Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

11 February 2021 * [i]

(Reference for a preliminary ruling – Social policy – Directive 1999/70/EC – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clause 5 – Measures to prevent abuse arising from the use of successive fixed-term employment contracts or relationships – Fixed-term employment contracts in the public sector – Successive contracts or extended initial contract – Equivalent legal measure– Absolute constitutional prohibition on the conversion of fixed-term employment contracts to contracts of indefinite duration – Obligation to interpret in conformity with EU law)

In Case C-760/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Monomeles Protodikeio Lasithiou (Court of first instance (single judge) of Lasithi, Greece), made by decision of 4 December 2018, received at the Court on 4 December 2018, in the proceedings

M.V. and Others

v

Organismos Topikis Aftodioikisis (OTA) 'Dimos Agiou Nikolaou'

THE COURT (Seventh Chamber),

composed of A. Kumin (Rapporteur), President of the Chamber, T. von Danwitz and P.G. Xuereb, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– M.V. and Others, by E. Chafnavi, dikigoros,

– the Organismos Topikis Aftodioikisis (OTA) 'Dimos Agiou Nikolaou', by K. Zacharaki, dikigoros,

* Language of the case: Greek.

– the Greek Government, by E.-M. Mamouna, E. Tsaousi, and K. Georgiadis, acting as Agents,

– the European Commission, initially by A. Bouchagiar and M. van Beek, and subsequently by A. Bouchagiar, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Clause 1 and Clause 5(2) 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 employment concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

2 The request has been made in proceedings between, on the one hand, M.V. and other workers, and, on the other, their employer, the Organismos Topikis Aftodioikisis (OTA) 'Dimos Agiou Nikolaou' (the administrative authority of the territory of the municipality of Agios Nikolaos, Greece) ('the municipality of Agios Nikolaos) concerning the legal classification of their employment relationships, in so far as they are employed by the cleansing department of that municipality, for a fixed term.

Legal context

European Union law

3 Clause 1 of the framework agreement provides that its purpose:

'… is to:

(a) improve the quality of fixed-term employment 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.'

4 Clause 3 of the framework agreement, headed 'Definitions', provides:

'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.

…'

5 Clause 5 of the framework agreement, headed 'Measures to prevent abuse', provides:

'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.'

6 Clause 8 of the framework agreement, headed 'Provisions on implementation', provides:

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

…'

Greek law

Provisions of the Greek Constitution

7 In 2001 paragraphs 7 and 8 were added to Article 103 of the Greek Constitution, worded as follows:

'7. The engagement of employees in the public administration and in the wider public sector … shall take place either by competitive entry examination or by selection on the basis of predefined and objective criteria, and shall be subject to review by an independent authority, as specified by legislation. …

8. The legislation shall specify the conditions and duration of private law employment relationships in the public administration and in the wider public sector, as this defined in each case, in order to fill either permanent posts other than those provided for in the first section of paragraph 3, or posts to meet temporary, unforeseen or urgent needs, within the meaning of the second section of paragraph 2. The legislation shall also specify the duties that may be undertaken by the staff mentioned in the preceding sentence. Conversion by legislation of staff covered by the first section to permanent civil servants or conversion of their contracts into contracts of indefinite duration is prohibited. The prohibitions of the present paragraph shall also apply to those employed on the basis of a contract for performance of a specific task.'

Statutory provisions

8 Article 8(1) and (3) of Law 2112/1920 on compulsory termination of contracts of employment of employees in the private sector (FEK A' 67/18.3.1920), which establishes provisions to protect workers in relation to the termination of private law employment contracts of indefinite duration, provides:

'1. Any contract that is contrary to this law shall be null and void, unless it is more favourable to the employee. …

…

3. The provisions of this law shall apply likewise to fixed-term contracts of employment if the term set is not warranted by the nature of the contract and was set deliberately in order to circumvent the provisions of this law governing the compulsory notice of termination of a contract of employment.'

9 It is apparent from the documents before the Court that Article 8(3) of Law 2112/1920, read together, in particular Articles 281 and 671 of the Civil Code, and with the general principles of the Greek Constitution, in particular Article 25(1) and (3) thereof, was applied over the years by the Greek courts in order to determine the correct legal classification of employment relationships, and those courts, on the basis of Article 8(3), held that contracts which purported to be fixed-term contracts, but which, in reality, were intended, by means of their renewal, to meet fixed and permanent needs of the employer, should be legally classified as 'contracts of indefinite duration'.

10 The referring court states that, following the revision of the Greek Constitution, the Greek courts no longer converted, on the basis of Article 8(3) of Law 2112/1920, the fixed-term employment contracts entered into by employers in the public sector into contracts of indefinite duration. The Greek courts considered that such conversion was in breach of the prohibition, laid down in Article 103 of the Greek Constitution, as revised, on the conversion of staff in the public sector to permanent civil servants, even where a fixed-term contract covered fixed and permanent needs of the employer.

The provisions relating to the renewal of the fixed-term contracts of staff in the cleansing services of territorial municipalities

11 In accordance with Article 205(1) of the Kodikas Katastasis Dimotikon kai Koinotikon Ypallilon (the Local Authority Employment Code), the local and regional authorities may enter into private law fixed-term employment contracts to deal with seasonal needs or other periodic or one-off needs.

12 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 one-off 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.'

13 Article 167 of Law 4099/2012 (FEK A' 250/20.12.2012), in the version applicable to the dispute in the main proceedings, provides:

'In derogation from any other provision, individual contracts currently in force and individual contracts which expired up to ninety (90) days before the entry into force of the present Law which relate to the cleansing of the premises of: public services; independent authorities; legal persons governed by public law; legal persons governed by private law, and local and regional authorities, entered into by any local or regional authority department responsible for cleansing, with the task of meeting the cleansing needs of other local or regional authority departments, shall be automatically extended until 31 December 2017. That extension shall not apply to the individual contracts entered into in order to meet urgent, seasonal or one-off needs in relation to cleansing, where the duration of such contracts does not exceed two months within a 12 month period and where such contracts have been entered into after 1 January 2016.'

14 Article 76 of Law 4386/2016 (FEK A' 83/11.5.2016) added after the first subparagraph of Article 167(1) of Law 4099/2012, in the version then in force, a subparagraph providing that the automatic renewal, until 31 December 2016, of individual employment contracts specified in the precedent subparagraph was also applicable, as from the entry into force of Law 4325/2015 (that is, from 11 May 2015), to the contracts of staff engaged, in order to meet urgent, seasonal or one-off needs in relation to cleansing, by means of fixed-term employment contracts the term of which could not exceed two months in any 12 month period.

Regulatory provisions

15 Article 2(1) of 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 into Greek law applicable to staff employed by the State and in the public sector in the broad sense, provides:

'The provisions of this decree shall apply to staff in the public sector … and to the staff of municipal undertakings who work under a fixed-term employment contract or relationship, or under a contract for work or other contract or relationship concealing a relationship between employer and employee. …'

16 Article 4 of that Presidential Decree provides:

'1. As regards terms and conditions of employment, workers employed for a fixed period shall not be regarded as treated unfavourably by comparison with workers employed for an indefinite period on the sole ground that their contract is concluded for a fixed period. Exceptionally, different treatment is permitted where justified by objective reasons.

2. Criteria for length of service qualification relating to particular conditions of employment shall be the same for fixed-term workers as for permanent workers except where different length of service qualification criteria are justified on objective grounds.'

17 Article 5 of that Presidential Decree, headed 'Successive Contracts', provides:

'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 or indirectly related to the form, the type or the activity of the undertaking.

3. Successive contracts shall be concluded in writing and the reasons justifying their conclusion shall be expressly stated in the contract, unless they are directly apparent from it. By way of exception, the written form shall not be required if the renewed contract has a term of no more than one month, owing to the seasonal nature of the employment, unless the written form is expressly provided for under another provision. The worker shall be provided with a copy of the contract within five working days of the commencement of employment.

4. The number of successive contracts shall not, in any circumstances, be greater than three, subject to the provisions of paragraph 2 of the following article.'

18 Article 6 of that Presidential Decree, which concerns the maximum duration of fixed-term contracts, provides:

'1. Successive contracts concluded between and performed by the same employer and the same worker in the same or similar professional activity and under the same or similar terms and conditions of employment may not exceed an overall period of employment of 24 months, irrespective of whether they are concluded in application of the previous article or in application of other provisions of current legislation.

2. An overall period of employment exceeding 24 months shall only be permitted in the case of workers engaged in the special categories of work provided for under current legislation such as, in particular, senior managerial staff, workers recruited for a specific research programme or any subsidised or financed programme, and workers recruited in order to perform work required in order to honour obligations pursuant to contracts with international organisations.'

19 Article 7 of Presidential Decree 164/2004, headed 'Penalties for infringements', states:

'1. Any contract concluded in breach of the provisions of Articles 5 and 6 of this decree shall automatically be invalid.

2. If all or part of the invalid contract has been performed, the worker shall be paid the sums of money owing on the basis thereof and any monies paid may not be recovered. The worker shall be entitled for the period over which the invalid contract was performed to compensation equal to the sum to which an equivalent worker under a contract of indefinite duration would be entitled on termination of his contract. If there were several invalid contracts, compensation

shall be calculated on the basis of the total period of employment under the invalid contracts. Sums of money paid by the employer to the worker shall be charged to the culpable party.

3. The penalty for any person who infringes the provisions of Articles 5 and 6 of this decree shall be imprisonment … Where the offence was committed through negligence, the perpetrator shall be subject to imprisonment of not more than one year. The same infringement shall also constitute evidence of a serious disciplinary offence.'

20 Under Article 10 of that Presidential Decree, the decree is without prejudice to provisions which may be more favourable to workers as a whole and to workers with a disability.

The dispute in the main proceedings and the questions referred for a preliminary ruling

21 In 2015 M.V. and others were engaged as employees of the municipality of Agios Nikolaos, within its cleansing departments, by means of private law fixed-term employment contracts, in order to fill full-time posts, their monthly pay being set in accordance with the statutory scale.

22 Those contracts were initially concluded for a period of eight months, but were renewed until 31 December 2017, with retroactive effect and without any interruption, by various legislative measures – which the referring court has listed in paragraphs 15 to 22 of its request for a preliminary ruling – the overall duration of the respective contracts varying between 24 and 29 months. The municipality of Agios Nikolaos ultimately terminated those contracts on 31 December 2017. It appears, further, from the request for a preliminary ruling that those extensions took place without any prior assessment of whether the seasonal, periodic or one-off needs that, as the case may be, justified the initial conclusion of those contracts continued to exist.

23 The applicants in the main proceedings considered that their situation constitutes an abuse arising from the use of successive fixed-term contracts and that such use is therefore contrary to the objective and purpose of the framework agreement, and made an application to the Monomeles Protodikeio Lasithiou (Court of First Instance (single judge) of Lasithi, Greece), asking that court, first, to declare that they continue to have an employment relationship with the municipality of Agios Nikolaos on the basis of an employment contract of indefinite duration and that termination of their employment contracts with effect from 31 December 2017 is null and void, and, second, to order that municipality, on pain of financial penalty, to employ them on the basis of employment contracts of indefinite duration.

24 The referring court states, first, that Directive 1999/70 was transposed into Greek law, with respect to staff in the public sector such as the applicants in the main proceedings, by Presidential Decree 164/2004, which provides for measures designed to prevent the abuse of successive fixed-term employment contracts or relationships.

25 Further, that court notes that Law 2112/1920 is still applicable, in that Article 8(1) and (3) provides that a fixed-term contract is null and void if its term is not justified by the nature of the contract, but has been deliberately fixed with the aim of circumventing the provisions relating to the obligatory termination of the employment contract.

26 The referring court emphasises that, by way of exception, the conclusion of successive fixed-term contracts is, under Greek law, lawful, subject to certain conditions. In that regard, that court states that Article 5 of Presidential Decree 164/2004 provides, inter alia, that the conclusion of that type

of contract is possible when it is justified by an objective reason and when it satisfies other conditions, such as the conclusion in writing of a new employment contract, and provided that there are no more than a maximum number of three extensions. 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 or indirectly related to the form, the type or the activity of the undertaking.

27 That court adds, however, that, after the entry into force of Directive 1999/70, but prior to the expiry to the prescribed time limit for the transposition of that directive into Greek law, the amendment of Article 103 of the Greek Constitution, which occurred in 2001, introduced, in Article 103(8), a prohibition on the conversion of fixed-term contracts of staff in the public sector to contracts of indefinite duration. The referring court observes, in that regard, that while the national courts were applying Law 2112/1920 as an 'equivalent legal measure', within the meaning of Clause 5(1) of the framework agreement, in order to reclassify fixed-term employment contracts as contracts of indefinite duration, the fact that the Greek Constitution has been revised now means that the application of those protective provisions is impossible.

28 In addition, the referring court draws attention to a decision of the Elegktiko Synedrio (Court of Auditors, Greece), where it has recently been held that such an extension of private law employment contracts is contrary to Directive 1999/70, as transposed into domestic law by Presidential Decree 164/2004. Such extensions lead to an unacceptable succession of contracts concluded and performed by the same employer and the same worker for the same type of task and under the same terms and conditions of work, in the absence of any objective and transparent criteria to determine whether the renewal of such contracts does in fact meet a genuine need, is capable of achieving the objective pursued and is necessary to that end, taking into consideration, inter alia, the fact that it involves a real risk of improper use of that type of contract.

29 In those circumstances, the referring court expresses, in particular, doubts as to the compatibility of the national legislation at issue in the main proceedings, which transposes the framework agreement, with that framework agreement, in so far as that legislation is to be interpreted as meaning that the automatic extensions of employment contracts at issue cannot be defined as 'successive fixed-term employment contracts', where no new fixed-term employment contract is concluded in writing, but rather the term of a pre-existing employment contract is extended.

30 Moreover, the referring court considers that the fixed-term employment contracts concluded with the applicants in the main proceedings are manifestly contrary to the set of measures to prevent abuse arising from the use of successive fixed-term employment contracts or relationships, provided for in Articles 5 and 6 of Presidential Decree 164/2004, as required by Clause 5(1) of the framework agreement. In that regard, that court submits, in particular, that there was no interruption between the various renewals of contracts and that no objective reasons justified them. Further, that court draws attention to the multiple interventions of the Greek legislature, the consequence being that, first, the maximum number of contract renewals, limited to three, and, second, the maximum 24 months duration of those renewals, imposed by Presidential Decree 164/2004, have been exceeded.

31 According to the findings of the referring court, the effect of Article 167 of Law 4099/2012, in the version applicable to the dispute in the main proceedings, was to permit the automatic extension of the fixed-term employment contracts at issue, by means of a mere declaration issued by each

employing authority, in the absence of any other procedure or any decision of any management body of that authority, and without there first having been an assessment made of whether the needs that had initially necessitated those contracts continued to exist.

32 The referring court states that, even in the event that fixed-term employment contracts in the cleansing sector were initially concluded for a term of eight months, on the basis of Article 205 of the Local Authority Employment Code, regardless of the fixed and permanent needs of the local and regional authorities, their extension until 31 December 2017, by means of legislative measures that had retroactive effect and were applicable exclusively to those contracts, demonstrates that the needs covered by those contracts cannot be regarded as one-off, seasonal or periodic.

33 Further, the referring court states that the Greek legislature has adopted a number of additional provisions ensuring, inter alia, that legitimacy is conferred on the public expenditure arising from the employment of workers in the cleansing services of local and regional authorities for the entire duration of the renewal of their employment contracts effected under Article 167 of Law 4099/2012, so that that expenditure, normally unlawful, has a legitimate object. By means of such action, the Greek legislature has, according to that court, prevented the workers concerned from receiving the compensation provided for in Article 7 of Presidential Decree 164/2004, since that provision lays down the condition that the employment contract must be null and void because of a breach of Articles 5 and 6 of that decree. In parallel, it has been decided, according to that court, that the penalties specified in Article 7 of Presidential Decree 164/2004 were not applicable to the local and regional authorities which employed staff in the cleansing sector, on the basis of the abovementioned fixed-term employment contracts, as extended on several occasions until the end of 2017. Further, by virtue of another statutory provision, the extension of those fixed-term employment contracts concluded by the local and regional authorities has not been taken into consideration in the calculation of the maximum duration of 24 months specified in Articles 5 to 7 of Presidential Decree 164/2004.

34 In those circumstances, the Monomeles Protodikeio Lasithiou (Court of First Instance (single judge) of Lasithi) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Would an interpretation of the provisions of national law enacted for the purpose of transposing into national law the framework agreement … that excluded the automatic extension of fixed-term employment contracts of local authority cleansing department workers from the definition of “successive” fixed-term employment contracts within the meaning of Clauses 1 and 5(2) of that framework agreement, pursuant to an express legislative provision of national law such as that enacted in Article 167 of Law 4099/2012, on the ground that it involves the extension of an existing employment contract rather than the conclusion in writing of a new fixed-term employment contract, undermine the purpose and the practical effect of that framework agreement?

(2) Where a practice is enacted and applied for the employment of local authority cleansing department workers that is contrary to the measures, to prevent the abuse that may arise from the use of successive fixed-term employment contracts, provided for under the measure harmonising national legislation with Clause 5(1) of the framework agreement, would the obligation incumbent upon a national court to interpret national law in conformity with EU law extend to the application of a provision of national law, such as Article 8(3) of Law 2112/1920, as a pre-existing and still applicable equivalent legal measure,

within the meaning of Clause 5(1) of the framework agreement, that would allow the correct legal classification of successive fixed-term employment contracts used to cover the fixed and permanent needs of local authority cleansing departments as employment contracts of indefinite duration?

(3) If the answer to the previous question is in the affirmative, would a provision of constitutional status such as that set out in Article 103(7) and (8) of the Greek Constitution, as revised in 2001, absolutely prohibiting the public sector from converting fixed-term employment contracts, concluded when the above provision was applicable, to contracts of indefinite duration, constitute an excessive restriction upon the obligation to interpret national law in conformity with EU law, by making it impossible to apply a pre-existing equivalent and still applicable legal measure of national law within the meaning of Clause 5(1) of the framework agreement, such as Article 8(3) of Law 2112/1920, and by preventing the possibility of successive fixed-term employment contracts used to cover the fixed and permanent needs of local authority cleansing departments from being re-classified as contracts of indefinite duration following a correct classification of the lawful relationship during court proceedings, even if they cover fixed and permanent needs?'

Consideration of the questions referred

The first question

35 By its first question, the referring court seeks, in essence, to ascertain whether Clause 1 and Clause 5(2) of the framework agreement must be interpreted as meaning that the expression 'successive fixed-term employment contracts' therein also covers the automatic extension of the fixed-term employment contracts of workers in the cleansing sector of local and regional authorities, which has taken place in accordance with express provisions of national law, notwithstanding the fact that the generally prescribed formal requirement that successive contracts be concluded in writing has been disregarded.

36 In that regard, it should be borne in mind that the purpose of Clause 5(1) of the framework agreement is to implement one of the objectives of that agreement, namely to place limits on successive recourse to fixed-term employment contracts or relationships, regarded as a potential source of abuse to the detriment of workers, by laying down as a minimum a number of protective provisions designed to ensure that the status of employees is not made insecure (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219 paragraph 53 and the case-law cited).

37 Accordingly, Clause 5(1) of the framework agreement requires, with a view to preventing abuse of successive fixed-term employment contracts or relationships, the effective and binding adoption by Member States of at least one of the measures listed in that provision, where their domestic law does not already include equivalent legal measures (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 55 and the case-law cited).

38 It is clear however from the wording of that clause of the framework agreement and from settled case-law that that clause is applicable solely when there are successive fixed-term employment contracts or relationships (judgments of 22 January 2020, *Baldonedo Martín*, C-177/18, EU:C:2020:26, paragraph 70, and of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 56 and the case-law cited), so that a contract which is

the very first or only fixed-term employment contract does not fall within the scope of Clause 5(1) of the framework agreement (see, to that effect, judgment of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 90 and the case-law cited).

39 In this instance, however, there is not, *stricto sensu*, a succession of two or more employment contracts, involving the existence and formal conclusion of two or more separate contracts, each one succeeding the other. More accurately, what we have here is the automatic extension of an initial fixed-term contract, as a result of legislative measures. What therefore has to be examined is whether that situation falls within the scope of the concept of 'successive fixed-term employment contracts or relationships' in Clause 5(1) of the framework agreement.

40 In that regard, in accordance with settled case-law, Clause 5(2)(a) of the framework agreement provides that it is, as a general rule, the task of the Member States and/or the social partners to determine under what conditions fixed-term employment contracts or relationships are to be regarded as 'successive' (see, to that effect, judgments of 22 January 2020, *Baldonedo Martín*, C-177/18, EU:C:2020:26, paragraph 71, and of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 57).

41 While the reason for such a reference back to national authorities for the purpose of establishing the specific rules for application of the term 'successive' within the meaning of the framework agreement is the concern to preserve the diversity of the relevant national rules, it is, however, to be remembered that the margin of appreciation thereby left to 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. 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 (judgments of 4 July 2006, *Adeneler and Others*, C-212/04, EU:C:2006:443, paragraph 82, and of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 58).

42 Member States are required to guarantee the result imposed by EU law, as imposed not only by the third paragraph of Article 288 TFEU, but also by the first paragraph of Article 2 of Directive 1999/70, read in the light of recital 17 of that directive (see, to that effect, judgments of 4 July 2006, *Adeneler and Others*, C-212/04, EU:C:2006:443, paragraph 68, and of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 59).

43 The limits on the discretion left to the Member States, mentioned in paragraph 41 of the present judgment, are most particularly necessary in respect of a key concept, such as whether employment relationships are successive, which is determinative of the definition of the very scope of the provisions of national law designed to implement the framework agreement (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 60).

44 If it were to be held that there are no successive fixed-term employment relationships, within the meaning of Clause 5 of the framework agreement, on the sole ground that the first fixed-term employment contract of the workers in the cleansing sector of local and regional authorities at issue in the main proceedings had been extended automatically by means of legislative measures, without any formal conclusion in writing of one or more new fixed-term employment contracts, that would be liable to jeopardise the object, the purpose and the effectiveness of the framework agreement.

45 Such a restrictive interpretation of the concept of 'successive fixed-term employment relationships' would allow insecure employment of workers over a period of years (judgments of 4 July 2006, *Adeneler and Others*, C-212/04, EU:C:2006:443, paragraph 85, and of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 62).

46 Further, that restrictive interpretation would be liable to have the effect not only that, in reality, a large number of fixed-term employment relationships would not qualify for the protection of workers sought by Directive 1999/70 and the framework agreement, because the objective pursued by that directive and that agreement would lose a large part of its substance, but also that the abuse of such relationships by employers in order to meet permanent and long-term staffing needs would be permitted (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 63).

47 In that context, it is also clear that the concept of the 'term' of the employment relationship is an essential constituent of any fixed-term contract. In the wording of Clause 3(1) of the framework agreement, 'the end of the contract or of the employment relationship is determined by objective conditions such as reaching a specific date, completing a specific task or the occurrence of a specific event'. The alteration of the date for the end of a fixed-term employment contract constitutes accordingly a change in the essence of that contract, which may legitimately be treated as equivalent to the conclusion of a new fixed-term employment relationship that succeeds the preceding employment relationship, and accordingly falls within the scope of Clause 5 of the framework agreement.

48 As can be seen from the second paragraph of the preamble to the framework agreement and from paragraphs 6 and 8 of its general considerations, the benefit of stable employment is viewed as a major element in the protection of workers, while it is only in certain circumstances that fixed-term employment contracts are liable to respond to the needs of both employers and workers (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, paragraph 54 and the case-law cited).

49 In that context, the fact that the extension or the renewal of the employment contracts is the result of legislative measures enacted by the Greek Parliament is of no relevance. It is clear that the effectiveness of the framework agreement would be jeopardised by an interpretation permitting the unilateral extension of the term of a fixed-term employment contract by means of legislative intervention.

50 In that regard, it must further be noted that the Court has held that a provision of national law which does no more than authorise, in a general and abstract manner, by a rule of statute or secondary legislation, the use of successive fixed-term employment contracts is not compatible with the requirements of Clause 5(1) of the framework agreement. Such a purely formal provision 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 capable of achieving the objective pursued and is necessary for that purpose. Such a provision therefore 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 (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraphs 67 and 68 and the case-law cited).

51 In this instance, since the automatic extension by means of legislation may be treated as the equivalent of renewal and, therefore, as the conclusion of a separate fixed-term contract, contracts such as those at issue in the main proceedings may indeed be classified as 'successive' within the meaning of Clause 5 of the framework agreement. That finding is corroborated by the fact that in the main proceedings, first, there is no indication of any interruption between the first employment contract and the employment contracts which followed on the basis of the automatic extensions prescribed by legislative measures, and, second, each of the applicants continued to work, without interruption, for his or her respective employer, doing the same type of work and subject to the same conditions of work, with the exception of the condition relating to the term of the employment relationship.

52 In the light of the foregoing, the answer to the first question is that Clause 1 and Clause 5(2) of the framework agreement must be interpreted as meaning that the expression 'successive fixed-term employment contracts' therein also covers the automatic extension of the fixed-term employment contracts of workers in the cleansing sector of local and regional authorities, which has taken place in accordance with express provisions of national law, notwithstanding the fact that the generally prescribed formal requirement that successive contracts be concluded in writing has been disregarded.

The second and third questions

53 By its second and third questions, which can be examined together, the referring court seeks, in essence, to ascertain whether, if the answer to the first question is in the affirmative, Clause 5(1) of the framework agreement must be interpreted as meaning that, where an abuse of successive fixed-term employment contracts, within the meaning of that provision, has occurred, the obligation incumbent on the referring court to undertake, so far as possible, an interpretation and an application of all the relevant provisions of domestic law capable of duly penalising that abuse and of eliminating the consequences of the infringement of EU law, extends to the application of a provision of national law that permits the conversion of the succession of fixed-term contracts to one employment contract of indefinite duration, even though another provision of national law, of a higher rank in the hierarchy of legal rules as a provision of the Greek constitution, absolutely prohibits, in the public sector, such a conversion.

54 In that regard, it must be recalled, as a preliminary point, that Clause 5(1) of the framework agreement requires Member States, in order to prevent the abuse of successive fixed-term employment contracts or relationships, to adopt one or more of the measures listed in a manner that is effective and binding, where domestic law does not include equivalent legal measures. The measures listed in Clause 5(1)(a) to (c), of which there are three, relate, respectively, to objective reasons justifying the renewal of such employment contracts or relationships, the maximum total duration of those employment contracts or relationships, and the number of renewals of such contracts or relationships (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 83 and the case-law cited).

55 The Member States enjoy a certain discretion in that regard since they have the choice of relying on one or more of the measures listed in Clause 5(1)(a) to (c) of the framework agreement, or on existing equivalent legal measures, while taking account of the needs of specific sectors and/or categories of workers (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 84 and the case-law cited).

56 In that way, Clause 5(1) of the framework agreement assigns to the Member States a general objective of preventing such abuse, while leaving to them the choice as to how to achieve it, provided that they do not compromise the objective or the practical effect of the framework agreement (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 85 and the case-law cited).

57 Clause 5 of the framework agreement does not lay down any specific penalties where instances of abuse have been established. In that case, it is incumbent on the national authorities to adopt measures that are not only proportionate, but also are sufficiently effective and act as sufficient deterrent to ensure that the measures taken pursuant to the framework agreement are fully effective (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 86 and the case-law cited).

58 Accordingly, 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. The domestic law of the Member State concerned must nonetheless contain another measure that is effective to prevent and, where relevant, penalise the abuse of successive fixed-term employment contracts (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 87 and the case-law cited).

59 Where the improper use of successive fixed-term employment contracts or relationships has taken place, a measure offering effective and equivalent safeguards for the protection of workers must be capable of being applied in order duly to penalise that abuse and to nullify the consequences of the breach of EU law. According to the very wording of the first paragraph of Article 2 of Directive 1999/70, Member States must 'take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by [that] directive' (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 88 and the case-law cited).

60 It should be borne in mind, moreover, that it is not for the Court to give a ruling on the interpretation of provisions of national law, that being exclusively for the national courts which have jurisdiction, which must determine whether the requirements set out in Clause 5 of the framework agreement are met by the provisions of the applicable national legislation (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 89 and the case-law cited).

61 It is therefore, in this instance, for the referring court to determine to what extent the conditions for application and effective implementation of the relevant provisions of domestic law constitute a measure that is adequate to prevent and, where relevant, penalise the abuse of successive fixed-term employment contracts or relationships (see, by analogy, judgment of 21 November 2018, *de Diego Porras*, C-619/17, EU:C:2018:936, paragraph 90 and the case-law cited).

62 The Court, when giving a preliminary ruling, may, nonetheless, offer clarification to guide that court in its findings (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 91 and the case-law cited).

63 In that regard, it must be noted that the Court has previously held that the re-classification of fixed-term employment contracts as contracts of indefinite duration, under Article 8(3) of Law 2112/1920, could – in so far as that provision remains applicable within the Greek legal order,

which is a matter for the referring court to determine – constitute a measure offering effective and equivalent protection of workers capable of duly penalising any abuse of fixed-term employment contracts and of nullifying the consequences of the breach of EU law (see, to that effect, order of 24 April 2009, *Koukou*, C-519/08, not published, EU:C:2009:269, paragraph 79 and the case-law cited).

64 It should, further, be borne in mind that the Court has held that Clause 5(1) of the framework agreement does not appear, so far as its subject matter is concerned, to be unconditional and sufficiently precise for individuals to be able to rely upon it before a national court. Under Clause 5(1), it is left to the discretion of the Member States to have recourse, for the purposes of preventing the abuse of fixed-term employment contracts, to one or more of the measures listed in that clause, or even to existing equivalent legal measures, while taking account of the needs of specific sectors and/or categories of workers. In addition, it is not possible to make an adequate determination of the minimum protection which should, in any event, be implemented pursuant to Clause 5(1) of the framework agreement (judgment of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 196).

65 However, it follows from settled case-law that, when national courts apply domestic law, they are bound to interpret it, to the fullest extent 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 288 TFEU. That obligation to interpret national law in conformity with EU law concerns all provisions of national law, whether adopted before or after the directive in question (judgment of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 197).

66 The requirement for national law to be interpreted in conformity with EU law is inherent in the system of the FEU Treaty, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they determine the disputes before them (judgment of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 198).

67 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 that is *contra legem* (judgment of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 199).

68 Nevertheless, the principle that national law must be interpreted in conformity with EU 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 that directive (judgment of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 200).

69 In this instance, it is therefore for the referring court, to the fullest extent possible, where abuse of successive fixed-term employment contracts has occurred, to interpret and apply the relevant provisions of national law in such a way that it is possible duly to penalise the abuse and to nullify the consequences of the breach of EU law. In that context, it is for that court to assess whether the

provisions of Article 8(3) of Law 2112/1920 may, if appropriate, be applied for the purposes of that interpretation in conformity with EU law (judgment of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 203).

70 In the event that the national court were to arrive at the conclusion that the conversion of fixed-term employment contracts into contracts of indefinite duration, under Article 8(3) of Law 2112/1920, was not possible, since that would amount to an interpretation *contra legem* of Article 103(7) and (8) of the Greek Constitution, that court should ascertain whether there are other effective measures for that purpose under Greek law. In that regard, it must be added that such measures must be sufficiently effective and act as sufficient deterrent to guarantee the full effectiveness of the legal provisions adopted to implement the framework agreement, namely, in this instance, Articles 5 and 6 of Presidential Decree 164/2004, which transposed Clause 5(1) of the framework agreement into the Greek legal order.

71 As regards the relevance, in that regard, of the fact that Article 103(8) of the Greek Constitution was amended, after the entry into force of Directive 1999/70 and before the time limit for transposing it had elapsed, so as to impose an absolute prohibition on the conversion of fixed-term employment contracts into contracts of indefinite duration in the public sector, it is sufficient to note 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 (judgment of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 204 and the case-law cited).

72 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.

73 In accordance with settled case-law, during the period for transposition of a directive, the Member States to which it is addressed must refrain from taking any measures liable seriously to compromise the achievement of the result prescribed by that directive (judgment of 13 November 2019, *Lietuvos Respublikos Seimo narių grupė*, C-2/18, EU:C:2019:962, paragraph 55 and the case-law cited). It is of little moment, in that regard, whether the provision of national law at issue, adopted after the entry into force of the directive concerned, does or does not concern the transposition of that directive (judgment of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 206 and the case-law cited).

74 It follows that all the authorities of the Member States are subject to the obligation to ensure that the provisions of EU law take full effect, and that applies also when those authorities amend their Constitution (judgment of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 207 and the case-law cited).

75 In the light of the foregoing, the answer to the second and third questions is that Clause 5(1) of the framework agreement must be interpreted as meaning that, where abuse of successive fixed-term employment contracts, within the meaning of that provision, has occurred, the obligation incumbent on the referring court to undertake, to the fullest extent possible, an interpretation and an application of all the relevant provisions of domestic law capable of duly penalising that abuse and of nullifying the consequences of the breach of EU law extends to an assessment of whether the provisions of earlier national legislation, which remain in force, and which permit the conversion of a succession of fixed-term contracts to one employment contract of indefinite

duration, may, where appropriate, be applied for the purposes of that interpretation in conformity with EU law, even though national constitutional provisions impose an absolute prohibition, in the public sector, on such conversion.

Costs

76 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 (Seventh Chamber) hereby rules:

1. **Clause 1 and Clause 5(2) 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, must be interpreted as meaning that the expression 'successive fixed-term employment contracts' therein also covers the automatic extension of the fixed-term employment contracts of workers in the cleansing sector of local and regional authorities, which has taken place in accordance with express provisions of national law, notwithstanding the fact that the generally prescribed formal requirement that successive contracts be concluded in writing has been disregarded.**

2. **Clause 5(1) of the framework agreement on fixed-term work must be interpreted as meaning that, where abuse of successive fixed-term employment contracts, within the meaning of that provision, has occurred, the obligation incumbent on the referring court to undertake, to the fullest extent possible, an interpretation and an application of all the relevant provisions of domestic law capable of duly penalising that abuse and of nullifying the consequences of the breach of EU law extends to an assessment of whether the provisions of earlier national legislation, which remain in force, and which permit the conversion of a succession of fixed-term contracts to one employment contract of indefinite duration, may, where appropriate, be applied for the purposes of that interpretation in conformity with EU law, even though national constitutional provisions impose an absolute prohibition, in the public sector, on such conversion.**

[Signatures]

[i] — The wording of the headwords of this document has been amended since it was first put online.