

Question 14:

Are point (b) of the first paragraph of Article 267 TFEU on questions concerning the validity of secondary law, which is mandatory even for a referring court not adjudicating at last instance, and the referring court's obligation, which is linked to questions concerning validity, to ensure the application of valid EU law by adopting, by decision, an interim order refusing leave for an appeal on a point of law, owing to the primacy of application of EU law, to be interpreted as precluding rules of Member States such as Article 133(4) and (9) of the Bundes-Verfassungsgesetz (Federal Constitutional Law; 'the B-VG'), in conjunction with Paragraph 25a(1) to (3) and Paragraph 30a(7) of the Verwaltungsgerichtshofgesetz (Law on the Supreme Administrative Court; 'the VwGG'), which grant, at national level, the parties to the underlying administrative proceedings a review of legal protection conducted by the Verwaltungsgerichtshof (Supreme Administrative Court, Austria) against a decision of the Verwaltungsgericht (Administrative Court, Austria) in the form of an 'extraordinary' appeal on a point of law?

(¹) Regulation of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, corrigendum in OJ 2004 L 200, p. 1).

(²) Regulation of the European Parliament and of the Council of 22 May 2012 amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ 2012 L 149, p. 4).

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 4 November 2020 — CC v Pensionsversicherungsanstalt

(Case C-576/20)

(2021/C 35/42)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant: CC

Respondent: Pensionsversicherungsanstalt

Questions referred

1. Is 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 (¹) to be interpreted as precluding child-raising periods spent in other Member States from being taken into account by a Member State competent to grant an old-age pension — under whose legislation the applicant for a pension has pursued an activity as an employed or self-employed person throughout her working life, with the exception of those child-raising periods — solely on the ground that the applicant for a pension was not pursuing an activity as an employed or self-employed person at the date when, under the legislation of that Member State, the child-raising period started to be taken into account for the child concerned?

If the first question is answered in the negative:

2. Is the first clause of 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 to be interpreted as meaning that, under its legislation, the Member State which is competent under Title II of Regulation (EC) No 883/2004 on the coordination of social security systems does not take child-raising periods into account generally, or that it does not take them into account only in a specific case?

(¹) OJ 2009 L 284, p. 1.