left for 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 (see paragraph 68 of this judgment). In particular, this discretion must not be exercised by national authorities in such a way as to lead to a situation liable to give rise to abuse and thus to thwart that objective.

83 Such an interpretation is especially vital in the case of a key concept, like the concept of 'successive' employment relationships, which is decisive for definition of the very scope of the national provisions intended to implement the Framework Agreement.

84 It is clear that 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.

85 As observed by the referring court and the Commission, and by the Advocate General in points 67 to 69 of her Opinion, 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.

86 Furthermore, a national rule of the type at issue in the main proceedings 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, largely negating the objective pursued by them, but also of permitting the misuse of such relationships by employers.

87 In the main proceedings, such a rule is even liable to result in yet more serious consequences for employees, given that it renders practically ineffective the national measure which the Greek authorities chose to adopt in order specifically to implement clause 5 of the Framework Agreement, a measure under which certain fixed-term employment contracts are presumed to have been concluded for an indefinite duration provided, in particular, that they are successive within the meaning of Presidential Decree No 81/2003.

88 It would thus be sufficient for the employer to allow a period of just 21 working days to elapse at the end of each fixed-term employment contract, before concluding another contract of the same nature, in order automatically to thwart the conversion of the successive contracts into a more stable employment relationship, irrespective of both the number of years for which the worker concerned has been taken on for the same job and the fact that those contracts cover needs which are not of limited duration but, on the contrary, 'fixed and permanent'. In those circumstances, the protection of workers against the misuse of fixed-term employment contracts or relationships, which constitutes the aim of clause 5 of the Framework Agreement, is called into question.

89 In light of the foregoing reasoning, the answer to the third question must be that clause 5 of the Framework Agreement is to be interpreted as precluding a national rule, such as that at issue in the main proceedings, 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.

Question 4

90 By its fourth question, the referring court essentially asks whether the Framework Agreement is to be interpreted as precluding the application of national legislation which, in the public sector, prohibits a succession of fixed-term employment contracts that have, in fact, been intended to cover 'fixed and permanent needs' of the employer from being converted into a contract of indefinite duration.

91 First, it should be noted that the Framework Agreement neither lays down a general obligation on the Member States to provide for the conversion of fixed-term employment contracts into contracts of indefinite duration nor prescribes the precise conditions under which fixed-term employment contracts may be used.

92 However, it requires the Member States to adopt at least one of the measures that are listed in clause 5(1)(a) to (c) of the Framework Agreement, which are intended to prevent in an effective manner the misuse of successive fixed-term employment contracts or relationships.

93 Furthermore, the Member States are required, within the bounds of the freedom left to them by the third paragraph of Article 249 EC, to choose the most appropriate forms and methods to ensure the effectiveness of directives, in the light of their objective (see Case 48/75 *Royer* [1976] ECR 497, paragraph 75, and Joined Cases C-58/95, C-75/95, C-112/95, C-119/95, C-123/95, C-135/95, C-140/95, C-141/95, C-154/95 and C-157/95 *Gallotti and Others* [1996] ECR I-4345, paragraph 14).

94 Thus, where, as in the present case, Community law does not lay down any specific sanctions should instances of abuse nevertheless be established, it is incumbent on the national authorities to adopt appropriate measures to deal with such a situation. Those measures must be not only proportionate, but also sufficiently effective and a sufficient deterrent to ensure that the provisions adopted pursuant to the Framework Agreement are fully effective.

95 While the detailed rules for implementing such provisions fall within the internal legal order of the Member States by virtue of the principle of procedural autonomy of the Member States, they must, however, not be less favourable than those governing similar domestic situations (principle of equivalence) or render

impossible in practice or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness) (see, inter alia, Case C-312/93 *Peterbroeck* [1995] ECR I-4599, paragraph 12, and the case-law cited).

96 Second, the following comments should be made regarding, more specifically, the context in which the fourth question has been asked.

97 It is apparent from the documents in the case which have been forwarded by the referring court that, while the Greek legislature chose to lay down, as a measure adopted to implement the Framework Agreement, that under certain conditions fixed-term employment contracts are to be converted into contracts of indefinite duration (see Article 5(3) of Presidential Decree No 81/2003), by virtue of Article 1 of Presidential Decree No 180/2004 the scope of that legislation was limited to fixed-term employment contracts of workers employed in the private sector.

98 In the case of the public sector, on the other hand, Article 21(2) of Law No 2190/1994 prohibits, absolutely and on pain of nullity, any reclassification as contracts of indefinite duration of fixed-term employment contracts covered by Article 21(1).

99 Next, it is apparent from the order for reference that, in practice, Article 21 of Law No 2190/1994 may well be used for improper purposes in that, instead of merely serving as a basis for the conclusion of fixed-term contracts intended to meet only temporary needs, it seems that it is used to conclude fixed-term contracts designed in actual fact to cover 'fixed and permanent needs'. The referring court has therefore already found in the grounds of its decision that the recourse, in the main proceedings, to Article 21 to serve as a basis for the conclusion of fixed-term employment contracts which are intended in reality to meet 'fixed and permanent needs' constitutes an abuse within the meaning of the Framework Agreement. It

thus merely asks whether, in a situation of that kind, the general prohibition laid down by that provision on converting such fixed-term contracts into contracts of indefinite duration compromises the objective and the practical effect of the Framework Agreement.

100 Finally, it has not been asserted before the Court that, in the public sector, Greek law included, at any rate until Presidential Decree No 164/2004 entered into force, any measure intended to prevent and to punish in an appropriate manner the misuse of successive fixed-term employment contracts.

101 As has already been stated in paragraphs 91 to 95 of this judgment, the Framework Agreement does not lay down a general obligation on the Member States to provide for the conversion of fixed-term employment contracts into contracts of indefinite duration, but clause 5(1) of the Framework Agreement does require effective and binding adoption of at least one of the measures listed in that provision that are designed to prevent the misuse of successive fixed-term contracts, if national law does not already include equivalent measures.

102 Furthermore, where such misuse has nevertheless taken place, a measure offering effective and equivalent guarantees for the protection of workers must be capable of being applied in order duly to punish that abuse and nullify the consequences of the breach of Community law. According to the very wording of the first paragraph of Article 2 of Directive 1999/70, the Member States must 'take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by [the] Directive'.

103 It is not for the Court to rule on the interpretation of domestic law, since that task falls exclusively to the referring court which must, in the present instance, determine whether the requirements recalled in the previous paragraph are met by the provisions of the relevant national legislation.

104 If that court were to find this not to be the case, it would be appropriate to conclude that the Framework Agreement precludes the application of that national legislation.

105 Accordingly, the answer to the fourth question must be that, in circumstances such as those of the main proceedings, the Framework Agreement 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, 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.

Question 1

106 Having regard to the answers given to the final three questions submitted by the referring court, from which it follows that, in circumstances such as those of the main proceedings, that court may, where relevant, be led to examine whether certain provisions of the pertinent national legislation are in conformity with the requirements of Directive 1999/70 and the Framework Agreement, a ruling should also be given on the first question.

107 As is apparent from the grounds of the order for reference, this question is essentially designed to determine — 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 time from which the national courts are required to interpret rules of domestic law in conformity with those provisions. Specifically, the

referring court is unsure whether the relevant point in time is the date on which the directive in question was published in the *Official Journal of the European Communities* and which corresponds to the date on which it entered into force for the Member States to which it was addressed, the date on which the period for transposing the directive expired or the date on which the national provisions implementing it entered into force.

108 When national courts apply domestic law, they are bound to interpret it, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive and consequently comply with the third paragraph of Article 249 EC (see, inter alia, Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835, paragraph 113, and the case-law cited). This obligation to interpret national law in conformity with Community law concerns all provisions of national law, whether adopted before or after the directive in question (see, inter alia, Case C-106/89 *Marleasing* [1990] ECR I-4135, paragraph 8, and *Pfeiffer and Others*, paragraph 115).

109 The requirement for national law to be interpreted in conformity with Community law is inherent in the system of the Treaty, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of Community law when they determine the disputes before them (see, inter alia, *Pfeiffer and Others*, paragraph 114).

110 It is true that the obligation on a national court to refer to the content of a directive when interpreting and applying the relevant rules of domestic law is limited by general principles of law, particularly those of legal certainty and non-retroactivity, and that obligation cannot serve as the basis for an interpretation of national law *contra legem* (see, by analogy, Case C-105/03 *Pupino* [2005] ECR I-5285, paragraphs 44 and 47).

111 Nevertheless, the principle that national law must be interpreted in conformity with Community law requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that the directive in question is fully effective and achieving an outcome consistent with the objective pursued by it (see *Pfeiffer and Others*, paragraphs 115, 116, 118 and 119).

112 In addition, if the result prescribed by a directive cannot be achieved by way of interpretation, it should also be borne in mind that, in accordance with the judgment in Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, at paragraph 39, Community law requires the Member States to make good damage caused to individuals through failure to transpose that directive, provided that three conditions are fulfilled. First, the purpose of the directive in question must be to grant rights to individuals. Second, it must be possible to identify the content of those rights on the basis of the provisions of the directive. Finally, there must be a causal link between the breach of the Member State's obligation and the damage suffered (see, to this effect, Case C-91/92 *Faccini Dori* [1994] ECR I-3325, paragraph 27).

113 With a view, more specifically, to determining the date from which national courts are to apply the principle that national law must be interpreted in conformity with Community law, it should be noted that that obligation, arising from the second paragraph of Article 10 EC, the third paragraph of Article 249 EC and the directive in question itself, has been imposed in particular where a provision of a directive lacks direct effect, be it that the relevant provision is not sufficiently clear, precise and unconditional to produce direct effect or that the dispute is exclusively between individuals.

114 Also, before the period for transposition of a directive has expired, Member States cannot be reproached for not having yet adopted measures implementing it in national law (see Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 43).

115 Accordingly, where a directive is transposed belatedly, the general obligation owed by national courts to interpret domestic law in conformity with the directive exists only once the period for its transposition has expired.

116 It necessarily follows from the foregoing that, where a directive is transposed belatedly, the date — envisaged by the referring court in Question 1(c) — on which the national implementing 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.

117 In addition, in light of the date envisaged in Question 1(a) and with a view to giving a complete ruling on the present question, it should be pointed out that it is already clear from the Court's case-law that the obligation on Member States, under the second paragraph of Article 10 EC, the third paragraph of Article 249 EC and the directive in question itself, to take all the measures necessary to achieve the result prescribed by the directive is binding on all national authorities, including, for matters within their jurisdiction, the courts (see, inter alia, *Inter-Environnement Wallonie*, paragraph 40, and *Pfeiffer and Others*, paragraph 110, and the case-law cited).

118 Also, directives are either (i) published in the *Official Journal of the European Communities* in accordance with Article 254(1) EC and, in that case, enter into force on the date specified in them or, in the absence thereof, on the 20th day following that of their publication, or (ii) notified to those to whom they are addressed, in which case they take effect upon such notification, in accordance with Article 254(3) EC.

119 It follows that a directive produces legal effects for a Member State to which it is addressed — and, therefore, for all the national authorities — following its publication or from the date of its notification, as the case may be.

120 In the present instance, Directive 1999/70 states, in Article 3, that it was to enter into force on the day of its publication in the *Official Journal of the European Communities*, namely 10 July 1999.

121 In accordance with the Court's settled case-law, it follows from the second paragraph of Article 10 EC in conjunction with the third paragraph of Article 249 EC and the directive in question itself that, during the period prescribed for transposition of a directive, the Member States to which it is addressed must refrain from taking any measures liable seriously to compromise the attainment of the result prescribed by it (*Inter-Environnement Wallonie*, paragraph 45; Case C-14/02 *ATRAL* [2003] ECR I-4431, paragraph 58; and *Mangold*, paragraph 67). In this connection it is immaterial whether or not the provision of national law at issue which has been adopted after the directive in question entered into force is concerned with the transposition of the directive (*ATRAL*, paragraph 59 and *Mangold*, paragraph 68).

122 Given that all the authorities of the Member States are subject to the obligation to ensure that provisions of Community law take full effect (see *Francovich and Others*, paragraph 32; Case C-453/00 *Kühne & Heitz* [2004] ECR I-837, paragraph 20; and *Pfeiffer and Others*, paragraph 111), the obligation to refrain from taking measures, as set out in the previous paragraph, applies just as much to national courts.

123 It follows 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.

124 In light of the foregoing reasoning, the answer to the first question must be 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.

Costs

125 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Clause 5(1)(a) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, 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.**

2. **Clause 5 of the framework agreement on fixed-term work is to be interpreted as precluding a national rule, such as that at issue in the main proceedings, 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.**

3. **In circumstances such as those of the main proceedings, the framework agreement on fixed-term work 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.**

4. **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.**

[Signatures]