OPINION OF ADVOCATE GENERAL KOKOTT

delivered on 27 October 2005 [1]

I — Introduction

1. The present case looks at how fixed-term employment relationships are used by public sector employers in Greece. A Greek court, the Monomeles Protodikio Thessalonikis (Single-Judge Court of First Instance, Thessaloniki, Greece), has made a reference for a preliminary ruling, enquiring about the requirements of Community law applying to such fixed-term employment relationships. This matter focuses in particular on the measures necessary to prevent the abuse of successive fixed-term employment contracts.

2. In this case the Court of Justice also looks at a matter of fundamental significance, namely the time from which national courts are required to interpret national law in accordance with directives.

II — Relevant legislation

A — *Community law*

3. The Community legislation relevant to this case is Council Directive 1999/70/EC of 28 June 1999 concerning the Famework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP [2] (hereinafter 'Directive 1999/70'). The Framework Agreement on fixed-term work (hereinafter 'Framework Agreement'), concluded on 18 March 1999 by three general cross-industry organisations (ETUC, UNICE and CEEP) and annexed to the directive, is implemented by that directive.

4. The Framework Agreement is underpinned, on the one hand, by the consideration 'that contracts of an indefinite duration are, and will continue to be, the general form

1 — Original language: German.

2 — OJ 1999 L 175, p. 43.

of employment relationship between employers and workers'.[3] However, the Framework Agreement at the same time acknowledges that fixed-term employment contracts 'are a feature of employment in certain sectors, occupations and activities which can suit both employers and workers'.[4]

5. Clause 1 of the Framework Agreement accordingly defines its purpose as follows:

'The purpose of this 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 5 of the Framework Agreement concerns measures to prevent the abuse of successive fixed-term employment contracts or relationships:

'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.

3 — Second paragraph in the preamble to the Framework Agreement; see also paragraph 6 of the general considerations thereof.

4 — Paragraph 8 of the general considerations of the Framework Agreement; see also the second paragraph in the preamble thereto.

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.'

7. Finally, the Framework Agreement provides in Clause 8(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.'

8. Directive 1999/70 allows Member States to define the terms used in the Framework Agreement but not specifically defined therein in conformity with national law or practice provided that the definitions in question respect the content of the Framework Agreement.[5] Such a measure is designed to take account of the situation in each Member State and the circumstances of particular sectors and occupations, including the activities of a seasonal nature.[6]

9. Under Article 3 of Directive 1999/70, the directive is to enter into force on the day of its publication in the *Official Journal of the European Communities*, which is 10 July 1999.

10. Under the first paragraph of Article 2 of Directive 1999/70, Member States are required to 'bring into force the laws, regulations and administrative provisions necessary to comply with this directive by 10 July 2001' or to ensure that, by that date at the latest, 'management and labour have introduced the necessary measures by agreement'. If necessary, and following consultation with management and labour, Member States may have a maximum of one more year, under the second paragraph of Article 2 of the directive, to take account of special difficulties or implementation by a collective agreement. The Commission has explained

5 — Recital 17 in the preamble to Directive 1999/70.

6 — Paragraph 10 of the general considerations of the Framework Agreement; see also the third paragraph in the preamble to that agreement.

that a year's extension, as described above, was granted up to 10 July 2002 in the case of Greece.

B — *National law*

11. The relevant provisions of Greek law are Law No 2190/1994 and the presidential decrees transposing Directive 1999/70.

Law No 2190/1994

12. Article 21 of Law No 2190/1994 [7] provides:

'... 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 ...; conversion into a contract of indefinite duration shall be invalid ...'.

Presidential Decree No 81/2003

13. Presidential Decree No 81/2003, [8] which entered into force on 2 April 2003, lays down 'provisions concerning workers employed under fixed-term contracts' and originally applied, under Article 2(1) thereof, 'to workers employed under a fixed-term contract or relationship'. However, the scope of that provision was subsequently restricted by Presidential Decree No 180/2004 of 23 August 2004 [9] to employment relationships in the private sector. [10]

14. Article 5 of Presidential Decree No 81/2003, in its original version, contains the following 'rules to protect workers and to prevent circumvention of the law to their detriment':

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

7 — *FEK* A' 28, 3 March 1994.

8 — *FEK* A' 77, 2 April 2003

9 — *FEK* A' 160, 23 August 2004. Under Article 5(1) of Presidential Decree No 180/2004, unless otherwise provided in individual provisions, the decree is to enter into force upon its publication in the Official Gazette.

10 — See Article 1 of Presidential Decree No 180/2004.

(a) There is an objective reason in particular:

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

...

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

4. Fixed-term employment contracts or relationships shall be regarded as "successive" if they are concluded between the same employer and worker under the same or similar terms of employment and they are not separated by a period of time longer than 20 working days.

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

15. Article 5 of Presidential Decree No 81/2003, cited above, was reformulated by Presidential Decree No 180/2004 and now provides inter alia as follows: [11]

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

if the renewal is justified by the form or the type or the activity of the employer or undertaking, or by special reasons or needs, provided that those circumstances are apparent, whether directly or indirectly, from the contract concerned; such circumstances include the temporary replacement of a worker, the carrying out of transient work, the temporary accumulation of work, or circumstances in which the fixed dur-

11 — See Article 3 of Presidential Decree No 180/2004.

ation is connected with education or training, or where a contract is renewed with the aim of facilitating a worker's transfer to related employment or carrying out a specific piece of work or programme, or the renewal is connected with a particular event ...

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

4. Fixed-term employment contracts or relationships shall be regarded as "successive" if they are concluded between the same employer and worker under the same or similar terms of employment and they are not separated by a period of time longer than 45 days, including non-working days. In the case of a group of undertakings, the term "the same employer", for the purposes of the preceding subparagraph, shall include undertakings in the group.

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

Presidential Decree No 164/2004

16. Special arrangements for workers employed under fixed-term contracts in the public sector are finally established by Presidential Decree No 164/2004, [12] which entered into force on 19 July 2004. Article 2(1) of the decree defines its scope as follows:

'The provisions of this decree shall apply to staff in the public sector, as that sector is defined in Article 3 of this decree, and to the

12 — *FEK* A' 134, 19 April 2004. Under Article 12(1) of Presidential Decree No 164/2004, unless otherwise provided in individual provisions, the decree is to enter into force upon its publication in the Official Gazette.

staff of municipal and communal undertakings who work under a fixed-term employment contract or relationship, or under a works contract or other contract or relationship concealing a relationship between employer and employee.'

17. Article 5 of Presidential Decree No 164/2004 includes the following provisions on the lawfulness of successive public sector 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 in paragraph 2 of the following article.'

18. The transitional provisions contained in Article 11 of Presidential Decree No 164/2004 provide inter alia:

'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 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.

...

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.'

III — Facts and main proceedings

19. The original 18 claimants in the main proceedings, [13] who include Mr Adeneler, were employed by the defendant in the main proceedings, the Greek milk organisation Ellinikos Organismos Galaktos (ELOG). ELOG, a legal person governed by private law with its registered office in Thessaloniki, is to be considered a part of the public sector in the broader sense, under the relevant Greek legislation. [14] ELOG is responsible for administering milk quotas in Greek territory and, in particular in this case, for ensuring compliance with the ceilings applying to Greece.

20. A number of employment contracts under private law, all of which were valid for fixed terms, were concluded in each case between ELOG and the individual claimants in the main proceedings. Both the original employment contracts and the subsequent employment contracts were concluded for a fixed term.

21. The initial employment relationships with some of the claimants were established even before 10 July 2001, the end of the ordinary period allowed for transposing Directive 1999/70. ELOG concluded its initial employment contracts with the other claimants in any event before 10 July 2002, the end of the extended period allowed for transposition of the directive. All the con-

13 — Three of whom have since withdrawn their respective actions.

14 — Article 51(1) of Law No 1892/1990 (*FEK* A' 101)

tracts — both the original and the subsequent contracts — were concluded in each case for a period of eight months; the interval between contracts varied in each case from 22 days to almost 11 months. The claimants were each invariably re-employed in the same area of work (for example, as laboratory technicians, secretaries or veterinary surgeons) in which they had previously worked under their original employment contract.

22. When Presidential Decree No 81/2003 entered into force on 2 April 2003, a fixed-term employment relationship was in place with each of the claimants. All of those employment relationships expired between June and the end of August 2003. Since then, some claimants have been unemployed whilst others have been temporarily re-employed by ELOG under interim arrangements.

23. In the main action, the claimants argue that their work covers the defendant's fixed and permanent needs and that its continued conclusion of fixed-term employment contracts with them therefore constituted abusive practice. As to the substance, they claim that the court should find that the employment contracts connecting them with ELOG are contracts of indefinite duration. That finding constitutes the essential prerequisite underpinning the claimants' further claims, for instance to re-employment and payment of outstanding earnings.

IV — Reference for a preliminary ruling and proceedings before the Court of Justice

24. By judgment of 8 April 2004, rectified by order of 5 July 2004, the Monomeles Protodikio Thessalonikis [15] (hereinafter also 'the referring court') referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Must a national court — as far as possible — interpret its domestic law in conformity with a directive which was transposed belatedly into national law from (a) the time when the directive entered into force, or (b) the time when the time-limit for transposing it into national law passed without transposition being effected, or (c) the time when the national measure implementing it entered into force?

(2) Does Clause 5(1)(a) of the Framework Agreement on fixed-term work mean that, in addition to reasons connected with the nature, type or characteristics of the work performed or other similar reasons, the fact solely and simply that the conclusion of a fixed-term contract is required by a provision of statute or

15 — Which is the local court of first instance.

secondary legislation may constitute an objective reason for continually renewing or concluding successive fixed-term employment contracts?

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

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

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

25. The claimants in the main proceedings, the Greek Government and the Commission have submitted written and oral observations to the Court of Justice; ELOG has only taken part in the hearing.

V — Assessment

A — *Admissibility of the questions referred for a preliminary ruling*

26. In their written observations, the Greek Government and the Commission have each cast doubt on the relevance of the questions referred to a decision in the case.

The first question referred: relevant time for the purpose of the legal assessment

27. The Commission first casts doubt on the relevance to a decision of the first question referred, which is concerned with establishing the time from which the obligation to interpret national law in accordance with a given directive arises. The reason for its doubts, it explains, is the fact that the disputed employment contracts of all the claimants in the main proceedings *did not expire* until *after* Presidential Decree No 81/2003 had been adopted, that is to say, they expired at a time when the period allowed for Greece to transpose the directive had already lapsed and when a provision of national law transposing Directive 1999/70 had been adopted. The Commission therefore appears to conclude that earlier dates are of no relevance to the main action and the question concerning the obligation to interpret domestic law in accordance with the relevant directive at earlier dates is therefore superfluous.

28. However, according to settled case-law, it is solely for the national court to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. The Court can refuse a request submitted by a national court only where it is quite obvious that the ruling sought by that court on the interpretation of Community law bears no relation to the actual facts of the main action or its purpose or where the problem is general or hypothetical. [16]

29. In this case, it is anything but *obvious* that the matter at issue is the late date to which the Commission refers. The referring court alone can determine the relevant date for the purposes of national law for assessing the legality of imposing fixed terms on employment contracts (whether it is the date of conclusion of the contract or the date of its expiry) and the legislation that is applicable in that regard (whether it is Presidential Decree No 81/2003 or some other provisions of national law). It is by no means inconceivable that the national court will conclude in this case that the legality of the fixed-term employment contracts must be assessed in each case on the basis of the legal situation prevailing *on the date of their conclusion.* That date, as far as we know, in any case *precedes* the expiry of the period prescribed by Directive 1999/70 for its transposition by Greece, that is to say, it precedes 10 July 2002.

30. According to information provided by the claimants in the main proceedings which is not in dispute, both the first and the second fixed-term employment contracts, in

16 — Reference need only be had to Case C-17/03 *Vereniging voor Energie, Milieu en Water and Others* [2005] ECR I-4983, paragraph 34, and to Case C-415/93 *Bosman* [1995] ECR I-4921, paragraphs 59 to 61.

particular, were concluded, at least with some of the claimants, even before expiry of the period allowed for Greece to transpose the directive, that is to say, before the abovementioned date of 10 July 2002. [17] It may therefore be relevant to ascertain, not least in view of those contracts, whether or not the national law applying to them was to be interpreted in conformity with the directive and Framework Agreement even before expiry of the period prescribed for their transposition.

31. In those circumstances, the question as to the date from which the obligation to interpret national law in conformity with a given directive arises is by no means *obviously irrelevant*. The doubts raised by the Commission as to the relevance of the first question referred to a decision in the case cannot therefore be sustained.

The second and third questions referred: subsequent change of the position under national law

32. By its second and third questions, the referring court seeks essentially to ascertain whether the Framework Agreement can be interpreted as not precluding the definitions of objective reasons and succession adopted by the Greek legislature in Presidential Decree No 81/2003. In its written and oral observations, the Greek Government comments in this regard that now, in the light of the adoption of special provisions applying to the public sector by Presidential Decrees Nos 164/2004 and 180/2004, Presidential Decree No 81/2003 can no longer apply to the main action, and consequently that the questions relating to that provision are irrelevant to the decision in the main action. The Greek Government thus objects that the second and third questions are irrelevant to a decision in the case.

33. It should first be noted in this regard that Article 234 EC confers jurisdiction on the Court to interpret *Community law*; therefore, changes in national legislation after the order making the reference cannot influence that interpretation. [18]

34. Furthermore, according to the case-law cited above, it is solely for the national court to assess the relevance of its reference for a

17 — See paragraphs 51 and 52 of the written pleadings of the claimants in the main proceedings, according to which the initial employment contracts entered into for a fixed eight-month term with almost half of the persons concerned were concluded even before 10 July 2001 and, for some of those persons, were succeeded by a second fixed-term employment contract only 22 days after their expiry

18 — Case C-83/92 *Pierrel and Others* [1993] ECR I-6419, paragraph 32. See also, to the same effect, Case C-194/94 *CIA Security International* [1996] ECR I-2201, paragraph 20

preliminary ruling to a decision in the case; [19] the Court of Justice can, at best, reject the questions referred to it if they are obviously immaterial to a decision in the case. [20]

35. Contrary to the Greek Government's arguments, it is by no means *obvious* in this case that the claimants in the main proceedings are now *all* [21] covered by the special provisions governing the public sector newly created by Presidential Decree No 164/2004 and, therefore, that the previous legislative situation, involving Presidential Decree No 81/2003 in its 2003 version, is no longer applicable to the persons concerned.

36. The rules laid down in Presidential Decree No 164/2004 do indeed have retroactive effect in so far as they also expressly apply to specific employment relationships dating from the two years preceding its entry into force. At the time of its entry into force on 19 July 2004, there must, though, still have been a valid employment contract or the last such contract must have expired no more than three months previously. [22] According to the referring court, however, the employment contracts of the claimants in the main action all expired long before that date, between June and September 2003.

37. Nor is it obvious that Presidential Decree No 180/2004 restricts the material scope of Presidential Decree No 81/2003, *with retroactive effect*, to employment relationships in the private sector. Presidential Decree No 180/2004 in any case contains no express provision to that effect. What is more, the relevant amending provisions do not appear to have entered into force until August 2004. [23]

38. Accordingly, it is also clear from the hearing on that point that there is no common ground between the parties over the provisions of Greek law applicable at the material time.

39. In view of those circumstances, it is not in any case obvious that the second and third questions referred bear no relation to the actual facts of the main action or its purpose. The reference for a preliminary ruling must therefore be declared admissible in that respect.

19 — *CIA Security International* (cited in footnote 18), paragraph 20.

20 — See point 28 and footnote 16 of this Opinion.

21 — The Greek Government itself concedes at paragraph 16 of its written observations that only 9 of the 18 claimants in the main proceedings met the requirements under Presidential Decree No 164/2004 for converting their originally fixed-term employment contracts into contracts of indefinite duration. It is also apparent from ELOG's pleadings at the hearing that the claimants in the main proceedings do not all fall within the scope of the transitional provisions of Presidential Decree No 164/2004.

22 — See the transitional provisions in Article 11(1) and (5) of Presidential Decree No 164/2004.

23 — See, in that regard, footnote 9 above.

The fourth question: material scope of the Framework Agreement

40. The fourth question referred focuses on the implications under the Framework Agreement of abusing the provisions of Article 21 of Law No 2190/1994 in concluding fixed-term employment contracts in the public sector. The Greek Government maintains in that regard that those provisions fall outside the scope of the Framework Agreement. It explains that the agreement is intended to prevent abuses arising from the conclusion of *several* successive fixed-term employment relationships, whilst Article 21 of Law No 2190/1994 concerns only the *first* fixed-term employment relationship concluded. Thus, the Greek Government, for its part, questions the relevance of the question referred to a decision in the case.

41. However, contrary to the view expressed by the Greek Government, it is by no means *obvious* that Article 21 of Law No 2190/1994 cannot in fact have implications — at least indirectly — for the legality of *successive* fixed-term employment relationships. After all, the provision in question prohibits the renewal or fresh conclusion of fixed-term employment relationships only in specific circumstances. It can be inferred conversely from the above that fresh employment relationships may be concluded in all other circumstances. Thus, the claimants in the main proceedings have gone unchallenged in their argument that, in practice, the public sector has relied for years on Article 21 of Law No 2190/1994 as the basis for concluding employment relationships, in each case for an eight-month fixed term and separated by four-month intervals, between the same worker and employer. In the light of those circumstances, an interpretation of the Framework Agreement may be useful to the referring court and material to a decision in the main action. Consequently, nor are there doubts in this regard about the admissibility of the reference for a preliminary ruling.

B — *Time from which the obligation to interpret national law in accordance with a given directive arises (first question)*

42. By its first question, the referring court seeks to ascertain the time from which it must interpret its national law in accordance with the relevant directive. It lists three possible times, not just the date of expiry of the period prescribed for transposition or the date of entry into force of the measures (belatedly) transposing the directive concerned into national law, but it also expressly refers to the preceding date of entry into force of the directive. The period prior to expiry of the time allowed for transposition is indeed relevant for at least some of the claimants in the main action. [24]

24 — It is relevant to those claimants whose first and second employment contracts with ELOG were concluded even before expiry of the period allowed for Greece to transpose the directive, that is to say, before 10 July 2002 (see, in that regard, points 29 and 30 of this Opinion).

43. It is already established in case-law that national laws, regulations and administrative provisions must be interpreted in conformity with the relevant directive. [25] Thus, where national law allows an interpretation in conformity with a directive, for example because the relevant provisions contain general clauses or non-specific legal concepts, the national court must exercise fully the 'discretion' it is given to meet the requirements of Community law. [26]

44. That obligation arises in any case upon expiry of the period prescribed in a directive for its transposition. [27] The national court is on no account at liberty to wait for the directive actually to be transposed, possibly belatedly, into national law. After all, the obligation to give an interpretation in conformity with Community law applies to national law as a whole and is not restricted to the laws, regulations or administrative provisions adopted specifically to implement the directive. [28] Accordingly, the obligation to interpret national law in conformity with the directive in question exists entirely independently of whether and when the directive concerned is actually transposed. [29]

45. Moreover, I have already pointed out in my Opinion in *Wippel*, [30] however, that provisions of national law must be interpreted and applied in conformity with directives *even before the time-limit for their transposition has expired* or, to be more precise, from the date of entry into force of the directive concerned. That view was endorsed most recently by Advocate General Tizzano in the *Mangold* case. [31] The *Kolpinghuis Nijmegen* judgment [32] is sometimes

25 — Case 14/83 *von Colson and Kamann* [1984] ECR 1891, paragraph 26, and Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835, paragraphs 113 and 114. See also the judgment delivered recently in connection with a framework decision in Case C-105/03 *Pupino* [2005] ECR I-5285, in particular paragraph 34.

26 — In this respect see, for instance, *von Colson and Kamann* (cited in footnote 25), paragraph 28, final sentence.

27 — This is apparent, for example, from Case C-106/89 *Marleasing* [1990] ECR I-4135, paragraph 8, and Case C-91/92 *Faccini Dori* [1994] ECR I-3325, paragraph 26: both judgments were delivered in cases where the period prescribed for transposition of the relevant directive had already lapsed without transposition being effected (paragraph 4 of the *Marleasing* judgment and paragraph 8 of the *Faccini Dori* judgment). See also, more recently, Case C-456/98 *Centrosteel* [2000] ECR I-6007, paragraphs 16 and 17.

28 — *Pfeiffer and Others* (cited in footnote 25), paragraphs 115, 118 and 119; to the same effect, see *Pupino* (cited in footnote 25), paragraph 47, final sentence.

29 — Contrary to what the referring court might be implying, its first question is therefore by no means relevant only if a directive 'was transposed belatedly into national law' but is relevant generally for all directives, including those which are transposed within the time allowed.

30 — Opinion in Case C-313/02 *Wippel* [2004] ECR I-9483, points 58 to 63.

31 — Opinion in Case C-144/04 *Mangold*, case pending before the Court, points 115 and 120. Similarly, see the Opinion of Advocate General Darmon in Joined Cases C-177/88 and C-179/88 *Dekker and Others* [1990] ECR I-3941, point 11, and in Joined Cases C-87/90 to C-89/90 *Verholen and Others* [1991] ECR I-3757, point 15 *in fine*. Advocate General Jacobs also inclines towards that view in his Opinion in Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, point 29 et seq.; see also, to a lesser degree, his Opinion in Case C-156/91 *Hansa Fleisch* [1992] ECR I-5567, points 23 and 24.

32 — Case 80/86 *Kolpinghuis Nijmegen* [1987] ECR 3969, paragraph 15, final sentence.

understood in the same way; [33] it does not in any event rule out the solution proposed here.

46. The following considerations in particular support the argument that national courts are *obliged* to interpret domestic law in conformity with directives *even before expiry of the period prescribed for their implementation*:

47. It is well known that directives have *legal effect* immediately upon their entry into force: from that time onwards, they are *binding* upon Member States as to the result to be achieved (third paragraph of Article 249 EC).

48. The Court thus concluded, in the light of the principle of Community solidarity laid down in Article 10 EC, that Member States must refrain from taking any measures liable seriously to compromise the result prescribed in a directive even during the period prescribed for transposition of that directive (*prohibition on frustrating the objective of a directive*). [34]

49. However, it is not only that *obligation to refrain from taking particular measures*, specifically developed by the Court, that can be inferred from the third paragraph of Article 249 EC in conjunction with Article 10 EC. In its first paragraph, Article 10 EC also imposes a *positive obligation* to take all appropriate measures, whether general or particular, that is to say, to do everything necessary, to ensure compliance with the requirements of Community law. [35] Where directives require implementation, that obligation under Community law as to the result to be achieved already exists upon their entry into force. [36] In that context, the obligation to take all measures necessary to achieve the result prescribed by a directive is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts. [37] Accordingly, the objectives of a directive are also binding on the courts of Member States upon its entry into force.

50. The courts are in fact bound by Community law to the extent that they are even required, according to the Court's case-law,

33 — Opinion of Advocate General Darmon in *Verholen and Others* (cited in footnote 31), point 15 *in fine*; see also the Opinion of Advocate General Léger in Case C-5/94 *Hedley Lomas* [1996] ECR I-2553, point 64.

34 — Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 45.

35 — *Pfeiffer and Others* (cited in footnote 25), paragraph 110.

36 — In that regard, see specifically *Inter-Environnement Wallonie* (cited in footnote 34), paragraphs 40 to 42.

37 — Case C-15/04 *Koppensteiner* [2005] ECR I-4855, paragraph 33, and *Pfeiffer and Others* (cited in footnote 25), paragraph 110, *Faccini Dori* (cited in footnote 27), paragraph 26, *Kolpinghuis Nijmegen* (cited in footnote 32), paragraph 12, and *von Colson and Kamann* (cited in footnote 25), paragraph 26.

to take into account legally non-binding *recommendations.* [38]

51. The fact that the national courts are bound by the result to be achieved by directives certainly does not mean that they would be obliged — even before the period prescribed for their transposition has expired — *to refrain from applying* conflicting national law. [39] That issue does not arise in any case if the law is interpreted in conformity with the directives. For instance, if a court interprets its national law in conformity with a directive, the provisions concerned will in fact be *applied* rather than disapplied. [40]

52. The fact that Member States are given a period within which to transpose a directive and are therefore not obliged to adopt the *laws, regulations or administrative provisions* necessary for its transposition before the end of that period does not, incidentally, mean that there is no obligation to interpret national law in conformity with the directive concerned from its entry into force. [41] The fact that a directive allows the national rule-making bodies a period for its transposition by no means signifies that the courts may also avail themselves of that transposition period. On the contrary, the transposition period is introduced solely to take account of the technical difficulties involved in the rule-making process, [42] which can arise, for example, in the parliamentary legislative procedure or in negotiations between management and labour. This is apparent also in Directive 1999/70 at issue here; the transposition period prescribed in the first paragraph of Article 2 thereof is indeed confined exclusively to the adoption of the necessary *laws, regulations and administrative provisions* and to *agreements between management and labour,* but the date of its entry into force is not, for that matter, deferred in any way. Therefore, the transposition period in question makes no difference to the binding nature of the predetermined objectives, even from entry into force of the directive. [43]

53. Nor is it likely that the national court could anticipate the national rule-making bodies or even contradict them by interpreting existing national law in conformity with directives before the end of the period prescribed for their transposition. As already mentioned, the result to be achieved by a directive is also binding upon the courts, for matters within their jurisdiction, from entry into force of the directive. Thus, if the national court can contribute to achieving the result prescribed by the directive, even

38 — Case 322/88 *Grimaldi* [1989] ECR 4407, paragraph 18. Advocate General Tizzano also referred to that point in his Opinion in *Mangold* (cited in footnote 31), at point 117.

39 — Case C-157/02 *Rieser Internationale Transporte* [2004] ECR I-1477, paragraphs 67 and 69, and the Opinion of Advocate General Tizzano in *Mangold* (cited in footnote 31), point 110.

40 — See point 60 and footnote 41 of my Opinion in *Wippel* (cited in footnote 30).

41 — *Inter-Environnement Wallonie* (cited in footnote 34), paragraphs 43 and 45.

42 — To that effect, see *Rieser Internationale Transporte* (cited in footnote 39), paragraph 68, and *Inter-Environnement Wallonie* (cited in footnote 34), paragraph 43.

43 — In terms of the case in point, it should be observed that Article 3 of Directive 1999/70 provides for its entry into force on 10 July 1999.

before the end of the period allowed for its transposition, by interpreting *existing* law, it is not anticipating the national rule-makers; it is merely applying the law created by them. In so doing, it is carrying out its very own function and is at the same time making its contribution towards fulfilling the obligations under Community law of the Member State concerned. This, of course, does not affect the national rule-makers' duty to achieve the result prescribed by the directive, if necessary by creating new provisions within a specified period. [44]

54. The first question referred should therefore be answered as follows:

A national court is required, immediately upon entry into force of a directive, to interpret the whole body of rules of national law, so far as possible, in the light of the wording and purpose of that directive, in order to achieve an outcome consistent with the objective pursued by the directive.

C — *Objective reason for imposing a fixed term on employment relationships (second question)*

55. By its second question, the referring court seeks essentially to ascertain which aspects, for the purposes of the Framework Agreement, may constitute objective reasons justifying the conclusion of successive fixed-term employment relationships. It specifically asks whether the simple fact that the conclusion of a fixed-term employment contract *is prescribed by a legislative provision* can constitute an objective reason within the meaning of the Framework Agreement. The excerpt, cited by the referring court, from Article 5(1)(a) of Presidential Decree No 81/2003 in its 2003 version contains a provision to that effect.

56. The concept of objective reasons is not defined in any greater detail in the Framework Agreement, or specifically in Clause 5(1)(a) thereof. Consequently, Member States and management and labour enjoy broad discretion to flesh out that concept, paying attention to the special features of the individual Member States, sectors and occupations. [45] However, in so doing, they continue to be bound, in accordance with the third paragraph of Article 249 EC, by the results to be achieved by the directive and Framework Agreement annexed thereto. In its 17th recital, even Directive 1999/70 itself

44 — According to settled case-law, transposing a directive into national law does not necessarily require its provisions to be reproduced verbatim in a specific express legal rule; a general legal context may be sufficient. However, it is essential for national law to guarantee that the national authorities will effectively apply the directive in full, that the legal position under national law is sufficiently precise and clear and that individuals are made fully aware of their rights and, where appropriate, may rely on them before the national courts (see, for example, Case C-168/03 *Commission* v *Spain* [2004] ECR I-8227, paragraph 36, Case C-410/03 *Commission* v *Italy* [2005] ECR I-3507, paragraph 60, and Case C-456/03 *Commission* v *Italy* [2005] ECR I-5335, paragraph 51).

45 — See also paragraph 10 of the general considerations of the Framework Agreement and the third paragraph of the preamble thereto

states that the definitions contained in national law respect the content of the Framework Agreement.

57. The Framework Agreement of course expressly recognises that fixed-term employment contracts are a feature of employment in certain sectors, occupations and activities which can suit both employers and workers. [46] Framework Agreement and directive alike do not therefore preclude the adoption of national rules permitting or even expressly prescribing — because of the special features of a particular sector such as the public service [47] — the conclusion of fixed-term employment relationships for specific sectors, occupations or activities. In such cases, the objective reason for concluding the fixed-term employment contract lies in precisely those special features which are considered to be characteristic of employment in the sector, occupational area or activity concerned. [48] Furthermore, an objective reason may lie, for example, in efforts to reintegrate specific categories of persons — such as the long-term unemployed or unemployed persons who have exceeded a particular age-limit — into working life.

58. However, a provision such as the passage of Article 5(1)(a) of Presidential Decree No 81/2003 which is material to this case is an entirely non-specific reference provision in that it refers to *any* national law and *any* national regulation which prescribe the conclusion of a fixed-term contract. The provision therefore deems there to be an objective reason even where a law or regulation provides only in very general terms for the conclusion of fixed-term employment relationships without it being clear from the wording, or at least from the spirit and purpose, and the context of the provision concerned precisely what the characteristics of the sectors, occupations, activities or persons concerned are that justify imposing such fixed terms.

59. Such a broadly worded, non-specific provision is particularly susceptible to abuse and is consequently inconsistent with the objectives of the Framework Agreement. The establishment of objective reasons provided for in that agreement, which may justify the use of fixed-term employment contracts, is intended to assist in preventing precisely such abuse of fixed-term employment contracts; that purpose is clearly defined specifically in Clause 1(b) of the Framework Agreement and, moreover, is echoed particularly clearly in the introductory sentence of Clause 5(1) thereof. [49] However, the more general the provision defining an objective reason, the less likely it is to fulfil that purpose of the Framework Agreement and the easier it will be to undermine the model

46 — Paragraph 8 of the general considerations of the Framework Agreement; see also the second paragraph in the preamble thereto.

47 — See, in that regard, the observations made on the fourth question, in particular at point 85 of this Opinion.

48 — In that regard, Article 5(1)(b) of Presidential Decree No 81/2003, for example, presumes that there is an objective reason for specific sectors listed in greater detail in that provision.

49 — See also paragraph 7 of the general considerations of the Framework Agreement.

of the contract of indefinite duration as the general form of employment relationship. [50]

60. To summarise, it can therefore be stated that an objective reason within the meaning of Clause 5(1)(a) of the Framework Agreement can be considered to exist only if it is clear from the wording, or at least from the spirit and purpose, and the context of the provision concerned precisely what the characteristics of the sectors, occupations, activities or persons concerned are that justify recourse to fixed-term employment relationships. The mere fact that the conclusion of a fixed-term employment relationship is prescribed by a national law, regulation or administrative provision is not sufficient in that respect.

61. The referring court's second question should therefore be answered as follows:

The mere fact that the conclusion of a fixed-term employment relationship is prescribed by a national law, regulation or administrative provision does not constitute an objective reason for the purposes of Clause 5(1)(a) of the Framework Agreement.

50 — See the second paragraph in the preamble to the Framework Agreement and paragraph 6 of the general considerations thereof (in that regard, see point 4 of this Opinion)

D — *Successive fixed-term employment relationships (third question)*

62. The first part of the third question referred deals with the definition of the concept of successive employment relationships. The second part concerns the associated problems of converting fixed-term employment relationships into relationships of indefinite duration.

Interpretation of the term 'successive' (Question 3(a))

63. In the first part of its third question (Question 3(a)), the referring court enquires whether the provisions of Clause 5(1) and (2) of the Framework Agreement preclude a national provision such as Article 5(4) of Presidential Decree No 81/2003 in its 2003 version which provides that one of the conditions governing the existence of successive employment contracts or relationships is that there must be no more than 20 days [51] between the contracts concerned.

51 — Article 5(4) of Presidential Decree No 81/2003 in its 2003 version expressly provides that those 20 days must be working days. Since, in its question, the national court refers expressly to that provision, all subsequent references to days will be understood to mean working days.

64. The concept of succession is one of the main legal concepts in the Framework Agreement. Of course, the Framework Agreement and, by extension, Directive 1999/70 are not intended primarily to obstruct the conclusion of *individual* fixed-term employment relationships; on the contrary, they are focused above all on the possibilities for pursuing abusive practices by concluding such contracts in succession (successive employment relationships), as well as on improving the quality of such fixed-term employment relationships. [52] In particular where a number of fixed-term employment relationships have been concluded *in succession*, there is a danger that the employment relationship of indefinite duration, the employment relationship model defined by management and labour, [53] will be circumvented, thus giving rise to the problem of abuse. That is why Clause 5(1) of the Framework Agreement expressly requires that measures be introduced to prevent abuse arising from the use of successive fixed-term employment relationships.

65. However, the Framework Agreement does not itself contain a definition of the term 'successive' and instead leaves its detailed definition to the Member States. In that context, Clause 5(2)(a) of the Framework Agreement even leaves it to them to decide whether actually to proceed at all with a definition in that regard, where it provides that 'Member States ... shall, *where appropriate*, determine under what conditions fixed-term employment contracts or relationships ... shall be regarded as "successive"...'. [54] However, if a Member State decides to proceed with such a definition, it does not enjoy complete discretion; on the contrary, it is bound by the result to be achieved by the directive and Framework Agreement pursuant to the third paragraph of Article 249 EC, as recital 17 in the preamble to Directive 1999/70 also expressly makes clear.

66. As the Commission rightly points out, Clause 5(2)(a) of the Framework Agreement must therefore be interpreted in the light of the objective of the directive, which is actually to prevent abuse. Under Clause 5(1) of the Framework Agreement, Member States are not simply requested but are expressly obliged to adopt measures for that purpose.

67. Defining the concept of succession so restrictively that it cannot even apply to a substantial proportion of the cases of successive fixed-term employment relationships and so that the definition chosen is without any effect is incompatible with that objective. In so doing, the cases concerned would effectively fall outside the scope of the national measures affording protection against abuse of fixed-term employment

52 — See, in particular, Clause 1(b) and Clause 5 of the Framework Agreement.

53 — See the second paragraph in the preamble to the Framework Agreement and paragraph 6 of the general considerations thereof (also point 4 of this Opinion).

54 — My emphasis.

relationships, and the protection afforded to workers — the objective pursued by the directive — could not take effect.

68. A provision such as Article 5(3) of Presidential Decree No 81/2003 in its 2003 version gives rise to that very concern. If only those fixed-term employment relationships that are separated by intervals not exceeding 20 working days are deemed to be 'successive', it is very easy in that case to circumvent the very protection afforded to workers against abusive practice that is the specific aim of the Framework Agreement. Employers need only wait 21 working days in each case before concluding a new employment contract with the same worker. The referring court, the Commission and the claimants in the main proceedings have rightly raised that issue. They maintain that such a short and inflexible interval between relationships allows employment to continue for years, with brief intervals of just 21 working days in each case, such cases consequently falling outside the scope of the national provisions protecting against abusive practice. Ultimately, the abuse of fixed-term employment relationships is almost encouraged by such practice.

69. In the light of those considerations, a provision which defines as 'successive' only those employment relationships which are separated by intervals not exceeding 20 working days is incompatible with the objective of protection pursued by the Framework Agreement and with the objective of Directive 1999/70.

70. I should point out merely in passing that a provision of that kind can also infringe other relevant provisions of Community law. After all, a provision which allows employment of indefinite duration subject to an annual interval of 21 working days could in effect result in permanent employment relationships comprising unpaid annual leave, in particular in Member States or sectors where most of that annual leave generally tends to be taken in a particular month, in August for example. However, a practice of that kind would be incompatible with Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time. [55] The article in question provides that Member States are to '... take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks ...'. The Court regards that entitlement of every worker to paid annual leave is a particularly important principle of Community social law from which there can be no derogations. [56]

71. Therefore, to summarise:

Clause 5(1) in conjunction with Clause 5(2)(a) of the Framework Agreement pre-

55 — OJ 2003 L 299, p. 9. That directive replaced the preceding Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18) which in fact contained an identical provision.

56 — Case C-173/99 *BECTU* [2001] ECR I-4881, paragraph 43, and Case C-342/01 *Merino Gomez* [2004] ECR I-2605, paragraph 29.

cludes a provision of national law under which one of the conditions governing the existence of successive employment contracts or relationships is that there must be no more than 20 working days between the contracts concerned.

Conversion into an employment relationship of indefinite duration (Question 3(b))

72. While the first part of the third question, discussed above, concerned the *prevention of abuse* of successive fixed-term employment relationships, the second part of the question (Question 3(b)) focuses on *penalties imposed for any abuse that may arise.* The referring court seeks essentially to ascertain whether the Framework Agreement allows a presumption of conversion from fixed-term employment relationships into relationships of indefinite duration only where there have been intervals not exceeding 20 working days between successive employment relationships. That rule is laid down in Article 5(3) in conjunction with Article 5(4) of Presidential Decree No 81/2003 in its 2003 version.

73. In that regard, it must first be stated that the Framework Agreement leaves the imposition of penalties for an abuse of successive fixed-term employment relationships to the discretion of the Member States. The only provision in that regard is laid down in Clause 5(2)(b) of the Framework Agreement, which refers to conversion into employment relationships of indefinite duration by way of example but does not by any means prescribe it as a compulsory measure. It is, after all, only *where appropriate* that Member States are to determine under what conditions fixed-term employment contracts or relationships are to be deemed to be contracts or relationships of indefinite duration.

74. Consequently, although Member States are obliged under Clause 5(1) of the Framework Agreement to introduce measures actually to *prevent* the abuse of successive fixed-term employment relationships, the agreement does not in fact introduce an obligation to *convert* such employment relationships into relationships of indefinite duration as a means of *penalising* abuse; on the contrary, the Framework Agreement provides for such conversion merely as a *possibility.*[57]

75. Member States therefore enjoy broad discretion in deciding whether and how they will penalise the abuse of successive fixed-term employment relationships. Where a Member State succeeds in preventing such abuse specifically by means of pre-emptive

57 — See also, to that effect, the Opinion of Advocate General Poiares Maduro in Cases C-53/04 *Marrosu and Sardino* and C-180/04 *Vassallo*, point 30.

measures, for instance by adopting measures which do not allow such cases to arise in the first place, penalties as a whole can quite conceivably be superfluous. The only obligation contained in the directive — apart from the obligation to improve the quality of fixed-term employment relationships — consists in the objective actually *to prevent* the abuse of successive fixed-term employment relationships.

76. Even the nature of and detailed arrangements for any penalties are not specified in the Framework Agreement. The fact that the conversion of fixed-term employment relationships into relationships of indefinite duration is specifically referred to as a distinct possibility does not rule out other measures, such as the award of compensation to the workers concerned. [58]

77. If the penalty itself is subject to discretion, Member States have a fortiori free rein to lay down the conditions under which a particular penalty is to be imposed. If they decide in favour of converting fixed-term employment relationships into relationships of indefinite duration, such conversion does not necessarily have to take place in all circumstances; it can, for example, be restricted to particularly blatant cases of abuse.

78. In the light of those considerations, there are no objections to presuming that an employment relationship exists for an indefinite duration only if there have been particularly short intervals not exceeding 20 working days between the individual successive fixed-term employment contracts (see, in that regard, Article 5(3) in conjunction with Article 5(4) of Presidential Decree No 81/2003 in the 2003 version). Clause 5(2)(b) of the Framework Agreement does not preclude a provision of that kind.

79. The Framework Agreement therefore lays down requirements of varying stringency as regards measures to *prevent abuse* and measures to *penalise abuse*. The requirements for preventing the abuse of successive fixed-term employment contracts, with which the first part of the third question referred (Question 3(a)) was concerned, are more stringent than the requirements relating to the — in any case non-compulsory — penalties for such abusive practices, with which the second part of that question (Question 3(b)) is concerned. Accordingly, Clause 5 of the Framework Agreement makes it possible to limit the scope of application of the specific penalty comprising *conversion* of fixed-term employment relationships into relationships of indefinite duration to cases where there have been no more than 20 working days between the individual contracts, and not to presume such conversion in other cases. However, as

58 — Italy, for example, adopted such a measure in respect of employment relationships in the public sector. See, in this regard, the proceedings pending before the Court in Cases C-53/04 and C-180/04 (*Marrosu and Sardino* and *Vassallo*). As to whether different penalties in the public and private sectors can be justified, see the Opinion of Advocate General Poiares Maduro in those cases (cited in footnote 57), points 27 to 49.

far as *preventing abuse* is concerned, the Framework Agreement *cannot* — as shown above — be interpreted as meaning that an abuse as such actually exists only where there are successive fixed-term employment contracts separated by brief intervals not exceeding 20 working days; if that were the case, the objective of protection pursued by the Framework Agreement would in many respects become meaningless. [59]

80. I should mention merely in passing that conversion of fixed-term employment relationships into relationships of indefinite duration restricted to certain cases does not constitute an infringement of the *prohibition of deterioration,* [60] as it is set out in Clause 8(3) of the Framework Agreement. Compared with previous practice in Greece, the situation of workers employed for a fixed term in the public sector — rather than deteriorating — ultimately improves, given that Presidential Decree No 81/2003 in its original version, or currently Presidential Decree No 164/2004, in any event makes it possible, in respect of certain categories of situation, to convert fixed-term employment contracts into contracts of indefinite duration.

81. The claimants in the main proceedings argue that the earlier legal situation in Greece had indeed made it possible to pursue a more liberal practice as regards converting fixed-term employment contracts into contracts of indefinite duration, in which regard they cite Article 8(3) of Law No 2112/1920. However, it could not be clarified definitively in the proceedings before the Court whether that provision had ever been made use of in the public sector in Greece. The results of the hearings appear to suggest that any such instances, if they did arise, would have been isolated cases and not part of usual practice. However, the question whether the transposition of Directive 1999/70 leads to a deterioration in the level of protection afforded to workers must be assessed by reference to the actual facts and not on the basis of theoretical considerations. The fact that Greek law in the light of Directive 1999/70 expressly provides for the possibility of converting fixed-term employment relationships into relationships of indefinite duration, even if only in some specific cases, must consequently be regarded as an increase, rather than a reduction, in the level of protection afforded to the workers concerned, for the purposes of Clause 8(3) of the Framework Agreement.

82. Thus, to summarise:

Clause 5(1) in conjunction with Clause 5(2)(b) of the Framework Agreement does

59 — See, in that regard, the observations made on Question 3(a) in points 63 to 71 of this Opinion.

60 — For the prohibition of deterioration, see the Opinion of Advocate General Tizzano in *Mangold* (cited in footnote 31), points 43 to 78.

not preclude a national provision which provides, only in certain cases involving successive fixed-term employment relationships constituting abuse, that those relationships are to be deemed to be employment relationships of indefinite duration but makes no such provision in other cases.

E — *Special features in the public sector: prohibition against converting fixed-term employment relationships into relationships of indefinite duration (fourth question)*

83. By its fourth question, the referring court seeks essentially to ascertain whether the provisions of Clause 5(1) and (2) of the Framework Agreement preclude a national provision which prohibits, by operation of law, conversion in the public sector of fixed-term employment relationships into relationships of indefinite duration, even in cases where the statutory requirements governing the use of such fixed-term employment relationships might have been circumvented in an abusive manner.

84. As I have just mentioned, [61] Clause 5(2)(b) of the Framework Agreement leaves to the discretion of the Member States the decision whether to make any provision at all for converting fixed-term employment relationships into relationships of indefinite duration and as to the conditions under which that conversion, where appropriate, is to take place. The Framework Agreement certainly does not require that every abuse of fixed-term employment contracts be penalised by their conversion into contracts of indefinite duration. So, even though the statutory restrictions on recourse to fixed-term employment relationships under private law have, allegedly, been circumvented in this case in an abusive manner, [62] the Framework Agreement does not require as a compulsory measure that provision be made for conversion into employment relationships of indefinite duration. Accordingly the Framework Agreement itself expressly recognises 'that their detailed application [that is to say, of the agreement's general principles and minimum requirements relating to fixed-term work] needs to take account of the realities of specific national, sectoral and seasonal situations'. [63]

85. The principles of public service law laid down in national law — not least in the Greek Constitution [64] — in particular play an important part in this case; they are based on the model of the established public servant. The 'established post' principle applies and

61 — See, in that regard, the observations made on Question 3(b) in point 72 et seq. of this Opinion.

62 — The establishment of an abuse presupposes the interpretation and application of national law and an assessment of the facts in the main proceedings, those duties falling exclusively to the referring court (see Case C-284/02 *Sass* [2004] ECR I-11143, paragraph 55, and Joined Cases C-211/03, C-299/03 and C-316/03 to C-318/03 *HLH Warenvertrieb* [2005] ECR I-5141, paragraph 96).

63 — As set out in the third paragraph in the preamble to the Framework Agreement; see also paragraph 10 of the general considerations thereof.

64 — Article 103 of the Greek Constitution as amended by the Law of 16 April 2001. The claimants in the main proceedings rely on that provision in their pleadings.

access to positions as public servants is regulated by a specific legal procedure. Moreover, strict limits are imposed by law in the Greek public sector on recourse to employment relationships under private law — usually only for a fixed term — and conversion of such relationships into relationships of indefinite duration is as a rule prohibited.

86. Such a statutory prohibition against converting fixed-term employment relationships into relationships of indefinite duration, which is laid down not least in Article 21 of Law No 2190/1994, can be justified by the objective of preventing circumvention of the principles of public service law described above. [65] Accordingly, nor does the Framework Agreement preclude that prohibition, unless it is implemented, for instance, in a discriminatory manner or it in some other way infringes the general principles of Community law. However, in the circumstances at issue, there is nothing to suggest that this is the case.

87. Irrespective of that point, the referring court is, of course, still required to interpret the whole body of rules of national law in conformity with the directives concerned in order to achieve an outcome in the main proceedings that is, so far as possible, consistent with the aims of the directive and Framework Agreement. [66] If the court therefore concludes that the use of fixed-term employment relationships under private law constituted *abuse* in the cases pending before it, it will have to assess whether its national law makes provision for or, in any event, allows in the light of the directive, the imposition of penalties for such abuse other than conversion into employment relationships of indefinite duration. For example, the award of compensation to the persons concerned would be a possibility.

88. On the whole, the fourth question referred should be answered as follows:

Clause 5(1) in conjunction with Clause 5(2)(b) of the Framework Agreement does not preclude a prohibition in the public sector against converting fixed-term employment contracts into contracts of indefinite duration, even in cases where the statutory requirements governing the use of such fixed-term employment relationships might have been circumvented in an abusive manner.

65 — See also, in this regard, the Opinion of Advocate General Poiares Maduro in Cases C-53/04 and C-180/04 (cited in footnote 57), points 42 and 43.

66 — As regards the requirement to interpret national law in accordance with directives, see my earlier observations on the first question in point 42 et seq. of this Opinion.

VI — Conclusion

89. I therefore propose that the Court of Justice should answer the questions referred by the Monomeles Protodikio Thessalonikis as follows:

(1) A national court is required, immediately upon entry into force of a directive, to interpret the whole body of rules of national law, so far as possible, in the light of the wording and purpose of that directive, in order to achieve an outcome consistent with the objective pursued by the directive.

(2) The mere fact that the conclusion of a fixed-term employment relationship is prescribed by a national law, regulation or administrative provision does not constitute an objective reason for the purposes of Clause 5(1)(a) of the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

(3) (a) Clause 5(1) in conjunction with Clause 5(2)(a) of the Annex to Directive 1999/70 precludes a provision of national law under which one of the conditions governing the existence of successive employment contracts or relationships is that there must be no more than 20 working days between the contracts concerned.

(b) Clause 5(1) in conjunction with Clause 5(2)(b) of the Annex to Directive 1999/70 does not preclude a national provision which provides, only in certain cases involving successive fixed-term employment relationships constituting abuse, that those relationships are to be deemed to be employment relationships of indefinite duration but makes no such provision in other cases.

(4) Clause 5(1) in conjunction with Clause 5(2)(b) of the Annex to Directive 1999/70 does not preclude a prohibition in the public sector against converting fixed-term employment contracts into contracts of indefinite duration, even in cases where the statutory requirements governing the use of such fixed-term employment relationships might have been circumvented in an abusive manner.