Reports of Cases

OPINION OF ADVOCATE GENERAL
EMILIOU
delivered on 5 October 2023 [1]

Case C-283/21

VA
v
Deutsche Rentenversicherung Bund,
joined party:
RB

(Request for a preliminary ruling from the Landessozialgericht Nordrhein-Westfalen (Higher Social Court, North Rhine-Westphalia, Germany))

(Reference for a preliminary ruling – Social security for migrant workers – Coordination of social security systems – Regulation (EC) No 987/2009 – Article 44(2) – Scope – Invalidity benefits – Calculation – Taking into account of 'child-raising periods' completed in other Member States – Conditions – Article 21 TFEU – Free movement of citizens)

I. Introduction

1. EU citizens may live and work in different Member States throughout their lives. They may also take 'career breaks' and devote their time to raising their children. A person may begin his or her professional career in a Member State ('Member State A') then stop working to raise his or her children in another Member State ('Member State B') before resuming his or her career in Member State A. In such a situation, does EU law require that, for the purpose of granting a pension to the person concerned, Member State A apply its legislation to the 'child-raising periods' completed in Member State B and take them into account as though they had been completed on its territory?

[1] Original language: English.

2. That question was at the heart of the cases which led to the judgments in *Elsen*,[2] in *Kauer*[3] and in *Reichel-Albert*,[4] in the context of the application of Regulation (EEC) No 1408/71,[5] which has been repealed and replaced by Regulations (EC) No 883/2004[6] and No 987/2009,[7] as well as, more recently, in the judgment in *Pensionsversicherungsanstalt (Child-raising periods completed abroad)*,[8] which, like the present case, concerned a situation governed by the latter two regulations.

3. In the judgment in *Pensionsversicherungsanstalt*, the Court found that, although the EU legislature had adopted a specific provision on the taking into account by Member State A of the 'child-raising periods' completed in Member State B, namely Article 44(2) of Regulation No 987/2009, that provision did not apply exclusively. Thus, the judicial solution which it had developed within the context of the application of Regulation No 1408/71, at a time when the EU legislature had not yet adopted any provision on that matter, remained relevant. On that basis, it held that, in a situation where the conditions laid out in Article 44(2) of Regulation No 987/2009 were not fulfilled, so that the person concerned could not rely on that provision, Member State A was still required, under Article 21 TFEU – which protects the freedom of movement of EU citizens – to apply its legislation to 'child-raising periods' completed in Member State B and to consider such periods as though they had been completed on its territory, so long as they were 'sufficiently closely linked' to 'periods of insurance' completed by the person concerned in that Member State. Such would be the case if that person had worked and paid contributions exclusively in Member State A, both before and after the transfer of his or her place of residence to Member State B.[9]

4. The situation at hand in the main proceedings is somewhat different. VA, the applicant in the main proceedings, completed what I understand to be periods which can be assimilated to 'periods of insurance' in Germany, both before and after she raised her children in the Netherlands. However, she only began paying contributions to the German statutory pension insurance scheme several years after she stopped devoting her time to raising her children.

5. Against that background, the crux of the issue in the present case is whether the 'sufficiently close link' test developed by the Court in its case-law is fulfilled in a situation where the person concerned has not paid contributions to the statutory pension insurance scheme of Member State A before he or she took time to raise his or her children in Member State B. As I will explain below, I am of the opinion that that question must be answered in the affirmative. Indeed, in my view, that circumstance does not, in and of itself, prevent a 'sufficiently close link' from being established between the 'child-raising periods' completed in Member State B and the 'periods of insurance' completed in Member State A.

2 Judgment of 23 November 2000 (C-135/99, EU:C:2000:647; 'the judgment in *Elsen*').

3 Judgment of 7 February 2002 (C-28/00, EU:C:2002:82; 'the judgment in *Kauer*').

4 Judgment of 19 July 2012 (C-522/10, EU:C:2012:475; 'the judgment in *Reichel-Albert*').

5 Regulation of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416).

6 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, and corrigendum OJ 2004, L 200, p. 1).

7 Regulation 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).

8 Judgment of 7 July 2022 (C-576/20, EU:C:2022:525; 'the judgment in *Pensionsversicherungsanstalt*').

9 Ibid., paragraph 63.

II. Legal framework

A. European Union law

1. Regulation No 883/2004

6. Title II of Regulation No 883/2004, entitled 'Determination of the legislation applicable', includes, inter alia, Article 11, which provides:

'1. Persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. Such legislation shall be determined in accordance with this Title.

…

3. Subject to Articles 12 to 16:

(a) a person pursuing an activity as an employed or self-employed person in a Member State shall be subject to the legislation of that Member State;

…

(e) any other person to whom subparagraphs (a) to (d) do not apply shall be subject to the legislation of the Member State of residence, without prejudice to other provisions of this Regulation guaranteeing him/her benefits under the legislation of one or more other Member States.

…'

2. Regulation No 987/2009

7. Regulation No 987/2009 lays down the procedure for implementing Regulation No 883/2004, pursuant to Article 89 of the latter regulation.

8. Pursuant to recital 14 of Regulation No 987/2009:

'Certain specific rules and procedures are required in order to define the legislation applicable for taking account of periods during which an insured person has devoted time to bringing up children in the various Member States.'

9. Article 44 of that regulation states:

'1. For the purposes of this Article, "child-raising period" refers to any period which is credited under the pension legislation of a Member State or which provides a supplement to a pension explicitly for the reason that a person has raised a child, irrespective of the method used to calculate those periods and whether they accrue during the time of child-raising or are acknowledged retroactively.

2. 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 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, shall remain responsible for taking into account that period as a child-raising period under its own legislation, as if such child-raising took place in its own territory.

…'

B. National law

10. Paragraph 56 of the Sozialgesetzbuch Sechstes Buch (Book VI of the Social Security Code; 'the SGB VI'), as amended by the Law of 28 November 2018 (BGB1. I, p. 2016), provides:

'(1) A child-raising period shall be the period spent raising a child during the first three years of its life. A child-raising period shall be credited to one of the parents of the child … if:

1. the period spent raising the child is to be attributed to that parent;

2. the child-raising took place in the Federal Republic of Germany or can be treated as having taken place there; and

3. that parent is not barred from being credited with that period.

…

(3) Raising shall be deemed to have taken place in the Federal Republic of Germany where the child-raising parent has habitually resided there with the child. A period of child-raising shall be treated as child-raising in the Federal Republic of Germany where the child-raising parent has habitually resided abroad with his or her child and during the period devoted to child-raising 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. …

…

(5) The child-raising period shall start at the end of the month during which the child was born and shall end after 36 calendar months …'

11. Paragraph 249(1) of the SGB VI, as amended by the Law of 23 June 2014 (BGB1. I, p. 787), provides:

'For a child born before 1 January 1992, the child-raising period shall end 24 calendar months after the end of the month during which the child was born.'

III. Facts, national proceedings and the questions referred

12. VA, the applicant in the main proceedings, is a German national born in 1958. From 1962 to 2010, she lived in Vaals (the Netherlands), a town located approximately 5 km away from Aachen (Germany).[10] While living there, she attended school in Aachen, and then in August 1975 she began to train as a state-certified educator there.

13. On 1 August 1978, VA started a one-year placement in a nursery located in Aachen. Under normal circumstances, that year would have been regarded as a period of employment in Germany, subject to compulsory insurance. However, because there were not enough paid positions available, she completed her placement without being paid and was, therefore, exempt from such insurance. Thus, she paid no contributions to the statutory pension insurance scheme of Germany.

14. When VA's placement ended in August 1979, she resumed her training as a state-certified educator in Aachen and completed the *Fachhochschulreife* (professional baccalaureate), while continuing to live in the Netherlands. Upon completing her training in July 1980, she no longer carried out any professional activity in Germany or the Netherlands.

15. VA then gave birth to two children. At the time they were born, VA had not paid contributions to the statutory pension insurance scheme of Germany. She raised her children in the Netherlands.

16. Between September 1993 and August 1995 and, subsequently, between April 1999 and October 2012, she was employed in Germany. Her job, having been regarded as 'minor' under German law, was exempted from compulsory insurance.

17. VA moved back to Germany in 2010. After October 2012, she began pursuing a gainful activity and became subject to compulsory insurance. She started paying contributions to the statutory pension insurance scheme of Germany.

18. Since March 2018, VA has been receiving a pension from Germany on the grounds of complete reduction of her earning capacity. When calculating the amount of that pension, the Deutsche Rentenversicherung Bund, the defendant in the main proceedings, considered that, aside from the periods during which VA contributed to the German statutory pension insurance scheme (the period since 2012), the relevant periods included those during which she was undergoing professional training in Germany (between August 1975 and July 1978, and between August 1979 and July 1980), as well as the 'child-raising period' between 1 April and 1 June 1999, during which she raised her children in the Netherlands while working as an employee in Germany (without being subject to compulsory insurance).

19. VA claims that the Deutsche Rentenversicherung Bund failed to take into account as relevant periods the 'child-raising periods' which she completed in the Netherlands between 15 November 1986 and 31 March 1999, during which she had no professional activity ('the periods in dispute'). She challenged that refusal before a first-instance court. Her challenge was unsuccessful.

[10] The referring court indicates that VA lived in the Netherlands on an intermittent basis between 1962 and 1975. She began living there on a full-time basis in 1975.

20. VA appealed the decision of the first-instance court against the Landessozialgericht Nordrhein-Westfalen (Higher Social Court, North Rhine-Westphalia, Germany).

21. That court notes that the fact that, during the periods in dispute, VA's two children were not brought up in Germany precludes crediting those periods under the first sentence of Paragraph 56(3) of the SGB VI. Nor can the periods in dispute fall within the scope of the second sentence of Paragraph 56(3) of the SGB VI since, in order for that to be possible, VA would have had to habitually reside abroad with her children and, during or immediately before those periods, to have completed periods of compulsory contribution in Germany by virtue of an activity carried out abroad (that is to say, in the Netherlands) as an employed or self-employed person. It also points out that the conditions laid down in Article 44(2) of Regulation No 987/2009 are not fulfilled for the reason that VA was not employed or self-employed in Germany when her children were born, at the time when the periods in dispute began to run.

22. Having said that, the referring court wonders whether, in the light of the Court's judgments including in, inter alia, *Reichel-Albert*, the periods in dispute must be taken into account by the Deutsche Rentenversicherung Bund for the purpose of granting VA a pension, given that there are certain factors suggesting the existence of a 'sufficiently close link', on the basis of Article 21 TFEU. In that regard, it notes, on the one hand, that VA's situation differs from the one which led to that judgment; indeed, before the birth of her children, VA was not subject to compulsory insurance in Germany *at all*. Therefore, she did not pay contributions to the statutory pension insurance scheme of that Member State. Furthermore, she did not merely transfer her residence to a different Member State (the Netherlands); in fact, she lived there on a permanent basis.

23. On the other hand, it points out that VA's entire employment history is linked to Germany, that she attended school exclusively in Germany, that she completed a one-year placement in Germany – which would have been subject to compulsory insurance had it not been for the fact that an insufficient number of paid positions were available at the relevant time – and that the other years during which VA undertook professional training were registered as 'pensions-relevant periods'. Moreover, VA's children attended school in Germany and she and her family took up residence in the Netherlands very close to the border with Germany.

24. In the light of those elements, the referring court wonders whether the fact that the periods in dispute are not taken into account under national law is compatible with Article 21 TFEU.

25. In those circumstances, the Landessozialgericht Nordrhein-Westfalen (Higher Social Court, North Rhine-Westphalia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is[,] under the legislation of the Netherlands – as the Member State which is competent under Title II of [Regulation No 883/2004] – a "child-raising period" taken into account within the meaning of Article 44(2) of [Regulation No 987/2009] by virtue of the fact that the period of child-raising in the Netherlands, as a pure period of residence, gives rise to a pension entitlement?

(2) If Question 1 is answered in the negative:

Is [Article] 44(2) of [Regulation No 987/2009] – following on from the judgments of the [Court] in [*Elsen*] and [*Reichel-Albert*] – to be interpreted broadly as meaning that the competent Member State must also take into account the child-raising period if the person raising the child has completed pension-relevant periods before and after the child-raising due to education or employment only in the scheme of that [Member] State, but did not pay contributions into that scheme immediately before or after the child-raising?'

26. The request for a preliminary ruling, dated 23 April 2021, was registered at the Court on 4 May 2021. The German, Czech and Netherlands Governments, as well as the European Commission, have submitted written observations. The same interested parties, with the exception of the Czech Government, were represented at the hearing which took place on 11 May 2023.

IV. Analysis

27. In order to calculate a pension,[11] the competent institutions of the Member States typically base themselves on the number of 'periods of insurance' or 'periods of residence' completed by the person concerned.[12] In view of the overarching purpose of Regulations No 883/2004 and No 987/2009, which is 'to draw up only a system of coordination' and, thus, to respect the special characteristics of national social security systems,[13] what counts as a 'period of insurance' or a 'period of residence' or what can be assimilated to such periods is up to each Member State to decide,[14] so long as their legislation complies with the TFEU provisions on the free movement of persons, in particular Article 21 TFEU.[15]

28. Some Member States – but not all – have provided for 'child-raising periods' to be assimilated to 'periods of insurance' or 'periods of residence' and, therefore, to be taken into account for the purpose of granting a pension.

29. Within that context, Article 44(2) of Regulation No 987/2009 introduces a special rule designed to determine, in a situation where a person has worked and raised his or her children in different Member States, the circumstances in which Member State A (the Member State where the person has worked) must apply its legislation to the 'child-raising periods' completed in Member State B and requiring, where that is the case, that those periods be treated as though they had been completed in Member State A.[16] That competence of Member State A is subsidiary to the competence of Member State B. Indeed, the obligation of Member State A to

[11] Under Article 1(w) of Regulation No 883/2004, the term 'pension' is defined as covering 'not only pensions but also lump-sum benefits which can be substituted for them and payments in the form of reimbursement of contributions and, subject to the provisions of Title III, revaluation increases or supplementary allowances'. It includes the provision of invalidity benefits such as those which VA claims she is entitled to in the present case (see Chapter 4, entitled 'Invalidity benefits'). See, also, Article 3(1)(c) of that regulation, which makes clear that that instrument applies not only to old-age benefits, but also to invalidity benefits.

[12] See, *in casu*, Article 45 of Regulation No 883/2004, which makes clear that the legislation of a Member State may make the acquisition, retention or recovery of the right to invalidity benefits conditional upon the completion of periods of insurance or residence.

[13] See, inter alia, recital 4 of Regulation No 883/2004.

[14] For the definition of 'period of insurance' and 'period of residence', see Article 1(t) and (v) of Regulation No 883/2004 respectively. Both concepts are defined with reference to the 'legislation under which they were completed or considered as completed'.

[15] See the judgment in *Pensionsversicherungsanstalt* (paragraph 49 and the case-law cited).

[16] Concretely, this means that, to the extent that the legislation of a Member State generally allows 'child-raising periods' to be taken into account for the purpose of granting a pension, that legislation cannot treat 'child-raising periods' completed in one or several other Member States differently from those completed at national level.

apply its legislation to the 'child-raising periods' completed in Member State B only applies if the legislation of Member State B does not already enable child-raising periods to be taken into account.

30. As the Czech Government explains, the objective of Article 44(2) of Regulation No 987/2009 is not to ensure that a beneficiary has the most advantageous legislation applied to his or her situation nor to impose an obligation on the Member States to take 'child-raising periods' into account as relevant 'periods of insurance' or 'periods of residence' under their legislation; rather, it is to avoid situations where such periods would not be credited under the legislation of a Member State for the sole reason that they took place in a different Member State. In that sense, that provision thus reflects the general principle of equal treatment that Article 5 of Regulation No 883/2004 seeks to codify, [17] and which flows directly from Article 21 TFEU.

31. As I explained in my Opinion in *Pensionsversicherungsanstalt*, [18] whether the legislation of Member State A applies, pursuant to Article 44(2) of Regulation No 987/2009, to 'child-raising periods' completed in Member State B depends on whether the following three conditions are cumulatively satisfied:

– no 'child-raising period' is taken into account under the legislation of Member State B;

– the legislation of Member State A was previously applicable to the person concerned on the ground that he or she was pursuing an activity as an employed or self-employed person in that Member State; and

– that person continued to be subject to Member State A's legislation because of that activity at the date when, under that Member State's legislation, the 'child-raising period' began to be taken into account for the child concerned. [19]

32. I gather from the information in the case file and the explanations provided by the referring court that VA fails to fulfil the second and third conditions that I have outlined above because she was not employed or self-employed in Member State A (Germany) and, thus, did not pay contributions to the statutory pension insurance scheme in Germany at any time prior to the birth of her children, although she did in fact complete her professional training and undertook a one-year placement in a nursery there.

33. I note, however, that, in its judgment in *Pensionsversicherungsanstalt*, the Court held that Article 44(2) of Regulation No 987/2009 does not '[govern] exclusively the taking into account of child-raising periods'. [20] The person concerned in that case also failed to meet the third (albeit not the second) condition set out in point 31 above. As I already stated in point 3 of this Opinion, the Court found that, although that person could not, in those circumstances, rely on Article 44(2) of Regulation No 987/2009, Member State A was still required to apply its legislation to the 'child-raising periods' completed in Member State B and to take account of those periods as

[17] See, also, to that effect, recital 5 of the latter regulation.

[18] C-576/20, EU:C:2022:75, point 32.

[19] I note, in passing, that Article 44(3) of Regulation No 987/2009 makes clear that the obligation provided for in paragraph 2 of that article does not apply if the person concerned is, or becomes, subject to the legislation of *another* Member State due to the pursuit of an employed or self-employed activity.

[20] See the judgment in *Pensionsversicherungsanstalt*, paragraph 55.

though they had been completed on its own territory. It based that conclusion on Article 21 TFEU and the fact that a 'sufficiently close link' existed between those periods and 'periods of insurance' (*in casu*, periods of employment or self-employment) completed in Member State A.[21]

34. In the light of that judgment, the referring court's second question must be understood as enquiring, in essence, whether the 'sufficiently close link' test, elaborated by the Court in its case-law on the basis not of Article 44(2) of Regulation No 987/2009, but of Article 21 TFEU, is fulfilled in a case such as the one at hand in the main proceedings. The referring court's doubts in that regard stem from the fact that, unlike the applicants in the cases leading to the judgments in *Elsen*, in *Kauer*, in *Reichel-Albert* and in *Pensionsversicherungsanstalt*, in which the Court found such a 'sufficiently close link' to exist, VA paid no contributions *at all* to the statutory insurance scheme of Germany nor could she be regarded, under the legislation of that Member State, as being employed or self-employed in Germany before she raised her children in the Netherlands.

35. I will explain why, in my view, that fact does not, in and of itself, relieve Member State A (Germany) of the obligation to apply its legislation to 'child-raising periods' completed in Member State B (the Netherlands). However, before I turn to that issue, I will provide an answer to the first question concerning the interpretation of the first condition outlined in point 31 above, which is that, in order for Member State A to become subject to such an obligation, no 'child-raising period' must be taken into account under the legislation of Member State B. In that regard, I note that the Commission argues that that question is devoid of any relevance in the present case, since the second and third conditions laid out in Article 44(2) of Regulation No 987/2009 are, in any case, not fulfilled. I agree that, in the main proceedings, VA cannot rely on that provision. However, that does not mean, in my view, that the question of whether Member State B (here, the Netherlands) fails to take the periods in dispute into account is irrelevant. Indeed, I consider that, in a situation where Regulations No 883/2004 and No 987/2009 apply *ratione temporis* (as is the case here), the first condition listed by Article 44(2) of Regulation No 987/2009 applies *mutatis mutandis* where the issue of whether 'child-raising periods' are taken into account is governed not by that provision, but by the 'sufficiently close link' test elaborated by the Court on the basis of Article 21 TFEU.

A. The first question: when is a child-raising period taken into account by the legislation of Member State B?

36. By its first question, the referring court wonders whether the first condition, outlined in point 31 above, is fulfilled where, under the legislation of Member State B (here, the Netherlands), such a period gives rise to pension rights not because it is assimilated to a 'period of insurance', but because it is counted as a 'period of residence'.

37. From the outset, I wish to make two points very clear. In the first place, I would like to explain why, as I already indicated in point 35 above, that condition, which is laid down in Article 44(2) of Regulation No 987/2009, applies *mutatis mutandis* when the person concerned cannot base his or her claim on that provision and must rely instead on Article 21 TFEU and the 'sufficiently close link' test developed by the Court in its judgments in *Elsen*, in *Kauer*, in *Reichel-Albert* and in *Pensionsversicherungsanstalt*.

[21] Ibid., paragraph 66.

38. In that regard, I recall, to begin with, that, as I explained in my Opinion in *Pensionsversicherungsanstalt*,[22] one of the cardinal principles of Regulations No 883/2004 and No 987/2009 is that the person to whom those regulations apply 'shall be subject to the legislation of a single Member State only'.[23]

39. In my view, that cardinal principle must be complied with not only in the context of the application of Article 44(2) of Regulation No 987/2009, but also when applying the 'sufficiently close link' test on the basis of Article 21 TFEU. Indeed, otherwise, a person raising his or her children abroad may be able, under that test, to have the relevant 'child-raising periods' taken into account by both Member State A and Member State B (double-counting) or to 'cherry-pick' which legislation – that of Member State A or Member State B – is more favourable to him or her, given that both legislations may be applicable to his or her situation. The result would be that the 'sufficiently close link' test could not, like Article 44(2) of Regulation No 987/2009, be regarded as introducing a mere subsidiary competence on the part of Member State A.[24] Rather, it would have to be considered as introducing a dual competence (in respect of both Member State A and Member State B).

40. Furthermore, I note that Article 21(1) TFEU provides that 'every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, *subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect*'.[25] Thus, I would be inclined to disavow an interpretation of that provision which would go against the overarching logic or one of the core principles underpinning those two regulations.[26]

41. In that regard, I also recall that, whereas Article 21 TFEU aims to ensure, in particular, that citizens who exercise their right to freedom of movement are not discriminated against and, as the Court has held, that they are not discouraged from exercising that right because of obstacles to that freedom, the purpose of that provision is not to guarantee that they be placed in an advantageous position by virtue of the fact that they exercise that right. Clearly, if a person who has exercised his or her right to free movement were entitled to have the 'child-raising periods' which he or she has completed abroad taken into account by both Member State A and Member State B, or to 'cherry-pick' which legislation should be applicable to such periods – rather than be able to rely on the legislation of Member State A, only if the legislation of Member State B does not already allow for 'child-raising periods' to be taken into account – such a person would find himself or herself in a more advantageous situation than a person whose life has been confined to the territory of a single Member State. Such a result would go beyond what is required under Article 21 TFEU.

42. Finally, I note that all Member States that acted as 'Member State B' in the judgments in *Elsen*, in *Kauer* and in *Reichel-Albert*, as well as in, more recently, *Pensionsversicherungsanstalt* (namely France, Belgium and Hungary), did not take into account the relevant 'child-raising periods'

22 C-576/20, EU:C:2022:75, points 64 and 65.

23 See Article 11(1) of Regulation No 883/2004. The system of coordination put in place by that regulation and by Regulation No 987/2009 pursues a dual objective, which is, on the one hand, to ensure that the persons covered by Regulation No 883/2004 are not left without social security cover by virtue of the fact that no legislation is applicable to them and, on the other hand, to *prevent the simultaneous application of a number of national legislative systems* and the complications that may ensue (see, to that effect, judgment of 5 March 2020, *Pensionsversicherungsanstalt (Rehabilitation benefit)*, C-135/19, EU:C:2020:177, paragraph 46).

24 Ibid., paragraph 46.

25 My emphasis.

26 As I will explain below, that is, of course, without prejudice to the fact that the compatibility of a national provision with a provision of secondary EU law (such as, *in casu*, Article 44(2) of Regulation No 987/2009) does not necessarily have the effect of removing the application of that measure from the scope of the TFEU provisions (see, in that regard, judgment of 11 April 2013, *Jeltes and Others*, C-443/11, EU:C:2013:224, paragraph 41 and the case-law cited).

pursuant to their own legislation. Consequently, the Court has, thus far, applied the 'sufficiently close link' test only in a context where it was clear that Member State B did not take into account the relevant 'child-raising periods'. [27]

43. It follows, in my view, from the above considerations, that a 'sufficiently close link' between 'child-raising periods' completed in Member State B and 'periods of insurance' completed in Member State A cannot be established unless it is clear that Member State B does not take 'child-raising periods' into account pursuant to its own legislation. That condition, which was expressly inserted by the EU legislature into Article 44(2) of Regulation No 987/2009 must, in the context where Member States are required to comply both with that provision and with the 'sufficiently close link' test elaborated by the Court on the basis of Article 21 TFEU, be regarded as applying *mutatis mutandis* when one relies on that test.

44. Having said that, I would like, in the second place, to clarify that, in a situation where the conditions for Article 44(2) of Regulation No 987/2009 to apply are fulfilled, Member State B can be regarded as taking 'child-raising periods' into account pursuant to its own legislation, even where such periods are assimilated to 'periods of residence' rather than 'periods of insurance'. Indeed, Article 44(1) of Regulation No 987/2009 states that a 'child-raising period' refers to 'any period which is credited under the pension legislation of a Member State or which provides a supplement to a pension explicitly for the reason that a person has raised a child, irrespective of the method used to calculate those periods'.

45. It results from that broad definition that, in order to determine whether 'child-raising periods' are taken into account under the legislation of Member State B, within the meaning of Article 44(2) of that regulation, one only needs to ascertain whether such periods are credited (or regarded as providing a supplement to a pension) under the pension legislation of that Member State. Exactly how those periods are credited, including whether they are credited as a 'period of insurance' or a 'period of residence', does not matter.

46. In my view, and following the same logic as in points 39 and 40 above, that definition applies *mutatis mutandis* within the context of the application of the 'sufficiently close link' test developed on the basis of Article 21 TFEU. Indeed, a person would otherwise become entitled to have the period devoted to raising children taken into account twice (under the legislation of both Member State A and Member State B), provided that Member State B only takes such a period into account as a 'period of residence' and not as a 'period of insurance'. [28] Such a result would go against the overarching logic of Regulations No 883/2004 and No 987/2009 and beyond what is required under Article 21 TFEU. At the same time, such a result could also be detrimental to the right of EU citizens to exercise their freedom of movement since – in the opposite scenario –

[27] Given that the Court did not openly state, in its judgments in *Elsen*, in *Kauer*, in *Reichel-Albert* or in *Pensionsversicherungsanstalt*, that the legislation of Member State B did not provide for the relevant 'child-raising periods' to be taken into account, one could also understand those judgments to mean that the legislation of Member State A should apply to such periods *to the exclusion of the legislation of Member State B* (see, in support of that interpretation, the judgments in *Elsen* (paragraph 28) and in *Kauer* (paragraphs 30 and 31)). However, in my view, that interpretation would be incorrect, at least in a situation where Regulations No 883/2004 and No 987/2009 apply *ratione temporis* (which was not the case in the judgments in *Elsen*, in *Kauer* or in *Reichel-Albert*). Indeed, it would mean that, under the 'sufficiently close link' test, a person would be able to rely on the legislation of Member State A *only*, whereas, under Article 44(2) of Regulation No 987/2009, that person could rely on the legislation of Member State B as well as, if no 'child-raising period' is taken into account under that legislation, on the legislation of Member State A (basically, he or she would get a double 'shot' at having such periods taken into account). In my view, the 'sufficiently close link' test, which was elaborated on the basis of Article 21 TFEU, cannot afford a lower level of protection to EU citizens than that provision.

[28] In such a scenario, Member State B would be regarded as *not* allowing the taking into account of 'child-raising periods' under its legislation. Member State A would, therefore, be obliged to apply its legislation to the periods devoted to raising children in Member State B, in application of the 'sufficiently close link' test. However, in practice, those periods would still be credited as 'periods of residence' under the legislation of Member State B.

those citizens would not be able to have the time that they spent raising their children in Member State B taken into account by Member State A if, under the legislation of the latter, such a period were to be regarded as a 'period of residence' rather than a 'period of insurance'. In that regard, I recall that it follows from the judgment in *Pensionsversicherungsanstalt* that, when the EU legislature adopted Article 44 of Regulation No 987/2009, it gave concrete expression to only some of the obligations concerning the taking into account of 'child-raising periods' that flow from Article 21 TFEU. As those obligations are broader in scope than those laid out in that secondary instrument, it seems to me that the definition of the concept of 'child-raising periods' cannot be narrower under Article 21 TFEU than under Article 44 of Regulation No 987/2009.

47. In the case at hand in the main proceedings, it is for the referring court to establish whether 'child-raising periods' are already taken into account under the legislation of Member State B (the Netherlands). Subject to the verification to be carried out by that court, I recall that the dispute at issue in the main proceedings concerns VA's entitlement to invalidity benefits, not to an old-age pension.[29] The Netherlands Government explained at the hearing that its national law does not allow invalidity benefits to be granted to self-employed persons such as VA and that it is only for the purpose of granting a different type of pension, namely an old-age pension, that 'child-raising periods' are assimilated to 'periods of residence'. It further stated that, in so far as the main proceedings concern only the granting of invalidity benefits, it must be considered that *no* child-raising period is to be taken into account under the legislation of that Member State.[30]

48. Having made those remarks in order to provide an answer to the first question of the referring court, I will now turn to whether the 'sufficiently close link' test applied by the Court in its judgments in *Elsen*, in *Kauer* and in *Reichel-Albert*, as well as in, more recently, *Pensionsversicherungsanstalt*, is relevant in the present case.

B. The second question: what constitutes a 'sufficiently close link'?

49. By its second question, the referring court wonders, in essence, whether the obligation, under Article 21 TFEU, to take the 'child-raising periods' into account for Member State A (here, Germany) also applies where, as is the case in the main proceedings, the person in question paid contributions because of his or her employment or self-employment in that Member State only *after* he or she raised his or her children in one or more other Member States, and not at all *before* the birth of his or her children. Within that context, the referring court makes express reference to the judgments in *Elsen*, in *Kauer* and in *Reichel-Albert*, in which the Court coined and developed the 'sufficiently close link' test.

50. I will explain, on the one hand, why, in my view, in a context where Regulations No 883/2004 and No 987/2009 apply *ratione temporis*, one should resist the temptation to stretch the 'sufficiently close link' too far and, on the other hand, why I consider such a link may exist even

[29] I note that the German Government argues that, in order for 'child-raising periods' to be regarded as being 'taken into account' under the legislation of Member State B, it only matters that, under that legislation, they are credited for the purpose of granting any type of pension (be it an old-age pension or an invalidity pension). I disagree. In my view, one must consider whether they are credited for the specific type of pension at issue.

[30] For the sake of completeness, I note that the Netherlands Government argues that, in the present case, the Member State competent under Title II of Regulation No 883/2004 is not the Netherlands, but Germany, given that the invalidity of VA arose while she lived and worked in Germany. That interpretation is, in my view, clearly incorrect. Indeed, in order to determine which legislation must be applied to a given period (such as, *in casu*, a 'child-raising period'), one must consider the situation of the person concerned during such a period, not the date when that person became entitled to a pension.

though a person has not paid contributions because of his or her employment or self-employment to the statutory pension insurance scheme of Member State A before moving to Member State B to raise his or her children.

1. The 'sufficiently close link' test after the judgment in Pensionsversicherungsanstalt

51. As I explained in my Opinion in *Pensionsversicherungsanstalt*,[31] it seems to me that when it adopted Article 44(2) of Regulation No 987/2009, the EU legislature made a conscious choice *not* to refer to the 'sufficiently close link' test formulated by the Court under the previously applicable regime (that is to say, in a context in which Regulation No 1408/71 applied *ratione temporis*). Indeed, since that provision postdates the judgments in *Elsen* and in *Kauer* (albeit not in *Reichel-Albert*), the EU legislature could have adopted it *expressis verbis* had it wished to do so, in such a way as to fully integrate that test into EU secondary legislation. However, perhaps due to the fact that that test is inherently not as clear as (and formulated in a more open-ended manner than) the three clearly defined conditions set out in Article 44(2) of Regulation No 987/2009, and that that provision was meant to introduce a (limited and clearly delineated) exception to the rules of competence contained in Title II of Regulation No 883/2004, it chose not to do so.[32]

52. It is those same reasons, as well as certain additional ones,[33] which lead me to consider that, although the Court has now decided, contrary to my suggestion,[34] that the 'sufficiently close link' test remains relevant in a situation where Regulations No 883/2004 and No 987/2009 (rather than Regulation No 1408/71) apply *ratione temporis*, one should resist the temptation to encourage an ever-expanding range of situations to fall within the scope of the 'sufficiently close link' test on the basis not of those regulations, but of Article 21 TFEU.

53. Several factors could contribute to that phenomenon. First, what constitutes a 'sufficiently close link' is not clear, as I have just explained. By nature, the 'sufficiently close link' test is open-ended and dependent on what can be regarded as relevant circumstances in each case. Different factors, including the fact that the applicants had worked exclusively in Member State A or that they had contributed exclusively in that Member State, were emphasised in the judgments in *Elsen*, in *Kauer*, in *Reichel-Albert* and in *Pensionsversicherungsanstalt*, without any of them being singled out as decisive.[35] Second, the Court has, to date, always concluded that a 'sufficiently close link' existed, and never that it was lacking. In fact, past judgments in which that test was applied show the Court's tendency to expand rather than limit the number of situations in which Member State A may be required to apply its legislation to 'child-raising periods' completed in Member State B. For example, whereas in the judgments in *Elsen* and in *Kauer* the applicants had remained subject to the legislation of Member State A until the 'child-raising periods'

31 C-576/20, EU:C:2022:75, points 60 to 63.

32 Ibid., points 64 and 65.

33 Linked, in particular, to the fact that the legislation of a Member State perfectly reflecting the contents of Article 44(2) of Regulation No 987/2009 could, following the judgment in *Pensionsversicherungsanstalt*, be found to be contrary to Article 21 TFEU, if it does not allow for 'child-raising periods' to be taken into account in other situations (such situations being difficult to anticipate given that the 'sufficiently close link' test is inherently unclear).

34 See my Opinion in *Pensionsversicherungsanstalt*.

35 For example, in its judgment in *Elsen*, the Court found that because there was a 'close link' between those periods and Ms Elsen's periods of activity in Germany, Ms Elsen could not be regarded as having ceased all 'occupational activity' or as being subject for that reason to the legislation of the Member State in which she resided (France). By contrast, in its judgment in *Reichel-Albert*, it seems to me that the Court's conclusion was somehow influenced by different considerations. First, Ms Reichel-Albert had worked and contributed in only one Member State (Germany), both before and after temporarily transferring her place of residence to another Member State (Belgium) where she had never worked. Second, Ms Reichel-Albert had moved to Belgium solely on family-related grounds and directly from Germany, where she had been employed up until the month prior to her move.

completed abroad began to run,[36] the same was not true of the applicants in the judgments in *Reichel-Albert* and in *Pensionsversicherungsanstalt*,[37] and yet that did not prevent the Court from concluding that a 'sufficiently close link' existed.

54. In the light of those considerations, it is hardly surprising that, in its request for a preliminary ruling, the referring court mentioned a variety of circumstances (such as the fact that VA's entire employment history is linked to Germany, that she attended school exclusively in Germany, that she took up residence in the Netherlands only a few kilometres from the border with Germany and that her children attended school in Germany) as being potentially relevant in order to establish the existence of a 'sufficiently close link'.[38]

55. In the following sections, I will attempt to clarify the scope of that test. I will begin by detailing (a) the considerations that are, in my view, *not* relevant to establish the existence of such a link, before insisting on (b) the ones which I consider, by contrast, to be decisive.

(a) Irrelevant considerations

56. First, given that the 'sufficiently close link' test was elaborated in cases in which the Court considered two issues – namely, on the one hand, whether Member State A was required to apply its legislation to the child-raising periods completed in Member State B and, on the other hand, where that was the case, whether that legislation treated those periods as though they had been completed in its territory and was therefore compatible with Article 21 TFEU –[39] it may be tempting to consider that the case-law which is relevant to the second of those issues is also relevant to the first.

57. In that regard, I note that, in its judgment in *Pensionsversicherungsanstalt*, the Court recalled, for example, that national legislation which places some of its nationals at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State must be regarded as giving rise to inequality of treatment, contrary to the principles which underpin the status of EU citizen in the exercise of the citizen's freedom to move.[40] I agree that, in the present case, if VA had raised her children in Germany, the relevant 'child-raising periods' would have automatically been taken into account under the applicable German legislation (that is, under the first sentence of Paragraph 56(3) of the SGB VI). Thus, much like the applicants in the proceedings at issue in the judgments in *Elsen*, in *Kauer*, in *Reichel-Albert* and in *Pensionsversicherungsanstalt*, VA has been placed at a disadvantage for the sole reason that she raised her children in the Netherlands, rather than in Germany.

58. However, I consider that the fact that a person, such as VA in the main proceedings, suffers a disadvantage for the reason that the 'child-raising periods' which he or she has completed abroad are not to be taken into account by Member State A is not, in and of itself, relevant to the question

[36] See the judgments in *Elsen* (paragraph 26), and in *Kauer* (paragraph 32).

[37] Indeed, in both of those cases, the applicant had stopped being subject to the legislation of Member State A several months or even more than a year before such periods began to run.

[38] See point 23 above.

[39] Indeed, as I explained in my Opinion in *Pensionsversicherungsanstalt* (C-576/20, EU:C:2022:75, point 38), prior to the entry into force of Regulations No 883/2004 and No 987/2009, the Court's case-law, as I understand it, revolved around a two-step approach based on the applicability of the legislation of Member State A to 'child-raising periods' completed in Member State B so long as there was a 'close link' or a 'sufficiently close link' between those periods and periods of gainful occupation completed in Member State A (the first step), and the obligation, derived from Article 21 TFEU, for such legislation to treat the 'child-raising periods' completed in Member State B as though they had been completed in Member State A (that is, to treat such periods equally) (the second step).

[40] See the judgments in *Pensionsversicherungsanstalt* (paragraph 61), and in *Reichel-Albert* (paragraph 42 and the case-law cited).

of whether a 'sufficiently close link' exists between the 'child-raising periods' completed in Member State B and the 'periods of insurance' that he or she completed in Member State A. Rather, it relates to the question of whether the legislation of Member State A is compatible with Article 21 TFEU.

59. In my view, those two questions are distinct from one another and cannot be merged. That was confirmed by the Court in its judgment in *Pensionsversicherungsanstalt*.[41] Thus, the mere fact that a person such as VA suffers a disadvantage because the 'child-raising periods' which she has completed in Member State B are not to be taken into account by Member State A cannot be relied upon to enlarge the range of situations in which a 'sufficiently close link' exists.[42]

60. Second, I note that most of the arguments put forward by the German Government during the hearing focused on the fact that VA has stronger ties to the Netherlands than to Germany. In that government's view, Germany would, for that reason, not be required to apply its legislation to the 'child-raising periods' which VA completed in the Netherlands.

61. I do not share that analysis. In my view, the mere fact that the person concerned also has links to the social security system of Member State B during the relevant 'child-raising periods' (for example, because that individual is subject to compulsory insurance in that Member State during those periods) does not prevent the legislation of Member State A from applying to such periods. As I explained in my answer to the first question, the purpose of the 'sufficiently close link' test is *not* to determine – depending on which social security system the applicant has the closest links to – which legislation applies: either that of Member State A or that of Member State B. Rather, that test aims to introduce a subsidiary (residual) competence for Member State A, which is without prejudice to the fact that if 'child-raising periods' are taken into account under the legislation of Member State B, then only the legislation of that Member State applies.

62. In that regard, I recall that, as the Commission pointed out during the hearing, the 'sufficiently close link' test was first developed by the Court in its judgment in *Elsen*, concerning a frontier worker. Frontier workers inevitably have links both to the Member State in which they work and to the Member State in which they reside. As such, it is clear that the mere fact that a person has links to Member State B does not prevent such a person from also having a 'sufficiently close link' to the social security system of Member State A.

63. Third, one could also argue that to establish a 'sufficiently close link', the applicant must have worked exclusively in one Member State (Member State A) during his or her life. Indeed, the Court emphasised that element in its judgments in *Elsen*, in *Kauer*, in *Reichel-Albert* and in *Pensionsversicherungsanstalt*.

64. However, I see two problems with that approach. In the first place, it would work to the disadvantage of EU citizens who have worked in several Member States and who have, therefore, exercised their right to freedom of movement in application of the provisions of the TFEU. A person may, for example, have worked only in Member State A both before and immediately after he or she raised a child in Member State B. Should such a person be deprived of the

[41] See, in particular, paragraphs 63 and 64 of that judgment.

[42] I add that if every time a person exercised his or her right to freedom of movement in application of the provisions of the TFEU the sole criteria were whether or not such a person would be placed at a disadvantage if he or she were not able to continue to rely on the legislation of the Member State which was previously applicable to him or her, then the rules forming part of the system of coordination put in place by Regulations No 883/2004 and No 987/2009 would become redundant as a whole. Such a result would create a lot of uncertainty not only for the Member States, but also for EU citizens themselves (and could therefore ultimately prejudice, rather than facilitate, the exercise of their right to freedom of movement as protected under those provisions).

opportunity to rely on the legislation of Member State A for the 'child-raising periods' which he or she completed in Member State B simply because he or she thereafter works in Member State C or even Member State B, and no longer in Member State A?

65. In the second place, that approach could also produce disproportionate obligations on Member State A. Imagine if the person concerned had no link with Member State A *at all* before he or she raised his or her children in Member State B, but he or she thereafter worked in Member State A only. Should that Member State be required to apply its legislation to the 'child-raising periods' completed in Member State B, even though the person concerned only began working on its territory many years later, for the sole reason that he or she can be said to have worked there exclusively?

66. Finally, I do not believe that the existence of a 'sufficiently close link' can be based, as the referring court states, on the mere fact that the life of the person concerned is, after the birth of his or her children, 'predominantly oriented' toward the legal, economic and social system of Member State A (for example, because the children attend school in Member State A or because she resided only a few kilometres away from the border of that Member State). That criterion is too uncertain and unpredictable and would fail to make the 'sufficiently close link' test any clearer.

67. Having made those clarifications, all that remains is for me to outline what considerations are decisive in order to establish the existence of a 'sufficiently close link'.

(b) Decisive considerations

68. It is clear to me that the decisive factor for the establishment of a 'sufficiently close link' is that the person concerned completed 'periods of insurance' in Member State A *before* (but not necessarily after), raising his or her children in Member State B (first condition). In my view, the fact that the person concerned has gone back to work in Member State A *after* the 'child-raising periods' completed in Member State B have ended may reinforce the Court's conclusion that a 'sufficiently close link' exists. However, it is not a precondition to the existence of such a link.

69. Indeed, if the person concerned were required, in order to benefit from the legislation of Member State A, to work again or to complete further 'periods of insurance' in that Member State *after* raising his or her children in Member State B, he or she would, quite simply, be affected in the exercise of his or her right to move and reside freely in other Member States under Article 21 TFEU (since, except in the case of frontier workers, the person concerned would effectively be required to move back to Member State A to complete further such 'periods of insurance').

70. In addition, I consider that, although the 'periods of insurance' completed in Member State A need not immediately precede the periods devoted to child raising, Member State A must be the last Member State in which the person concerned completed 'periods of insurance' before he or she raised his or her children in Member State B (second condition). Indeed, in my view, if a person completes 'periods of insurance' in Member State A and then in Member State C before raising his or her children in Member State B, then the 'child-raising periods' completed in the latter Member State must be regarded as being more closely linked to the 'periods of insurance' completed in Member State C than to those completed in Member State A. In such a situation,

Member State C, rather than Member State A, is to apply its legislation. [43]

71. I add that that second condition is consistent with the rule, laid down in Article 44(3) of Regulation No 987/2009, which provides that the obligation for Member State A to take the 'child-raising periods' completed in Member State B into account according to its own legislation no longer applies 'if the person concerned is, or becomes, subject to the legislation of another Member State due to the pursuit of an employed or self-employed activity'.

72. It follows that the 'sufficiently close link' test must, in my view, be based on two essential components. First, the person concerned must have completed 'periods of insurance' in Member State A *before* (but not necessarily after) raising his or her children in Member State B. Second, Member State A must be the last Member State in which the person concerned completed such 'periods of insurance' before he or she raised his or her children in Member State B.

2. Application to a situation such as the one at hand in the main proceedings

73. In the operative part of the judgment in *Pensionsversicherungsanstalt*, the Court expressly emphasised that the person concerned had paid contributions exclusively in Member State A, both before and after transferring their place of residence to another Member State where they raised their children. Given that formulation, one may wonder, as the referring court does in the present case, whether the 'sufficiently close link' test is fulfilled in a situation such as the one at hand in the main proceedings, in which VA completed what I understand to be periods that can be assimilated to 'periods of insurance' in Member State A (Germany) before raising her children in Member State B (the Netherlands), but only started paying contributions to the statutory insurance scheme of that first Member State several years after she stopped devoting her time to raising her children.

74. In my view, that circumstance cannot, in and of itself, prevent, as I have already stated in point 35 above, the applicability of the legislation of Member State A (Germany) to the periods in dispute.

75. In that regard, I must admit that it makes sense, in principle, to make the entitlement of a person to a pension dependent upon the fact that the person concerned paid contributions to the statutory pension insurance scheme of the Member State responsible for granting such a pension. Thus, I can see why some Member States may want to limit what is to be considered as a 'period of insurance' to periods during which the person concerned actually paid contributions on account of his or her employment or self-employment. However, that does not change the fact that other Member States, including Germany, allow certain periods of a person's life, during which he or she paid no such contributions and was not employed or self-employed (and was, therefore, not subject to compulsory insurance), to be assimilated to 'periods of insurance'.

76. On that point, I recall that, under Article 1(t) of Regulation No 883/2004, the term 'period of insurance' is not limited to 'periods of contribution, employment or self-employment'. That term also applies to 'all periods … regarded by the said legislation as equivalent to periods of insurance'.

[43] In that regard, I also recall that, as regards Article 45 TFEU, which concerns freedom of movement, the Court has already stated that a situation, which is based on a set of circumstances which are too uncertain and indirect, is not capable of influencing the choice of the worker to exercise his or her freedom of movement and cannot be regarded as liable to hinder the free movement of workers (see judgment of 24 November 2022, *MCM (Student financial aid for studies abroad)*, C-638/20, EU:C:2022:916, paragraph 35 and the case-law cited). In my view, those considerations also apply in the context of the application of Article 21 TFEU. Thus, the 'child-raising periods' cannot be too remote or too detached from the 'periods of insurance' completed in Member State A.

It follows that 'periods of insurance', within the meaning of that provision, may be completed by a person in a Member State, even though he or she does not pay contributions to the statutory insurance scheme of (and is not employed or self-employed in) that Member State.

77. *In casu*, the German Government seems to me to indicate that the periods of professional training which VA completed in Germany before she went on to raise her children in the Netherlands are assimilated to 'periods of insurance' under Paragraph 58(1) of the SGB VI. The referring court makes a similar statement in its request for a preliminary ruling. Indeed, it notes that corresponding 'credit periods' or 'pension-relevant periods' were registered in VA's insurance history for the periods during which she undertook that professional training.

78. Furthermore, Germany is the last Member State in which VA completed 'periods of insurance' before moving to the Netherlands.

79. Consequently, and subject to the verification to be carried out by the referring court, I would be inclined to consider, in the light of the considerations which I emphasised in points 68 to 72 above, that the legislation of Member State A (Germany) applies to the periods in dispute and that that Member State is required, under Article 21 TFEU, to take account of those periods as though they had been completed on its territory. [44]

V. Conclusion

80. In the light of the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Landessozialgericht Nordrhein-Westfalen (Higher Social Court, North Rhine-Westphalia, Germany) as follows:

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

must be interpreted as meaning that the Member State responsible for the payment of pension is required to apply its legislation and to take account of 'child-raising periods' completed in another Member State as though such periods had been completed on its territory, pursuant to Article 21 TFEU, provided, first, that the person concerned completed 'periods of insurance' in the first Member State before he or she carried out those 'child-raising periods' and, second, that that Member State was the last Member State in which he or she completed such 'periods of insurance' before that transfer. The obligation for the first Member State to take account of the 'child-raising periods' completed in the second Member State does not apply if that Member State already takes account of such periods pursuant to its own legislation. A 'period of insurance' may include a period assimilated to a 'period of insurance' under the national legislation of the Member State liable for the payment of the pension during which no contributions were paid to the statutory pension insurance scheme of that Member State.

[44] Regarding the question of whether the national legislation at hand in the main proceedings complies with Article 21 TFEU (the second step to which I referred in footnote 39 above), I note that in the judgments in *Elsen* (paragraph 34) and in *Reichel-Albert* (paragraph 39), the Court already took the opportunity to state, in respect of earlier (identical) versions of the provisions at issue in the main proceedings, that such provisions were disadvantageous to EU citizens who have exercised their right to move and reside freely in the Member States, as guaranteed by Article 21 TFEU, and were, therefore, contrary to that provision. In my view, that conclusion is still valid.