COURT OF JUSTICE
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Judgment of the Court in Case C-576/20 | Pensionsversicherungsanstalt (Child-raising periods completed abroad)

Child-raising periods completed in other Member States are to be taken into account in the calculation of an old-age pension

The Court of Justice confirms its line of authority pursuant to which the Member State responsible for payment of the pension, in which the recipient worked and paid contributions exclusively, both before and after the transfer of that person's place of residence to another Member State where they raised their children, is required to take into account those child-raising periods

In November 1987, after working as a self-employed person in Austria, CC moved to Belgium where she gave birth to two children on 5 December 1987 and 23 February 1990, respectively. After the birth of her first child, she devoted her time to raising her children, without taking up employment, without accruing any periods of insurance and without receiving benefits for raising her children. This was also the position in Hungary, where she stayed in December 1991.

On her return to Austria in February 1993, CC continued to raise her children for thirteen months, while being compulsorily affiliated to, and paying contributions into, the Austrian social security scheme. She then worked and paid contributions in that Member State until she retired.

CC applied for an old-age pension, which was granted to her by the Austrian pension insurance institution by decision of 29 December 2017. The child-raising periods completed in Austria were treated as periods of insurance and taken into account for the purpose of calculating the amount of her pension. The periods completed in Belgium and Hungary, however, were not taken into account.

CC challenged that decision, claiming that child-raising periods completed in other Member States should be treated as periods of insurance on the basis of Article 21 TFEU, which establishes the right to freedom of movement of Union citizens, since she worked and was affiliated to the Austrian social security scheme before and after those periods.

After her action was dismissed on appeal, CC brought an appeal on a point of law (Revision) before the Oberster Gerichtshof (Supreme Court, Austria). Uncertain as to the taking into account of child-raising periods completed in other Member States for the purpose of the calculation of an old-age pension, that court asked the Court of Justice to interpret a provision of secondary EU law [1] applicable *ratione temporis* to the present case. In the referring court's

[1] Namely, Article 44(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1). That article, headed 'Taking into account of child-raising periods', provides in paragraph (2) that where, under the legislation of the Member State which is competent under Title II of Regulation No 883/2004, no child-raising period is taken into account, the institution of the Member State whose legislation, according to Title II of Regulation No 883/2004, was applicable to the person concerned on the grounds that he or she was pursuing an activity as an employed

view, it is not excluded that that provision sets out exclusively the conditions for taking such periods into account and CC does not fulfil them: on the date on which the first child-raising period began, she was not pursuing any activity as an employed or self-employed person in Austria.

In its judgment, the Court does not accept that that provision is exclusive as regards the taking into account of child-raising periods completed by the same person in different Member States and confirms that those periods are to be taken into account, in the present case, under Article 21 TFEU.

Findings of the Court

In the first place, the Court finds that, in the light of its wording, its context and the objectives of the legislation of which it forms part, Article 44 of Regulation No 987/2009 must be interpreted as not governing exclusively the taking into account of child-raising periods completed by the same person in different Member States.

As regards its wording, the Court observes that that provision does not indicate that it governs exclusively the taking into account of such periods and that while the provision constitutes a codification of the Court's case-law in this area, [2] on the date of its entry into force the judgment in *Reichel-Albert* [3] had not yet been delivered, therefore the lessons arising from that judgment could not be taken into account when Regulation No 987/2009 was adopted with a view to their possible codification.

As regards the context of Article 44 of Regulation No 987/2009, the Court, referring to the title and chapter of that regulation to which it belongs, states that that provision establishes an additional rule that makes it possible to increase the likelihood of the persons concerned having their child-raising periods taken fully into account and to thus avoid, as far as possible, that such periods are not taken into account.

Concerning the objective of Regulation No 987/2009, the interpretation according to which Article 44 of that regulation governs exclusively the taking into account of child-raising periods completed in different Member States would amount to **allowing the Member State responsible for payment of a person's old-age pension, within which Member State that person worked and paid contributions exclusively both before and after the transfer of their place of residence to another Member State where they raised their children, to refuse to take into account child-raising periods completed by that person in another Member State** and, consequently, **placing that person at a disadvantage, solely by reason of having exercised their right to freedom of movement**. Accordingly, such an interpretation **would run counter to the objectives pursued** by that regulation, **in particular as regards the objective of ensuring observance of the principle of freedom of movement**, enshrined in Article 21 TFEU, and could therefore jeopardise the effectiveness of Article 44 of that regulation.

In the second place, the Court holds that, in order to ensure observance of that principle, the lessons from the

or self-employed person at the date when, under that legislation, the child-raising period started to be taken into account for the child concerned, is to remain responsible for taking that period into account as a child-raising period under its own legislation, as if such child-raising took place in its own territory.

[2] See judgments of 23 November 2000, *Elsen*, C-135/99, and of 7 February 2002, *Kauer*, C-28/00 (see also Press Release No 13/02) where the Court established the 'close link' or 'sufficiently close link' test between the periods of insurance completed as a result of the pursuit of an occupational activity in the Member State in which the person concerned seeks an old-age pension and the child-raising periods completed by that person in another Member State. The Court held that the fact that persons who had worked exclusively in the Member State responsible for payment of their old-age pension pursued, at the time of the birth of their child, an activity as an employed or self-employed person in the territory of that Member State made it possible to establish the existence of such a close or sufficiently close link and that, accordingly, the legislation of that Member State was applicable as regards the taking into account of child-raising periods completed in another Member State for the purpose of granting such a pension.

[3] In the judgment of 19 July 2012, *Reichel-Albert*, C-522/10, the Court held that Article 21 TFEU must be interpreted as requiring the competent institution of a first Member State to take into account, for the purpose of granting such a pension, the child-raising periods completed by that person in a second Member State, as though those periods had been completed on its national territory by a person who pursued occupational activities only in the first Member State and who, at the time of the birth of his or her child, had temporarily stopped working and had, solely on family-related grounds, established his or her place of residence in the territory of the second Member State.

judgment in *Reichel-Albert* are applicable to a situation such as that at issue in the main proceedings in which the person concerned does not fulfil the condition of pursuing an activity as an employed or self-employed person imposed by that provision in order, for the purpose of granting an old-age pension, to have taken into account, by the Member State responsible for payment of that pension, child-raising periods which that person has completed in other Member States. Accordingly, that Member State is required to take those periods into account pursuant to Article 21 TFEU where that person has worked and paid contributions exclusively in that Member State, both before and after the transfer of their place of residence to the other Member State in which they completed those periods.

The Court finds that, as in the situation at issue in the judgment in *Reichel-Albert*, there is a **sufficiently close link between the child-raising periods completed** by CC **abroad and the periods of insurance completed as a result of the pursuit of an occupational activity in Austria. Therefore, the legislation of that Member State must be applied for the purpose of taking into account and crediting those periods, with a view to granting an old-age pension by that Member State**.

If CC had not left Austria, her child-raising periods would have been taken into account for the purpose of calculating her Austrian old-age pension. Therefore, like the person concerned in the case which gave rise to the judgment in *Reichel-Albert*, she is disadvantaged solely on the ground that she exercised her right to freedom of movement, which is contrary to Article 21 TFEU.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

The full text of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ✆ (+352) 4303 3355

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