

**Case C-58/21**

**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice**

**Date lodged:**

1 February 2021

**Referring court:**

Verwaltungsgericht Wien (Austria)

**Date of the decision to refer:**

21 January 2021

**Complainant:**

FK

**Respondent authority:**

Rechtsanwaltskammer Wien

---

**Subject matter of the main proceedings**

Social security – Applicable law – Lawyers – Retirement pension – Conditions for awarding it – Waiver of the right to practise as a lawyer in Austria and abroad

**Subject matter and legal basis of the request**

Interpretation of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and examination of whether the pension provisions applicable in Austria to lawyers are compatible with EU law; Article 267 TFEU.

**Questions referred for a preliminary ruling**

1. How is Article 13(2)(b) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems to be interpreted where, from a quantitative point of view, the centre of interest of the activities of a person is in a non-Member State in

which that person also resides and, furthermore, that person also pursues an activity in two Member States (Federal Republic of Germany and Austria), the activity in the two Member States being distributed in such a way that the bulk of the activity clearly takes place in one Member State (in this specific case, the Federal Republic of Germany)?

In the event that that provision is interpreted to the effect that Austria has competence, [the following question] is [asked]:

2. [Are] the provision of Paragraph 50(2)(2)(c)(aa) of the Rechtsanwaltsordnung (Code of Lawyers) and the provision of Paragraph 26(1)(8) of the Satzung Teil A 2018 (2018 Statute for Part A) based thereon permissible under EU law or do they infringe EU law and the rights guaranteed under EU law by requiring, as a condition for the award of a retirement pension, that the right to practise law in Austria and abroad be waived (Paragraph 50(2)(2)(c)(aa)) or that the right to practise as a lawyer anywhere be waived (Paragraph 26(1)(8) of the 2018 Statute for Part A)?

#### **Provisions of EU law relied on**

Charter of Fundamental Rights of the European Union ('the Charter'): Articles 15, 17, 20 and 21;

TFEU: Articles 49 and 56;

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems: Articles 2, 3, 11, 13, 50 and 87;

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: Articles 14, 45 and 47.

#### **Provisions of national law relied on**

Rechtsanwaltsordnung (Code of Lawyers; 'the RAO'): Paragraphs 49 and 50;

Verordnung der Vertreterversammlung des Österreichischen Rechtsanwaltskammertages über die Versorgungseinrichtungen Teil A der österreichischen Rechtsanwaltskammern (Satzung Teil A 2018) (Regulation of the Assembly of Representatives of the Austrian Bar Association on the Pension Schemes in Part A of the Austrian Bars (2018 Statute for Part A)): Paragraph 26.

### **Brief presentation of the facts and procedure in the main proceedings**

- 1 The Verwaltungsgericht Wien (Administrative Court, Vienna, Austria) is called on to deal with a complaint lodged by a lawyer ('the complainant') against a decision of the Rechtsanwaltskammer Wien (Vienna Bar, Austria).
- 2 The complainant has both Polish and German nationality and has worked or is still partly working as a lawyer in three countries (Germany, Switzerland and Austria).
- 3 His activities were initially concentrated in Germany and were then (and still are) concentrated in Switzerland. By contrast, he worked as a lawyer in Austria only to a comparatively small extent. Accordingly, the amount of time worked and turnover achieved there never exceeded 10% of his total working time and total turnover, respectively.
- 4 The complainant was never resident in Austria. The centre of his private interests was in Germany from 1996 to 2007, and then in Switzerland.
- 5 The complainant applied to the Vienna Bar for the award of an early retirement pension. In that application, he stated that he wished to waive only his right to practise law in Austria, but not his authorisations to practise in Germany and Switzerland.
- 6 By its decision, the Vienna Bar rejected the complainant's application for the award of an early retirement pension. It justified this on the ground that the complainant continued to work as a lawyer in Germany and Switzerland and that an essential condition for the award of an early retirement pension (see paragraph 7 below) was therefore not fulfilled.

### **Essential arguments of the parties in the main proceedings**

- 7 The Vienna Bar takes the view that an early retirement pension can be granted in Austria only if the right to practise as a lawyer is waived worldwide. This follows, in particular, from Paragraph 26(1)(8) of the 2018 Statute for Part A.
- 8 The complainant takes the view that this infringes EU law, in particular the freedom of establishment and the freedom to provide services.

### **Succinct presentation of the reasoning in the request for a preliminary ruling**

- 9 First of all, the first question is intended to clarify the applicable law. This is because it is questionable whether Austrian law is applicable at all.
- 10 The applicable law depends, in essence, on the place where the activity is mainly carried out.

- 11 For persons who normally pursue an activity as a self-employed person in two or three Member States, Article 13(2) of Regulation No 883/2004 stipulates the criteria to be used to determine the applicable legislation. Accordingly, a person covered by Article 13(2) is subject either to the legislation of his/her Member State of residence or, if he/she does not pursue a substantial part of his/her activity in that Member State, to the legislation of the Member State in which the centre of interest of his/her activities is situated.
- 12 The complainant's main place of residence is Switzerland, where he also pursues the bulk of his activities from a quantitative point of view. In addition to that, he is still active in two Member States (Germany and Austria), to a much lesser extent from a quantitative point of view, whereby the bulk of that activity is pursued in Germany.
- 13 The question arises as to how Article 13(2)(b) of Regulation No 883/2004 is to be understood in a case such as the present one, in which both the centre of interest of a person's activities and that person's place of residence are situated outside a Member State, and a literal interpretation of that provision would mean that such a situation would not be subject to the legislation of any Member State. Should an interpretation of Article 13(2)(b) of Regulation No 883/2004 nevertheless lead to the application of the legislation of a Member State, it is unclear which legislation (that is to say, which Member State's legislation) is applicable if the person concerned pursues his or her activity in several Member States in different quantities.
- 14 If Austrian law is applicable, the second question seeks clarification as to whether Paragraph 50(2)(2)(c)(aa) of the Code of Lawyers – according to which entitlement to a pension is subject to the condition that 'the right to practise law in Austria and abroad be waived' – and the provision of Paragraph 26(1)(8) of the 2018 Statute for Part A based thereon – according to which entitlement to a retirement pension is subject to the condition that 'the right to practise as a lawyer anywhere be waived' – are compatible with EU law.
- 15 The reason for this is that those provisions could infringe, in particular, the freedom of establishment under Article 49 TFEU, since, in the present case, there is a cross-border element on the one hand and, on the other hand, the establishment of lawyers is hindered by the Austrian provisions in question.
- 16 An infringement of the right to property under Article 17 of the Charter may also enter into consideration. The guarantee of the right to property under EU law also protects property interests in connection with social benefits provided for by law, such as pensions, in particular. Restrictions of the fundamental right to property require a legal basis and must be justified by objectives of general interest pursued by the Union and must be suitable for attaining the objective and proportionate. There are doubts as to whether all these conditions are met.

- 17 Furthermore, the Austrian legislation could infringe the freedom to provide services under Article 56 TFEU, the right under Article 15 of the Charter to engage in work and to take up and pursue a freely chosen occupation, and the prohibition of discrimination under EU law.

WORKING DOCUMENT