Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

23 April 2020 *

(Reference for a preliminary ruling — Freedom of movement for workers — Article 45(1) TFEU — Remuneration — Step allocation in a remuneration system — Remuneration system linking entitlement to a higher remuneration rate to length of service with the same employer — Limitation of the account to be taken of previous periods of relevant activity with an employer in a Member State other than the Member State of origin)

In Case C-710/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesarbeitsgericht (Federal Labour Court, Germany), made by decision of 18 October 2018, received at the Court on 14 November 2018, in the proceedings

WN

v

Land Niedersachsen

THE COURT (Seventh Chamber),

composed of P.G. Xuereb, President of the Chamber, A. Arabadjiev (Rapporteur) and A. Kumin, Judge,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– WN, by K. Otte, Rechtsanwalt,

– the Land Niedersachsen, by J. Rasche, Rechtsanwältin,

– the German Government, by J. Möller and S. Eisenberg, acting as Agents,

– the European Commission, by M. van Beek and B.-R. Killmann, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 45 TFEU and of Article 7(1) of 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).

2 The reference has been made in the course of proceedings between WN and the Land Niedersachsen (Land of Lower Saxony, Germany), relating to the account taken only in part, for the purpose of determining the remuneration rate of the applicant in the main proceedings, of periods of relevant activity with an employer established in France.

Legal context

EU law

3 Article 7(1) of Regulation No 492/2011 provides:

‘A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.’

4 Article 1 of 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; ‘the Framework Agreement’) provides that the said agreement annexed to the directive is to be put into effect.

5 Clause 3 of the Framework Agreement (‘Definitions’) is worded as follows:

‘1. For the purpose of this agreement, the term “fixed-term worker” means a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.

2. For the purpose of this agreement, the term “comparable permanent worker” means a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills. Where there is no comparable permanent worker in the same establishment, the comparison shall be made by reference to the applicable collective agreement, or where there is no applicable collective agreement, in accordance with national law, collective agreements or practice.’

6 Clause 4 of the Framework Agreement (‘Principle of non-discrimination’) states as follows:

‘1. In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds.

2. Where appropriate, the principle of *pro rata temporis* shall apply.

3. The arrangements for the application of this clause shall be defined by the Member States after consultation with the social partners and/or the social partners, having regard to Community law and national law, collective agreements and practice.

4. Period-of-service qualifications relating to particular conditions of employment shall be the same for fixed-term workers as for permanent workers except where different length-of-service qualifications are justified on objective grounds.'

German law

7 The Tarifvertrag für den Öffentlichen Dienst der Länder (Collective Agreement for the public sector of the *Länder*), in the version resulting from Amendment No 7 of 9 March 2013, applicable in the main proceedings ('the TV-L'), provides, in Paragraph 12 thereof ('Classification'):

'1. Employed workers shall receive remuneration according to the grade to which they are allocated.

…'

8 Paragraph 16 of the TV-L sets the steps within a grade in the remuneration table as follows:

'1. Grades 9 to 15 each have five steps …

2. Employed workers shall be recruited at step 1 where they have no relevant professional experience. Where employed workers have acquired relevant professional experience of at least one year from a previous fixed-term or permanent employment relationship with the same employer, step allocation shall take into account the periods of relevant professional experience from that previous employment relationship. Where the relevant professional experience of at least one year has been acquired from an employment relationship with another employer, the employed worker shall be allocated to step 2 or, where the employed worker was recruited after 31 January 2010 and has relevant professional experience of at least three years, to step 3. Irrespective of this, in the case of new recruitments to cover staffing needs, the employer may take into account, in whole or in part, periods of previous professional activity when allocating an employee to a step, where that activity is beneficial to the intended activity.

Explanations relating to Paragraph 16(2):

1. Relevant professional experience is professional experience in the activity assigned or an activity corresponding to the task allocated.

…

3. A previous employment relationship within the meaning of the second sentence exists if there is a period of no more than six months between the end of the previous employment relationship and the beginning of the new one; …

…

3. Employed workers advance to the next step — from step 3, depending on their performance, according to Paragraph 17(2) — after completing, with their employer, the following periods of continuous activity within the same step (advancement to a higher step):

– Step 2, after one year in step 1,

– Step 3, after two years in step 2,

– Step 4, after three years in step 3,

– Step 5, after four years in step 4 …’

9 Directive 1999/70 implementing the Framework Agreement was transposed into German law by the Gesetz über Teilzeitarbeit und befristete Arbeitsverträge (Teilzeit- und Befristungsgesetz) (Law on part-time work and fixed-term employment contracts) of 21 December 2000, as amended by the Law of 20 December 2011 (‘the TzBfG’).

10 Under the heading ‘Principle of non-discrimination’, Paragraph 4(2) of the TzBfG provides:

‘Fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers because they work on a fixed-term basis, unless different treatment is justified on objective grounds. Fixed-term workers shall receive remuneration or another divisible benefit for consideration which is granted for a specified reference period and the extent of which shall correspond to the length of their service during the reference period. Where certain conditions of employment depend on the length of the work relationship in the same establishment or undertaking, account shall be taken, for fixed-term workers, of the same periods as for permanent workers, unless different treatment is justified on objective grounds.’

The dispute in the main proceedings and the question referred for a preliminary ruling

11 WN, a German national, carried out teaching activities in various secondary and high schools in France from 1997 to 2014 without interruption. On 8 September 2014, less than six months after the end of that activity, she was recruited as a teacher by the Land of Lower Saxony. Her employment contract is governed by the TV-L, which determines her step allocation in the remuneration table.

12 It is apparent from the order for reference that the Land of Lower Saxony recognised WN’s professional experience acquired in France as relevant within the meaning of Paragraph 16(2) of the TV-L for the purpose of determining her classification in that table.

13 The periods of activity completed in France were taken into account only in part, however, by the Land of Lower Saxony for the purpose of determining WN’s step allocation. As a consequence, she was allocated to step 3 of grade 11 of the remuneration table. The referring court states that, pursuant to Paragraph 16(2) of the TV-L — which provides for the capping of the account to be taken of the relevant professional experience acquired from another employer — only 3 out of the 17 years of WN’s professional activity in France were taken into account.

14 WN claims that had she acquired 17 years of relevant professional experience from a previous employment relationship with the same employer, within the meaning of Paragraph 16(2) of the TV-L, namely the Land of Lower Saxony, she would have been allocated, from the beginning of her new employment relationship with that employer, to step 5 of that grade in the remuneration table pursuant to that provision.

15 Consequently, on 20 October 2014, WN requested from the Land of Lower Saxony her reallocation to step 5 of grade 11 in the remuneration table and retroactive payment of the corresponding remuneration. The Land of Lower Saxony rejected that request on the ground that the relevant professional experience exceeding three years which WM could rely on was acquired with an employer other than the Land of Lower Saxony and, therefore, could not be taken into account in full.

16 WN brought an action against that decision before the competent first-instance labour court, which was upheld and led to the review of her allocation. The referring court states that WN had claimed that her allocation to step 3 of that grade was incorrect because the failure to take into account in full her relevant professional experience acquired in France amounted to a difference in treatment contrary

to the principle of equality and to the freedom of movement for workers. The Landesarbeitsgericht (Higher Labour Court, Germany) upheld the appeal brought by the Land of Lower Saxony and annulled the first-instance judgment. WN then brought an appeal in *Revision* before the Bundesarbeitsgericht (Federal Labour Court, Germany), seeking confirmation of the first-instance judgment.

17 Having doubts as to the compatibility of the relevant national legislation in question with EU law, the referring court decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Are Article 45(2) TFEU and Article 7(1) of [Regulation No 492/2011] to be interpreted as precluding a provision such as that in Paragraph 16(2) of the [TV-L], pursuant to which the relevant professional experience acquired with the last previous employer has a privileged position in the case where an employee is allocated to the steps of a collective pay structure following re-employment as a result of that professional experience being fully acknowledged pursuant to the second sentence of Paragraph 16(2) of the TV-L, whereas only a maximum of three years of the relevant professional experience acquired with other employers is taken into account pursuant to the third sentence of Paragraph 16(2) of the TV-L, if that privileged position is required under EU law by Clause 4.4 of the [Framework Agreement]?'

Consideration of the question referred

18 A preliminary point to make is that, according to the Court's settled case-law, in the procedure laid down in Article 267 TFEU, which provides for cooperation between national courts and the Court, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to decide the case before it. With that in mind, the Court may have to reformulate the questions referred to it. The fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not prevent the Court from providing the national court with all the points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 35).

19 In the present case, it is apparent from the order for reference that the legislation at issue in the main proceedings applies without distinction to all workers recruited by a *Land*, irrespective of nationality. By contrast, it introduces a difference in treatment between workers depending on the employer with which professional experience has been acquired.

20 Contrary to the case that gave rise to the judgment of 5 December 2013, *Zentralbetriebsrat der gemeinnützigen Salzburger Landeskliniken* (C-514/12, EU:C:2013:799), in which the national measure at issue concerned doctors and healthcare professionals from a Member State other than the Republic of Austria and employed by the Land Salzburg (Land of Salzburg, Austria), in the present case, it is apparent from the order for reference that WN is a German national who, before her recruitment as a teacher by a school of the Land of Lower Saxony in Germany, stayed in the territory of another Member State and taught there in various secondary and high schools. Thus, the file before the Court does not permit the inference that WN is a worker who is a national of a Member State and who, by reason of her nationality, was treated differently in the territory of another Member State in respect of conditions of employment and work.

21 In that context, the case in the main proceedings cannot be regarded as characterised by the existence of discrimination based on nationality for the purpose of Article 45(2) TFEU and Article 7(1) of Regulation No 492/2011.

22 In those circumstances, and in the light of the information provided by the referring court, the question referred must be reformulated in order to provide the referring court with points of interpretation which may be of assistance.

23 It is apparent from the order for reference that the Bundesarbeitsgericht (Federal Labour Court) asks, in fact, whether Article 45(1) TFEU is to be interpreted as precluding national legislation that, for the purpose of determining the remuneration rate of a person working as a school teacher with a local authority, takes into account that person's previous periods of relevant activity with an employer, other than that local authority, situated in another Member State, only up to a maximum of three years in total.

24 In that regard, it should be noted that all of the provisions of the FEU Treaty relating to the freedom of movement for persons as well as those of Regulation No 492/2011 are intended to facilitate the pursuit by nationals of the Member States of occupational activities of all kinds throughout the European Union and preclude measures which might place those nationals at a disadvantage when they wish to pursue paid employment in the territory of another Member State (judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 40).

25 Nationals of the Member States have in particular the right, which they derive directly from the Treaty, to leave their Member State of origin to enter the territory of another Member State and reside in that Member State in order to pursue an activity there. As a result, Article 45 TFEU precludes any national measure which is capable of hindering or rendering less attractive the exercise by EU nationals of the fundamental freedom guaranteed by that article (judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 41).

26 National legislation which does not take into account in full previous periods of equivalent activity completed in a Member State other than the Member State of origin of a migrant worker is likely to render less attractive the freedom of movement for workers, in breach of Article 45(1) TFEU (see, to that effect, judgments of 30 September 2003, *Köbler*, C-224/01, EU:C:2003:513, paragraph 74, and of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 54).

27 As to the main proceedings, it should be noted that, under Paragraph 16(2) of the TV-L, the relevant professional experience of a person recruited by the Land of Lower Saxony acquired with employers other than that local authority is taken into account only in part.

28 As is apparent from the Court's case-law, however, with regard, in particular, to the account to be taken in part of the relevant professional experience, it is appropriate to distinguish equivalent professional experience, on the one hand, from any other type of professional experience which is merely beneficial to the performance of the duties of a school teacher, on the other hand (judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 51).

29 With regard to equivalent professional experience, it must be noted that German migrant workers, including those from the Land of Lower Saxony, who intend to perform for more than three years the duties of a school teacher or equivalent duties with one or more schools or comparable establishments outside that *Land* or in a Member State other than the Federal Republic of Germany will be dissuaded from so doing. Thus, those workers will in particular be dissuaded from leaving their Member State of origin to enter the territory of another Member State in order to perform the duties of a school teacher or equivalent duties if, following their return in the territory of the Land of Lower Saxony, despite having performed, in essence, the same work in that other Member State, their equivalent professional

experience is not taken into account in full when the Land of Lower Saxony determines their salary grading (see, to that effect, judgments of 30 September 2003, *Köbler*, C-224/01, EU:C:2003:513, paragraph 74, and of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 47).

30 In the present case, the account to be taken in full of the equivalent professional experience acquired by German migrant workers, including those of the Land of Lower Saxony, with a school or comparable establishment in a Member State other than the Federal Republic of Germany would have the effect that those workers, who performed for more than three years teaching or equivalent duties, would be subject, for the purposes of their salary grading, to the same conditions as workers of the Land of Lower Saxony who perform teaching duties for periods of activity of the same overall duration with schools of that *Land*. Accordingly, it can reasonably be supposed that it is a relevant factor in those workers' decision whether or not to apply for a position as a school teacher with schools in a Member State other than the Federal Republic of Germany and leave their Member State of origin (see, to that effect, judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 49).

31 However, the principle of the freedom of movement for workers enshrined in Article 45 TFEU does not require professional experience which, without being equivalent, is merely beneficial for the performance of teaching duties to be taken into account in full, in so far as it is not necessary to ensure that both the workers employed by the Land of Lower Saxony who have never performed their right of free movement and those who have are subject to the same conditions for the purposes of their salary grading. The consideration that a worker, whose full equivalent professional experience which might be completed in a Member State other than the Member State of origin will be taken into account for the purposes of the initial salary grading as a teacher in a school of the Land of Lower Saxony, will be dissuaded from leaving his or her Member State of origin if professional experience of any other type which might be acquired in that other Member State will not be taken into account in full, seems to rely on a set of events too uncertain and indirect to be capable of being regarded as hindering the freedom of movement for workers (see, to that effect, judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 50).

32 In the present case, it is apparent from the file that, pursuant to the national rules that are to be interpreted strictly, WN's professional experience acquired in France was recognised by the Land of Lower Saxony as professional experience acquired in the context of an activity equivalent in essence to that for which she was recruited by that *Land*.

33 It follows that, in so far as legislation such as that at issue in the main proceedings does not take into account in full previous periods of equivalent activity completed in a Member State other than the Member State of origin of a migrant worker, it is likely to render less attractive the freedom of movement for workers, in breach of Article 45(1) TFEU, and, accordingly, constitutes an obstacle to that freedom.

34 A measure of that kind cannot be accepted unless it pursues one of the legitimate aims listed in the TFEU or is justified by overriding reasons in the public interest. It is also necessary, in such a case, that its application be capable of ensuring the achievement of the objective in question and not go beyond what is necessary to attain that objective (judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 55).

35 With regard, in the first place, to the question of whether that measure can be justified by the objective of ensuring observance of the principle of equal treatment between fixed-term workers and permanent workers, the referring court notes that the second sentence of Paragraph 16(2) of the TV-L is appropriate in cases of re-employment of fixed-term workers by the same employer. The referring court states that that national provision seeks to give workers who are repeatedly re-employed the

possibility to advance to higher steps. The referring court adds that the first sentence of Paragraph 4(2) of the TzBfG, which puts into effect Clause 4.4 of the Framework Agreement, is intended to treat equally fixed-term and permanent workers in terms of seniority recognition.

36 In that regard, it must be noted that it is apparent from the file that the account to be taken in full of equivalent professional experience acquired, pursuant to Paragraph 16(2) of the TV-L, is in no way limited to persons who acquired their professional experience in the context of fixed-term contracts. It is in no way excluded that a person who terminated his or her permanent employment contract with the Land of Lower Saxony may decide, before six months have elapsed between the end of the previous relationship and the beginning of the new one, to enter into another employment contract with that *Land* and benefit from the rule under Paragraph 16(2) of the TV-L.

37 In the present case, it is not apparent from the file before the Court whether WN's work relationship in France was permanent or not. However, that factual element is immaterial. WN is, in any event, subject to the cap under Paragraph 16(2) of the TV-L upon entering into an employment contract with the Land of Lower Saxony, whereas a person who performed an equivalent activity to that of WN in the context of a previous employment relationship with that *Land* would be entitled to have his or her equivalent professional experience taken into account in full upon entering into a new contract with that *Land*, regardless of whether the previous employment contract was fixed-term or permanent.

38 Moreover, in order to safeguard equal treatment between fixed-term and permanent workers, it is not necessary to exclude part of the equivalent professional experience of persons who worked for another employer. In addition, the principle of equal treatment in no way requires fixed-term workers to be put in a more favourable situation than that other group of workers.

39 In the second place, the Land of Lower Saxony and the German Government submit, by way of justification, that experience acquired with the same employer enables the workers concerned to perform their duties better. Thus, with a view to ensuring fair wages, that advantage may be rewarded by granting a higher rate of remuneration to those with such professional experience.

40 In that regard, suffice it to recall that it is apparent from the file before the Court that WN's professional experience acquired in France was recognised by the Land of Lower Saxony as professional experience acquired in the context of an activity in essence equivalent to that which she is to perform in the context of her work relationship with that *Land*. In so far as, in the present case, that experience was found to be in essence equivalent to experience acquired with the schools of the Land of Lower Saxony, the fact that it was acquired in another Member State is not capable of justifying the capping of the experience to be taken into account. A national measure, such as that at issue in the main proceedings, which takes into account equivalent experience in a limited manner, cannot be regarded as aiming to reward entirely that experience and, consequently, is not capable of ensuring the achievement of that justification (see, to that effect, judgment of 8 May 2019, *Österreichischer Gewerkschaftsbund*, C-24/17, EU:C:2019:373, paragraph 88).

41 In the third place, the Land of Lower Saxony and the German Government contend that the measure at issue in the main proceedings is justified by the objective of rewarding employees for their loyalty to their employer. In connection with that line of arguments, the German Government adds that, contrary to the case that gave rise to the judgment of 30 September 2003, *Köbler* (C-224/01, EU:C:2003:513), in which various Austrian universities were competing with each other, in the main proceedings certain conditions of work, such as teaching content and remuneration, are similar in all state schools within the Land of Lower Saxony. Accordingly the legislation at issue in the main proceedings is capable of ensuring the achievement of the objective of rewarding employees for their loyalty.

42 In that regard, it should be recalled that, in the case that gave rise to the judgment of 30 September 2003, *Köbler* (C-224/01, EU:C:2003:513), the third question referred by the domestic court concerned, inter alia, the question of whether a special length-of-service increment provided for under Austrian law could be regarded as a bonus intended to reward Austrian university professors for their loyalty to their sole employer, namely the Austrian State. Similarly, in the present case, while all state school teachers are the employees of a single employer, namely the Land of Lower Saxony, they are assigned to different state school within that *Land*.

43 Against that background, it is appropriate to observe, first, that even if certain conditions of work, such as teaching content and remuneration, are similar in all state schools within the Land of Lower Saxony, the possibility remains that there might be other conditions that are capable of creating competition between those schools, such as, for example, their reputation. In any event, those schools compete on the employment market for state school teachers with the schools of other local authorities, those of other Member States as well as those of third countries.

44 Accordingly, contrary to the arguments put forward by the Land of Lower Saxony and the German Government set out in paragraph 41 above, the measure at issue in the main proceedings does nothing to promote the loyalty of a school teacher since that school teacher's remuneration, which is determined according to professional experience, is payable even if that person changes school within that *Land* (see, by analogy, judgment of 30 September 2003, *Köbler*, C-224/01, EU:C:2003:513, paragraph 84, and order of 10 March 2005, *Marhold*, C-178/04, not published, EU:C:2005:164, paragraph 36).

45 Secondly, it must be stated that national legislation such as that at issue in the main proceedings is likely to have consequences on the choice made by school teachers between a position in a school of the Land of Lower Saxony and one in a school outside the territory of that *Land* or that of the Federal Republic of Germany (see, by analogy, judgment of 30 September 2003, *Köbler*, C-224/01, EU:C:2003:513, paragraph 85, and order of 10 March 2005, *Marhold*, C-178/04, not published, EU:C:2005:164, paragraph 37).

46 Therefore, the legislation at issue in the main proceedings leads to a partitioning of the employment market for school teachers in the territory of the Land of Lower Saxony and runs counter to the very principle of freedom of movement for workers (see, by analogy, judgment of 30 September 2003, *Köbler*, C-224/01, EU:C:2003:513, paragraph 86, and order of 10 March 2005, *Marhold*, C-178/04, not published, EU:C:2005:164, paragraph 38).

47 In view of the specific features of the measure at issue in the main proceedings, it must be found that the obstacle that it entails cannot, in the present case, be justified by the objective of rewarding employees for their loyalty to their employers.

48 In the fourth place, the Land of Lower Saxony claims that the recognition in full of professional experience acquired with the same employer is an incentive for reinstatement with that employer, within six months following the end of the previous employment relationship, of persons who acquired such an experience.

49 In that regard, it is appropriate to note that, as is evident from paragraph 11 above, WN was recruited as a teacher by the Land of Lower Saxony less than six months after the end of her previous employment relationship with another employer.

50 It must be recalled that the national legislation at issue in the main proceedings includes two elements, namely (i) the account to be taken in full of periods of activity completed in the service of the local authority and (ii) the exclusion of part of the equivalent professional experience acquired with an employer other than that local authority. The Land of Lower Saxony submits that the account to be taken in full of periods of service completed in the service of the local authority is an incentive to

reinstate workers after their employment relationship has ended but in no way does the *Land* explain the reasons for which it considers that the capping of the account to be taken of equivalent professional experience acquired with an employer other than that local authority contributes to reinstatement within the services of that *Land*.

51 In any event, a national measure such as that at issue in the main proceedings, which excludes part of the equivalent professional experience acquired with an employer other than the local authority in the main proceedings or with an employer situated in another Member State is no incentive, by its nature, to reinstate workers who acquired some experience with that local authority. By contrast, it precludes them from obtaining equivalent professional experience with an employer, other than that local authority, situated in another Member State. It follows that that measure cannot be considered to be capable of ensuring the achievement of the objective pursued.

52 In the light of all of the foregoing, the answer to the question referred is that Article 45(1) TFEU must be interpreted as precluding national legislation that, for the purpose of determining the remuneration rate of a person working as a school teacher with a local authority, takes into account that person's previous periods of activity with an employer, other than that local authority, situated in another Member State, only up to a maximum of three years in total, when that activity is equivalent to that which that person is to perform in the context of his or her school teaching duties.

Costs

53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby rules:

Article 45(1) TFEU must be interpreted as precluding national legislation that, for the purpose of determining the remuneration rate of a person working as a school teacher with a local authority, takes into account that person's previous periods of activity with an employer, other than that local authority, situated in another Member State, only up to a maximum of three years in total, when that activity is equivalent to that which that person is to perform in the context of his or her school teaching duties.

[Signatures]