SUMMARY

ECJ 19 July 2012, case C-522/10 (Doris Reichel-Albert - v - Deutsche Rentenversicherung Nordbayern), Free movement, Social insurance

Facts

Mrs Reichel-Albert lived and worked in Germany until 30 June 1980. She then moved with her husband to Belgium, where she lived without working until 1 July 1986. At that point, she returned to Germany. While in Belgium she gave birth to two children, the first in 1981, the second in 1984. In 2008 she applied to the Deutsche Rentenversicherung Nordbayern (DRN) to have her six years of residence in Belgium taken into account and credited for the purpose of calculating her state old-age retirement benefits. Had she remained a resident of Germany in 1980-1986 rather than moving to Belgium, these six years would have counted towards her retirement benefits given that "child-raising periods" (defined as periods spent raising a child during the first three years of its life) count. However, Mrs Reichel-Albert's application was turned down because German law limits the crediting of periods of childcare to childcare that takes place in Germany or where it "can be treated as having taken place there". According to Article 56(3) of Book VI of the Socialgesetzbuch ('Article 56(3)'), a childcare period that took place abroad is treated as having taken place in Germany "where the child-rearing parent has habitually resided abroad with his or her child and during the period devoted to childcare or immediately before the birth of the child has completed periods of compulsory contribution by virtue of an activity carried on there as an employed or self-employed person". Given that Mrs Reichel-Albert did not work while in Belgium (and that her husband did not make compulsory contributions during that period), she did not satisfy the criteria of Article 56(3).

National proceedings

Mrs Reichel-Albert brought proceedings before the local Sozialgericht, which referred two questions to the ECJ regarding the interpretation of Regulation 987/2009, which lays down procedures for implementing Regulation 883/2004. The latter replaced Regulation 1408/71 as from 1 May 2010.

ECJ's findings

1. At the time the DRN decided not to take Mrs Reichel-Albert's period of Belgian residence into account (2008), Regulations 883/2004 and 987/2009 had not yet come into force. Therefore the questions need to be addressed under Regulation 1408/71 (§ 24-29).

2. Since Regulation 1408/71 does not lay down specific rules regarding the crediting of periods of childcare, the questions asked by the referring court must be understood as being whether, in a situation such as that of Mrs Reichel-Albert, Article 21 TFEU on the right of every EU citizen to move and reside freely within the EU must be interpreted as requiring periods of childcare completed in one Member State as though they had been completed in another Member State (§ 30).

3. Which legislation is to determine this question: German or Belgian legislation? The fact that Mrs Reichel-Albert worked and contributed in only one Member State (Germany), both before and after temporarily transferring her place of residence, solely on family-related grounds, to another Member State (Belgium) where she never worked or contributed, allows a sufficiently close link to be established between her child-rearing periods and her periods of insurance completed by virtue of a gainful occupation in the first Member State (Germany). Consequently, German legislation is applicable in a situation such as that of Mrs Reichel-Albert (§ 31-36).

4. This narrows down the issue to the compatibility with Article 21 TFEU of Article 56(3), pursuant to which, for the purposes of granting an old-age pension, periods of childcare completed outside Germany, unlike those completed inside Germany, are not taken into account unless (inter alia) the child-rearing parent was (self-)employed during the residence abroad (§ 37).

5. In a situation such as Mrs Reichel-Albert's, Article 56(3) leads to that result that carers of children who have not completed periods of compulsory contribution by virtue of an activity carried on as a (self-)employed person during the child-rearing are not entitled to have their childcare taken into account solely because they temporarily established their residence abroad. In so doing, they are awarded, in the Member State of which they are nationals (in this

case, Germany), treatment that is less favourable than that which they would have enjoyed had they not availed themselves of their right of free movement. This is contrary to the principles which underpin the status of an EU citizen, that is, a guarantee of same treatment in law in the exercise of the citizen's freedom to move (§ 38-42).

6. It has not been established or even argued that Article 56(3) can be justified where it is based on objective considerations and is proportionate to the legitimate objective of that national provision (§ 43).

Ruling

In a situation such as that at issue in the main proceedings, Article 21 TFEU must be interpreted as meaning that it requires the competent institution of a first Member State, for the purpose of granting an old-age pension, to take account of child-rearing periods completed in a second Member State as though those periods had been completed on its national territory by a person who pursued employed or self-employed activity only in that 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.

Creator: European Court of Justice (ECJ)
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