Reports of Cases

Case C-703/17

Adelheid Krah
v
Universität Wien

(Request for a preliminary ruling from the Oberlandesgericht Wien)

Judgment of the Court (Second Chamber), 10 October 2019

(Reference for a preliminary ruling — Free movement of persons — Article 45 TFEU — Workers — Regulation (EU) No 492/2011 — Article 7(1) — Postdoctoral senior lecturers — Limitation on the recognition of previous periods of professionally relevant service completed in another Member State — System of pay linking a higher rate of pay to the duration of employment with the current employer)

1. *Free movement of persons — Workers — Equal treatment — Remuneration — Postdoctoral senior lecturers — Partial recognition of previous periods of professionally relevant service completed in another Member State — Applicability to all engaged workers — Direct discrimination based on nationality — None*
(Art. 45(2) TFEU; European Parliament and Council Regulation No 492/2011, Art. 7(1))

(see paragraphs 21, 25, 28)

2. *Free movement of persons — Workers — Equal treatment — Remuneration — Postdoctoral senior lecturers — Partial recognition of previous periods of professionally relevant service completed in another Member State — Difference in treatment on the basis of the university which employed the worker — Indirect discrimination based on nationality — None*
(Art. 45(2) TFEU; European Parliament and Council Regulation No 492/2011, Art. 7(1))

(see paragraphs 23, 24, 29-32, 38)

3. *Free movement of persons — Workers — Equal treatment — Remuneration — Postdoctoral senior lecturers — Partial recognition of previous periods of professionally relevant service completed in another Member State — Previous equivalent service — Obstacle — Justification — No justification —Previous service not equivalent but beneficial to the performance of duties — No obstacle*
(Art. 45(2) TFEU; European Parliament and Council Regulation No 492/2011, Art. 7(1))

(see paragraphs 40-43, 47-51, 54, 55-63, operative part)

Résumé

Rules of a university of a Member State which, for the purposes of grading the salaries of its lecturers, limit the account to be taken of previous periods of professionally equivalent service completed in another Member State constitute an obstacle to the free movement of workers

In the judgment in *Krah* (C-703/17), delivered on 10 October 2019, the Court ruled that rules of a university of a Member State which, for the purposes of grading the salaries of its postdoctoral senior lecturers, limit the account to be taken of previous periods of professionally equivalent service completed by those lecturers in another Member State, constitute an obstacle to the free movement of workers, as guaranteed by Article 45 TFEU. However, Article 45 TFEU and Article 7(1) of Regulation No 492/2011 on freedom of movement for workers[1] do not preclude such rules if the service completed in that other Member State was not equivalent, but merely beneficial to the performance of the duties of postdoctoral senior lecturer at the university in question.

In the case pending before the referring court, a German national, who holds a doctorate in history, worked for five years in a teaching post at the University of Munich. Since the end of 2000, she has worked at the University of Vienna, first of all in a teaching post, then as a senior lecturer and, from 1 October 2010, as a postdoctoral senior lecturer. By decision of 8 November 2011, the University of Vienna decided, for the purposes of establishing the salary grading for postdoctoral senior lecturers, to take into account a maximum of four years of previous periods of professionally relevant service, without differentiating between the periods completed in other universities in Austria and those completed abroad. That four-year limit does not, however, apply to professional experience completed at the University of Vienna as a postdoctoral senior lecturer. Pursuant to that decision, the applicant's salary grading was established on the basis of four years of previous professional experience.

In response to the question concerning the compatibility of the decision of 8 November 2011 with the principle of non-discrimination on grounds of nationality, the Court found, first of all, that that decision does not constitute discrimination based directly on nationality or indirect discrimination in respect of workers who are nationals of other Member States. However, the Court took the view that it constitutes an obstacle to the free movement of workers, guaranteed by Article 45(1) TFEU, in so far as it is liable to render the exercise of that freedom less attractive.

In that regard, the decision of 8 November 2011 takes into account a maximum of four years of previous periods of professionally relevant service. That definition covers not only previous activity that is equivalent or even identical to the performance of the duties of postdoctoral senior lecturers at the University of Vienna, but also any other type of activity which is merely beneficial to the performance of those duties.

The Court ruled that limiting the recognition of previous equivalent professional service to four years constitutes an obstacle to free circulation. That limitation is liable to deter a postdoctoral senior lecturer who has accrued equivalent professional experience exceeding that period to leave his or her Member State of origin and to apply for such a position at the University of Vienna. The Court states in this respect that such a senior lecturer would be subject to less

[1] Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1). Article 7(1) of that regulation constitutes the specific expression of the principle of non-discrimination laid down in Article 45(2) TFEU within the specific field of conditions of employment and work.

advantageous salary conditions than those applicable to postdoctoral senior lecturers who have carried out the same work during periods of service of the same duration at the University of Vienna.

However, as regards the failure to take into account all of the experience which is merely beneficial, the Court found that there was no obstacle to the free movement of workers, since such a failure cannot produce effects that deter free movement.

As regards, finally, justification for the obstacle to free movement resulting from the partial recognition of equivalent professional experience, the Court confirmed that rewarding experience acquired which enables the worker to improve the performance of his or her duties constitutes a legitimate objective of pay policy. Nevertheless, in the light of the specific circumstances of the case in the main proceedings, the decision of 8 November 2011 did not appear appropriate to ensure achievement of that objective, with the result that the Court found that there was an infringement of Article 45 TFEU.