Judgment of the Court (Third Chamber) of 23 April 2009 (references for a preliminary ruling from the Monomeles Protodikio Rethimnis — Greece) — K. Angelidaki, A. Aivali, A. Vavouraki, Kh. Kaparou, M. Lioni, E. Makrigiannaki, E. Nisanaki, Kh. Panagiotou, A. Pitsidianaki, M. Khalkiadaki, Kh. Khalkiadaki (C-378/07), Kharikleia Giannoudi (C-379/07), Georgios Karampousanos, Sophocles Mikhopoulos (C-380/07) v Nomarkhiaki Aftodiikisi Rethimnis, Dimos Geropotamou

(Joined Cases C-378/07 to C-380/07) [1]

(Directive 1999/70/EC — Clauses 5 and 8 of the framework agreement on fixed-term work — Fixed-term employment contracts in the public sector — First or single use of a contract — Successive contracts — Equivalent legal measure — Reduction in the general level of protection afforded to workers — Measures intended to prevent abuse — Penalties — Absolute prohibition on conversion of fixed-term employment contracts into contracts of indefinite duration in the public sector — Consequences of the incorrect transposition of a directive — Interpretation in conformity with Community law)

(2009/C 141/12)

Language of the case: Greek

Referring court

Monomeles Protodikio Rethimnis

Parties to the main proceedings

Applicants: K. Angelidaki, A. Aivali, A. Vavouraki, Kh. Kaparou, M. Lioni, E. Makrigiannaki, E. Nisanaki, Kh. Panagiotou, A. Pitsidianaki, M. Khalkiadaki, Kh. Khalkiadaki (C-378/07), Kharikleia Giannoudi (C-379/07), Georgios Karampousanos, Sophocles Mikhopoulos (C-380/07)

Defendants: Nomarkhiaki Aftodiikisi Rethimnis, Dimos Geropotamou

Re:

Reference for a preliminary ruling — Monomeles Protodikio Rethimnis — Interpretation of Clauses 5 and 8(1) and (3) of the annex to Council Directive 1999/70/EEC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — Prohibition on adopting national rules in the guise of transposition where an equivalent national measure, within the meaning of Clause 5(1) of the directive, already exists and the new rules lower the level of protection of workers under fixed-term employment contracts

Operative part of the judgment

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.*

(1) OJ C 269, 10.11.2007.

Judgment of the Court (First Chamber) of 2 April 2009 (reference for a preliminary ruling from the Corte d'appello di Milano (Italy)) — Marco Gambazzi v DaimlerChrysler Canada Inc., CIBC Mellon Trust Company

(Case C-394/07) (1)

(Brussels Convention — Recognition and enforcement of judgments — Grounds for refusal — Infringement of public policy in the State in which enforcement is sought — Exclusion of the defendant from the proceedings before the court of the State of origin because of failure to comply with a court order)

(2009/C 141/13)

Language of the case: Italian

Referring court

Corte d'appello di Milano

Parties to the main proceedings

Applicant: Marco Gambazzi

Defendants: DaimlerChrysler Canada Inc., CIBC Mellon Trust Company

Re:

Reference for a preliminary ruling — Corte d'appello di Milano — Interpretation of Articles 26 and 27(1) of the Brussels Convention — Decision whose recognition is contrary to public policy in the State in which enforcement is sought — Decision preventing one of the parties from presenting a defence ('debarment') because of failure to comply with a court order

Operative part of the judgment

Article 27(1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, is to be interpreted as follows:

the court of the State in which enforcement is sought may take into account, with regard to the public policy clause referred to in that article, the fact that the court of the State of origin ruled on the applicant's claims without hearing the defendant, who entered