JUDGMENT OF THE COURT (Third Chamber)

23 April 2009 *

In Joined Cases C-378/07 to C-380/07,

REFERENCES for a preliminary ruling under Article 234 EC from the Monomeles Protodikio Rethimnis (Greece), made by decisions of 19, 20 and 23 July 2007, received at the Court on 8 August 2007, in the proceedings

Kiriaki Angelidaki (C-378/07),

Anastasia Aivali,

Angeliki Vavouraki,

Khrisi Kaparou,

Manina Lioni,

* Language of the case: Greek.

Evangelia Makrigiannaki,

Eleonora Nisanaki,

Khristiana Panagiotou,

Anna Pitsidianaki,

Maria Khalkiadaki,

Khrisi Khalkiadaki

v

Organismos Nomarkhiaki Aftodiikisi Rethimnis,

and

Kharikleia Giannoudi (C-379/07),

Georgios Karampousanos (C-380/07),

Sophocles Mikhopoulos

v

Dimos Geropotamou,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, A. Ó Caoimh, (Rapporteur), J.N. Cunha Rodrigues, U. Lõhmus and P. Lindh, Judges,

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

having regard to the written procedure and further to the hearing on 8 October 2008,

after considering the observations submitted on behalf of:

— Ms Angelidaki and Others, by I. Koutsourakis, F. Dermitzaki and K. Tokatlidis, dikigoroi,

— the Organismos Nomarkhiaki Aftodiikisi Rethimnis, by M. Drimakis, dikigoros,

— Ms Giannoudi, by I. Zouridis, F. Dermitzaki and K. Tokatlidis, dikigoroi,

— Mr Karampousanos and Mr Mikhopoulos, by I. Zouridis and M.-M. Tsipra, dikigoroi,

— the Dimos Geropotamou, by N. Mikhelakis, dikigoros,

— the Greek Government, by K. Samoni, E. Mamouna and M. Mikhelogiannaki, acting as Agents,

— the Italian Government, by I.M. Braguglia, acting as Agent, assisted by P. Gentili, avvocato dello Stato,

— the Commission of the European Communities, by M. Patakia and M. van Beek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 December 2008,

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of clauses 5(1) and (2) and 8(3) 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).

2 The references have been made in the course of proceedings between Ms Angelidaki and 13 other employees and their respective employers, the Organismos Nomarkhiaki Aftodiikisi Rethimnis (Prefectural Authority of Rethimnon) and the Organismos Topikis Aftodiikisi Rethimnis, called the 'Dimos Geropotamou' (Municipality of Geropotamos), concerning the classification of contracts of employment between them and the non-renewal of those 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) annexed hereto'.

4 According to recitals 3, 6, 7, 13 to 15 and 17 in the preamble to that directive, the first three paragraphs in the preamble to the Framework Agreement and paragraphs 3, 5 to 8 and 10 of the general considerations of the Framework Agreement:

— 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 these conditions while the improvement is being maintained, as regards in particular 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; and

— 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 4 of the Framework Agreement provides:

‘1. In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds.

2. Where appropriate, the principle of *pro rata temporis* shall apply.

…’

9 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.'

10 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.

…

5. The prevention and settlement of disputes and grievances arising from the application of this agreement shall be dealt with in accordance with national law, collective agreements and practice.

…'

11 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 1999, 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.'

12 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

Legislation intended to transpose Directive 1999/70

13 The Greek Government informed the Commission that it intended to avail itself 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. As a result of that extension, the period did not expire until 10 July 2002.

14 The first measure transposing Directive 1999/70 into Greek law, namely Presidential Decree No 81/2003 laying down provisions concerning workers employed under fixed-term contracts (FEK A' 77/2.4.2003), entered into force on 2 April 2003. According to Article 2(1), the decree applied to workers employed under a fixed-term contract or relationship.

15 That decree was subsequently amended by 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 decree] applies to workers employed under a fixed-term contract or relationship in the private sector.'

16 The second measure transposing Directive 1999/70 into Greek law entered into force on 19 July 2004. 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.

17 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 contract for work or other contract or relationship concealing a relationship between employer and employee.'

18 Article 5 of Presidential Decree No 164/2004 is worded as follows:

'Successive contracts

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, subject to the provisions of paragraph 2 of the following article.'

19 Article 6 of Presidential Decree No 164/2004 provides:

‘Maximum period of employment

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 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 or any subsidised or financed programme or workers recruited in order to perform work required in order to honour obligations pursuant to contracts with international organisations.’

20 Article 7 of Presidential Decree No 164/2004 states:

‘Penalty for infringements

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 shall 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. Persons in breach of the provisions of Articles 5 and 6 of this decree shall be punished by a term of imprisonment … If the offence was committed as a result of negligence, the culpable party shall be punished by a term of imprisonment of up to one year. The same infringement shall also constitute evidence of a serious disciplinary offence.'

21 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. …

2. In order to establish whether the preconditions set out in the preceding paragraph have been met, workers shall submit an application to the body in question by a deadline of two months from the date on which this decree enters into force, stating the facts proving that these preconditions have been met. The organ competent to issue a reasoned decision as to whether the preconditions set out in the preceding paragraph have been met shall be the relevant internal council or equivalent organ or, where there is none, the administrative council or administrative organ of the relevant legal person or the equivalent organ under current legislation. The competent organ for municipal or communal undertakings shall in all cases be the municipal or communal council of the relevant local authority, acting on the recommendation of the administrative council or the administrative organ of the undertaking. The organ which is competent in accordance with the foregoing shall also decide whether contracts for work or other contracts or relationships are in fact concealing an employer/employee relationship. The decision by the organ competent in accordance with the above provisions shall be issued within five months of the date on which this decree enters into force.

3. Decisions under paragraph 2 by the competent organs, whether positive or negative, shall be transmitted immediately to the Anotato Simvoulio Epilogis Prosopikou (ASEP) (Supreme Staff Selection Council), which shall give a ruling within three months of receipt of the decisions in question.

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.

…'

Other relevant legislation concerning fixed-term employment contracts

— Constitutional provisions

22 Article 103 of the Constitution of the Hellenic Republic is worded as follows:

'…

2. No one may be appointed as a civil servant to an established post not provided for by law. Special laws may provide for exceptions in order to cover unforeseen and urgent needs with personnel hired for a certain period of time on a private law contract.

…

8. A law shall specify the conditions and duration of private law employment relations, in the public administration and in the broader public sector as defined on each occasion,... to meet temporary or unforeseen and urgent needs in accordance with the second sentence of paragraph 2. The law shall also specify the duties that may be undertaken by the staff mentioned in the preceding sentence. Conversion by law of staff covered by the first sentence to permanent civil servants or conversion of their contracts into contracts of indefinite duration is prohibited. The prohibitions of the present paragraph also apply to those employed on the basis of a contract for work.'

23 Article 103(8) of the Constitution of the Hellenic Republic entered into force on 7 April 2001, that is after the entry into force of Directive 1999/70, but before the expiry both of the normal period for transposing the directive, namely 10 July 2001, and of the additional period provided for in the second paragraph of Article 2 of the directive, namely 10 July 2002.

— Legislative provisions

24 Article 8(3) of Law No 2112/1920 on compulsory notice of termination of contracts of employment of employees in the private sector (FEK B' 11/18.3.1920) states:

'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.'

25 According to the national court, in the absence of an objective reason for imposing a fixed term, according to Article 8(3) of Law No 2112/1920, as interpreted by Greek case-law, a contract of employment concluded for a fixed term is treated as a contract of indefinite duration, which is the case where such a contract is intended to meet the fixed and permanent needs of the employer. Article 8(3) applies not only where a number of successive fixed-term employment contracts have been concluded but also in the case of the first or single use of a fixed-term employment contract.

26 Moreover, it is apparent from the documents before the Court that, by Judgment 18/2006, the Arios Pagos (Greek Supreme Court of Cassation) held that Article 8(3) of Law No 2112/1920 constitutes an 'equivalent legal measure' for the purposes of clause 5(1) of the Framework Agreement inasmuch as it allows fixed-term employment contracts, both in the private and public sectors, to be treated with retroactive effect as contracts of indefinite duration, notwithstanding the prohibition laid down in Article 103 of the Constitution of the Hellenic Republic against the conversion by law of fixed-term employment contracts to contracts of indefinite duration, since that prohibition does not preclude recognition of the true character of a contract. By contrast, by its Judgments 19/2007 and 20/2007 delivered on 11 June 2007, the Arios Pagos held that, having regard to Article 103 of the Constitution, fixed-term employment contracts cannot be converted to contracts of indefinite duration, even if they meet fixed and permanent needs.

27 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.'

28 Article 6(1) of Law No 2527/1997 provides that when departments and legal persons in the public sector conclude contracts to engage natural persons for work, a prior ministerial decision is required which must, inter alia, state that the work does not form part of the usual duties of the employees of the body in question, together with the reasons why the work cannot be carried out by that body's employees. According to Article 6(1), any contract for work to cover the fixed and permanent needs of the employer is automatically invalid in its entirety.

29 Article 1 of Law No 3250/2004 (FEK A'124/7.7.2004) provides as follows:

'1. The public administration, first and second-level local government authorities and legal persons governed by public law may recruit staff under part-time, fixed-term private-law contracts of employment in order to meet requirements for the purpose of providing services of a social character to the public.

2. The above staff shall be recruited solely in order to meet additional requirements for the purpose of serving the public and shall have no effect on the operational structure of the departments of the agencies referred to in the preceding paragraph.

…'

30 Article 2 of Law No 3250/2004 provides:

'1. Staff shall be recruited under part-time, fixed-term private-law contracts of employment from the categories of social groups referred to in Article 4 and in accordance with the selection criteria laid down in that Article.

2. The term of the above contracts may not exceed 18 months. A new contract may be signed with the same worker no less than four months after expiry of the previous contract. Persons employed under such contracts shall not work more than 20 hours a week.'

31 According to Article 3(1) of Law No 3250/2004:

'Services of a social character shall be understood to mean services in connection with social care and welfare provided in the home, school janitor services, school road-crossing services, services to foster the social integration of immigrants, services to meet emergency civil protection requirements, services during cultural events, services to meet special environmental requirements, public information services and social programmes financed by the European Union.'

The main proceedings and the questions referred for a preliminary ruling

Case C-378/07

32 It is apparent from the order for reference in this case that, in 2005, the applicants in the main proceedings each entered into private-law contracts of employment with a term of 18 months with the Organismos Nomarkhiaki Aftodiikisi Rethimnis — a local authority within the public sector, under Greek law — which were described as 'part-time, fixed-term' contracts within the meaning of Law No 3250/2004. None of those contracts was extended or renewed upon expiry of the term.

33 The applicants took the view that the work performed under those contracts met the fixed and permanent needs of their employer and, on 3 November 2006, brought an action before the Monomeles Protodikio Rethimnis (Rethimnon Court of First Instance, single judge) for their contracts to be recognised as employment contracts of indefinite duration and for the defendant local authority to be required to employ them under such contracts.

34 The applicants rely in that regard on Article 8(3) of Law No 2112/1920 which, interpreted in conformity with Directive 1999/70, constitutes an 'equivalent legal measure' for the purposes of clause 5 of the Framework Agreement, as the Arios Pagos held in its Judgment 18/2006. According to the applicants, that result is not precluded by Article 103(8) of the Constitution of the Hellenic Republic since the prohibition against converting fixed-term employment contracts into contracts of indefinite duration in the public sector relates only to contracts by which public employers in fact cover temporary, unforeseen or urgent needs.

35 In its decision the referring court therefore queries, in essence, whether, by excluding from the protection against abuse provided for under Presidential Decree No 164/2004 individuals who have concluded a single fixed-term employment contract, the Greek legislature correctly transposed Directive 1999/70, inasmuch as that exclusion could, contrary to clause 8(3) of the Framework Agreement, constitute a reduction in the

general level of protection afforded to fixed-term workers, as defined by an 'equivalent legal measure' within the meaning of clause 5(1) of that agreement, since Article 8(3) of Law No 2112/1920 applies to the first and single use of a contract as well as to successive contracts.

36 Furthermore, even on the assumption that Article 8(3) of Law No 2112/1920 can be applied to the main proceedings, the referring court takes the view that a further question arises, first, as to whether national law can be applied in such a way that the conclusion of a fixed-term employment contract is regarded as being based on an objective reason where that contract is concluded pursuant to a particular law to cover special, additional social needs or exceptional or temporary needs when, in actual fact, those needs are 'fixed and permanent'. Second, the referring court queries whether the national court's power of interpretation could, in that respect, be restricted by a constitutional rule which prohibits absolutely the conversion in the public sector of fixed-term employment contracts into contracts of indefinite duration.

37 In those circumstances, the Monomeles Protodikio Rethimnis decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Are clause 5 and clause 8(1) and (3) of the [Framework Agreement] which forms an integral part of [Directive 1999/70] to be interpreted as meaning that Community law (by reason of the application of the said Framework Agreement) precludes a Member State from adopting measures,

(a) where an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement already existed under national law before the directive entered into force, and

(b) where the measures adopted in order to apply the Framework Agreement reduce the general level of protection afforded to fixed-term workers under national law?

2. If Question 1 is answered in the affirmative, is the reduction in the protection afforded to fixed-term workers in the case simply of a single fixed-term employment contract (rather than several, successive contracts), under which the worker is in fact to provide services to meet "fixed and permanent", rather than temporary, exceptional or urgent, requirements, connected to the application of the said Framework Agreement and the above directive and is such a reduction therefore permitted or not permitted from the point of view of Community law?

3. If Question 1 is answered in the affirmative, where there is an equivalent legal measure under national law, within the meaning of clause 5(1) of the Framework Agreement, which existed before [Directive 1999/70] entered into force, such as Article 8(3) of Law No 2112/1920 at issue in the main proceedings, is the adoption of a legal measure by reason of the application of the Framework Agreement, such as Article 11 of Presidential Decree No 164/2004 at issue in the main proceedings, an unacceptable reduction in the general level of protection afforded to fixed-term workers under national law within the meaning of clause 8(1) and (3) of the Framework Agreement:

(a) where the scope of the legal measure in question applying the Framework Agreement extends only to successive fixed-term employment contracts or relationships and not to persons who have concluded simply a single fixed-term contract of employment (rather than several, successive contracts) in order for the worker to meet "fixed and permanent" requirements of the employer, while the earlier equivalent legal measure applied to all fixed-term contracts of employment, even where the worker concluded a single fixed-term employment contract, under which, in fact, the worker was to provide services to meet "fixed and permanent" (rather than temporary, exceptional or urgent) requirements, and

(b) where, for the purpose of protecting fixed-term workers and preventing abuse within the meaning of the Framework Agreement on fixed-term work, the legal measure in question applying the Framework Agreement provides, as a legal consequence, for fixed-term contracts thereafter (*ex nunc*) to be treated as contracts of indefinite duration, whereas the earlier equivalent legal measure makes provision for the treatment of fixed-term contracts of employment as contracts of indefinite duration from the time when they were originally concluded (*ex tunc*)?

4. If Question 1 is answered in the affirmative, where an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement … already existed in the national legal order before [Directive 1999/70] entered into force, as in the case of Article 8(3) of Law No 2112/1920 at issue in the main proceedings, is the choice made by the Greek legislature, in transposing the above directive into Greek law,

— first, to exclude the said cases of abuse in which the worker has concluded a single fixed-term contract, under which, in fact, the worker was to provide services to meet "fixed and permanent" (rather than temporary, exceptional or urgent) requirements, from the scope of protection of the above Presidential Decree No 164/2004, and,

— second, not to enact a similar measure establishing legal consequences specific to the case, affording to workers in such cases of abuse protection over and above the general protection which is provided as standard under general Greek employment law whenever work is provided under an invalid contract, irrespective of whether or not there has been abuse within the meaning of the Framework Agreement, and which includes a claim on the part of the worker to payment of his wages and severance pay, regardless of whether or not he worked under a valid contract,

an unacceptable reduction in the general level of protection afforded to fixed-term workers under national law within the meaning of clause 8(1) and (3) of the Framework Agreement, bearing in mind

(a) that the obligation to pay wages and severance pay is provided for under national law for all employment relationships and is not intended specifically to prevent abuse within the meaning of the Framework Agreement, and

(b) that the legal consequence of the application of the earlier equivalent legal measure is that a (single) fixed-term contract of employment is recognised as a contract of indefinite duration?

5. If all the above questions are answered in the affirmative, should the national court, in interpreting national law in accordance with [Directive 1999/70], disapply the provisions of the legal measure which are not compatible with it, but which were adopted by reason of the application of the Framework Agreement and result in a reduction in the general level of protection afforded to fixed-term workers under national law, such as those in Presidential Decree No 164/2004, which tacitly and indirectly (but clearly) deny the relevant protection in cases of abuse when the worker has concluded a single fixed-term contract of employment under which, in fact, he is to provide services to meet "fixed and permanent" (rather than temporary, exceptional or urgent) requirements and apply, instead, an equivalent legal measure which existed before the directive entered into force, such as Article 8(3) of Law No 2112/1920?

6. If the national court finds that a provision (in this case Article 8(3) of Law No 2112/1920) that constitutes an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement … is applicable in principle to a dispute over fixed-term work and, on the basis of that provision, the finding that even a single contract of employment was concluded on a fixed-term basis for no objective reason relating to the nature, type or features of the work performed means that the contract must be recognised as a contract of employment of indefinite duration, then:

(a) is it compatible with Community law for a national court to interpret and apply national law to the effect that the fact that a legal provision governing employment under a fixed-term contract of employment in order to meet seasonal, periodic, temporary, exceptional or additional social needs (in this case Law No 3250/2004) was used as the legal basis for concluding a fixed-term contract constitutes an objective reason in all cases for concluding such contracts, even though the requirements covered were, in fact, fixed and permanent?

(b) is it compatible with Community law for a national court to interpret and apply national law to the effect that a provision prohibiting the conversion of fixed-term contracts of employment in the public sector to contracts of indefinite duration must be construed as an absolute prohibition in any circumstance on converting a fixed-term employment contract or relationship in the public sector to an employment contract or relationship of indefinite duration, even if it was wrongfully concluded as a fixed-term contract, that is to say, when the requirements met were, in fact, "fixed and permanent", and that the national court has no discretion in such cases to make a finding as to the true character of the legal employment relationship at issue and correctly categorise it as a contract of indefinite duration? Alternatively, should the prohibition in question be restricted solely to fixed-term contracts of employment which were, in fact, concluded in order to meet temporary, unforeseen, urgent, exceptional or similar types of special requirements and not to cases in which they were, in fact, concluded in order to meet "fixed and permanent" requirements?'

Case C-379/07

38 It is apparent from the file lodged with the Court that the applicant in the main proceedings in this case entered into three successive fixed-term contracts — which were described as 'contracts for work' within the meaning of Article 6 of Law No 2527/1997 — with the Dimos Geropotamou, a local authority within the public sector, under Greek law. These contracts covered the periods from 1 December 2003 to 30 November 2004, from 1 December 2004 to 30 November 2005 and from 5 December 2005 to 4 December 2006 respectively.

39 The applicant took the view that the work performed under those contracts met the fixed and permanent needs of her employer and, on 10 November 2006, brought an action before the Monomeles Protodikio Rethimnis for those contracts to be recognised as employment contracts of indefinite duration and for the Dimos Geropotamou to be required to employ her under such contracts.

40 The applicant submitted the same arguments as those advanced by the applicants in the main proceedings in Case C-378/07, which are set out in paragraph 34 of this judgment; the referring court therefore queries in its decision whether Presidential Decree No 164/2004 does not also constitute a reduction in the general level of protection afforded to fixed-term workers, as defined by Article 8(3) of Law No 2112/1920, for the following reasons:

— first, so far as concerns Article 11 of Presidential Decree No 164/2004 which allows, as a transitional measure, the conversion of fixed-term employment contracts into contracts of indefinite duration, its temporal scope is limited to certain existing or expired contracts only, its cumulative conditions of application are more stringent as regards the length of the period between two contracts and the minimum total duration of the contracts and, lastly, such conversion has no retroactive effect; and

— second, Article 7 of Presidential Decree No 164/2004 which provides, as a permanent measure, for the payment of wages and severance pay, introduces the same penalties as those provided for under general Greek employment law regardless of any abuse, without allowing fixed-term employment contracts to be recognised as contracts of indefinite duration.

41 Furthermore, even on the assumption that Article 8(3) of Law No 2112/1920 can be applied to the main proceedings, the referring court submits the same questions as those raised in Case C-378/07, which are set out in paragraph 36 of this judgment, concerning the concept of 'objective reason' and the effect on the national courts' powers of the absolute prohibition against converting fixed-term employment contracts to contracts of indefinite duration in the public sector.

42 In those circumstances, the Monomeles Protodikio Rethimnis decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Are clause 5 and clause 8(1) and (3) of the [Framework Agreement] which forms an integral part of [Directive 1999/70] to be interpreted as meaning that Community law (by reason of the application of the said Framework Agreement) precludes a Member State from adopting measures,

(a) where an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement already existed under national law before the directive entered into force, and

(b) where the measures adopted in order to apply the Framework Agreement reduce the general level of protection afforded to fixed-term workers under national law?

2. If Question 1 is answered in the affirmative, where there is an equivalent legal measure under national law, within the meaning of clause 5(1) of the Framework Agreement, which existed before [Directive 1999/70] entered into force, such as Article 8(3) of Law No 2112/1920 at issue in the main proceedings, is the adoption of a legal measure by reason of the application of the Framework Agreement, such as Article 11 of Presidential Decree No 164/2004 at issue in the main proceedings, an unacceptable reduction in the general level of protection afforded to fixed-term workers under national law within the meaning of clause 8(1) and (3) of the Framework Agreement:

(a) where the legal measure in question applying the Framework Agreement was adopted after the time-limit for transposing [Directive 1999/70] had elapsed, but only fixed-term employment contracts and relationships which were in

effect before its entry into force or had expired within a certain period before its entry into force but after the time-limit for transposing the directive had elapsed fall within its temporal scope, whereas the equivalent legal measure which already existed is not subject to temporal restrictions on its scope and covers all fixed-term employment contracts which had been concluded, were in effect or had expired when Directive 1999/70 came into force and the time-limit for its transposition had elapsed?

(b) where fixed-term employment contracts or relationships only fall within the scope of application of the legal measure in question applying the Framework Agreement if they can be regarded as successive within the meaning of that measure, satisfying the cumulative requirements:

(i) that there is a maximum period of three months between them;

(ii) that they extend for a total of at least 24 months before the measure in question enters into force, irrespective of the number of contract renewals or that, on the basis of those renewals, there has been a minimum total period of work of 18 months over an overall period of 24 months from the original contract, provided that there are at least three renewals since the original contract, whereas the existing equivalent legal measure does not lay down such conditions but covers all fixed-term (successive) employment contracts, irrespective of a minimum total period of work and a minimum number of contract renewals?

(c) where, for the purposes of protecting fixed-term workers and preventing abuse within the meaning of the Framework Agreement …, the legal measure in question applying the Framework Agreement provides, as a legal consequence, for fixed-term contracts thereafter (*ex nunc*) to be treated as contracts of indefinite duration, whereas the earlier equivalent legal measure makes provision for the treatment of fixed-term contracts of employment as contracts of indefinite duration from the time when they were originally concluded (*ex tunc*)?

3. If Question 1 is answered in the affirmative, where an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement … already existed in the national legal order before that directive entered into force, as in the case of

Article 8(3) of Law No 2112/1920 at issue in the main proceedings, is the adoption of a legal measure by reason of the application of the Framework Agreement, such as Article 7 of Presidential Decree No 164/2004 at issue in the main proceedings, an unacceptable reduction in the general level of protection afforded to fixed-term workers under national law within the meaning of clause 8(1) and (3) of the Framework Agreement, when that provides, as the sole means of protection of fixed-term workers from abuse, for an obligation on the part of the employer to pay wages and severance pay where workers have wrongfully been employed under successive fixed-term employment contracts, bearing in mind

(a) that the obligation to pay wages and severance pay is provided for under national law for all employment relationships and is not intended specifically to prevent abuse within the meaning of the Framework Agreement, and

(b) that the legal consequence of the application of the earlier equivalent legal measure is that successive fixed-term contracts of employment are recognised as a contract of indefinite duration?

4. If all the above questions are answered in the affirmative, should the national court, in interpreting national law in accordance with [Directive 1999/70], disapply the provisions of the legal measure which are not compatible with it, but which were adopted by reason of the application of the Framework Agreement and result in a reduction in the general level of protection afforded to fixed-term workers under national law, such as Articles 7 and 11 of Presidential Decree No 164/2004, and apply instead an equivalent legal measure which existed before the directive entered into force, such as Article 8(3) of Law No 2112/1920?

5. If the national court finds that a provision (in this case Article 8(3) of Law No 2112/1920) that constitutes an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement … is applicable in principle to a dispute

over fixed-term work and, on the basis of that provision, the finding that successive contracts of employment were concluded as a fixed-term contract for no objective reason relating to the nature, type or features of the work performed means that the contracts must be recognised as a contract of employment of indefinite duration, then

(a) is it compatible with Community law for a national court to interpret and apply national law to the effect that the fact that a legal provision governing employment under a fixed-term contract of employment in order to meet seasonal, periodic, temporary or exceptional needs was used as the legal basis for concluding a fixed-term contract constitutes an objective reason in all cases for concluding such contracts, even though the requirements covered were, in fact, fixed and permanent?

(b) is it compatible with Community law for a national court to interpret and apply national law to the effect that a provision prohibiting the conversion of fixed-term contracts of employment in the public sector to contracts of indefinite duration must be construed as an absolute prohibition in any circumstance on converting a fixed-term employment contract or relationship in the public sector to an employment contract or relationship of indefinite duration, even if it was wrongfully concluded as a fixed-term contract, that is to say, when the requirements met were, in fact, "fixed and permanent", and that the national court has no discretion in such cases to make a finding as to the true character of the legal employment relationship at issue and correctly categorise it as a contract of indefinite duration? Alternatively, should the prohibition in question be restricted solely to fixed-term contracts of employment which were, in fact, concluded in order to meet temporary, unforeseen, urgent, exceptional or similar types of special requirements and not to cases in which they were, in fact, concluded in order to meet "fixed and permanent" requirements?'

Case C-380/07

43 It is apparent from the file lodged with the Court that the applicants in the main proceedings in this case entered into three successive fixed-term contracts with the Dimos Geropotamou, as well as with the private-law body 'O Geropotamos', a

municipal undertaking, the first of those contracts, described as an 'employment contract' within the meaning of Law No 2190/1994, covering the period from 1 July 2004 to 1 December 2004 and the two subsequent contracts, described as 'contracts for work' within the meaning of Article 6 of Law No 2527/1997, covering the periods from 29 December 2004 to 28 December 2005 and from 30 December 2005 to 29 December 2006 respectively.

44 Since the dispute that was brought before it on 10 November 2006 is essentially identical to that of Case C-379/07, the Monomeles Protodikio Rethimnis decided to stay the proceedings and to refer the same questions to the Court of Justice for a preliminary ruling as were put in that case.

45 By order of 12 November 2007, the President of the Court decided to join these three cases for the purposes of the written and oral procedure and of the judgment.

The questions referred for a preliminary ruling

Admissibility

46 Apart from the applicants in the main proceedings, all the parties which submitted written observations to the Court either challenged or cast doubt, on various grounds, on the relevance, and therefore admissibility, of the questions referred.

47 First, the Greek Government takes the view that the interpretation sought in respect of clauses 5(1) and 8(3) of the Framework Agreement has no connection with the main proceedings. The referring court incorrectly, and thus hypothetically, concluded that Article 8(3) of Law No 2112/1920 constitutes an alternative legislative framework for

the implementation of the Framework Agreement. However, in view of, in particular, the prohibitions laid down by Article 103(8) of the Constitution of the Hellenic Republic and Article 21 of Law No 2190/1994, Law No 2112/1920 does not apply to the public sector, a point also forcefully made by the defendants in the main proceedings. This interpretation of Article 8(3) of Law No 2112/1920 was, moreover, confirmed by Judgments 19/2007 and 20/2007 of the Arios Pagos. Furthermore, without expressly calling in question the admissibility of the questions referred, the defendants in the main proceedings and the Commission also deny that that provision was still in force when the time-limit for transposing Directive 1999/70 elapsed and that it allowed the contracts in question to be treated as contracts of indefinite duration, as the case may be.

48 In that regard, it should be noted that it is not for the Court, in the context of a reference for a preliminary ruling, to give a ruling on the interpretation of provisions of national law or to decide whether the interpretation given by the national court of those provisions is correct. The Court must take account, under the division of jurisdiction between the Community Courts and the national courts, of the factual and legislative context in which the questions put to it are set, as described in the order for reference (see Joined Cases C-482/01 and C-493/01 *Orfanopoulos and Oliveri* [2004] ECR I-5257, paragraph 42; Case C-244/06 *Dynamic Medien* [2008] ECR I-505, paragraph 19; and Case C-330/07 *Jobra* [2008] ECR I-9099, paragraph 17; see also, to that effect, order of 12 June 2008 in Case C-364/07 *Vassilakis and Others*, paragraphs 134 and 143).

49 However, in the main proceedings, the referring court essentially questions whether, by excluding from its scope workers who have entered into a first or single fixed-term employment contract and by not allowing fixed-term employment contracts to be treated as contracts of indefinite duration in the public sector, or imposing restrictive conditions in that regard, the transposition of Directive 1999/70 by Presidential Decree No 164/2004 constitutes a 'reduction' for the purposes of clause 8(3) of the Framework Agreement by comparison with the protection afforded by Article 8(3) of Law No 2112/1920. To that end, the referring court expressly finds, on the basis of domestic case-law, that Article 8(3) of Law No 2112/1920 applies to the public sector and, in so doing, it relies on the premiss that Article 8(3) was in force on the date by which Directive 1999/70 was required to be transposed and, moreover, that it allowed such treatment.

50 Furthermore, there can be no question of there being such a reduction unless, as the Commission notes and as the referring court presumes, Article 8(3) of Law No 2112/1920 is still in force but — in situations such as those at issue in the main proceedings — not applicable simultaneously with the national legislation by which the Framework Agreement was transposed, whether by reason, for example, of the very fact that such subsequent legislation was enacted, of the amendment of Article 103(8) of the Constitution of the Hellenic Republic, or of the reversal of precedent by the Arios Pagos in Judgments 19/2007 and 20/2007 concerning the interpretation of Article 8(3).

51 It must be concluded therefore that, irrespective of the disagreement between the parties in the main proceedings concerning the interpretation of national law and the criticism expressed in regard to that adopted by the national court, the questions referred must be considered in the light of the interpretation of national law adopted by that court. The plea of inadmissibility raised by the Greek Government in this respect must therefore be rejected.

52 Second, the Commission contends that Questions 3 to 6 in Case C-378/07 are devoid of purpose. As the Greek and Italian Governments also assert, it follows from the judgment in Case C-144/04 *Mangold* [2005] ECR I-9981, at paragraphs 41 to 43, that clause 5(1) of the Framework Agreement is designed solely to prevent abuse arising from the use of successive fixed-term employment contracts and does not, therefore, apply where the contract in question is the first or only contract of employment concluded between the parties.

53 That objection cannot be accepted.

54 The questions referred to above, which relate not to clause 5(1) of the Framework Agreement but to clause 8(3) thereof, are intended to determine, in essence, whether the transposition of Directive 1999/70 by Presidential Decree No 164/2004 constitutes a 'reduction' for the purposes of clause 8(3) with regard to the level of protection afforded by Article 8(3) of Law No 2112/1920 to workers who have entered into a single

fixed-term employment contract and, if so, to clarify the consequences of that so far as the main proceedings are concerned.

55 However, the questions are in no way devoid of purpose; they raise, in particular, the issue whether, as the Greek and Italian Governments and the Commission maintain, clause 8(3) of the Framework Agreement is inapplicable where a single fixed-term employment contract has been concluded.

56 It must also be noted in that regard that, having held, in paragraphs 42 and 43 of the judgment in *Mangold*, that the interpretation of clause 5(1) of the Framework Agreement was irrelevant to the outcome of the dispute before the national court in that case, because that dispute concerned the first and only use of a fixed-term employment contract, the Court, in paragraphs 44 to 54 of the judgment, answered the supplementary question put to it by that court in the same dispute concerning the interpretation of clause 8(3) of the Framework Agreement.

57 In those circumstances, since Questions 3 to 6 in Case C-378/07 relate to the interpretation of Community law and it is not obvious that that interpretation bears no relation to the actual facts of the disputes before the national court or to their purpose, and the disputes are clearly not hypothetical, the Court, as it has consistently held, is bound to answer those questions (see, to that effect, in particular, Case C-212/04 *Adeneler and Others* [2006] ECR I-6057, paragraphs 41 and 42; Case C-238/05 *Asnef-Equifax and Administración del Estado* [2006] ECR I-11125, paragraphs 15 to 17; and the order in *Vassilakis and Others*, paragraphs 42 to 44).

58 Third, the Italian Government submits that Question 2 in Cases C-379/07 and C-380/07 is inadmissible because the transitional provisions laid down in Article 11 of Presidential Decree No 164/2004, to which that question relates, do not apply to the contracts at issue in the main proceedings which, on the contrary, are covered by the

general rules laid down under Articles 5 to 7 of that decree. Question 2 has no connection, therefore, therefore, with the main proceedings.

59 That objection cannot be accepted either. Since it is apparent from the orders for reference that the fixed-term contracts at issue in the main proceedings in those cases were still in effect when Presidential Decree No 164/2004 entered into force, namely on 19 July 2004, those contracts were capable of falling within the scope of Article 11 of the decree.

60 Admittedly, it is apparent from the orders for reference in those cases that the applicants in the main proceedings did not satisfy the conditions to which, under that provision, recognition of their contracts as contracts of indefinite duration was subject.

61 However, by its second question in those cases, the referring court specifically seeks to determine whether those conditions, which entailed the exclusion of the contracts from the transitional arrangements introduced by Article 11 of Presidential Decree No 164/2004, constitute a 'reduction' for the purposes of clause 8(3) of the Framework Agreement, with the result that the applicants in the main proceedings in those cases may be entitled under the provisions of the Framework Agreement to have those contracts recognised as contracts of indefinite duration, as envisaged, according to the applicants, by an 'equivalent legal measure' within the meaning of clause 5(1) of that agreement, namely Article 8(3) of Law No 2112/1920.

62 Consequently, and taking into account the case-law cited in paragraph 57 of this judgment, it cannot be held that it is obvious that the interpretation of Community law sought in Question 2 in Cases C-379/07 and C-380/07 bears no relation to the actual facts of the disputes before the national court or to their purpose, and those disputes are clearly not hypothetical.

63 Having regard to all of the foregoing, the questions referred must be held to be admissible.

Substance

64 By the first set of questions, the referring court seeks, in essence, to interpret clauses 5(1) and 8(3) of the Framework Agreement in order to assess whether those provisions preclude the national legislation at issue in the main proceedings and, in particular, Presidential Decree No 164/2004, which was adopted specifically for the purposes of implementing the Framework Agreement in the public sector. To that end, the referring court raises questions on the following issues:

— first, in relation to the measures to prevent misuse of successive fixed-term employment contracts referred to in clause 5(1) of the Framework Agreement, on the discretion which the Member States have in transposing that clause where an 'equivalent legal measure' within the meaning of that clause already exists under national law (Question 1 in Cases C-378/07 to C-380/07) and on the concept of 'objective reasons' within the meaning of clause 5(1) (Question 6(a) in Case C-378/07 and Question 5(a) in Cases C-379/07 and C-380/07);

— second, in relation to the concept of 'reduction' for the purposes of clause 8(3) of the Framework Agreement, whether that clause applies to workers who have entered into a first or single fixed-term employment contract (Question 2 in Case C-378/07) and precludes amendments introduced by national implementing

legislation, as against pre-existing national law (Questions 3 and 4 in Case C-378/07, and Questions 2 and 3 in Cases C-379/07 and C-380/07); and

— third, in relation to the penalties for the misuse of fixed-term employment contracts, whether the Framework Agreement precludes the absolute prohibition in the public sector against conversion of those contracts to contracts of indefinite duration (Question 6(b) in Case C-378/07 and Question 5(b) in Cases C-379/07 and C-380/07).

65 Furthermore, by its final questions, the referring court seeks to clarify the consequences for national courts of any incompatibility of Presidential Decree No 164/2004 with the provisions of the Framework Agreement (Question 5 in Case C-378/07 and Question 4 in Cases C-379/07 and C-380/07).

66 It is therefore appropriate to answer the questions referred by the national court in the order set out in paragraphs 64 and 65, although it must be made clear from the outset that, in so far as the national court is asking the Court of Justice to rule on the compatibility of Presidential Decree No 164/2004 with the Framework Agreement, it is not for the Court, in the context of the procedure provided for in Article 234 EC, to determine whether national provisions are compatible with Community law. The Court may nevertheless provide the national court with all the criteria for the interpretation of Community law which may enable it to assess whether those provisions are so compatible in order to give judgment in the various proceedings before it (see, in particular, Joined Cases C-145/06 and C-146/06 *Fendt Italiana* [2007] ECR I-5869, paragraph 30).

Measures to prevent abuse within the meaning of clause 5(1) of the Framework Agreement

— The discretion of the Member States where an 'equivalent legal measure' exists under national law

67 By its questions, the referring court asks, in essence, whether clause 5(1) of the Framework Agreement must be interpreted as precluding the adoption by a Member State of national legislation, such as Presidential Decree No 164/2004, which, for the purposes specifically of transposing Directive 1999/70 so as to implement the provisions of that directive in the public sector, provides for the implementation of the measures to prevent the misuse of successive fixed-term employment contracts or relationships which are listed in clause 5(1)(a) to (c), where an 'equivalent legal measure' within the meaning of that clause already exists under national law, such as Article 8(3) of Law No 2112/1920.

68 Before replying to that question, which seeks to determine the discretion available to the Member States in transposing clause 5(1) of the Framework Agreement, it is necessary, first of all, to clarify the meaning of 'equivalent legal measure' for the purposes of that clause.

69 Both the Greek Government and the Commission contend that Article 8(3) of Law No 2112/1920 does not constitute such a measure since its purpose differs from that of clause 5(1) of the Framework Agreement. Law No 2112/1920, which relates to the termination of employment contracts of indefinite duration, does not contain provisions designed to prevent the misuse of successive fixed-term employment contracts but merely allows a contract to be treated as a contract of indefinite duration in the context of its termination. In any event, according to the Greek Government, the possibility of a fixed-term employment contract being treated as a contract of indefinite duration does not have a deterrent effect in relation to the conclusion of successive contracts in the public sector, since the financial consequences of such treatment are borne by society as a whole and not necessarily by the employer concerned, unlike in the private sector.

70 In that regard, it is important to note that while, as has been pointed out in paragraphs 48 to 51 of this judgment, it is for the referring court to interpret national law, namely in this case Article 8(3) of Law No 2112/1920, and that therefore, in order to answer the questions referred, it must be accepted that, as the referring court has determined, Article 8(3) allows fixed-term employment contracts to be treated as contracts of indefinite duration in the public sector, the fact remains that the concept of an 'equivalent legal measure' within the meaning of clause 5(1) of the Framework Agreement is a Community law concept which must be given a uniform interpretation in each Member State.

71 In that respect, it is certainly true, as is apparent from paragraph 10 of the general considerations of the Framework Agreement, that the agreement allows Member States and social partners to define 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 (*Adeneler and Others*, paragraph 68, and order in *Vassilakis and Others*, paragraph 87).

72 However, in accordance with recital 17 in the preamble to Directive 1999/70, unless the Framework Agreement refers back to the Member States in that regard, the content of those principles and requirements may not vary according to the national law applicable since, according to recital 14 in the preamble to the directive and the preamble to the Framework Agreement, the purpose of that agreement is to establish at Community level a general framework for the use of fixed-term employment contracts.

73 In the present case, since the concept of 'equivalent legal measure' is not defined by the Framework Agreement, it must be noted, in the absence of a referral back to the law of the Member States, 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 prevent the status of employees from being insecure (see *Adeneler and Others*, paragraph 63, and order in *Vassilakis and Others*, paragraph 84).

74 Thus, clause 5(1) of the Framework Agreement requires Member States, in order to 'prevent abuse arising from the use of successive fixed-term employment contracts or relationships', to adopt one or more of the measures listed where domestic law does not include 'equivalent legal measures' to prevent such abuse. 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 contracts or relationships, the maximum total duration of successive fixed-term employment contracts or relationships, and the number of renewals of such contracts or relationships (see Case C-268/06 *Impact* [2008] ECR I-2483, paragraph 69, and order in *Vassilakis and Others*, paragraph 80).

75 It follows unequivocally from the terms of that clause themselves that the various measures it envisages are intended to be 'equivalent' (*Impact*, paragraph 76).

76 Consequently it is apparent that the expression 'equivalent legal measures' in clause 5(1) of the Framework Agreement is intended to cover any national legal measure whose purpose, like that of the measures laid down by that clause, is to prevent effectively the misuse of successive fixed-term employment contracts or relationships (see, to that effect, *Adeneler and Others*, paragraph 65).

77 As the Advocate General observed at points 53 and 54 of her Opinion, it is irrelevant that the national legal measure at issue before the national court, such as Article 8(3) of Law No 2112/1920 in the present case, does not provide for the particular measures set out in clause 5(1)(a) to (c) of the Framework Agreement, or that it was not enacted specifically to protect workers from abuse in relation to successive fixed-term employment contracts, or even that its scope is not limited to those contracts alone. Since Article 8(3) is capable — in conjunction, where appropriate, with other national legal provisions — of also contributing to the effective prevention of abuse in the use of successive fixed-term employment contracts, it must be regarded as being equivalent to the measures listed in clause 5(1)(a) to (c) of the Framework Agreement.

78 In the main proceedings, it is therefore for the referring court to consider to what extent the possibility — which, according to that court, is provided for in Article 8(3) of Law No 2112/1920 — of treating a fixed-term employment contract as a contract of indefinite duration in the public sector when, in fact, it covers fixed and permanent needs of the employer contributes to the effective prevention of the misuse of successive fixed-term employment contracts or relationships. If the national court comes to the conclusion that Article 8(3) does have such an effect, that provision should be regarded as being an 'equivalent legal measure' within the meaning of clause 5(1) of the Framework Agreement.

79 Next, as regards the issue whether, in such cases, the existence of an 'equivalent legal measure' within the meaning of clause 5(1) precludes the adoption by the Member State concerned of national legislation which, for the purposes of transposing Directive 1999/70 lays down specific measures, as in Articles 5 to 7 and 11 of Presidential Decree No 164/2004, designed to prevent the misuse of successive fixed-term employment contracts or relationships, it should be noted that, in prescribing the effective and binding adoption of at least one of the measures listed in clause 5(1) of the Framework Agreement intended to prevent the misuse of successive fixed-term employment contracts, where domestic law does not already include equivalent legal measures, clause 5(1) of the Framework Agreement assigns to the Member States the general objective of preventing such misuse, while leaving to them the choice as to how to achieve it (*Impact*, paragraph 70 and case-law cited).

80 It follows that, by virtue of that provision, the Member States have a certain discretion as to how they achieve that objective, provided nevertheless that they guarantee the result imposed by Community law, as is clear 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 the light of recital 17 in the preamble to that Directive (see, to that effect, *Adeneler and Others*, paragraph 68, and order in *Vassilakis and Others*, paragraph 87).

81 As the Court has already held, it is therefore left to the discretion enjoyed by the Member States under clause 5(1) of the Framework Agreement to rely on one or more of the measures listed in that clause, or even on existing equivalent legal measures, while taking account of the needs of specific sectors and/or categories of workers, in

order to ensure the effective prevention of the misuse of successive fixed-term employment contracts or relationships (see *Impact*, paragraph 71).

82 Therefore, although, in the absence of an equivalent legal measure in its domestic law, a Member State must, in order to achieve that objective, of necessity adopt one or more of the preventive measures listed in clause 5(1)(a) to (c) of the Framework Agreement in order correctly to transpose Directive 1999/70 (see, to that effect, *Adeneler and Others*, paragraph 65; and *Impact*, paragraphs 69 and 70; also order in *Vassilakis and Others*, paragraph 80), the existence of such an equivalent legal measure cannot, on the other hand, deprive that State of the possibility of additionally adopting one or more of the measures listed in clause 5(1)(a) to (c) for the purposes, in particular — as all the parties who submitted written observations essentially acknowledge — of amending or enhancing the protection derived from that equivalent legal measure, if all further development of existing national legislation is not to be prevented.

83 However, it must be borne in mind that the margin of discretion thereby left for the Member States is not unlimited and that, in particular, it cannot in any event go so far as to compromise the objective or the practical effect of the Framework Agreement (*Adeneler and Others*, paragraph 82).

84 Thus, since the purpose of clause 5(1) of the Framework Agreement, as is apparent from paragraphs 73 to 77 and 79 of this judgment, is to require the Member States to ensure that provision is made in their national law for the effective prevention of the misuse of successive fixed-term employment contracts or relationships, the adoption of such national implementing legislation must not result in the effectiveness of that prevention — as previously secured by virtue of an 'equivalent legal measure' within the meaning of clause 5(1) — being affected. In that regard, it is particularly important that the legal position arising from the various measures available under national law is sufficiently precise and clear, so that individuals can ascertain the full extent of their rights and, where appropriate, rely on them before the national courts.

85 Furthermore, the discretion conferred on the Member States under clause 5(1) of the Framework Agreement must also be exercised in compliance with Community law and, in particular, its general principles as well as the other provisions of the Framework Agreement (see, to that effect, *Mangold*, paragraphs 50 to 54 and 63 to 65).

86 In that regard, it must be noted in particular that, where domestic law already includes provisions designed to prevent effectively the misuse of successive fixed-term employment contracts or relationships which may constitute an 'equivalent legal measure' within the meaning of clause 5(1) of the Framework Agreement, the adoption by a Member State of one or more of the specific preventive measures listed in clause 5(1)(a) to (c) of that agreement cannot constitute valid grounds for reducing the general level of protection afforded to workers in the field of the Framework Agreement within the meaning of clause 8(3); this issue is covered by the questions considered in paragraphs 108 to 178 of this judgment.

87 Therefore, the answer to be given to the referring court is that clause 5(1) of the Framework Agreement must be interpreted as not precluding the adoption by a Member State of national legislation, such as Presidential Decree No 164/2004, which, for the purposes specifically of transposing Directive 1999/70 so as to implement the provisions of that directive in the public sector, provides for the implementation of the measures to prevent the misuse of successive fixed-term employment contracts or relationships which are listed in clause 5(1)(a) to (c) where — which it is for the national court to ascertain — an 'equivalent legal measure' within the meaning of that clause already exists under national law, such as Article 8(3) of Law No 2112/1920, provided, however, that that legislation (i) does not affect the effectiveness of the prevention of the misuse of fixed-term employment contracts or relationships resulting from that equivalent legal measure, and (ii) complies with Community law and, in particular, with clause 8(3) of the Framework Agreement.

— The requirement of 'objective reasons' for the purposes of clause 5(1)(a) of the Framework Agreement

88 By its questions, the referring court asks, in essence, whether clause 5(1)(a) of the Framework Agreement must be interpreted as precluding the application of national legislation, such as that at issue in the main proceedings, by the authorities of the Member State concerned in such a way that the conclusion of fixed-term employment contracts in the public sector — irrespective of whether these are contracts used for the first or only time or successive contracts — is deemed to be justified by 'objective reasons' within the meaning of that clause solely on the ground that those contracts are founded on legal provisions allowing them to be concluded or renewed in order to meet certain temporary needs when, in fact, those needs are 'fixed and permanent'.

89 It is apparent from the orders for reference that those questions were put by the court seised of the disputes in the main proceedings because applying national law in this way could inhibit the power conferred on it by Article 8(3) of Law No 2112/1920 — described by that court as an 'equivalent legal measure' — to recognise fixed-term employment contracts as contracts of indefinite duration. Such recognition is precluded, according to the national court, if the fixed term is justified by objective reasons.

90 It must be observed at the outset that the Framework Agreement does not compel the Member States to adopt a measure requiring every first or single use of a fixed-term employment contract to be justified by such objective reasons. As the Court has already held, such fixed-term employment contracts are not within the scope of clause 5(1) of the Framework Agreement, which relates solely to prevention of the misuse of successive fixed-term employment contracts or relationships; the objective reasons referred to in clause 5(1)(a) thus relate only to the renewal of such contracts or relationships (see *Mangold*, paragraphs 41 to 43).

91 Furthermore, as regards successive fixed-term employment contracts or relationships, it should be borne in mind that clause 5(1) of the Framework Agreement, which is

intended specifically to prevent abuse arising from their use, 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 that type of employment contract do not already exist in the Member State concerned. Among those measures, clause 5(1)(a) envisages 'objective reasons justifying the renewal of such contracts or relationships' (see *Adeneler and Others*, paragraphs 64 to 66).

92 As is apparent from paragraph 7 of the general considerations of the Framework Agreement, the signatory parties to that agreement took the view that the use of fixed-term employment contracts founded on objective reasons is a way to prevent abuse (*Adeneler and Others*, paragraph 67, and order in *Vassilakis and Others*, paragraph 86).

93 However, as has been stated in paragraphs 79 to 82 of this judgment, the Member States have a certain discretion in respect of the implementation of clause 5(1) of the Framework Agreement, since they can choose to have recourse to one or more of the measures listed in clause 5(1)(a) to (c), or even to existing equivalent legal measures.

94 It follows that, for the purposes of that implementation, a Member State can legitimately choose not to adopt the measure referred to in clause 5(1)(a), which requires the renewal of such successive fixed-term employment contracts or relationships to be justified by objective reasons. It may, on the contrary, prefer to adopt one or both of the measures referred to in clause 5(1)(b) and (c) which deal, respectively, with the maximum total duration of those successive fixed-term employment contracts or relationships and the number of renewals of such contracts or relationships, or it may even choose to maintain an existing equivalent legal measure, and it may do so provided that, whatever the measure thus chosen, the effective prevention of the misuse of fixed-term employment contracts or relationships is assured (see, to that effect, *Adeneler and Others*, paragraph 101).

95 However, where, for the purposes of implementing clause 5(1) of the Framework Agreement, a Member State chooses to adopt the measure referred to in clause 5(1)(a), which requires the renewal of successive fixed-term employment contracts or relationships to be justified by objective reasons, that Member State is 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 recital 17 in its preamble (see, to that effect, *Adeneler and Others*, paragraph 68, and order in *Vassilakis and Others*, paragraph 87).

96 In those circumstances, the concept of 'objective reasons' for the purposes of clause 5(1)(a) of the Framework Agreement must, as the Court has already held, 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. 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 (*Adeneler and Others*, paragraphs 69 and 70; Case C-307/05 *Del Cerro Alonso* [2007] ECR I-7109, paragraph 53; and order in *Vassilakis and Others*, paragraphs 88 and 89).

97 On the other hand, a national provision which merely authorises recourse to successive fixed-term 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 previous two paragraphs (*Adeneler and Others* paragraph 71; *Del Cerro Alonso*, paragraph 54; and order in *Vassilakis and Others*, paragraph 90).

98 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 (*Adeneler and Others*, paragraph 72, and order in *Vassilakis and Others*, paragraph 91).

99 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 (*Adeneler and Others*, paragraph 73, and order in *Vassilakis and Others*, paragraph 92).

100 More specifically, recourse to fixed-term employment contracts solely on the basis of a general provision of statute or secondary legislation, unconnected 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 and is appropriate for achieving the objective pursued and necessary for that purpose (*Adeneler and Others* paragraph 74; *Del Cerro Alonso*, paragraph 55; and order in *Vassilakis and Others*, paragraph 93).

101 However, it is apparent from the documents submitted to the Court that the national legislation at issue in the main proceedings no longer provides that the fact that the conclusion of a fixed-term employment contract is prescribed by a law constitutes an objective reason automatically justifying an unlimited number of renewals of such a contract. Instead, it appears that that legislation lays down the precise and concrete circumstances in which successive fixed-term employment contracts or relationships may be concluded in the public sector. Recourse to such contracts is permitted, as the case may be, under Article 5(2) of Presidential Decree No 164/2004 to meet 'special needs' which are 'related to the form, the type or the activity of the undertaking', under Article 1 of Law No 3250/2004 in order to meet 'additional requirements' for the purposes of providing 'services of a social character' to the public, under Article 6(1) of Law No 2527/1997 for the implementation of work which does not form part 'of the usual duties of the employees', or under Article 21(1) of Law No 2190/1994 in order to cope with 'seasonal or other periodic or temporary needs'.

102 As the referring court itself observed in its questions, the national legislation at issue in the main proceedings thus allows fixed-term employment contracts to be concluded for the purposes of meeting what are essentially temporary needs. However, it must be

acknowledged that such needs may constitute 'objective reasons' for the renewal of such contracts under clause 5(1)(a) of the Framework Agreement.

103 Nevertheless, as the Advocate General indicated at points 106 and 107 of her Opinion, it would be contrary to the objective pursued by that clause, which aims to prevent effectively the misuse of successive fixed-term employment contracts or relationships, if the renewal of such contracts or relationships were founded on the provisions of national legislation at issue in the main proceedings referred to in paragraph 101 of this judgment when, in reality, the needs covered by those provisions are not in fact of a temporary nature but are, on the contrary, 'fixed and permanent' (see, by analogy, *Adeneler and Others*, paragraph 88, and order in *Vassilakis and Others*, paragraph 110).

104 Such use of fixed-term employment contracts or relationships conflicts directly with the premiss on which the Framework Agreement is founded, namely — as is apparent from paragraphs 6 and 8 of its general considerations — that contracts of indefinite duration are the general form of employment relationship, whereas fixed-term employment contracts are a feature of employment in certain sectors or in respect of certain occupations and activities (see *Adeneler and Others*, paragraph 61; *Impact*, paragraph 86; and order in *Vassilakis and Others*, paragraph 82).

105 Consequently, the benefit of stable employment is viewed as a major element in the protection of workers (see *Mangold*, paragraph 64), whereas — as is apparent from the second paragraph in the preamble to the Framework Agreement and paragraph 8 of the general considerations — it is only in certain circumstances that fixed-term employment contracts are liable to respond to the needs of both employers and workers (*Adeneler and Others*, paragraph 62; *Impact*, paragraph 87; and order in *Vassilakis and Others*, paragraph 83).

106 Therefore, since, as the Court has consistently held, the Member States' obligation arising from a directive to achieve the result envisaged by that directive and their duty under Article 10 EC to take all appropriate measures, whether general or particular, to

ensure the fulfilment of that obligation is binding on all the authorities of the Member States including, for matters within their jurisdiction, the courts (see, in particular, Case C-106/89 *Marleasing* [1990] ECR I-4135, paragraph 8; Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 40; and Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835, paragraph 110), it is for all the authorities of the Member State concerned to ensure, for matters within the sphere of their competence, that clause 5(1)(a) of the Framework Agreement is complied with by specifically determining that the national legislation which permits the renewal in the public sector of successive fixed-term employment contracts or relationships which have to meet temporary needs is not, in fact, being used to meet fixed and permanent needs.

107 Therefore, the answer to be given to the referring court is that clause 5(1)(a) of the Framework Agreement must be interpreted as precluding the application of national legislation, such as that at issue in the main proceedings, by the authorities of the Member State concerned in such a way that the renewal of successive fixed-term employment contracts in the public sector is deemed to be justified by 'objective reasons' within the meaning of that clause solely on the ground that those contracts are founded on legal provisions allowing them to be renewed in order to meet certain temporary needs when, in fact, those needs are fixed and permanent. By contrast, clause 5(1)(a) does not apply to the first or single use of a fixed-term employment contract or relationship.

The concept of 'reduction' for the purposes of clause 8(3) of the Framework Agreement

— Reduction in relation to workers who have concluded a first or single fixed-term employment contract

108 By its question, the referring court asks, in essence, whether clause 8(3) of the Framework Agreement must be interpreted as meaning that the 'reduction' with which that clause is concerned must be considered only in relation to the general level of protection applicable in the Member State concerned to workers who have entered into

successive fixed-term employment contracts, without regard to the protection applicable to workers who have entered into a first or single fixed-term employment contract.

109 It is apparent from the order for reference in Case C-378/07 that that question is raised in respect of national legislation, such as Presidential Decree No 164/2004, which, in the opinion of the referring court, lays down measures for protection from the misuse of fixed-term employment contracts only where these are successive in nature, whereas the earlier national law derived from Article 8(3) of Law No 2112/1920 applies equally where the contract is the first or only fixed-term employment contract concluded between the parties.

110 It must be borne in mind that, according to clause 8(3) of the Framework Agreement, '[i]mplementation of this agreement shall not constitute valid grounds for reducing the general level of protection afforded to workers in the field of the agreement'.

111 However, as regards the field of the Framework Agreement, the preamble thereto states in its first paragraph that the agreement aims to contribute towards 'achieving a better balance between "flexibility in working time and security for workers"'. According to recital 14 in the preamble to Directive 1999/70, which essentially replicates the third paragraph in the preamble to the Framework Agreement, that agreement sets out for that purpose 'the general principles and minimum requirements for fixed-term employment contracts and employment relationships'. The fifth paragraph in the preamble to the Framework Agreement also states that the agreement 'relates to the employment conditions of fixed-term workers'.

112 The Framework Agreement, in particular clause 8(3), thus follows an aim which is akin to the fundamental objectives enshrined in the first paragraph of Article 136 EC as well as in the third paragraph of the preamble to the EC Treaty and Article 7 and the first paragraph of Article 10 of the 1989 Community Charter of the Fundamental Social Rights of Workers to which Article 136 EC refers, and which are associated with the improvement of living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, and with the existence of

proper social protection for workers, in the present case, for fixed-term workers (see, to that effect, *Impact*, paragraph 112).

113 In the light of those objectives, clause 8(3) of the Framework Agreement cannot be interpreted restrictively.

114 According to the actual wording of clause 2 of the Framework Agreement, the agreement applies to any fixed-term worker who has an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State.

115 Under clause 3 of the Framework Agreement, the definition of 'fixed-term worker' covers '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'.

116 Therefore, it is clear both from the objective of Directive 1999/70 and the Framework Agreement and from the wording of the relevant provisions thereof that, contrary to the submissions, in essence, made by the Greek Government and the Commission, the scope of the Framework Agreement is not limited solely to workers who have entered into successive fixed-term employment contracts; on the contrary, the agreement is applicable to all workers providing remunerated services in the context of a fixed-term employment relationship linking them to their employer (*Del Cerro Alonso*, paragraph 28), irrespective of the number of fixed-term contracts entered into.

117 Thus, it must be observed that clause 4 of the Framework Agreement provides that fixed-term workers are not to be treated in a less favourable manner in respect of employment conditions than permanent workers solely because they have a fixed-term contract or relation, without restricting the scope of that prohibition to successive fixed-term employment contracts.

118 It is true that clause 5(1) of the Framework Agreement, implementing in that regard clause 1(b) of the agreement, relates solely to the adoption by the Member States of measures intended to prevent the misuse of successive fixed-term employment contracts or relationships.

119 However, those two clauses do not determine the scope of the Framework Agreement and, therefore, cannot have the effect of restricting the scope of clause 8(3), which is included in a separate part of the Framework Agreement devoted to its implementation and, moreover, refers neither to clause 1(b) of the Framework Agreement nor to clause 5(1).

120 It follows from this that the existence of a 'reduction' for the purposes of clause 8(3) of the Framework Agreement must be considered in relation to the whole of a Member State's domestic law relating to the protection of workers in the context of fixed-term employment contracts.

121 Consequently, the answer to be given to the referring court is that clause 8(3) of the Framework Agreement must be interpreted as meaning that the 'reduction' with which that clause is concerned must be considered in relation to the general level of protection applicable in the Member State concerned both to workers who have entered into successive fixed-term employment contracts and to workers who have entered into a first or single fixed-term employment contract.

— The amendments introduced by the national implementing legislation, as against prior domestic law

122 By its questions, the referring court asks, in essence, whether clause 8(3) of the Framework Agreement must be interpreted as precluding national legislation, such as Presidential Decree No 164/2004, which, unlike an earlier rule of domestic law such as Article 8(3) of Law No 2112/1920 — which, according to that court, constitutes an 'equivalent legal measure' within the meaning of clause 5(1) of that agreement — (i) no longer provides for successive fixed-term employment contracts to be recognised as contracts of indefinite duration where abuse arises from the use of such contracts in the public sector, or which makes such recognition subject to certain cumulative and restrictive conditions, and (ii) excludes from the benefit of the protection measures provided workers who have entered into a first or single fixed-term employment contract.

123 In that regard, it must be observed at the outset that, contrary to the suggestion made by the referring court and also by the Greek Government and the Commission, the question as to whether there is a 'reduction' for the purposes of clause 8(3) of the Framework Agreement must not be considered solely by reference to the level of protection applicable to fixed-term workers that is derived from an 'equivalent legal measure' within the meaning of clause 5(1) of the agreement.

124 As is apparent, in particular, from paragraphs 116 to 121 of this judgment, it is clear both from the objective pursued by Directive 1999/70 and the Framework Agreement and from the wording of clause 8(3) of that agreement that the existence of a 'reduction' for the purposes of that clause must be considered in relation to the whole of domestic law relating to fixed-term employment contracts. It is irrelevant in that regard whether those provisions may or may not constitute an 'equivalent legal measure' within the meaning of clause 5(1) of the agreement; clause 8(3) does not, in any event, refer to clause 5(1).

125 Next, as regards the scope of clause 8(3) of the Framework Agreement, it is apparent from the very wording of that clause that implementation of the agreement cannot

provide the Member States with valid grounds for reducing the general level of protection for workers previously guaranteed in the domestic legal order in the sphere covered by that agreement (*Mangold*, paragraph 50).

126 It follows that reduction of the protection which workers are guaranteed in the sphere of fixed-term employment contracts is not prohibited as such by the Framework Agreement but, in order for that reduction to be caught by the prohibition laid down by clause 8(3) of the agreement, it must, first, be connected to the 'implementation' of the Framework Agreement and, second, relate to the 'general level of protection' afforded to fixed-term workers (see, to that effect, *Mangold*, paragraph 52).

127 In the present case, it is apparent from the documents before the Court that the reduction referred to by the national court and invoked by the applicants in the main proceedings arises — so far as workers who entered into successive employment contracts are concerned — from the fact that, unlike Article 8(3) of Law No 2112/1920, which, according to the national court, allowed a fixed-term employment contract automatically to be recognised, with retroactive effect, as a contract of indefinite duration where the contract was entered into in order to meet fixed and permanent needs, Articles 5 to 7 of Presidential Decree No 164/2004, which transposed Directive 1999/70, no longer provide for the possibility of such recognition in the public sector; Article 11 of that decree makes that possibility — which is provided for on a transitional basis only, in respect of certain successive contracts in effect when that decree entered into force — subject to compliance with a number of restrictive conditions and does not have retroactive effect.

128 Furthermore, as regards workers who have entered into a first or single fixed-term employment contract, the reduction consists in the fact that those workers, who were covered by the protection measures available under Article 8(3) of Law No 2112/1920, are excluded from the scope of Presidential Decree No 164/2004.

129 In that regard, it must be observed that since, in accordance with the case-law cited in paragraph 48 of this judgment, it is for the national courts alone to interpret national law, it is those courts which are required to determine to what extent the abovementioned amendments introduced by Presidential Decree No 164/2004 in relation to prior national law, as derived from Article 8(3) of Law No 2112/1920, entailed a reduction in the protection of workers who have entered into a fixed-term employment contract, by comparing for that purpose the degree of protection afforded by each of those national provisions.

130 By contrast, it is for the Court, where appropriate, in giving a preliminary ruling, to provide the referring court with guidance to assist it in its assessment of the issue as to whether the possible reduction in the protection of workers who have entered into a fixed-term employment contract constitutes a 'reduction' for the purposes of clause 8(3) of the Framework Agreement. In order to do so, it is necessary to consider to what extent the amendments introduced by the national legislation intended to transpose Directive 1999/70 and the Framework Agreement may be deemed to be connected to the 'implementation' of that agreement and, moreover, may relate to the 'general level of protection' afforded to workers within the meaning of clause 8(3).

131 As regards, in the first place, the condition relating to the connection with the 'implementation' of the Framework Agreement, the Court has already held that that term, used without any further precision in clause 8(3) of the Framework Agreement, does not refer only to the original transposition of Directive 1999/70 and especially of the Annex thereto containing the Framework Agreement, but must also cover all domestic measures intended to ensure that the objective pursued by the directive may be attained, including those which, after transposition in the strict sense, add to or amend domestic rules previously adopted (*Mangold*, paragraph 51).

132 It follows that national legislation such as Presidential Decree No 164/2004, which is the second implementing measure adopted by the Member State concerned for the purposes of transposing Directive 1999/70 and the Framework Agreement, is liable to be caught by clause 8(3) of that agreement.

133 However, such legislation cannot be regarded as conflicting with that clause if the reduction it entails is in no way connected to the implementation of the Framework Agreement. That would be the case if the reduction were justified not by the need to put the Framework Agreement into effect but by the need to encourage another objective, one that is distinct from that implementation (see, to that effect, *Mangold*, paragraphs 52 and 53).

134 In the present case, with regard to the amendment concerning the possibility of reclassifying fixed-term employment contracts, it appears that, from 1994 — in other words, approximately five years before the adoption of Directive 1999/70 and the Framework Agreement — Article 21(2) of Law No 2190/1994 already provided, absolutely and on pain of nullity, for the prohibition of any reclassification as contracts of indefinite duration of fixed-term employment contracts entered into in the public sector on the basis of that law (see, in that regard, *Adeneler and Others*, paragraph 98).

135 Such a provision might suggest that the fact that Presidential Decree No 164/2004 does not provide for the possibility of reclassifying fixed-term employment contracts as contracts of indefinite duration, or makes it subject to certain conditions, is justified not by the need to put the Framework Agreement into effect but, as the defendants in the main proceedings and the Greek Government contend, by the need to ensure compliance, in the public sector, with competition recruitment procedures and thus to preserve the status of Greek civil servants.

136 However, it is also apparent from the orders for reference that, according to the court hearing the main actions, which is required to interpret national law, Article 8(3) of Law No 2112/1920 — which, according to that court, allows fixed-term employment contracts to be reclassified in this way, including in the public sector, where they are not justified by an objective reason — was still in force at the time of the adoption of Directive 1999/70 and the Framework Agreement.

137 In addition, as is apparent from recital 4 in the preamble to Directive 1999/70, the adoption of that directive and of the Framework Agreement was based on two proposals for directives made by the Commission in 1990 on employment relationships with regard to working conditions (Proposal for a Council Directive on certain employment relationships with regard to working conditions (OJ 1990 C 224, p. 4)) and distortions of competition (Proposal for a Council Directive on certain employment relationships with regard to distortions of competition (OJ 1990 C 224, p. 6), as amended (OJ 1990 C 305, p. 8)), on which the Council was unable to reach a decision. However, it must be observed that the latter proposal already envisaged, in Article 4, an obligation on the Member States to introduce certain measures to prevent fixed-term employment contracts being used to cover an existing, permanent post.

138 In those circumstances, it cannot be excluded, but nevertheless remains for the referring court to ascertain, that the fact that Presidential Decree No 164/2004 does not provide for fixed-term employment contracts to be treated as contracts of indefinite duration in the public sector, or makes such treatment subject to certain conditions, is connected to the implementation of the Framework Agreement. That may be all the more so given that, as paragraph 23 of this judgment shows, Article 103(8) of the Constitution of the Hellenic Republic was amended so as to prohibit absolutely the conversion of fixed-term employment contracts into contracts of indefinite duration in the public sector after the entry into force of Directive 1999/70 and before the time-limit for transposing the directive elapsed.

139 With regard to the amendment arising from the exclusion from the protection afforded by Presidential Decree No 164/2004 of workers who have entered into a first or single fixed-term employment contract, it must be acknowledged that it could be connected to the implementation of the Framework Agreement since, according to the order for reference in Case C-378/07, those workers had the benefit of the protection measures provided for under Article 8(3) of Law No 2112/1920 at the time of the adoption of Directive 1999/70 and the Framework Agreement. In addition, it is not apparent from any of the documents in the file submitted to the Court that, in providing for that exclusion, the national legislature intended to promote an objective other than that of implementing the Framework Agreement, although this is for the referring court to ascertain.

140 As regards, in the second place, the condition that the reduction must relate to the 'general level of protection' afforded to fixed-term workers, this implies that only a reduction on a scale likely to have an effect overall on national legislation relating to fixed-term employment contracts is liable to be covered by clause 8(3) of the Framework Agreement.

141 However, in the present case, as regards the amendment arising from the exclusion from the scope of Presidential Decree No 164/2004 of workers who have entered into a first or single fixed-term employment contract, it is apparent that that amendment does not affect all workers who have entered into a fixed-term employment contract but only those who (i) are in the public sector and (ii) are not parties to successive fixed-term employment contracts.

142 In so far as the latter workers do not represent a significant proportion of workers employed for a fixed term in the Member State concerned, which it is for the referring court to ascertain, the reduction in the protection afforded to that limited category of workers is not, in itself, likely to have an effect overall on the level of protection applicable under the domestic legal order to workers bound by fixed-term employment contracts.

143 As to the amendment concerning the possibility of treating fixed-term employment contracts as contracts of indefinite duration, while it is true that Presidential Decree No 164/2004 does not provide for such treatment or makes it subject to restrictive conditions, not only does the decree apply only to workers in the public sector but it also implements, in the public sector, all the measures intended to prevent the misuse of successive fixed-term employment contracts or relationships listed in clause 5(1)(a) to (c) of the Framework Agreement.

144 However, to the extent that such measures for the prevention of misuse are wholly or partly new to the domestic legal order (see, in that regard, *Adeneler and Others*, paragraph 100), which it is for the referring court to ascertain, their adoption can offset the reduction in protection resulting from the abolition or restriction of the penalty previously applicable in the event of misuse, consisting in the employment contract in question being treated as a contract of indefinite duration.

145 Such a development of national legislation, which tends to reinforce measures to prevent the misuse of successive fixed-term employment contracts, accords, moreover, with the objective pursued by the Framework Agreement. First, as is apparent from clauses 1(b) and 5(1) of that agreement, it is intended precisely to establish a framework to prevent abuse arising from the use of such contracts (*Adeneler and Others*, paragraph 79, and Case C-53/04 *Marrosu and Sardino* [2006] ECR I-7213, paragraph 43). Second, the Framework Agreement does not lay down any specific sanctions should instances of abuse have been established and, in particular, it neither lays down a general obligation on the Member States to provide for the recognition of fixed-term employment contracts as employment contracts of indefinite duration nor prescribes the precise conditions under which fixed-term employment contracts may be used (see *Adeneler and Others*, paragraphs 91 and 94), thereby giving Member States a margin of discretion in the matter (*Marrosu and Sardino*, paragraph 47). Thus, clause 5(2)(b) of the Framework Agreement merely provides that the Member States are, 'where appropriate', to determine under what conditions fixed-term employment contracts are to be 'deemed to be contracts … of indefinite duration'.

146 In those circumstances, it must be concluded that amendments introduced by national legislation intended to transpose Directive 1999/70 and the Framework Agreement, as in the case of the legislation at issue in the main proceedings, do not appear to constitute a 'reduction' in the general level of protection afforded to fixed-term workers for the purposes of clause 8(3) of the Framework Agreement where — which it is for the national court to ascertain — those amendments relate to a limited category of workers having entered into a fixed-term employment contract or may be offset by the adoption of measures to prevent the misuse of successive fixed-term employment contracts.

147 However, the fact remains that implementation of the Framework Agreement must comply with the other provisions of that agreement.

148 In that regard, it must be borne in mind that, according to recital 14 in the preamble to Directive 1999/70 and the third paragraph of the preamble to the Framework Agreement, that agreement sets out the general principles and minimum requirements relating to fixed-term work. Thus, clause 8(1) of the Framework Agreement expressly authorises the Member States and the social partners to maintain or introduce more favourable provisions for fixed-term workers than set out in that agreement.

149 It follows from this that the implementation of the Framework Agreement cannot have the effect of reducing the protection previously applicable, under the domestic legal order, to fixed-term workers to a level below that set by the minimum protective provisions laid down by the Framework Agreement in order to prevent the status of employees from being insecure (see *Adeneler and Others*, paragraph 63, and *Impact*, paragraph 88; see also, by analogy, with regard to clause 4 of the Framework Agreement, *Del Cerro Alonso*, paragraph 27).

150 As regards, specifically, workers who have entered into successive fixed-term employment contracts, implementation of the Framework Agreement must accordingly comply with the requirements of clause 5 of that agreement, designed to prevent abuse arising in the use of such contracts.

151 As far as the adoption of those measures to prevent abuse is concerned, it must be noted that clause 5(1) of the Framework Agreement requires the effective and binding adoption by Member States of at least one of the measures listed in that provision, where national law does not already include equivalent measures (see *Adeneler and Others*, paragraph 101; *Marrosu and Sardino*, paragraph 50; Case C-180/04 *Vassallo* [2006] ECR I-7251, paragraph 35; and *Impact*, paragraph 70; also order in *Vassilakis and Others*, paragraph 124).

152 In the present case, however, it is common ground that Articles 5 and 6 of Presidential Decree No 164/2004 implement, in the public sector, all the measures intended to prevent the misuse of successive fixed-term employment contracts or relationships listed in clause 5(1)(a) to (c) of the Framework Agreement.

153 However, the applicants in the main proceedings submit that, since that decree recognises only fixed-term employment contracts separated by a period of less than three months as being 'successive', it does not ensure the effective prevention of misuse of fixed-term employment contracts given that, in Greece, such contracts are generally separated by periods of four months.

154 In that regard, it must be noted that 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. As to the remainder, clause 5(2) leaves it, in principle, 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 (*Adeneler and Others*, paragraphs 80 and 81, and order in *Vassilakis and Others*, paragraphs 103 and 104).

155 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 respect 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 (*Adeneler and Others*, paragraph 82, and order in *Vassilakis and Others*, paragraph 105).

156 Thus, the Court has already held 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. 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 (*Adeneler and Others*, paragraphs 84 and 85, and order in *Vassilakis and Others*, paragraphs 107 and 108).

157 On the other hand, the Court has also already held that the legislation at issue in the main proceedings, which recognises only fixed-term employment contracts separated by a period of less than three months as being 'successive', does not appear, as such, to be so inflexible and inherently so restrictive. Such breaks can generally be regarded as being sufficient to interrupt any existing employment relationship and consequently have the effect that any contract signed subsequently would not be regarded as being successive. It follows from this that clause 5(1) of the Framework Agreement does not, in principle, preclude legislation such as that at issue in the main proceedings. However, it is for the national authorities and courts responsible for implementing the measures transposing Directive 1999/70 and the Framework Agreement, and which are thus called upon to rule on the treatment of successive fixed-term employment contracts, to consider in each case all the circumstances at issue, taking account, in particular, of the number of successive contracts concluded with the same person or for the purposes of performing the same work, in order to ensure that fixed-term relationships are not abused by employers (see order in *Vassilakis and Others*, paragraphs 115 to 117).

158 Next, as regards the punishment of misuse, it must be observed that 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 measures taken pursuant to the Framework Agreement are fully effective (*Adeneler and Others*, paragraph 94; *Marrosu and Sardino*, paragraph 51; *Vassallo*, paragraph 36; and order in *Vassilakis and Others*, paragraph 125).

159 While, in the absence of relevant Community rules, the detailed rules for implementing such measures are a matter for the domestic legal order of the Member States, under the principle of their procedural autonomy, 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, in particular, *Adeneler and Others*, paragraph 95; *Marrosu and Sardino*, paragraph 52; and *Vassallo*, paragraph 37; also order in *Vassilakis and Others*, paragraph 126).

160 Therefore, where abuse of successive fixed-term contracts has 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' (*Adeneler and Others*, paragraph 102; *Marrosu and Sardino*, paragraph 53; and *Vassallo*, paragraph 38; also order in *Vassilakis and Others*, paragraph 127).

161 Accordingly, while a Member State such as the Member State concerned in the main proceedings is entitled, as paragraph 144 of this judgment shows, not to provide, as a penalty for failure to comply with the preventive measures laid down by national legislation transposing clause 5(1) of the Framework Agreement, for fixed-term employment contracts to be treated as contracts of indefinite duration, it must nevertheless satisfy itself that the other penalties prescribed by that legislation are sufficiently effective and a sufficient deterrent to ensure that those preventive measures are fully effective (see, to that effect, *Adeneler and Others*, paragraph 105; *Marrosu and Sardino*, paragraph 49; and *Vassallo*, paragraph 34; also order in *Vassilakis and Others*, paragraph 123).

162 In the present case, the applicants in the main proceedings submit, however, in the first place, that the penalties laid down in Article 7 of Presidential Decree No 164/2004 cannot be regarded as having this effective and deterrent character. First, the payment of wages and severance pay provided for under Article 7(2) is not in any way designed to

prevent the misuse of fixed-term employment contracts; it is the penalty laid down under general employment law. Second, the criminal-law and disciplinary penalties provided for by Article 7(3) already exist and, moreover, are entirely ineffective in Greece. In addition, in practice, these penalties are not applied to a number of categories of fixed-term workers, such as those with contracts for work or contracts of employment entered into pursuant to Law No 2190/1994.

163 It should be borne in mind in that regard that it is not for the Court to interpret national law, that being exclusively a matter for the referring court or, as the case may be, for the national courts having jurisdiction, which must determine whether the requirements set out in paragraphs 158 to 160 of this judgment are met by the provisions of the national law applicable (see, in particular, *Vassallo*, paragraph 39, and order in *Vassilakis and Others*, paragraph 134).

164 It is therefore 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 adequate for the punishment of the misuse by the public authorities of successive fixed-term employment contracts or relationships (see, to that effect, *Vassallo*, paragraph 41; and *Marrosu and Sardino*, paragraph 56; also order in *Vassilakis and Others*, paragraph 135).

165 In that regard, as the Advocate General observed at point 92 of her Opinion, it is for the referring court, inter alia, to satisfy itself that workers who have experienced abuse arising from the use of successive fixed-term employment contracts, as suggested by the applicants in the main proceedings, are not deterred, in the hope of continued public sector employment, from asserting before the national authorities, including the courts, the rights conferred upon them under national law which arise from the implementation by that law of all the preventive measures envisaged by clause 5(1) of the Framework Agreement.

166 In addition, the referring court must satisfy itself that the penalties provided for by Presidential Decree No 164/2004 can be applied to employers of all 'fixed-term' workers within the meaning of clause 3(1) of the Framework Agreement if those workers experience abuse arising from the use of successive contracts, regardless of how their contract is classified under domestic law.

167 In the second place, the applicants in the main proceedings maintain that Article 11 of Presidential Decree No 164/2004 — which provides for the possibility, on a transitional basis, of the conversion to employment contracts of indefinite duration of certain successive fixed-term contracts in effect at the time when that decree entered into force, or which had expired during a period of three months immediately preceding that entry into force — is not an adequate sanction in view of the restrictive and cumulative nature of the conditions imposed by that provision. In that regard, the applicants also raise various problems relating to the operation of the procedure before the ASEP, which is the administrative body competent to rule on applications for conversion. Those difficulties arise, in particular, from the time-limits to which the ASEP is subject when taking its decisions and because the intervention of the administrative courts, on the basis of the ASEP's competence, in proceedings relating to the application of Article 11 calls into question the very jurisdiction of the civil courts to resolve disputes concerning Article 8(3) of Law No 2112/1920.

168 As regards the conditions imposed by Article 11 of Presidential Decree No 164/2004 in respect of the possibility of conversion of fixed-term contracts, it must be borne in mind, so far as the requirement of a period of less than three months between such contracts is concerned, that it has already been established in paragraph 157 of this judgment that such a requirement is not, in principle, contrary to clause 5(1) of the Framework Agreement.

169 As to the conditions imposed by Article 11 concerning the total minimum term of the contracts and the number of renewals, it is not altogether clear from the documents submitted to the Court how these would be liable to affect the objective pursued by the Framework Agreement. In that regard, it should be noted that the mere fact that the conversion envisaged by that provision has not taken place with retroactive effect does not appear, as such, to be capable of rendering that penalty ineffective since it results, in any event, in the substitution of a relationship of indefinite duration for a fixed-term

relationship and therefore brings to an end a position of insecurity, introducing instead greater stability in employment relationships.

170 In so far as the applicants in the main proceedings submit that, owing to the cumulative conditions imposed by Article 11 of Presidential Decree No 164/2004, certain fixed-term employment contracts concluded or renewed abusively in the public sector before the entry into force of the decree would escape any penalty, it should be observed that, in such a situation, 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. Consequently, in so far as the domestic law of the Member State concerned did not, during that period, include other effective measures for that purpose, for example, because the penalties laid down in Article 7 of the decree did not apply *rationae temporis*, the recognition of fixed-term employment contracts as contracts of indefinite duration pursuant to Article 8(3) of Law No 2112/1920 could, as the applicant in the main proceedings in Case C-379/07 submits, constitute such a measure (see, to that effect, *Adeneler and Others*, paragraphs 98 to 105, and order in *Vassilakis and Others*, paragraphs 129 to 137).

171 However, it is the national authorities and courts responsible for implementing the measures transposing Directive 1999/70 and the Framework Agreement, and thus called upon to rule on the treatment of successive fixed-term employment contracts, which must consider in each case, on the basis of all the circumstances at issue, whether the measures laid down under Article 11 of Presidential Decree No 164/2004 are appropriate for the purposes of duly punishing any misuse of fixed-term employment contracts which took place before the entry into force of that decree and thereby nullifying the consequences of the breach of Community law.

172 With regard to the procedure provided for under national law for that purpose, it must be noted that, under clause 8(5) of the Framework Agreement, the prevention and also

the settlement of disputes and grievances arising from the application of that agreement are to be dealt with in accordance with national law, collective agreements and practice (order in *Vassilakis and Others*, paragraph 140).

173 The Court has consistently held that, in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law (*Impact*, paragraph 44 and case-law cited, and order in *Vassilakis and Others*, paragraph 141).

174 As is apparent from paragraphs 158 and 159 of this judgment, it is incumbent on the national authorities to adopt appropriate measures to ensure that the measures taken pursuant to the Framework Agreement are fully effective. The detailed rules for implementing those measures, which are a matter for the domestic legal order of the Member States under the principle of their national procedural autonomy, must be consistent with the principles of equivalence and effectiveness (order in *Vassilakis and Others*, paragraph 142).

175 The Court has already held that national legislation such as that at issue in the main proceedings which provides that an independent administrative body such as the ASEP is competent to reclassify where appropriate fixed-term employment contracts as contracts of indefinite duration appears, *prima facie*, to satisfy those requirements (order in *Vassilakis and Others*, paragraph 144).

176 Nevertheless, it is for the referring court, not the Court of Justice, to ascertain that the Member State concerned has taken all necessary steps enabling it, first, to be in a position at any time to guarantee the results imposed by Directive 1999/70 and, second, to provide that the detailed rules for implementing the measures taken in application of the Framework Agreement, which, in accordance with the principle of the Member States' procedural autonomy, are a matter for that State's domestic legal order,

guarantee the right to effective judicial protection in compliance with the principles of equivalence and effectiveness (see, in particular, order in *Vassilakis and Others*, paragraph 149 and case-law cited).

177 Having regard to all the foregoing, the answer to be given to the referring court is therefore that clause 8(3) of the Framework Agreement must be interpreted as not precluding national legislation, such as Presidential Decree No 164/2004, which, unlike an earlier rule of domestic law such as Article 8(3) of Law No 2112/1920, (i) no longer provides for fixed-term employment contracts to be recognised as contracts of indefinite duration where abuse arises from the use of such contracts in the public sector, or which makes such recognition subject to certain cumulative and restrictive conditions, and (ii) excludes from the benefit of the protection measures provided workers who have entered into a first or single fixed-term employment contract, where — which it is for the national court to ascertain — such amendments relate to a limited category of workers having entered into a fixed-term employment contract or are offset by the adoption of measures to prevent the misuse of fixed-term employment contracts within the meaning of clause 5(1) of the Framework Agreement.

178 However, the implementation of the Framework Agreement by national legislation such as Presidential Decree No 164/2004 cannot have the effect of reducing the protection previously applicable, under the domestic legal order, to fixed-term workers to a level below that set by the minimum protective provisions laid down by the Framework Agreement. In particular, compliance with clause 5(1) of the Framework Agreement requires that such legislation should provide, in respect of the misuse of successive fixed-term employment contracts, effective and binding measures to prevent such misuse and sanctions which are sufficiently effective and a sufficient deterrent to ensure that those preventive measures are fully effective. It is therefore for the referring court to establish that those conditions are fulfilled.

The absolute prohibition on converting fixed-term employment contracts to contracts of indefinite duration in the public sector

179 By its questions, the referring court asks, in essence, whether the Framework Agreement must be interpreted as precluding the application of national legislation which, in the public sector, prohibits fixed-term employment contracts that have, in fact, been intended to cover fixed and permanent needs of the employer from being converted to contracts of indefinite duration.

180 It is apparent from the orders for reference that, according to the court seised of the main proceedings, that absolute prohibition on any conversion is now laid down not only by Article 21 of Law No 2190/94, but also by Article 103(8) of the Constitution of the Hellenic Republic, as amended on 7 April 2001.

181 Whatever the nature of the provisions of Greek law prohibiting the conversion of successive fixed-term employment contracts into contracts of indefinite duration, it must be stated at the outset, in so far as this question concerns the conclusion of every first or single fixed-term employment contract, that, as paragraph 90 of this judgment shows, the Framework Agreement does not require the Member States to adopt measures in order to punish the misuse of such a contract resulting from the fact that it does actually cover fixed and permanent needs of the employer. Such a contract is not covered by clause 5(1) of the Framework Agreement, which relates solely to the prevention of the misuse of successive fixed-term employment contracts or relationships (*Mangold*, paragraphs 41 to 43).

182 In so far as the question concerns successive fixed-term employment contracts, it must be pointed out that that question is the same as a question on which the Court has already given a ruling in *Adeneler and Others* (paragraphs 91 to 105) and that other

relevant information enabling an answer to be given to that question appears in the judgments in *Marrosu and Sardino* (paragraphs 44 to 57) as well as *Vassallo* (paragraphs 33 to 42) and the order in *Vassilakis and Others* (paragraphs 120 to 137).

183 It follows from that case-law that, since clause 5 of 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 (*Adeneler and Others*, paragraph 91), it gives Member States a margin of discretion in the matter (*Marrosu and Sardino*, paragraph 47, and order in *Vassilakis and Others*, paragraph 121).

184 However, as is already clear from paragraph 161 of this judgment, in order for national legislation, which, in the public sector, prohibits absolutely the conversion into a contract of indefinite duration of a succession of fixed-term employment contracts that, in fact, have been intended to cover fixed and permanent needs of the employer, to be regarded as compatible with the Framework Agreement, the domestic law of the Member State concerned must include, in that sector, another effective measure to prevent and, where relevant, punish the misuse of successive fixed-term contracts (see, to that effect, *Adeneler and Others*, paragraph 105; *Marrosu and Sardino*, paragraph 49; and *Vassallo*, paragraph 34; also order in *Vassilakis and Others*, paragraph 123).

185 It must be observed, as is apparent in particular from paragraphs 79 to 82 and 93 of this judgment, that clause 5(1) of the Framework Agreement requires the effective and binding adoption by Member States of at least one of the measures listed in that provision and designed to prevent the abusive use of successive fixed-term employment contracts or relationships, where national law does not already include equivalent measures (*Marrosu and Sardino*, paragraph 50; and *Vassallo*, paragraph 35; also order in *Vassilakis and Others*, paragraph 124).

186 In addition, 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 measures which must be not only proportionate, but also sufficiently effective and a sufficient deterrent to ensure that the measures taken pursuant to the Framework Agreement are fully effective, in accordance with the requirements referred to in paragraphs 158 to 160 of this judgment (*Adeneler and Others*, paragraph 94; *Marrosu and Sardino*, paragraph 51; and *Vassallo*, paragraph 36; also order in *Vassilakis and Others*, paragraph 125).

187 In the present case, it should be noted that the national legislation at issue in the main proceedings lays down mandatory rules governing the duration and renewal of fixed-term employment contracts which are intended to ensure that the three preventive measures listed in clause 5(1)(a) to (c) of the Framework Agreement are implemented. It also provides that, where abuse of successive fixed-term employment contracts has been established, the worker who is prejudiced is entitled to the payment of wages and severance pay, whilst the person responsible for the infringement may be subject to criminal and disciplinary penalties. Furthermore, that legislation also provides that certain fixed-term employment contracts which were still in effect when the legislation entered into force or which had expired shortly before that date may, subject to compliance with certain conditions, be converted to contracts of indefinite duration.

188 While such legislation could meet the requirements referred to in paragraphs 158 to 160 of this judgment (see, to that effect, *Marrosu and Sardino*, paragraph 55; *Vassallo*, paragraph 40; and order in *Vassilakis and Others*, paragraph 128), it is none the less for the referring court — as is apparent from paragraphs 162 to 176 of this judgment — to determine to what extent the conditions for application and effective implementation of the relevant provisions of domestic law constitute a measure adequate for the prevention and, where relevant, the punishment of the misuse by the public authorities of successive fixed-term employment contracts or relationships (see *Vassallo*, paragraph 41; and *Marrosu and Sardino*, paragraph 56; also order in *Vassilakis and Others*, paragraph 135).

189 Therefore, the answer to be given to the referring court is that, in circumstances such as those of the cases in the main proceedings, the Framework Agreement must be interpreted as meaning that, where the domestic law of the Member State concerned includes, in the sector under consideration, other effective measures to prevent and, where relevant, punish the abuse of successive fixed-term employment contracts within the meaning of clause 5(1) of that agreement, it does not preclude the application of a rule of national law which prohibits absolutely, in the public sector only, the conversion into a contract of indefinite duration of a succession of fixed-term employment contracts which, having been intended to cover fixed and permanent needs of the employer, must be regarded as constituting an abuse. It is none the less 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 adequate for the prevention and, where relevant, the punishment of the misuse by the public authorities of successive fixed-term employment contracts or relationships.

190 By contrast, since clause 5(1) of the Framework Agreement is not applicable to workers who have entered into a first or single fixed-term employment contract, that provision does not require the Member States to adopt penalties where such a contract does in fact cover fixed and permanent needs of the employer.

Consequences of the interpretation of clauses 5(1) and 8(1) of the Framework Agreement for national courts and tribunals

191 By its questions, the referring court asks, in essence, whether it is obliged under Community law to disapply national legislation such as Presidential Decree No 164/2004 at issue in the main proceedings if it is contrary to the provisions of the Framework Agreement, and to apply instead an 'equivalent legal measure' such as that provided for under Article 8(3) of Law No 2112/1920.

192 Having regard to the answers given to the other questions, this question becomes relevant for the national court if that court, following what has been held in paragraphs 103 to 106 and 147 to 176 of this judgment, concludes that in some circumstances national legislation, as interpreted or applied by national authorities, does not, contrary to clause 5(1) of the Framework Agreement, include effective measures intended to prevent and, where relevant, punish the misuse by a public sector employer of successive fixed-term employment contracts and also, as the case may be, if that court, following what has been held, in particular, in paragraphs 138, 139 and 146 of this judgment, concludes that, contrary to clause 8(3) of the Framework Agreement, Presidential Decree No 164/2004 constitutes a reduction in the general level of protection of fixed-term workers which was justified by the need to put that agreement into effect.

193 For the purposes of responding to the question referred, it should be borne in mind that the Court has consistently held that, whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied upon by individuals as against the State, particularly in its capacity as an employer (see, in particular, to that effect, Case 152/84 *Marshall* [1986] ECR 723, paragraphs 46 and 49, and Case C-187/00 *Kutz-Bauer* [2003] ECR I-2741, paragraphs 69 and 71).

194 That is the case, according to the case-law, whenever the full application of the directive is not in fact secured, that is to say, not only where the directive has not been implemented or has been implemented incorrectly, but also where the national measures correctly implementing the directive are not being applied in such a way as to achieve the result sought by it (Case C-62/00 *Marks & Spencer* [2002] ECR I-6325, paragraph 27).

195 As the Court has already held, that case-law can be applied to agreements which, like the Framework Agreement, are the product of a dialogue, based on Article 139(1) EC,

between management and labour at Community level and which have been implemented in accordance with Article 139(2) EC by a directive of the Council, of which they are thus an integral component (*Impact*, paragraph 58).

— Clause 5(1) of the Framework Agreement

196 The Court has already 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 rely, for the purposes of preventing the misuse of fixed-term employment contracts, on one or more of the measures listed in that clause, or even on 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 determine sufficiently the minimum protection which should, on any view, be implemented pursuant to clause 5(1) of the Framework Agreement (*Impact*, paragraphs 71, 78 and 79).

197 However, the Court has consistently held that 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. 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, in particular, *Adeneler and Others*, paragraph 108, and order in *Vassilakis and Others*, paragraph 56).

198 The requirement that national law 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, in particular, *Adeneler and Others*, paragraph 109, and order in *Vassilakis and Others*, paragraph 57).

199 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 *Adeneler and Others*, paragraph 110; *Impact*, paragraph 100; and order in *Vassilakis and Others*, paragraph 58).

200 The principle that national law must be interpreted in conformity with Community law none the less 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 *Adeneler and Others*, paragraph 111; *Impact*, paragraph 101; and the order in *Vassilakis and Others*, paragraph 59).

201 As the Court stated in paragraph 115 of the judgment in *Adeneler and Others*, 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 (see also the order in *Vassilakis and Others*, paragraph 63).

202 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 Case C-91/92 *Faccini Dori* [1994] ECR I-3325, paragraph 27, and order in *Vassilakis and Others*, paragraph 60).

203 In the present case, it is therefore for the national court, so far as possible, and where there has been misuse of successive fixed-term employment contracts, to interpret and apply the relevant provisions of national law in such a way that it is possible duly to punish the abuse and to nullify the consequences of the breach of Community law. In that context, it is for the national court to determine whether the provisions of Article 8(3) of Law No 2112/1920 can be applied in some circumstances for the purposes of an interpretation in conformity with Community law.

204 As regards the relevance in that regard of the fact that Article 103(8) of the Constitution of the Hellenic Republic was amended after the entry into force of Directive 1999/70 and before the time-limit for transposing it elapsed so as to prohibit absolutely 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 (see *Adeneler and Others*, paragraph 119, and order in *Vassilakis and Others*, paragraph 67).

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

206 However, according to the case-law of the Court, it follows from the application of the second paragraph of Article 10 EC in conjunction with the third paragraph of Article 249 EC and the directive concerned that, during the period prescribed for the 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 that directive (*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 (*Adeneler and Others*, paragraph 121, and the order in *Vassilakis and Others*, paragraph 69).

207 It follows 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); that applies also when those authorities amend their Constitution.

— Clause 8(3) of the Framework Agreement

208 As regards clause 8(3) of the Framework Agreement, it should be noted that, as is apparent from paragraph 126 of this judgment, clause 8(3) does not prohibit all reductions in the protection of fixed-term workers but only those which are justified by the need to 'put into effect' that agreement and, moreover, which relate to the 'general level of protection' afforded to fixed-term workers.

209 It follows from this, first, that clause 8(3) of the Framework Agreement relates only to the 'implementation' of that agreement by the Member States and/or the social partners, on whom it is incumbent to transpose that agreement into the domestic legal order, prohibiting them, as has been established in paragraph 133 of this judgment, from justifying, in that transposition, a reduction in the general level of protection of workers by the need to put the Framework Agreement into effect.

210 Second, by virtue of the fact that the prohibition in clause 8(3) of the Framework Agreement is confined, in its own words, to 'reducing the general level of protection afforded to workers in the field of [that] agreement', clause 8(3) implies, as paragraph 140 of this judgment shows, that only a reduction on a scale likely to have an effect overall on national legislation relating to fixed-term employment contracts is liable to be covered by that clause. However, individuals would not be able to infer from such a prohibition any right that would be sufficiently clear, precise and unconditional.

211 It follows that clause 8(3) of the Framework Agreement does not fulfil the conditions required in order to have direct effect.

212 In that respect, it is for the national courts to interpret the provisions of national law, so far as possible, in such a way that they can be applied in a manner which is consistent with the objective pursued by the Framework Agreement (see, by analogy, case-law cited in paragraphs 197 to 200 of this judgment).

213 Having regard to the foregoing, the answer to be given to the national court is that it is for that court to interpret the relevant provisions of national law, so far as possible, in conformity with clauses 5(1) and 8(3) of the Framework Agreement, and also to determine, in that context, whether an 'equivalent legal measure' within the meaning of clause 5(1), such as that provided for in Article 8(3) of Law No 2112/1920, must be applied to the main proceedings in place of certain other provisions of domestic law.

Costs

214 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Third Chamber) hereby rules:

1. **Clause 5(1) 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 not precluding the adoption by a Member State of national legislation, such as Presidential Decree No 164/2004 laying down provisions concerning workers employed under fixed-term contracts in the public sector, which, for the purposes specifically of transposing Directive 1999/70 so as to implement the provisions of that directive in the public sector, provides for the implementation of the measures to prevent the misuse of successive fixed-term employment contracts or relationships which are listed in clause 5(1)(a) to (c) where — which it is for the national court to ascertain — an 'equivalent legal measure' within the meaning of that clause already exists under national law, such as Article 8(3) of Law No 2112/1920 on compulsory notice of termination of contracts of employment of employees in the private sector, provided, however, that that legislation (i) does not affect the effectiveness of the prevention of the misuse of fixed-term employment contracts or relationships resulting from that equivalent legal measure, and (ii) complies with Community law and, in particular, with clause 8(3) of the Framework Agreement.**

2. **Clause 5(1)(a) of the Framework Agreement on fixed-term work must be interpreted as precluding the application of national legislation, such as that at issue in the main proceedings, by the authorities of the Member State concerned in such a way that the renewal of successive fixed-term employment contracts in the public sector is deemed to be justified by 'objective reasons' within the meaning of that clause solely on the ground that those contracts are founded on legal provisions allowing them to be renewed in order to meet certain temporary needs when, in fact, those needs are fixed and permanent. By contrast, clause 5(1)(a) does not apply to the first or single use of a fixed-term employment contract or relationship.**

3. Clause 8(3) of the Framework Agreement on fixed-term work must be interpreted as meaning that the 'reduction' with which that clause is concerned must be considered in relation to the general level of protection applicable in the Member State concerned both to workers who have entered into successive fixed-term employment contracts and to workers who have entered into a first or single fixed-term employment contract.

4. Clause 8(3) of the Framework Agreement on fixed-term work must be interpreted as not precluding national legislation, such as Presidential Decree No 164/2004, which, unlike an earlier rule of domestic law such as Article 8(3) of Law No 2112/1920, (i) no longer provides for fixed-term employment contracts to be recognised as contracts of indefinite duration where abuse arises from the use of such contracts in the public sector, or which makes such recognition subject to certain cumulative and restrictive conditions, and (ii) excludes from the benefit of the protection measures provided workers who have entered into a first or single fixed-term employment contract, where — which it is for the national court to ascertain — such amendments relate to a limited category of workers having entered into a fixed-term employment contract or are offset by the adoption of measures to prevent the misuse of fixed-term employment contracts within the meaning of clause 5(1) of the Framework Agreement.

However, the implementation of the Framework Agreement by national legislation such as Presidential Decree No 164/2004 cannot have the effect of reducing the protection previously applicable, under the domestic legal order, to fixed-term workers to a level below that set by the minimum protective provisions laid down by the Framework Agreement. In particular, compliance with clause 5(1) of the Framework Agreement requires that such legislation should provide, in respect of the misuse of successive fixed-term employment contracts, effective and binding measures to prevent such misuse and penalties which are sufficiently effective and a sufficient deterrent to ensure that those preventive measures are fully effective. It is therefore for the referring court to establish that those conditions are fulfilled.

5. In circumstances such as those of the cases in the main proceedings, the Framework Agreement on fixed-term work must be interpreted as meaning that, where the domestic law of the Member State concerned includes, in the sector under consideration, other effective measures to prevent and, where relevant, punish the abuse of successive fixed-term employment contracts within the meaning of clause 5(1) of that agreement, it does not preclude the application of a rule of national law which prohibits absolutely, in the public sector only, the conversion into a contract of indefinite duration of a succession of fixed-term employment contracts which, having been intended to cover fixed and permanent needs of the employer, must be regarded as constituting an abuse. It is none the less 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 adequate for the prevention and, where relevant, the punishment of the misuse by the public authorities of successive fixed-term employment contracts or relationships.

By contrast, since clause 5(1) of the Framework Agreement is not applicable to workers who have entered into a first or single fixed-term employment contract, that provision does not require the Member States to adopt penalties where such a contract does in fact cover fixed and permanent needs of the employer.

6. It is for the national court to interpret the relevant provisions of national law, so far as possible, in conformity with clauses 5(1) and 8(3) of the Framework Agreement on fixed-term work, and also to determine, in that context, whether an 'equivalent legal measure' within the meaning of clause 5(1), such as that provided for in Article 8(3) of Law No 2112/1920, must be applied to the main proceedings in place of certain other provisions of domestic law.

[Signatures]