

## Operative part

The total costs to be reimbursed by Mühlhens GmbH & Co. KG to Zirh International Corp. are fixed at EUR 5 126.95.

### **Order of the Court (Third Chamber) of 12 June 2008 — Vassilakis v Dimos Kerkyraion**

**(Case C-364/07)**

(Article 104(3), first paragraph, of the Rules of Procedure — Directive 1999/70/EC — Successive fixed-term employment contracts in the public sector — Social policy — Framework agreement on fixed-term work — Concepts of ‘successive contracts’ and ‘objective reasons’ justifying the renewal of such contracts — Measures intended to prevent abuse — Sanctions — Settlement at national level of disputes and grievances — Scope of the obligation to interpret national law in conformity with Community law)

1. *Preliminary rulings — Jurisdiction of the Court — Limits — Clearly irrelevant questions and hypothetical questions put in a context not permitting a useful answer — Questions not related to the purpose of the main proceedings (Art. 234 EC) (see paras 42-44)*
2. *Acts of the institutions — Directives — Implementation by Member States — Belated transposition into national law — Provisions at issue not having direct effect — Obligation to interpret national law in accordance with the purpose of the directive — When the obligation arises — Date of expiry of the period for transposition (Arts 10, second para., EC and 249, third para., EC) (see paras 64, 69-72, operative part 1)*

3. *Social policy — ETUC, UNICE and CEEP Framework Agreement on fixed-term work — Directive 1999/70 — Measures designed to prevent the misuse of successive fixed-term employment contracts (Council Directive 1999/70, Annex, Clause 5(1)(a)) (see para. 94, operative part 2)*
  
4. *Social policy — ETUC, UNICE and CEEP Framework Agreement on fixed-term work — Directive 1999/70 — Measures designed to prevent the misuse of successive fixed-term employment contracts (Council Directive 1999/70, Annex, Clause 5) (see para. 117, operative part 3)*
  
5. *Social policy — ETUC, UNICE and CEEP Framework Agreement on fixed-term work — Directive 1999/70 — Measures designed to prevent the misuse of successive fixed-term employment contracts (Council Directive 1999/70, Annex, Clause 5) (see para. 137, operative part 4)*
  
6. *Social policy — ETUC, UNICE and CEEP Framework Agreement on fixed-term work — Directive 1999/70 — Measures designed to prevent the misuse of successive fixed-term employment contracts (Council Directive 1999/70, Annex) (see para. 150, operative part 5)*

**Re:**

Reference for a preliminary ruling — Monomeles Protodikio Kerkyras — Interpretation of Clause 5(1) and (2) 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 (OJ 1999 L 175, p. 43) — Employment contracts entered into with public authorities — Concept of objective reasons justifying the renewal, without restriction, of successive fixed-term contracts — Concept of successive contracts.

## Operative part

1. Where a directive is transposed belatedly into a Member State's domestic law and the relevant provisions of the directive do not have direct effect, the national courts are bound to interpret domestic law so far as possible, once the period for transposition has expired, in the light of the wording and the purpose of the directive concerned with a view to achieving the results sought by the directive, favouring the interpretation of the national rules which is the most consistent with that purpose in order thereby to achieve an outcome compatible with the provisions of the directive.
2. Clause 5(1)(a) of the Framework Agreement on fixed-term work signed on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, is to be interpreted as precluding the use of successive fixed-term employment contracts where the justification advanced for their use is solely that such use is laid down by a general provision of statute or secondary legislation of a Member State. On the contrary, the concept of 'objective reasons' within the meaning of that clause requires recourse to this particular type of employment relationship, as provided for by national legislation, to be justified by the presence of specific factors relating in particular to the activity in question and the conditions under which it is carried out.
3. Clause 5 of the Framework Agreement on fixed-term employment is to be interpreted as not precluding, as a general rule, a national provision, such as that referred to in the third question, according to which only fixed-term employment contracts or employment relationships that are separated by a period of time shorter than three months can be regarded as 'successive' for the purposes of that clause.
4. In circumstances such as those of the main proceedings, the Framework Agreement is to be interpreted as meaning that, in so far as the domestic law of the Member State concerned does not include, in the sector under consideration, any other effective measure to prevent and, where relevant, punish the misuse of successive fixed-term contracts, the Framework

Agreement precludes the application of national legislation which, in the public sector alone, prohibits absolutely the conversion into an employment contract of indefinite duration of a succession of fixed-term contracts that have been intended to cover the 'fixed and permanent needs' of the employer and must therefore be regarded as constituting an abuse. It is, however, for the referring court, in accordance with its obligation to interpret national law in conformity with Community law, to determine whether its domestic law does not include any such other effective measure.

5. The principle of the effectiveness of Community law and the Framework Agreement on fixed-term employment do not preclude, as a general rule, a provision of national law under which an independent administrative authority has jurisdiction in respect of the possible reclassification of fixed-term contracts as contracts of indefinite duration. It is, however, for the referring court to ensure that the right to effective judicial protection is safeguarded with due regard to the principles of effectiveness and equivalence.

**Judgment of the Court (First Chamber) of 19 June 2008 —  
Commission v Germany**

(Case C-39/06)

(Failure of a Member State to fulfil obligations — State aid — Subsidies for investment and employment — Obligation to recover — Non-compliance — Principle of protection of legitimate expectations)

1. *Actions for failure to fulfil obligations* *Non-compliance with a Commission decision concerning State aid* *Defences* *Legality of the decision called in question* *Inadmissibility* *Limits* *Non-existent measure (Arts 88(2), second para., EC, 226 EC, 227 EC, 230 EC and 232 EC) (see paras 18-20)*