Principality of Liechtenstein
Fürstlicher
Oberster Gerichtshof

SV.2024.36 – Document number 27

ORDER

The Princely Supreme Court (*Fürstlicher Oberster Gerichtshof*), as appellate court, through its First Senate, composed of the President, University Professor (retired) Dr Hubertus Schumacher, and Supreme Court Judges, Dr Wolfram Purtscheller, Dr Marie-Theres Frick, Dr Valentina Hirsiger and lic. iur. Stefan Zünd, as additional members of the Senate, in addition, in the presence of court clerk Astrid Wanger, in the social security proceedings between the appellant **Sabine Mohr-Egger, LL.M.,** lawyer, XXX, and the respondents **Liechtensteinische Alters- und Hinterlassenenversicherung (Liechtenstein Old-Age and Survivors' Insurance)**, 2. **Liechtensteinische Invalidenversicherung (Liechtenstein Invalidity Insurance)** and 3. **Liechtensteinische Familienausgleichskasse (Liechtenstein Family Allowances Office)**, all at Gerberweg 2, FL-9490 Vaduz, all represented by MLaw Julia Walser and others, also of the same address, concerning the levying of contributions, in the appeal on a point of law by Sabine Mohr-Egger,

LL.M., against the judgment of the Princely Court of Appeal (*Fürstliches Obergericht*) of 10 July 2025, SV.2024.36, document number 19, by which the appellant's appeal against the decision of the respondents of 21 October 2024, A.2023/039, was dismissed, in closed session, has ordered:

I. The following questions are referred to the **EFTA Court** for an advisory opinion:

First question:

Must Article 14(5b) of Regulation (EC) No 987/2009 as amended by Regulation (EU) No 465/2012, according to which marginal activities shall be disregarded for the purposes of determining the applicable legislation under Article 13 of Regulation (EC) No 883/2004 (the basic Regulation), be interpreted as meaning that already the fact that the income from a political activity pursued in the State of residence, which according to national legislation corresponds to that of a civil servant and thus an employed person, amounts to less than 0.5% of the income that the corresponding insured person receives from an activity as a self-employed person in another Member State suffices in this connection to speak of a marginal activity or must further criteria be taken into consideration, for example, the duration of the activity as an employed person, on the one hand, and the self-employed activity, on the other, the importance of the activity as an employed person, pursued wholly independently of the activity as a self-employed person, for the political

community of the State of residence as well as the place of performance of the activity as an employed person, the actual pursuit thereof or the manner of performance prescribed as a result of the appointment to a political function or are further additional criteria to be taken into consideration, and if so, which?

Second question:

In the event that it is not sufficiently clarified through the answer to the first question whether the relevant activity as an employed person must be qualified as marginal, the question is asked whether, having regard to recitals 1, 5, 10, 12, 15 and 17 in conjunction with Article 13(4) and (5) of Regulation (EC) No 883/2004, Article 34(1)(b) and (2)(b) of the Act of 14 December 1952 on Old-Age and Survivors Insurance (AHVG) must be interpreted as meaning that the insured person who receives an old-age pension in the Member State of residence as a result of her activity as a self-employed person previously pursued in that State must be subject nonetheless to compulsory social insurance in the Member State in which the activity as a self-employed person is still pursued.

II. The appeal proceedings before the Princely Supreme Court in case SV.2024.36 (OGH.2025.84) are stayed pending receipt of the advisory opinion and following receipt of such will be resumed of the Court's own motion.

Grounds:

1. Facts and procedure to date

1.1. The appellant is an Austrian national. She had been registered with the Vorarlberg Bar Association as a lawyer in Austria since 2002. In 2003 she was admitted in Liechtenstein as an established lawyer. She was entered in the register of Liechtenstein lawyers in 2012. She earned income as a self-employed lawyer in Liechtenstein and Austria, with the major part of her earnings generated in Liechtenstein. The appellant renounced the pursuit of the profession as a lawyer in Austria with effect from 30 November 2021. Thereafter, the appellant has (had) earnings in Austria as a member of the town council and now as an office-holding councillor for the town of Hohenems. Since 1 March 2022 she has been in receipt of an old-age pension in Austria. In Liechtenstein she continues to pursue an activity as a self-employed lawyer.

1.2. On 22 February 2023, the respondents registered the appellant as a person pursuing a self-employed activity with effect from 1 December 2021. On the same day provisional decisions for December 2021, January to December 2022 and January to December 2023 were issued by which the appellant was required to pay old-age and survivors' insurance (AHV), invalidity insurance (IV) and family allowances office (FAK) contributions as a self-employed person for the respective years as well as

administrative costs amounting to CHF XXX and two amounts of CHF XXX.

1.3. By the contested decision of 21 October 2024, A.2023/039, the *respondents* dismissed the appellant's appeal against these three provisional decisions. In summary it was reasoned that the situation to be assessed in determining a possible obligation on the appellant to pay contributions had changed from 1 December 2021, as with effect from 30 November 2021 the appellant had renounced the pursuit of the profession of a lawyer in Austria. Originally, on the basis of the transitional provision in Article 87(8) of Regulation (EC) No 883/2004, the appellant was under an obligation to pay contributions in Austria, although she had always earned the major part of her income in Liechtenstein. The appellant could have retained this contribution obligation at the latest until 31 May 2022 or until the situation changed. An exception agreement as provided for in Article 16(1) of Regulation (EC) No 883/2004 had not been entered into. Hence, from 1 December 2021, as a result of the changed circumstances, the appellant was, in any event, under an obligation to pay contributions in Liechtenstein in accordance with Articles 11 and 13 of Regulation (EC) No 883/2004.

1.4. By judgment of 10 July 2025 (ON 19), now under challenge, the *Princely Court of Appeal* dismissed the appellant's appeal against that decision. Its reasoning was based primarily on Article 13(3) and (4) of Regulation (EC) No 883/2004 and Article 14 of Regulation (EC) No 987/2009. According to the Princely Court of Appeal, it

follows from these provisions in connection with the appellant's (uncontested) statement, according to which her income as a town councillor amounts to less than 0.5% of her income from her self-employed activity, that the activity as an employed person must be characterised in comparison as marginal and hence as not relevant here.

1.5. By her appeal on a point of law lodged in due time, the *appellant* challenges this judgment (document number 19) on grounds of an incorrect assessment of the law and deficiencies in the appeal proceedings. In conclusion, it is requested that the Supreme Court "amends the decision of the respondents of 21 October 2024, insurance number 89580, statement number 10.010.096, appeal number A.2023/039, such as to allow the appellant's appeal so that Liechtenstein social security legislation is not applied to the appellant and no AHV-IV-FAK contributions are required of her and that the provisional decisions of the respondent for the years 2021, 2022 and 2023, all of 22 February 2023, statement number 10.010.096, insured person number 89580, are set aside without being replaced". In the alternative, a request is made that the judgment be set aside. The appellant proposes that this case be referred to the EFTA Court for an advisory opinion.

1.6. The *respondents* lodged within the deadline a reply to the appeal on a point of law in which they request the Supreme Court to dismiss the appeal.

2. General considerations

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the

coordination of social security systems is an integral part of the EEA Agreement (Publication of 26 July 2012 of Decision of the EEA Joint Committee No 76/2011, State Law Gazette 2012 No 202) and is directly applicable in Liechtenstein. As higher-ranking and more recent law, it takes precedence over national provisions (Constitutional Court, 27 June 2022, case StGH 2021/088, paragraph 2.2 of the reasoning, published as GE 2022, 227, confirming the ruling of the Princely Supreme Court of 10 September 2021, case 01 CG.2020.275, paragraph 8.2 of the reasoning, published as GE 2021, 161).

The Princely Supreme Court considers it necessary for the following reasons to refer this case to the EFTA Court for an advisory opinion on the interpretation of the following provisions in accordance with Article 34 of the Agreement Between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

3. Legal framework

3.1. EEA law

Recitals 1, 5, 10, 12, 15 and 17 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 (basic Regulation) are worded as follows:

(1) The rules for coordination of national social security systems fall within the framework of free movement of persons and should contribute towards improving their standard of living and conditions of employment.

...

(5) It is necessary, within the framework of such coordination, to guarantee within the Community equality of treatment under the different national legislation for the persons concerned.

...

(10) However, the principle of treating certain facts or events occurring in the territory of another Member State as if they had taken place in the territory of the Member State whose legislation is applicable should not interfere with the principle of aggregating periods of insurance, employment, self-employment or residence completed under the legislation of another Member State with those completed under the legislation of the competent Member State. Periods completed under the legislation of another Member State should therefore be taken into account solely by applying the principle of aggregation of periods.

...

(12) In the light of proportionality, care should be taken to ensure that the principle of assimilation of facts or events does not lead to objectively unjustified results or to the overlapping of benefits of the same kind for the same period.

...

(15) It is necessary to subject persons moving within the Community to the social security scheme of only one single Member State in order to avoid overlapping of the applicable provisions of national legislation and the complications which could result therefrom.

...

(17) With a view to guaranteeing the equality of treatment of all persons occupied in the territory of a Member State as effectively as possible, it is appropriate to determine as the legislation applicable, as a general rule, that of the Member State in which the person concerned pursues his/her activity as an employed or self-employed person.

...

Article 1 of the basic Regulation, headed "Definitions", is worded:

"For the purposes of this Regulation:

(a) 'activity as an employed person' means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or equivalent situation exists;

(b) 'activity as a self-employed person' means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or equivalent situation exists;

...

(d) 'civil servant' means a person considered to be such or treated as such by the Member State to which the administration employing him/her is subject;

(e) 'special scheme for civil servants' means any social security scheme which is different from the general social security scheme applicable to employed persons in the Member State concerned and to which all, or certain categories of, civil servants are directly subject;

...

(l) 'legislation' means, in respect of each Member State, laws, regulations and other statutory provisions and all other implementing measures relating to the social security branches covered by Article 3(1);

...

Article 11 of the basic Regulation ("General rules") is worded:

"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;

(b) a civil servant shall be subject to the legislation of the Member State to which the administration employing him/her is subject;

...

(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."

Article 13 of the basic Regulation ("Pursuit of activities in two or more Member States") is worded:

1. A person who normally pursues an activity as an employed person in two or more Member States shall be subject:

(a) to the legislation of the Member State of residence if he/she pursues a substantial part of his/her activity in that Member State, or

(b) if he/she does not pursue a substantial part of his/her activity in the Member State of residence:

(i) to the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated if he/she is employed by one undertaking or employer; or

(ii) to the legislation of the Member State in which the registered office or place of business of the undertakings or employers is situated if he/she is employed by two or more undertakings or employers which have their registered office or place of business in only one Member State; or

(iii) to the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated other than the Member State of residence if he/she is employed by two or more undertakings or employers, which have their registered office or place of business in two Member States, one of which is the Member State of residence; or

(iv) to the legislation of the Member State of residence if he/she is employed by two or more undertakings or employers, at least two of which have their registered office

or place of business in different Member States other than the Member State of residence.

2. A person who normally pursues an activity as a self-employed person in two or more Member States shall be subject to:

(a) the legislation of the Member State of residence if he/she pursues a substantial part of his/her activity in that Member State;

[or]

(b) the legislation of the Member State in which the centre of interest of his/her activities is situated, if he/she does not reside in one of the Member States in which he/she pursues a substantial part of his/her activity.

3. A person who normally pursues an activity as an employed person and an activity as a self-employed person in different Member States shall be subject to the legislation of the Member State in which he/she pursues an activity as an employed person or, if he/she pursues such an activity in two or more Member States, to the legislation determined in accordance with paragraph 1.

4. A person who is employed as a civil servant by one Member State and who pursues an activity as an employed person and/or as a self-employed person in one or more other Member States shall be subject to the legislation of the Member State to which the administration employing him/her is subject.

5. Persons referred to in paragraphs 1 to 4 shall be treated, for the purposes of the legislation determined in accordance with these provisions, as though they were

pursuing all their activities as employed or self-employed persons and were receiving all their income in the Member State concerned.

Article 87(8) of the basic Regulation ("Transitional provisions") is worded:

...

8. If, as a result of this Regulation, a person is subject to the legislation of a Member State other than that determined in accordance with Title II of Regulation (EEC) No 1408/71, that legislation shall continue to apply while the relevant situation remains unchanged and in any case for no longer than 10 years from the date of application of this Regulation unless the person concerned requests that he/she be subject to the legislation applicable under this Regulation.

Article 14 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 as amended by Regulation (EU) No 465/2012 (hereinafter also: "implementing Regulation"), headed "Details relating to Articles 12 and 13 of the basic Regulation", is worded:

...

5b. Marginal activities shall be disregarded for the purposes of determining the applicable legislation under Article 13 of the basic Regulation. Article 16 of the implementing Regulation shall apply to all cases under this Article.

...

3.2.1. **National law (Liechtenstein)**

Article 34 of the Act of 14 December 1952 on Old-Age and Survivors' Insurance (Old-Age and Survivors' Insurance Act) *(Gesetz vom 14. Dezember 1952 über die Alters- und Hinterlassenenversicherung (AHVG))*, headed "*I. Compulsorily insured persons*", is worded:

1) Insured in accordance with this Act are:

...

b) the natural persons who pursue an economic activity in Liechtenstein;

...

2) Not insured are:

...

b) persons affiliated to a foreign public old-age and survivors' insurance if inclusion in the insurance would entail an unreasonable dual burden for them. Upon a reasoned request, these shall be exempted from the compulsory insurance by the fund;

...

Article 55 of the Old-Age and Survivors' Insurance Act is worded:

Persons who have completed the 65th year of life shall be entitled to an old-age pension; this shall be without prejudice to taking a pension early in accordance with Article 73. The entitlement shall arise on the first day of

the month which follows the completion of the 65th year of life. It shall expire on death.

...

Article 73 of the Old-Age and Survivors' Insurance Act (headed "I. Taking the old-age pension early") is worded:

1) Persons who fulfil the minimum period of contribution for the entitlement to an old-age pension may take the pension early from the 60th year of life ...

3.2.2. **National law (Austria)**

Section 1 of the Public Servants' Sickness and Accident Insurance Act *(Beamten-Kranken- und Unfallversicherungsgesetzes (B-KUVG))*, headed "Scope of the insurance" and "Compulsory insurance the sickness and accident insurance", is worded:

(1) Unless an exemption exists under section 2 or 3, insured in the sickness and accident insurance are:

...

10.

...

b) The mayors and other members of municipal councils as well as local leaders (local representatives) provided that they are not members of the municipal council as well as district leaders and district councillors;

...

12. Persons who on the basis of one of the functions listed in points 8 to 11 receive a (survivors') pension, an ongoing allowance or an extraordinary pension on the basis of

Länder law as long as they are resident within national territory;

...

4. **Explanations**

The provisions of Title II of Regulation (EC) No 883/2004, of which Articles 11 to 16 form part, constitute a complete and uniform system of conflict rules. Those provisions are intended not only to prevent the simultaneous application of a number of national legislative systems and the complications which might ensue, but also to ensure that persons covered by that regulation are not left without social security cover because there is no legislation which is applicable to them. Thus, where a person falls within the scope ratione personae of Regulation No 883/2004, as defined in Article 2 thereof, the rule in Article 11(1) of the regulation that the legislation of a single Member State is to apply is in principle applicable and the national legislation applicable is determined in accordance with the provisions of Title II of the regulation. Those provisions are solely intended to determine the national legislation applicable to persons falling within the scope of that regulation. As such, they are not intended to lay down the conditions creating the right or the obligation to become affiliated to a social security scheme or to a particular branch of such a scheme. It is for the legislature of each Member State to lay down those conditions. However, when the Member States lay down the conditions creating the right or the obligation to become affiliated to a social security scheme, they are under an obligation to comply with the provisions of the

EU law in force. In particular, the conflict rules laid down by Regulation No 883/2004 are mandatory for the Member States and the latter do not have the option to determine to what extent their own legislation or that of another Member State is applicable (ECJ, C-451/17 *'Walltopia' AD*, paragraphs 41, 42, 47 and 48 with further references). Accordingly, it also cannot be accepted that insured persons falling within the scope of those rules can counteract their effects by being able to elect to withdraw from their application (ECJ, C-89/16 *Szoja*, paragraph 42).

It follows from the requirements of the uniform application of Union law and the principle of equal treatment that the terms of a provision of Union law (or EEA law) which does not contain any express reference to the law of the Member States for the purpose of determining its meaning and scope must be given an autonomous and uniform interpretation throughout the European Union (EEA), which interpretation must take into account not only the wording of the provision but also its context and the objective pursued by the legislation in question (compare ECJ, C-610/18 *AFMB Ltd and Others*, paragraph 50 with further references).

The appellant is correct to observe that in Case C-33/22, *Österreichische Datenschutzbehörde*, paragraph 59, the ECJ held that, under the second paragraph of Article 288 TFEU, a regulation (to be applied in that case) is binding *in its entirety* (emphasis added by the Senate) and directly applicable in all Member States. However, according to certain writers in the legal literature (see below) and other ECJ rulings (compare C-418/18 P

Puppinck and Others v *Commission*, paragraphs 75 and 76 with further references), this principle cannot be applied without restriction to the recitals of regulations. Instead, accordingly, the ECJ regularly relies on recitals for the purposes of teleological interpretation. They provide valuable insights into the objectives and purpose of the legal act, the intention of the Union legislature and the scheme of the regulation. Consequently, recitals are used by the ECJ as a guideline in the teleological interpretation of regulations. They often clarify individual provisions of a regulation and disclose the purpose. However, no consideration may be given to recitals if they are not covered by the provisions of the regulation. Finally, it is not permissible to interpret the content of the provisions of a regulation contrary to their utter literal sense as a correction, relying on divergent statements in the recitals. Rather, the ECJ bases itself primarily on the wording of the provision and considers the recitals as an additional aid to interpretation (compare Ulrike Frauenberger-Pfeiler, "Vom Einfluss des Parteiwillens auf den grenzüberschreitenden Bezug der Streitsache", *ecolex* 2024/281; compare Christoph Kronthaler and Simon Laimer, "Schwerwiegender Mangel nach dem VGG", ZVR 2024/88, *Zeitschrift für Verkehrsrecht* 2024, 243-246). In other words, although they have no binding normative substance, recitals are of particular importance also in the interpretation of a directive's provisions. Recitals often clarify individual provisions of a directive or disclose their purpose. In this respect, recitals must be consulted as a guideline in the teleological interpretation of directives. If recitals are not covered by the provisions of the directive,

no consideration may be given to them. It is unacceptable to interpret the content of the provisions of a directive contrary to their utter literal sense as a correction, relying on divergent statements in the recitals (compare Kronthaler and Laimer).

Admittedly, the system introduced by Regulation No 883/2004 (and its predecessor Regulation No 1408/71) is solely a system for the coordination of the social security legislation of the Member States and not for the harmonisation of such legislation; it is, however, inherent in such a system that differences may remain between the social security rules of the Member States, not least with regard to the level of social contributions to be paid in respect of a given activity (C-610/18, paragraph 68).

For the purposes of achieving the objectives stated, Article 11(3)(a) of Regulation No 883/2004 lays down the general rule that a person who pursues an activity as an employed person in the territory of a Member State is subject to the legislation of that State. That general rule is stated in that provision to be "subject to Articles 12 to 16" of Regulation No 883/2004. In certain specific situations, the unrestricted application of that principle might in fact create, rather than prevent, administrative complications for workers as well as for employers and social security authorities, which could impede the freedom of movement of the persons covered by those regulations (C-610/18, paragraphs 42 and 43).

Article 13(5) of the basic Regulation reflects the implications of the principle of applying only one system of law even in the event of connections to several Member

States. If in this way double insurance is to be avoided, at the same time, however, it is necessary to prevent this choice of the regulation from placing employed or self-employed persons at a disadvantage (H.-D. Steinmeyer in M. Fuchs and C. Janda (eds.), *Europäisches Sozialrecht*, 8th edition, Article 13, point 24, page 242).

Article 14 of Regulation No 987/2009 contains important clarifications, inter alia, in relation to Article 13 of Regulation No 883/2004 (Pursuit of activities in two or more Member States). These involve, in actual fact, not procedural rules, but provisions of a substantive nature which for schematic reasons would be better included in the basic Regulation (M. Pöltl in B. Spiegel (ed.), *Zwischenstaatliches Sozialversicherungsrecht*, 79th update, Regulation 987/2009, Article 14, point 1; compare M. Pöltl, 97th update, Regulation 883/2004, Article 13, point 3).

In this connection, the circumstance, also referred to already in the previous instances, must be mentioned that as regards the transition from Regulation No 1408/71 to Regulation No 883/2004 in existing cases Article 87(8) thereof provides that the competence applicable under Regulation No 1408/71 shall continue to apply while the relevant situation remains unchanged, however, for no longer than 10 years, that is to say (in Austria) until 30 April 2020 (M. Pöltl, Regulation 883/2004, Article 13, point 3/1, referring to Article 87, point 21 et seq.); in Liechtenstein until 31 May 2022.

The definitions in the basic Regulation for "civil servants" in Article 1(d) and for "special schemes for civil

servants" in Article 1(e) are relevant only in relation to a small number of rules in Regulation No 883/2004. Article 11(3)(b) and Article 13(4) refer to civil servants, Articles 49 and 60 as well as Articles 31, 41 and 57 of Regulation No 987/2009 to special schemes for civil servants. As already mentioned, these definitions do not rely on a concept of European law but on the national classification. Consequently, all persons treated as a civil servant under the national classification must also be considered civil servants. As regards a special scheme for civil servants what is crucial, first of all, is that it involves a scheme for civil servants within the meaning of the definition mentioned and, in addition, that it is separated from the general scheme for other employed persons. Inasmuch as no special rules for civil servants are provided for in Regulation No 883/2004, for these groups of persons, too, the general rules apply and, in particular, pursuit of an activity as a civil servant is considered the pursuit of an activity as an employed person as provided for in point (a) (e.g. for the application of the rules on family benefits).

In relation to Austria, there are, in accordance with existing practice, various elements which point to civil servant status from the perspective of social security law. First of all, the legal nature of the employer is decisive. Thus, all staff engaged by a body governed by public law (in particular, the Federation, Länder, municipalities but also statutory bodies for the representation of collective interests or social security institutions) are considered civil servants irrespective of whether these are in a public law or private law employment relationship. Second, it depends on the nature of the relationship for employment law

purposes – that is to say, every person who is an employment relationship governed by public law is considered a civil servant. Usually, this involves a group of persons who are likely already included in the first category. However, it cannot be excluded in the context of privatisations that although a private law employer exists, part of the workforce transferred remains in an employment relationship governed by public law. Third, the classification may result also from social security law status. Thus, insurance in a special scheme for civil servants results always in civil servant status – but it must be observed in relation to this group also that there are few cases in which a private law employer has staff who are protected in special scheme for civil servants. Further, it must be presumed, moreover, that persons exercising a political function are considered civil servants.

There can be no doubt that, inter alia, the Public Servants' Sickness and Accident Insurance Act is considered a special scheme for civil servants. Austria has not made use of the possibility of Annex 2 to Regulation No 987/2009, meaning that, as regards sickness or accident insurance, protection under a special scheme for civil servants is, in relation to Austria, subject to coordination with regard to benefits like every other sickness or accident insurance scheme (compare, in this connection, B. Spiegel in B. Spiegel, 109th update, Regulation 883/2004, Article 1, points 17 to 19; compare M. Pöltl, Regulation 883/2004, Article 11, points 16 to 19, and Article 13, points 26 to 26/2).

As regards the assessment of political functions in Austria and thus, in this connection, the question whether civil servants are insured, at any rate, in Austria, it must be determined whether, under the provisions on the applicable legislation, persons exercising political functions are included among persons pursuing an economic activity. With regard to the compulsory insurance resulting, as such, under the Public Servants' Sickness and Accident Insurance Act, these persons must indeed be regarded as persons treated as civil servants. In accordance with the scheme of Regulation No 883/2004 (as well as Regulation No 1408/71), these persons, too, must therefore be regarded as a special variant of employed persons. For that reason, also the entirety of Title II of Regulation No 883/[2004] is applicable to them. Consequently, inasmuch as an activity as a self-employed person or employed person is pursued in another country, a categorisation must be effected in accordance with Article 13(1) or (3) of Regulation No 883/2004. If, in accordance with those provisions, the activity in another country is subject to Austrian legislation, the same legal position applies as in the case where this activity is pursued within the national territory. If the political activity is subject to the foreign legislation, the question asked is redundant (compare M. Pöltl, Regulation 883/2004, Article 11, points 17/2, 18 and 19).

As a result of Regulation (EU) No 465/2012, paragraph 5b, cited above, was added to Article 14 of Regulation No 987/2009. This provision specifies that throughout the entire scope of Article 13 of Regulation No 883/2004 marginal activities shall be disregarded. As a result, categorisations not reflecting the true economic

nature of an activity are precluded and manipulations prevented. Marginal activities are disregarded, however, only for the purposes of determining the competence in accordance with Title II of Regulation No 883/2004. Subsequently, the Member State determined as competent in accordance with Title II takes account of the marginal activity in accordance with its legislation. The second sentence of Article 5b provides that also in such cases the procedure under Article 16 of this Regulation applies, for example, that only the Austrian institution of the place of residence is entitled to make a provisional determination of competence. However, since Article 16 determines the procedure for the application of Article 13 of the basic Regulation, it follows from that that also the case of a marginal activity remains a case for Article 13. This is logical, as the starting point is that a person pursues an activity in several Member States which results in the application of Article 13. Only this institution can take the legal decision in the context of a provisional determination that one of the activities is marginal. Subsequently, also the institution determined as competent must take account of the marginal activity in accordance with its legislation.

In the original version, the exclusion of marginal activities applied only for paragraph [5(b)] in the version applicable at the time (continuous pursuit of activities in two or more Member States with the exception of "marginal activities"). By way of Regulation No 465/2012, this criterion was extended to the entire scope of Article 13.

It is intended that an activity be regarded as "marginal" (insignificant) if it is pursued on a permanent

basis but marginal in terms of time and economic return. As an indicator, it was suggested that activities accounting for less than 5% of the worker's regular working time and/or less than 5% of his/her overall remuneration should be regarded as insignificant. Also the nature of the activities, such as activities that are of a supporting nature, that lack independence, that are performed from home or in service of the main activity, can be an indicator that they concern marginal activities.

However, a judgment of the ECJ of 13 September 2017 (C-570/15, *X*) casts doubt on the 5% threshold. In a case in which of all the hours worked by a worker 6.5% were performed in the Member State of residence, mostly by working from home, this activity was considered marginal for the purposes of determining the competence; in this regard, however, the ECJ emphasised that the employment contract did not provide for the worker to perform activities in the territory of his Member State of residence. It is unclear what significance this criterion has also in other cases (compare, in this regard, M. Pöltl in B. Spiegel, 79th update, Regulation 987/2009, Article 14, points 40 to 46/1, and M. Pöltl in B. Spiegel, 97th update, Regulation 883/2004, Article 13, point 5/1).

5. **Application to the proceedings at hand**

In the first place, the appellant is to be agreed with in her argument that for the assessment of the legal questions at issue here it is not the provisions of Article 13(1) and (2) of Regulation No 883/2004 that are decisive and hence it is also not significant whether the relevant person pursues a substantial part of her activity or

employed activity in one Member State. Instead, the provisions of Article 13(3) and (4) are decisive here.

The claims of the appellant (in document number 16) that already on the basis of her activity as a town councillor she was, as such, required to be compulsorily insured with the Insurance Fund for Civil Servants and Officials of the Public Authorities, the Railways and the Mining Sector (*Versicherungsanstalt öffentlich Bediensteter, Eisenbahnen und Bergbau* (BVAEB)) (and as a result she is included in a special scheme for civil servants) were not contested in detail by the defendants and therefore must be regarded as given for the purposes of this decision (Sections 266 and 267 of the Code of Civil Procedure (*Zivilprozessordnung*)). As a result of her activity as a town councillor in the town of Hohenems (and thus for a body governed by public law) in Austria, the appellant falls within the scope of the Public Servants' Sickness and Accident Insurance Act and must therefore be categorised, in accordance with the principles set out, as an insured person treated as a civil servant. Thus, inasmuch as no special rules for civil servants are provided for in Regulation No 883/2004, also for the appellant the general rules apply as they do for employed persons.

It is correct that, in accordance with that argument, for the purposes of Article 13(4) of Regulation No 883/2004, the appellant – in so far as is relevant here – is subject to the legislation of the Member State to which the administration employing her is subject, that is to say, to this extent, Austria.

However, Article 14 of Regulation No 987/2009, which, as mentioned, contrary to the appellant's position, comprises not only implementing provisions but also provisions of a substantive nature, includes the rule in paragraph 5b, inserted by Regulation No 465/2012, according to which, marginal activities shall be disregarded for the purposes of determining the applicable legislation under Article 13 of the basic Regulation. This applies – contrary to the appellant's arguments – throughout the entire scope of Article 13 of Regulation No 883/2004.

It is uncertain, however, how the term "marginal activity" must be interpreted and on which criteria it is based. It is uncontested that the relevant activity is pursued by the appellant on a permanent basis. According to the legal literature and the case law of the ECJ, the time spent on this activity plays a decisive role. The percentages of 5% and 6.5% mentioned hitherto in this connection are, however, linked to further conditions, which are not fulfilled in the present case. Namely, it is not at issue here, for example, that the "employment contract" of the appellant does not provide for her to carry out work in the territory of her Member State of residence (compare ECJ, C-570/15, paragraph 24). The fact is that, according to the observations of the appellate court, the economic return from her activity as town councillor is extremely low. However, that constitutes only one among many criteria. Rather, according to the case law cited (C-570/15, in particular paragraph 21), regard must be had also to the duration of periods of activity (time worked) and to the nature of the employment as defined in the contractual documents (decisive in that case), as well as to the actual

work performed, where appropriate. In this regard, in the present case, simply on the basis of general experience (compare Section 269 of the Code of Civil Procedure), it cannot be said that the activity as a town councillor is only of a supporting nature, that lacks independence, performed, for example, from home or in service of the main activity. The question arises how these criteria are to be weighted in relation to each other in order to reach a final determination on whether the activity of the appellant as a town councillor must be assessed as marginal or not. The appellant's activity as an office-holding councillor, on which she now relies, is not decisive in these proceedings, because, currently, the factual requirements for the period December 2021 up to and including the end of 2023 are relevant, whereas the appellant, according to her own position in the case, was only elected to become an office-holding councillor at the inaugural session of the town council of Hohenems on 29 March 2025 and in this role is expected to receive a so-called functional allowance of EUR 32 355.82 annually (document number 16).

In sum, this gives rise to the first question to be addressed to the EFTA Court.

The Princely Court of Appeal is prima facie correct that, under Regulations No 883/2004 and No 987/2009 decisive here, the uncontested fact that the appellant has been in receipt of an old-age pension in Austria since 1 March 2022 does not appear to be of relevance. Nor is it relevant, contrary to the appellant's position, with regard to the contested period of December 2021 and the years 2022 and 2023, that she has been entitled, according to her

claims, to a pension from the pension fund of the Vorarlberg Bar Association since August 2024. However, according to her own position, also to this extent not contested in detail, the appellant became entitled to an old-age pension in Austria at the age of 60, that is to say, from 18 July 2021.

Pursuant to Article 34(2)(b) of the Old-Age and Survivors' Insurance Act ("I. Compulsorily insured persons"), persons who are affiliated to a foreign public old-age and survivors' insurance are not insured if inclusion in the insurance would entail an unreasonable dual burden for them. Upon a reasoned request, these shall be exempted from the compulsory insurance by the fund.

The application of this provision results in a case such as the appellant's in a certain tension with the provision set out in Article 34(1)(b) of the Old-Age and Survivors' Insurance Act, according to which, natural persons such as the appellant who pursue an economic activity in Liechtenstein are insured in accordance with that act, which, by definition entails corresponding compulsory contributions.

In this connection, the appellant relies on recitals 1, 5, 10, 12, 15 and 17 of Regulation No 883/2004. It follows in particular from recital 15 that it is necessary to subject persons moving within the Community to the social security scheme of only one single Member State in order to avoid overlapping of the applicable provisions of national legislation and the complications which could result therefrom. In that regard, according to recital 12, care should be taken to ensure that the principle of

assimilation of facts or events does not lead to objectively unjustified results or to the overlapping of benefits of the same kind for the same period. Having regard to the ruling of the ECJ in Case C-33/22, paragraph 59 (*Österreichische Datenschutzbehörde*), according to which a regulation is binding in its entirety, these principles appear important for the present case.

In this connection, the notion of the appellant becomes relevant, that for most of the relevant period she has already been in receipt of an old-age pension in Austria, which within the meaning of the principles of the recitals mentioned could conflict with the fact that the appellant should nevertheless pay corresponding social insurance contributions in Liechtenstein. Persons who are in receipt of an old-age pension in Liechtenstein pursuant to Article 55 of the Old-Age and Survivors' Insurance Act or take such early pursuant to Article 73 of the Old-Age and Survivors' Insurance Act are, accordingly, no longer obliged to pay contributions in this connection. If one takes account of the fact that, in accordance with the principles of Regulation No 883/2004, insured persons should be treated as if all the facts relevant in this connection have occurred in one Member State, this could be interpreted to mean that the fact that the appellant is already in receipt of an old-age pension in Austria exempts her from the obligation to pay contributions in Liechtenstein. Finally – as mentioned – it should be avoided that as a result of the principle of applying only one system of law insured persons are placed at a disadvantage.

This results in the second question directed to the EFTA Court.

6. The pending appeal on a point of law had to be stayed, applying by analogy Section 190 of the Code of Civil Procedure. Following receipt of the advisory opinion from the EFTA Court, proceedings will be continued of the court's own motion.

7. The costs of the proceedings in the appeal on a point of law and in the advisory opinion procedure shall be determined in the final national decision.

Princely Supreme Court,
First Senate
Vaduz, 7 November 2025
The President
University Professor (retired) Dr Hubertus Schumacher

The accuracy of this copy is confirmed by

Astrid Wanger