

SUMMARY

## **ECJ 11 February 2021, Case C-760/18 (M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)), Fixed-Term Work**

***M.V. and Others – v – Organismos Topikis Aftodioikisis (OTA) ‘Dimos Agiou Nikolaou’, Greek case***

### **Summary**

The concept of “successive fixed-term contracts” in Clause 1 and 5(2) of the framework agreement on fixed-term work (annexed to Directive 1999/70/EC) also covers automatic extensions, even if they do not meet formal national requirements. The referring court must undertake, to the fullest extent possible, assess whether national law can be interpreted in conformity with the directive.

### **Question**

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

If the answer to the first question is in the affirmative, must Clause 5(1) of the framework agreement be interpreted as meaning that, where an abuse of successive fixed-term employment contracts, within the meaning of that provision, has occurred, the obligation incumbent on the referring court to undertake, so far as possible, an interpretation and an application of all the relevant provisions of domestic law capable of duly penalising that abuse

and of eliminating the consequences of the infringement of EU law, extends to the application of a provision of national law that permits the conversion of the succession of fixed-term contracts to one employment contract of indefinite duration, even though another provision of national law, of a higher rank in the hierarchy of legal rules as a provision of the Greek constitution, absolutely prohibits, in the public sector, such a conversion?

### **Ruling**

Clause 1 and Clause 5(2) of the framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as meaning that the expression ‘successive fixed-term employment contracts’ therein also covers the automatic extension of the fixed-term employment contracts of workers in the cleansing sector of local and regional authorities, which has taken place in accordance with express provisions of national law, notwithstanding the fact that the generally prescribed formal requirement that successive contracts be concluded in writing has been disregarded.

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

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2021-02-11

**Case number:** C-760/18