Reports of Cases

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)

In Case C-703/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria), made by decision of 7 December 2017, received at the Court on 15 December 2017, in the proceedings

Adelheid Krah

v

Universität Wien,

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, K. Lenaerts (Rapporteur), President of the Court, acting as a Judge of the Second Chamber, and C. Vajda, Judges,

Advocate General: M. Bobek,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 23 January 2019,

after considering the observations submitted on behalf of:

– Ms Krah, by S. Jöchtl,

– the Universität Wien, by A. Potz, Rechtsanwältin,

– the Austrian Government, by J. Schmoll, acting as Agent,

– the European Commission, by D. Martin and M. Kellerbauer, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 23 May 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 45 TFEU, 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), and of Articles 20 and 21 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Ms Adelheid Krah and the Universität Wien (University of Vienna, Austria) concerning the partial recognition of previous periods of professionally relevant service which she completed with the Universität München (University of Munich, Germany) and with the University of Vienna for the purpose of determining the amount of her remuneration.

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.'

Austrian law

4 In accordance with Paragraph 6 of the Universitätsgesetz 2002 (Law of 2002 on universities, BGB1. I, 120/2002), the Rahmenkollektivvertrag für ArbeitnehmerInnen an Universitäten (Collective Framework Agreement for Employees at Universities) of 15 February 2011 ('the Collective Agreement') is intended to apply to all universities in Austria belonging to an umbrella organisation, in their capacity as employers (currently 21 universities).

5 Under Paragraph 26(3) and Paragraph 48 of the Collective Agreement, in the version applicable to the main proceedings, Ms Krah is classified in pay grade B1.

6 Paragraph 49(3) of the Collective Agreement provides:

'The monthly gross salary in pay grade B1 amounts to EUR 2 696.50.

That amount shall increase:

(a) after three years of employment to EUR 3 203.30. That three-year period shall be reduced by periods for which evidence regarding previous work-related experience is produced;

(b) after eight years of employment in the category set out in (a) or in the event of a doctorate which was a condition for the commencement of the employment relationship (postdoctoral position) to EUR 3 590.70;

(c) after eight years of employment in the category set out in (b) to EUR 3 978.30;

(d) after eight years of employment in the category set out in (c) to EUR 4 186.90.'

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

7 Ms Krah, a German national, has a doctorate in history. For five years she was employed in a teaching post at the University of Munich.

8 Since the winter semester of 2000/2001, she has been employed in a teaching post at the University of Vienna.

9 Following the submission of her postdoctoral thesis, Ms Krah was offered, by decision of the University of Vienna of 12 March 2002, a teaching position as a university lecturer for history on the basis of a fixed-term contract. Subsequently, she taught at least seven hours per week in each semester on the basis of fixed-term teaching contracts.

10 From 1 October 2010, Ms Krah was employed as a postdoctoral senior lecturer classified in pay grade B1, within the meaning of the Collective Agreement. From 1 March 2013, her initially fixed-term contract was extended for an indefinite duration. For the purpose of establishing her salary grading, and in accordance with the Collective Agreement, no previous periods of service were included in that contract.

11 On the basis of a decision taken by the rector of the University of Vienna on 8 November 2011 ('the decision of 8 November 2011'), however, that university decided to recognise only a maximum of four years of previous periods of professionally relevant service by postdoctoral senior lecturers if the employment relationship commenced on or after 1 October 2011. When account was taken of such previous periods of professionally relevant service, no distinction was made between periods completed in Austria and those completed abroad.

12 In the case of Ms Krah, a previous period of four years of professionally relevant service was taken into account upon her retroactive recruitment with effect from 1 October 2010, with the result that she was included in pay grade B1, under the conditions set out in Paragraph 49(3)(b) of the Collective Agreement, with access to the next step in her pay grade requiring four years of seniority.

13 Ms Krah submitted a request to the Arbeits- und Sozialgericht Wien (Labour and Social Court, Vienna, Austria) that account be taken of all of her previous periods of service, that is to say, the eight and a half years with the University of Vienna and the five years with the University of Munich, in order to be graded in a higher pay step. She thus sought an order requiring the University of Vienna to pay her EUR 2 727.20 together with interest, representing the remuneration which she had not received for the period from 13 June 2014 to 13 August 2015.

14 Since the Arbeits- und Sozialgericht Wien (Labour and Social Court, Vienna) turned down her request, Ms Krah appealed against the judgment of that court to the referring court, the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria). That court has doubts as to the scope of the principle of non-discrimination on grounds of nationality and the right to freedom of movement of workers, as guaranteed by EU law.

15 In those circumstances, the Oberlandesgericht Wien (Higher Regional Court, Vienna) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must EU law, in particular Article 45 TFEU, Article 7(1) of [Regulation No 492/2011], and Articles 20 and 21 of the [Charter], be interpreted as precluding a provision under which [previous periods of professionally relevant service] of a member of the teaching staff of the University of Vienna can be recognised only up to a total period of three or four years, irrespective of whether these are periods of service with the University of Vienna or with other national or international universities or similar institutions?

(2) Is a system of pay that does not provide for full recognition of [previous periods of professionally relevant service], but at the same time links a higher rate of pay to the duration of employment with the same employer, at variance with the freedom of movement for workers in accordance with Article 45(2) TFEU and Article 7(1) of Regulation No 492/2011?'

Consideration of the questions referred

The first question

16 By its first question, the referring court asks, in essence, whether Article 45 TFEU, Article 7(1) of Regulation No 492/2011 and Articles 20 and 21 of the Charter must be interpreted as precluding rules of a university of a Member State, such as those at issue in the main proceedings, which, for the purposes of a worker's salary grading as a postdoctoral senior lecturer with that university, take into account only a maximum of four years of previous periods of professionally relevant service by that worker, irrespective of whether those are periods of service with that same university or with other similar universities or institutions based in that Member State or in another Member State.

17 As a preliminary point, it should be noted that, even though the first question refers to Articles 20 and 21 of the Charter, it is, however, clear from the order for reference that, by that question, the referring court is asking the Court to interpret, in the context of the free movement of workers, the principle of non-discrimination on grounds of nationality and the concept of an obstacle to that free movement.

18 While it is true that Article 21(2) of the Charter lays down the principle of non-discrimination on grounds of nationality, it must nonetheless be borne in mind that Article 52(2) thereof provides that rights recognised by the Charter for which provision is made in the Treaties are to be exercised under the conditions and within the limits defined by those Treaties. In that vein, Article 21(2) of the Charter corresponds to the first paragraph of Article 18 TFEU, as confirmed by the explanations on the Charter of Fundamental Rights (OJ 2007 C 303, p. 17) relating to that provision, and must be applied in accordance with that article (see, by analogy, judgment of 4 July 2013, *Gardella*, C-233/12, EU:C:2013:449, paragraph 39).

19 In this respect, it must be borne in mind that the Court has consistently held that Article 18 TFEU, which sets out a general prohibition of all discrimination on grounds of nationality, is intended to apply independently only to situations governed by EU law in respect of which the FEU Treaty lays down no specific prohibition of discrimination. The principle of non-discrimination, however, was implemented, in the field of free movement of workers, by Article 45 TFEU (see, to that effect, judgment of 18 July 2017, *Erzberger*, C-566/15, EU:C:2017:562, paragraphs 25 to 27).

20 It follows that it is appropriate to consider the first question solely on the basis of Article 45 TFEU and Article 7(1) of Regulation No 492/2011.

Article 45(2) TFEU and Article 7(1) of Regulation No 492/2011

21 Article 45(2) TFEU prohibits all discrimination based on nationality between workers of the Member States as regards employment, remuneration or other conditions of work and employment. Article 7(1) of Regulation No 492/2011 constitutes merely 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, and must therefore be interpreted in the same way as Article 45(2) TFEU (judgments of 5 December 2013, *Zentralbetriebsrat der gemeinnützigen Salzburger Landeskliniken*, C-514/12, EU:C:2013:799, 'judgment in *SALK*', paragraph 23; of 13 March 2019, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach*, C-437/17, EU:C:2019:193, paragraph 16; and of 8 May 2019, *Österreichischer Gewerkschaftsbund*, C-24/17, EU:C:2019:373, paragraphs 68 and 69).

22 Rules of a university of a Member State, such as those at issue in the main proceedings, which provide for partial account to be taken of previous professionally relevant periods of service, for the purpose of determining the applicable salary grade, indisputably form part of the field of employment and work conditions. They thus come within the scope of the provisions cited in the preceding paragraph (see, by analogy, judgments in *SALK*, paragraph 24, and of 13 March 2019, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach*, C-437/17, EU:C:2019:193, paragraph 17).

23 In that regard, it is settled case-law that the equal-treatment rule laid down in Article 45 TFEU and in Article 7 of Regulation No 492/2011 prohibits not only overt discrimination by reason of nationality but also all covert forms of discrimination which, through the application of other distinguishing criteria, lead in fact to the same result (see, to that effect, judgments in *SALK*, paragraph 25; of 13 March 2019, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach*, C-437/17, EU:C:2019:193, paragraph 18; and of 8 May 2019, *Österreichischer Gewerkschaftsbund*, C-24/17, EU:C:2019:373, paragraph 70).

24 In that context, the Court has stated that a provision of national law, even if it applies to all workers regardless of nationality, must be regarded as indirectly discriminatory if it is intrinsically liable to affect workers who are nationals of other Member States more than national workers and if there is a consequent risk that it will place the worker from a different Member State at a particular disadvantage, unless it is objectively justified and proportionate to the aim pursued (see, to that effect, judgments in *SALK*, paragraph 26; of 13 March 2019, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach*, C-437/17, EU:C:2019:193, paragraph 19; and of 8 May 2019, *Österreichischer Gewerkschaftsbund*, C-24/17, EU:C:2019:373, paragraph 71).

25 In the present case, by virtue of the decision of 8 November 2011, the University of Vienna decided to recognise only a maximum of four years of previous periods of professionally relevant service by postdoctoral senior lecturers for the purposes of establishing their salary grading, without differentiating between periods completed in Austria and those completed abroad.

26 In accordance with the Collective Agreement, relevant professional experience is defined as 'previous work-related experience', with the result that that definition covers not only equivalent or even identical previous activities to those required of the worker at the University of Vienna but also any other activities which are merely beneficial to the performance of those duties, such as extra-curricular activities and traineeships.

27 During the hearing before the Court, and as the Advocate General has noted in point 55 of his Opinion, it was confirmed that that limit of four years also applies to professional experience that was acquired with the University of Vienna in a different capacity to that of a postdoctoral senior lecturer.

28 As regards the existence of possible discrimination contrary to Article 45(2) TFEU and Article 7(1) of Regulation No 492/2011, it should be noted from the outset that a decision such as that of 8 November 2011 is applicable without distinction to all workers engaged by the University of Vienna, regardless of their nationality. Such a decision cannot therefore be regarded as constituting discrimination based directly on nationality.

29 However, rules of a university of a Member State, such as those at issue in the main proceedings, establish a difference in treatment between workers on the basis of the employer with which the professional experience was acquired. It follows from the decision of 8 November 2011 that professional experience acquired by a worker in the capacity of postdoctoral senior lecturer or equivalent with one or several universities or similar institutions is recognised only up to a maximum of four years for the purposes of his or her salary grading at the time when he or she was hired by that university, even if his or her professional experience in reality exceeds four years. Thus, such a worker will be graded, at the beginning of the employment relationship, in a lower grading in the salary scale than that of a worker in the capacity of postdoctoral senior lecturer during periods of service of the same total duration with the University of Vienna.

30 The decision of 8 November 2011 adversely affects all workers, both Austrians and nationals of other Member States, who have worked as postdoctoral senior lecturers or equivalent during periods of service of more than four years, with one or several universities or similar institutions other than the University of Vienna, in comparison with those who have worked as postdoctoral senior lecturers during periods of service of the same total duration with the University of Vienna.

31 In order for such a difference in treatment between workers on the basis of the employer with which they have acquired the professional experience to be taken into account to be regarded as being indirectly discriminatory, within the meaning of Article 45(2) TFEU and Article 7(1) of Regulation No 492/2011, it must, however, be intrinsically liable to affect workers who are nationals of other Member States more than national workers.

32 It is, however, apparent from the order for reference that there is nothing to indicate that, when applying for the position of postdoctoral senior lecturer, workers who are nationals of other Member States are more likely than Austrian workers to have worked in that capacity or equivalent during periods of service of more than four years with one or several universities or

similar institutions other than the University of Vienna. Consequently, it has not been established that the decision of 8 November 2011 places Austrian workers in particular at an advantage over workers who are nationals of other Member States.

33 Additionally, contrary to what the Commission submits in its written observations, it cannot be inferred from the case-law resulting from the judgment in *SALK* that the decision of 8 November 2011 is the source of indirect discrimination, within the meaning of Article 45(2) TFEU and Article 7(1) of Regulation No 492/2011.

34 The national rules at issue in the case which gave rise to that judgment provided that, in determining the reference date for the purposes of the advancement of an employee of Land Salzburg (Province of Salzburg, Austria) to the next pay step in his or her grade, account was to be taken of all uninterrupted periods of service completed with that authority, but of only a total of 60% of any other periods of service. As is apparent from paragraph 40 of the judgment in *SALK*, those rules were intended to allow mobility within a group of distinct employers who were part of that authority and irrespective of whether the professional experience acquired with one of the employers of that group was relevant in the light of the duties to be performed with another employer of that group.

35 In paragraph 28 of that judgment, the Court held that such rules were liable to affect workers who are nationals of other Member States more than national workers, placing the former at a particular disadvantage as they will in all likelihood have accrued professional experience in a Member State other than Austria before entering the employ of Land Salzburg. Those rules thus favour the mobility of national workers over that of workers who are nationals of other Member States.

36 However, as already noted in paragraph 32 of this judgment, that is not the position in the main proceedings in the present case.

37 It follows that the case-law resulting from the judgment in *SALK* cannot be applied to the situation at issue in the case in the main proceedings, arising from the application of the decision of 8 November 2011 (see, by analogy, judgment of 13 March 2019, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach*, C-437/17, EU:C:2019:193, paragraph 33).

38 It follows from the foregoing considerations that rules of a university of a Member State, such as those at issue in the main proceedings, which establish a difference in treatment between workers on the basis of the employer with which they have acquired the professional experience to be recognised for the purposes of their salary grading cannot be regarded as indirectly discriminatory in regard to workers who are nationals of other Member States and, therefore, as being contrary to Article 45(2) TFEU.

Article 45(1) TFEU

39 It is also necessary to determine whether rules of a university of a Member State, such as those at issue in the main proceedings, constitute an obstacle to the free movement of workers, as prohibited by Article 45(1) TFEU.

40 In this respect, it should be borne in mind that all the provisions of the FEU Treaty relating to freedom of movement for persons are intended, as are those of Regulation No 492/2011, 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 nationals of Member States at a disadvantage if they wish to pursue a paid activity in the territory of another Member State (judgments in *SALK*, paragraph 32, and of 8 May 2019, *Österreichischer Gewerkschaftsbund*, C-24/17, EU:C:2019:373, paragraph 77).

41 In that context, 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 there 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 freedoms guaranteed by that article (judgment of 18 July 2017, *Erzberger*, C-566/15, EU:C:2017:562, paragraph 33).

Whether there is an obstacle

42 In the case in the main proceedings, by virtue of the decision of 8 November 2011, previous periods of professionally relevant service completed by a postdoctoral senior lecturer in a university other than the University of Vienna are recognised only up to a maximum of four years by the University of Vienna for the purposes of establishing that lecturer's salary grading.

43 As is apparent from paragraph 26 of this judgment, the definition of relevant professional experience covers not only equivalent or even identical previous activities to those required of the worker at the University of Vienna but also any other activities which are merely beneficial to the performance of those duties.

44 In that regard, it must be borne in mind that primary EU law cannot guarantee to a worker that moving to a Member State other than his or her Member State of origin will be neutral in terms of social security, since, given the disparities between the Member States' social security schemes and legislation, such a move may be more or less advantageous for the person concerned in that regard (judgments of 18 July 2017, *Erzberger*, C-566/15, EU:C:2017:562, paragraph 34, and of 13 March 2019, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach*, C-437/17, EU:C:2019:193, paragraph 37).

45 Thus, Article 45 TFEU does not grant to that worker the right to rely, in the host Member State, on the conditions of employment which he enjoyed in the Member State of origin under the national legislation of that latter State (judgment of 18 July 2017, *Erzberger*, C-566/15, EU:C:2017:562, paragraph 35).

46 EU law guarantees only that workers active in a Member State other than their Member State of origin are subject to the same conditions as workers who are covered by the national legislation of the host Member State (see, to that effect, judgments of 23 January 2019, *Zyla*, C-272/17, EU:C:2019:49, paragraph 45, and of 13 March 2019, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach*, C-437/17, EU:C:2019:193, paragraph 38).

47 In the first place, as regards equivalent professional experience, it must be noted that workers who are nationals of other Member States and who performed, for periods of more than four years, the duties of postdoctoral senior lecturer or equivalent with one or several universities or similar institutions located in their Member State of origin will be dissuaded from applying for a position of postdoctoral senior lecturer at the University of Vienna and, therefore, from exercising their

right to free movement if, despite the fact of having performed, essentially, the same work in their Member State of origin, not all of their professional experience is taken into account when their salary grading is determined.

48 The fact that the partial recognition of equivalent professional experience is liable to hinder the free movement of workers is not based on a set of circumstances which are too uncertain and indirect, unlike the national rules at issue in the case giving rise to the judgment of 13 March 2019, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach* (C-437/17, EU:C:2019:193), which concerned the reward of a worker's loyalty towards a particular employer, as is apparent in particular from paragraph 33 of that judgment.

49 In the present case, recognition of all the equivalent professional experience acquired by workers with a university of a Member State other than Austria would have the effect that workers who are nationals of other Member States and who performed, for periods of more than four years, the duties of postdoctoral senior lecturer or equivalent with one or several universities or similar institutions located in their Member State of origin are, for the purposes of their salary grading, subject to the same conditions as workers who performed the duties of postdoctoral senior lecturer or equivalent during periods of service of the same total duration with the University of Vienna. Therefore, it is reasonable to assume that this is a relevant factor in the decision of those workers to apply for the position of postdoctoral senior lecturer at the University of Vienna and to leave their Member State of origin.

50 In the second place, as regards, by contrast, recognition of all the professional experience which, without being equivalent, is merely beneficial to the performance of the duties of postdoctoral senior lecturer, the principle of free movement of workers, established in Article 45 TFEU, does not require such recognition, since it is not necessary in order to ensure that Austrian workers and those who are nationals of other Member States are, for the purposes of their salary grading, subject to the same conditions. To consider that a worker whose entire equivalent professional experience acquired in the Member State of origin is already recognised for the purposes of his or her initial salary grading as a postdoctoral senior lecturer with the university of another Member State would be dissuaded from applying for that position if any other professional experience that he or she acquired in the Member State of origin was not recognised, appears to be based on a set of circumstances which are too uncertain and indirect to be regarded as constituting an obstacle to the free movement of workers.

51 It is thus appropriate, as regards the partial recognition of relevant professional experience, to differentiate between equivalent professional experience, on the one hand, and any other professional experience which is merely beneficial to the performance of the duties of a postdoctoral senior lecturer, on the other.

52 Therefore, if it were to become apparent that Ms Krah performed duties at the University of Munich that are, in essence, equivalent to those which she performs as a postdoctoral senior lecturer at the University of Vienna, this being a matter for the referring court to ascertain, the fact that not all of that professional experience is taken into account constitutes an obstacle to free movement.

53 If, by contrast, Ms Krah has not acquired such an equivalent professional experience in her Member State of origin, partial recognition by the University of Vienna of that experience will not constitute such an obstacle.

54 It follows that, where the rules of a university of a Member State, such as those at issue in the main proceedings, do not take account of all previous periods of professionally equivalent service which were completed in the Member State of origin, those rules are liable to render the free movement of workers less attractive, contrary to Article 45(1) TFEU.

Justification for the obstacle

55 Rules of a university of a Member State, such as those at issue in the main proceedings, cannot be accepted unless they pursue one of the legitimate aims listed in the FEU Treaty or are justified by overriding reasons in the public interest. Even so, in such a case, application of those rules must still be such as to ensure achievement of the objective in question and must not go beyond what is necessary for that purpose (see, to that effect, inter alia, judgments in *SALK*, paragraph 36, and of 8 May 2019, *Österreichischer Gewerkschaftsbund*, C-24/17, EU:C:2019:373, paragraph 84).

56 In that regard, the University of Vienna submits, referring to paragraph 34 et seq. of the judgment of 3 October 2006, *Cadman* (C-17/05, EU:C:2006:633), that the decision of 8 November 2011 seeks to reward professional experience acquired in the field concerned, which enables the worker to perform his or her duties better. Four years of professional experience are normally necessary to acquire the educational knowledge required to perform the duties of a postdoctoral senior lecturer to the highest possible standard, that knowledge being acquired during the first years of service. By contrast, recognition of professional experience of more than four years of service does not lead to an improvement of the services requested from the worker.

57 It is true that, in paragraph 34 of that judgment, the Court held that rewarding, in particular, experience acquired which enables the worker to perform his or her duties better constitutes a legitimate objective of pay policy.

58 In that regard, the Court found, in paragraph 35 of that judgment, that, as a general rule, recourse to the criterion of length of service is appropriate for the purpose of attaining that objective. Length of service goes hand in hand with acquired experience, and such experience enables the worker to perform his or her duties better.

59 However, in the present case, the University of Vienna limits to four years the number of years of equivalent professional experience to be taken into account for the purposes of salary grading. It thus challenges the fact that experience acquired over time goes hand in hand with improvement of the quality of services requested.

60 Furthermore, it is apparent from the file submitted to the Court that, while it is true that postdoctoral senior lecturers of that university are involved mainly in teaching activities, they are also required to carry out research activities and to assume administrative tasks, in respect of which it has not been alleged that all of the years of equivalent professional experience should not be taken into account, as they are for postdoctoral senior lecturers employed from the beginning by that university.

61 Consequently, it must be held that the obstacle to free movement of workers which results from the decision of 8 November 2011 does not appear to be appropriate for attaining the objective which it pursues.

62 In the light of all the foregoing considerations, the answer to the first question is that Article 45(1) TFEU must be interpreted as precluding rules of a university of a Member State, such as those at issue in the main proceedings, which, for the purposes of a worker's salary grading as postdoctoral senior lecturer with that university, take into account only a maximum of four years of previous periods of service completed by that worker in another Member State, if that service was equivalent, or indeed identical, to that required of the worker in the performance of those duties of postdoctoral senior lecturer.

63 By contrast, Article 45 TFEU and Article 7(1) of Regulation No 492/2011 must be interpreted as not precluding such rules if the service previously completed in another Member State was not equivalent, but merely beneficial to the performance of those duties of postdoctoral senior lecturer.

The second question

64 By its second question, the referring court asks, in essence, whether Article 45 TFEU and Article 7(1) of Regulation No 492/2011 must be interpreted as precluding a system of pay of a university of a Member State that does not provide for full recognition of previous periods of professionally relevant service completed by a worker in another Member State, but at the same time links a higher rate of pay to the duration of employment with that university.

65 As the Advocate General observed in point 115 of his Opinion, that second question is linked to the first question, since it also refers to the partial recognition of previous periods of professionally relevant service, such as that established by the decision of 8 November 2011.

66 As is apparent from the answer to the first question, should it transpire that Ms Krah performed duties at the University of Munich which were, in essence, equivalent to those which she performs as a postdoctoral senior lecturer at the University of Vienna, this being a matter for the referring court to ascertain, the fact that that previous professional experience is not taken fully into account would constitute an obstacle to the free movement of workers.

67 However, a system of pay linking a higher rate of pay to the duration of employment with the current employer, such as that which has been established, in the present case, by the Collective Agreement, does not in itself constitute such an obstacle.

68 If, in the present case, the referring court should find that the University of Vienna is required to recognise all the previous periods of equivalent service which were completed by Ms Krah with the University of Munich, she will be graded in the same grading in the salary scale as that which would have applied to her if she had worked those previous periods of service with the University of Vienna. Such a worker is therefore not placed at a disadvantage in comparison with any other postdoctoral senior lecturer who was employed by the University of Vienna during periods of service of the same total duration. Those two types of workers will enjoy an identical grading at a higher rate of pay according to the duration of their employment through application of the system of pay referred to in the previous paragraphs.

69 It follows that there is no need to reply to the second question, in so far as, in the light of the Court's answer to the first question, the referring court finds that there is an obstacle to the free movement of workers in the case in the main proceedings.

70 If, by contrast, Ms Krah has not acquired such equivalent professional experience in her Member State of origin, partial recognition of that experience by the University of Vienna does not constitute such an obstacle.

71 In the absence of such an obstacle, the second question in reality relates to the situation in which a postdoctoral senior lecturer engaged by the University of Vienna decides to move from that university back to another university located in a Member State other than Austria and to return to that first university at a later stage.

72 In this respect, according to consistent case-law of the Court, where questions submitted by national courts concern the interpretation of a provision of EU law, the Court is bound, in principle, to give a ruling unless it is obvious that the request for a preliminary ruling is in reality designed to deliver advisory opinions on general or hypothetical questions (judgment of 1 October 2015, *O*, C-432/14, EU:C:2015:643, paragraph 18 and the case-law cited). If it appears that the question raised is manifestly irrelevant for the purposes of deciding the case in the main proceedings, the Court must declare that there is no need to proceed to judgment (judgment of 24 October 2013, *Stoilov i Ko*, C-180/12, EU:C:2013:693, paragraph 38 and the case-law cited).

73 In the present case, as noted by the Advocate General in point 126 of his Opinion, there is nothing in the file submitted to the Court to suggest that Ms Krah's situation is covered by the situation referred to in paragraph 72 of the present judgment. It follows that, if, in the light of the answer to its first question, the referring court finds that there is no obstacle to the free movement of workers, there would also no longer be any need to reply to the second question.

74 Having regard to the foregoing considerations, there is no need to reply to the second question.

Costs

75 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 (Second Chamber) hereby rules:

Article 45(1) TFEU must be interpreted as precluding rules of a university of a Member State, such as those at issue in the main proceedings, which, for the purposes of a worker's salary grading as postdoctoral senior lecturer with that university, take into account only a maximum of four years of previous periods of service completed by that worker in another Member State, if that service was equivalent or indeed identical to that required of the worker in the performance of those duties of postdoctoral senior lecturer.

Article 45 TFEU and 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 must be interpreted as not precluding such rules if the service previously completed in that other Member State was not equivalent, but merely beneficial to the performance of those duties of postdoctoral senior lecturer.

[Signatures]