Reports of Cases

OPINION OF ADVOCATE GENERAL
JÄÄSKINEN
delivered on 4 September 2014[1]

Joined Cases C-400/13 and C-408/13

Sophia Marie Nicole Sanders
represented by Marianne Sanders
v
David Verhaegen
(Request for a preliminary ruling from the Amtsgericht Düsseldorf, Germany)
and
Barbara Huber
v
Manfred Huber

(Request for a preliminary ruling from the Amtsgericht Karlsruhe (Germany))

(Judicial cooperation in civil matters — Jurisdiction in matters relating to maintenance obligations — Article 3(b) of Regulation (EC) No 4/2009 — Action against a person who has his habitual residence in another State — Legislation of a Member State conferring exclusive jurisdiction in such a case to the first instance court which has jurisdiction for the seat of the Higher Regional Court in whose area of jurisdiction the habitual residence of the party residing in that Member State is situated — Exclusion of such centralisation of jurisdiction)

I – **Introduction**

1. In these joined cases, the references for a preliminary ruling submitted by the Amtsgericht Düsseldorf (local court, Düsseldorf, Germany) and the Amtsgericht Karlsruhe (local court, Karlsruhe, Germany) concern, in essence, the interpretation of Article 3(a) and (b) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.[2]

2. Article 3(a) and (b), among other provisions of that regulation, govern the jurisdiction *ratione loci* of the relevant courts of the Member States[3] designating, as alternatives, 'the court for the place where the defendant is habitually resident' or 'the court for the place where the creditor is habitually resident', and it is stated that the applicant is free to choose between those heads of jurisdiction.

1 — Original language: French.

2 — OJ 2009 L 7, p. 1, and Corrigenda, OJ 2011 L 311, p. 26 and OJ 2013 L 8, p. 19.

3 — In the light of recitals 46 to 48 in the preamble to Regulation No 4/2009, it should be pointed out that Ireland (see recital 46), the United Kingdom of Great Britain and Northern Ireland (see Commission Decision 2009/451/EC of 8 June 2009 on the intention of the United Kingdom to accept Council Regulation (EC) No 4/2009, OJ 2009 L 149, p. 73), and also the Kingdom of Denmark (see Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ 2009 L 149, p. 80) notified their decision to implement it.

3. These cases have arisen in two disputes relating to claims for maintenance payments between, first, a minor and her father and, second, a married woman and her husband. Those claims were brought, respectively, before the Amtsgericht (local court of first instance) of the German towns in which the maintenance creditors concerned habitually reside. However, each of those courts, applying a provision implementing in German law the cases to which Article 3(a) and (b) of Regulation No 4/2009 refers, declined jurisdiction in favour of the Amtsgericht in the town of the seat of the Oberlandesgericht (Higher Regional Court) in whose area of jurisdiction those applicants reside.

4. The Court is therefore asked to determine whether Article 3 of that regulation, which is directly applicable in the legal orders of the Member States, is to be interpreted as precluding legislation such as that at issue in the main proceedings which, as regards maintenance obligations, has the effect of centralising cross-border jurisdiction in a court which is not the court whose area of ordinary jurisdiction includes the locality in which the party living in Germany habitually resides.

5. Although Regulation No 4/2009 has been applicable since 18 June 2011,[4] the Court has not yet had the opportunity to rule on the interpretation of the provisions it contains.[5] Consequently, it will be necessary inter alia to consider whether it is possible, or even necessary, to take into account the lessons learned from the Court's case-law relating to other instruments applicable between the Member States in the sphere of jurisdiction in civil matters and, if so, to determine to what extent reasoning by analogy is relevant for interpreting Article 3 of Regulation No 4/2009.

6. These matters arise, in particular, in the light of the similarities between the wording of that article and that of the provisions relating to jurisdiction in matters of maintenance obligations contained in the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, ('the Brussels Convention')[6] and in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of decisions in civil and commercial matters[7] ('the Brussels I Regulation'), which follows on from that Convention.[8]

II – **Legal framework**

A – *Regulation No 4/2009*

7. Recital 3 in the preamble to Regulation No 4/2009 expressly refers to the Brussels I Regulation amongst other instruments. Recital 44 states that that regulation amends the Brussels I Regulation 'by replacing the provisions of that Regulation applicable to maintenance obligations'. Recital 15 adds that '[i]n order to preserve the interests of maintenance creditors and to promote the proper administration of justice within the European Union, the rules on jurisdiction as they result from the [Brussels I] Regulation should be adapted ... [inter alia in that] there should no longer be any referral to national law'.

8. Article 3(a) and (b) of Regulation No 4/2009 provides that '[i]n matters relating to maintenance obligations in Member States, jurisdiction shall lie with:

(a) the court for the place where the defendant is habitually resident, or

4 — See Article 76 of the regulation, supplemented by a declaration by the European Community in that regard (declaration available at the following Internet address: http://www.hcch.net/index_en.php?act=status.comment&csid= 1065&disp=type).

5 — In *Nagy*, C-442/13, the Court had been asked by the Oberster Gerichtshof (Austria) for the interpretation of Article 12 of Regulation No 4/2009, concerning *lis pendens*, but that case was removed from the register on 18 June 2014 after the request was withdrawn.

6 — OJ 1972 L 299, p. 32.

7 — OJ 2001 L 12, p. 1.

8 — See, inter alia, judgment in *Refcomp* (C-543/10, EU:C:2013:62, paragraph 18).

(b) the court for the place where the creditor is habitually resident,

...'.

B – *German law*

9. Regulation No 4/2009 was implemented in German law by the Law of 23 May 2011 on the Recovery of Maintenance in Relations with Foreign States (Auslandsunterhaltsgesetz, 'AUG'). [9]

10. In the version applicable at the time of the events, the first sentence of Paragraph 28(1) of that Act, entitled 'Centralisation of jurisdiction; …', provides that '[i]f a party concerned does not have his or her habitual residence in Germany, the court which is to rule exclusively on applications in maintenance cases falling under Article 3(a) and (b) of Regulation (EC) No 4/2009 is the Amtsgericht which has jurisdiction for the seat of the Oberlandesgericht in whose area of jurisdiction the defendant or creditor has his or her habitual residence. ...'

III – **The main proceedings, the questions referred for a preliminary ruling and the procedure before the Court**

A – *Sanders*, C-400/13

11. On 29 May 2013, Sophia Marie Nicole Sanders, a minor represented by her mother, brought a claim for maintenance before the Amtsgericht sitting in Mettmann (Germany), the town in which she is habitually resident, against her father, who resides in Belgium.

12. Having heard the parties, the Amtsgericht Mettmann referred the case, pursuant to Paragraph 28(1) AUG, to the Amtsgericht Düsseldorf, as the local court of first instance in the seat of the Higher Regional Court in whose area of jurisdiction the maintenance creditor had her habitual residence, namely the Oberlandesgericht Düsseldorf.

13. However, the Amtsgericht Düsseldorf called into question its own territorial jurisdiction; it considered that, under Article 3(b) of Regulation No 4/2009, jurisdiction must lie with the court for the place in a Member State where the applicant is habitually resident, in this case the Amtsgericht Mettmann. By decision lodged on 16 July 2013, the Amtsgericht Düsseldorf therefore stayed proceedings and referred the following question to the Court for a preliminary ruling:

'Is Paragraph 28(1) [AUG] contrary to Article 3(a) and (b) of [Regulation No 4/2009]?'

B – *Huber*, C-408/13

14. Mrs Huber brought proceedings before the Amtsgericht sitting in Kehl (Germany), the town in which she is habitually resident, against her husband, Mr Huber, who resides in Barbados, for maintenance payments following their separation.

15. In preliminary proceedings concerning the grant of legal aid, the Amtsgericht Kehl referred the case to the Amtsgericht Karlsruhe (Germany), on the ground that that court alone had jurisdiction, under Paragraph 28(1) AUG, since the applicant was habitually resident within the jurisdiction of the Oberlandesgericht Karlsruhe.

9 — BGBl. 2011 I, p. 898.

16. Since both parties to the main proceedings had expressed doubts as to the compatibility of Paragraph 28(1) AUG with Article 3(a) and (b) of Regulation No 4/2009, the Amtsgericht Karlsruhe, by decision of 18 July 2013, agreed to stay proceedings and to submit the following question to the Court for a preliminary ruling:

'Is it compatible with Article 3(a) and (b) of [Regulation No 4/2009] if it is provided in the first sentence of Paragraph 28(1) [AUG] that, if a party concerned does not have his or her habitual residence in Germany, the court which is to rule exclusively on applications in maintenance cases falling under Article 3(a) and (b) of [Regulation No 4/2009] is the Amtsgericht which has jurisdiction for the seat of the Oberlandesgericht in whose area of jurisdiction the defendant or creditor has his or her habitual residence?'

C – *Procedure before the Court*

17. By order of the President of the Court of 25 July 2013, Cases C-400/13 and C-408/13 were joined for the purposes of the written and oral procedure and of the judgment.

18. Written observations have been submitted by the German Government and by the European Commission. No hearing has been held.

IV – **Analysis**

A – *The content of the references for a preliminary ruling*

19. Owing to the difficulties which may arise from the wording of the references for a preliminary ruling made to the Court in these cases, it is necessary, first of all, to define the limits of its jurisdiction in this context, and then to specify the provisions to be interpreted, in the light both of Article 3 and of other articles in Regulation No 4/2009.

20. In the first place, following the example of the German Government, I suggest that the questions posed by the referring courts be reformulated by the Court, in accordance with its case-law, to the effect that their purpose must be not to interpret the provisions of German law to which those questions refer and to determine whether they infringe EU law, because that does not fall within the scope of the Court's jurisdiction in actions under Article 267 TFEU,[10] but to analyse Article 3 of Regulation No 4/2009 in order to supply the national courts with a ruling on the interpretation of Union law so as to enable them to decide the cases before them.[11]

21. In the second place, it should be pointed out that the two referring courts are asking the Court to rule on the interpretation of both Article 3(a) and Article 3(b) of Regulation No 4/2009, since it is noted that Paragraph 28(1) AUG applies in 'cases falling under Article 3*(a) and (b)* [of that regulation]' (emphasis added).

22. However, the Commission maintains that these references for a preliminary ruling are clearly inadmissible in so far as they relate to Article 3(a) of that regulation, since, in the light of the circumstances of the main proceedings, only Article 3(b) relates to the facts or subject-matter of these cases and is therefore relevant in this instance.

10 — In contrast to the possibility available to us in the context of the procedure laid down in Article 258 TFEU. See, inter alia, judgments in *Stadt Papenburg* (C-226/08, EU:C:2010:10, paragraph 23); *Varzim Sol* (C-25/11, EU:C:2012:94, paragraph 27) and *Križan and Others* (C-416/10, EU:C:2013:8, paragraph 58).

11 — Judgments in *Rhône-Alpes Huiles and Others* (295/82, EU:C:1984:48, paragraph 12); *Sodiprem and Others* (C-37/96 and C-38/96, EU:C:1998:179, paragraph 22) and *ASM Brescia* (C-347/06, EU:C:2008:416, paragraphs 25 and 26).

23. It is true that in the two cases which are pending in the main proceedings, the applicants are maintenance creditors who have chosen to bring proceedings before a court situated in Germany, where they habitually reside, and that that situation falls within the scope of Article 3(b) of Regulation No 4/2009. It is against that background that the referring courts raise the question of which of the German courts, under that provision, is to be regarded as having jurisdiction *ratione loci* as the 'place where the creditor is habitually resident', owing to the doubts sown by a provision of German law.

24. In contrast, the application of Article 3(a) of that regulation, which relates to the jurisdiction of the court for the 'place where the defendant is habitually resident', does not pose any specific problem in connection with the main proceedings. Consequently, in line with the case-law according to which the Court cannot rule on a question or part of a question referred for a preliminary ruling which does not clearly respond to an objective need inherent in the outcome of a case pending before the referring court,[12] I consider that the reply to be given in these cases should be limited to the interpretation of Article 3(b) of Regulation No 4/2009.

25. Nevertheless, in order to carry out that interpretation, it will be necessary to take account of the more general system of which the relevant provision forms part,[13] and in particular to note the fact that Article 3(a) and Article 3(b) are worded identically as regards the expression giving rise to the questions referred[14] and that they are applicable as alternatives in the same situation, namely when the claim for maintenance is the principal claim.[15]

26. In the third place, it may be noted that, in its decision to refer in *Huber* (C-408/13), the Amtsgericht Karlsruhe raises the possibility that the exclusivity of jurisdiction for which Paragraph 28(1) AUG provides may be contrary not only to Article 3 of Regulation No 4/2009 but also to Articles 4 and 5 thereof,[16] without, however, referring to these latter articles in the question it submits for a preliminary ruling. The Commission suggests that the Court interpret the aforementioned Articles 4 and 5, in case the referring court, in addition to the question it has posed, wishes to know whether the centralisation of jurisdiction at issue is also incompatible with those provisions.

27. I consider that, in accordance with its case-law,[17] the Court does not need to give a ruling in that regard, since the Amtsgericht Karlsruhe has limited the question which it has referred to the Court to the definition of the scope of Article 3 of Regulation No 4/2009, whereas Articles 4 and 5 of that regulation are indeed mentioned but are not the subject-matter of that question, as they are not decisive for a ruling on its own jurisdiction according to the assessment made by that court.[18]

12 — See, inter alia, judgments in *Banchero* (C-387/93, EU:C:1995:439, paragraph 18 et seq.) and *Mangold* (C-144/04, EU:C:2005:709, paragraph 36 et seq.).

13 — In that regard, see point 61 et seq. of this Opinion.

14 — Indeed, the expression 'the court for the place where ... is habitually resident' appears in both Article 3(a) and Article 3(b).

15 — And not ancillary to another legal action, such cases being governed by Article 3(c) and (d).

16 — Articles 4 and 5 relate to jurisdiction based, respectively, either on a choice of court agreement, or on the voluntary appearance of the defendant. In *Sanders* (C-400/13), the Amtsgericht Düsseldorf, on the other hand, made no mention of it, given that Article 4(3) provides that it is not to apply to a dispute relating to a maintenance obligation towards a child under the age of 18, which is the situation in the present case.

17 — See, inter alia, judgments in *Affish* (C-183/95, EU:C:1997:373, paragraph 24) and *Kaba* (C-466/00, EU:C:2003:127, paragraph 41).

18 — In order to justify the '[n]eed to make a reference for a preliminary ruling' it states that 'the matter of the compatibility of the first sentence of Article 28(1) AUG with Article 3(a) and (b) of Regulation No 4/2009 is crucial to the outcome of the case. The territorial jurisdiction of the Amtsgericht Kehl or the Amtsgericht Karlsruhe depends on it', and also that the doubts of the parties, who have requested the reference for a preliminary ruling, relate only to that matter.

B – *Lessons to be learned from comparison with other instruments*

28. Since the Court is called upon to interpret Regulation No 4/2009 for the first time in these cases, it may be enquired whether guidelines for consideration or even criteria for providing a reply may be found in related instruments. In that regard, it is necessary, first of all, to examine whether it is relevant to compare the regulation to international agreements or other regulations relating to jurisdiction in civil matters, some of which contain provisions which are very similar to those of Article 3(b) of Regulation No 4/2009 (1). If so, it will then be necessary to determine, in the light of the specific features of this latter piece of legislation, to what extent such a comparison makes it possible to carry out an interpretation by analogy, and in particular to take into account the Court's case-law in relation to those other instruments (2).

1. The possibility of comparing the regulation to other instruments

29. Article 3(b) of Regulation No 4/2009 is worded in terms similar to those of the rules of 'special jurisdiction' relating to maintenance obligations in Article 5(2) of the Brussels Convention [19] and in Article 5(2) of the Brussels I Regulation, which state that jurisdiction in the matter lies with 'the courts of the place where the maintenance creditor is domiciled or habitually resident'. [20]

30. Notwithstanding the fact that maintenance obligations are now excluded from the scope of application of the Brussels I Regulation, [21] the Court's case-law relating to the provisions of the Brussels Convention and those of the aforementioned regulation are, in my view, still relevant for analysing the corresponding provisions of Regulation No 4/2009. Accordingly, although such an approach will have to be somewhat qualified, it seems to me expedient for the terms which are the subject-matter of these references for a preliminary ruling to be interpreted in the light of that case-law, for the following reasons.

31. First, the significant links which exist between the Brussels I Regulation and Regulation No 4/2009 are obvious from a reading of the latter, since its preamble refers to the Brussels I Regulation several times [22] and Article 68(1) expressly states that Regulation No 4/2009 replaces the provisions of the Brussels I Regulation applicable to matters relating to maintenance obligations.

32. Second, as regards more specifically the rules of jurisdiction in Article 3 of Regulation No 4/2009, the genesis of that provision confirms the existence of such links. Indeed, the Commission's initial Proposal emphasises the need to improve the possibilities already provided to maintenance creditors by the Brussels I Regulation. [23] The Communication containing a commentary on that Proposal [24]

19 — As amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland.

20 — The wording of Article 3(b) of Regulation No 4/2009 differs only in that the alternative link to the domicile of the creditor no longer appears (on the reasons for that change, see footnote 27 of this Opinion) and, in the French version, in that the term 'tribunal' has been replaced by the more generic term 'jurisdiction' (see also, in particular, the Italian and Romanian versions).

21 — That regulation replaced the Brussels Convention, before being amended itself by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1), recital 10 and Article 1(2)(e) of which draw the appropriate conclusions from the adoption of the specific legislation constituted by Regulation No 4/2009.

22 — See, inter alia, recitals 3, 15 and 44.

23 — See recital 10 and Paragraph 1.2.1 of the Explanatory Memorandum of the Proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations presented by the Commission on 15 December 2005 (COM(2005) 649 final).

24 — Communication from the Commission to the Council and the European Parliament of 12 May 2006 (COM(2006) 206 final).

confirms that Article 3 reproduces in essence the corresponding provisions of the Brussels I Regulation,[25] to which, however, certain amendments have been made in order to remove ambiguities,[26] to adapt those provisions to the particular features of family law[27] and to extend their scope of application.[28]

33. In the light of these considerations, I believe it may be accepted as a premise that the provisions of Article 3 are to be interpreted in accordance with the case-law concerning the provisions of the Brussels Convention and of the Brussels I Regulation in so far as they are equivalent,[29] with certain reservations, however, relating to the specific aims of Regulation No 4/2009 which will be set out below.[30]

34. For the sake of completeness, it is necessary to examine whether it is relevant to make a comparison with instruments, other than the aforementioned Convention and regulation, which are also applicable in the sphere of jurisdiction in civil matters, and more particularly in family matters.[31]

35. With regard to the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance,[32] recital 8 in the preamble to Regulation No 4/2009 states that it must be taken into account in the application of the regulation.[33] That Convention does not contain rules of direct jurisdiction,[34] but the related preparatory documents provide useful guidance for giving a ruling in this case, in that they state that the provisions for jurisdiction linked to the creditor's place of residence or domicile '[are] based on a wish to protect the (usually) weaker party (*i.e.* the creditor) by offering him/her a convenient forum in which to bring his/her claim, *i.e.* on home ground'.[35]

25 — Changes to Article 3 were developed during the *travaux préparatoires* of Regulation No 4/2009 but, as regards Paragraphs (a) and (b), their original version was adopted without alteration, and it was stated that the opinion of the European Economic and Social Committee seeking to invert Paragraphs (a) and (b) so that the creditor's habitual residence became the first criterion of jurisdiction (OJ 2006 C 185, p. 35, especially 4.1) was not followed.

26 — That Communication points out the addition of an 'important detail at item d)'.

27 — Given that the Brussels I Regulation applied to all civil and commercial matters, the Communication states, with regard to the aforementioned Article 3, that '[the future Regulation No 4/2009] abandons the concept of domicile and now refers only to habitual residence; this is the more appropriate concept in instruments applicable to family law'.

28 — That Communication states that the rules of jurisdiction laid down in the aforementioned Article 3 'appl[y] wherever the defendant is habitually resident'.

29 — See, to that effect, Béraudo, J.-P., 'Fascicule 3022', *JurisClasseur Europe Traité*, LexisNexis, Paris, 2012, paragraph 9; Gascón Inchausti, F., 'Le recouvrement des aliments en Europe', in *La justice civile européenne en marche*, edited by M. Douchy-Oudot, Dalloz, Paris, 2012, p. 147 et seq; and Devers, A., 'Les practiciens et le droit international privé européen de la famille', *Europe*, 2013, No 11, Study 9, paragraphs 9 and 19.

30 — See point 37 et seq. of this Opinion.

31 — Bearing in mind that Regulation No 4/2009 is within that sphere, even though it also contains a financial aspect (see recital 11 and Article 1 of the regulation, and Paragraph 3.1 of Proposal for a Regulation (COM(2005) 649 final)).

32 — The text of that Convention and the corresponding Explanatory Report, prepared by A. Borrás and J. Degeling, are available at the Internet address http://www.hcch.net/index_en.php?act=conventions.text&cid= 131. The European Union itself signed and approved the Convention, given that the Member States are bound by the effect of that approval (see Council Decision 2011/220/EU of 31 March 2011, OJ 2011 L 93, p. 9, and Council Decision 2011/432/EU of 9 June 2011, OJ L 192, p. 39, especially recital 4 in the preamble to the latter decision).

33 — See also recital 17 and Article 8 of Regulation No 4/2009, since the *travaux préparatoires* of the regulation were carried out at the same time as the negotiation for the Convention, in an effort to 'search for possible synergies' between those two legislative frameworks (see Paragraph 1.1.2 of the Explanatory Memorandum of the Proposal for a Regulation (COM(2005) 649 final)).

34 — There was a lack of consensus at the end of a discussion of which the Explanatory Report mentioned in footnote 32 of this Opinion gives an account (see pp. 58 to 62).

35 — See p. 44 et seq. of the report prepared by W. Duncan, 'Towards a New Global Instrument on the International Recovery of Child Support and other Forms of Family Maintenance', Preliminary Document No 3 of April 2003 (http://www.hcch.net/index_en.php?act=publications.details&pid= 4108&dtid= 35), which refers in that regard to Article 5(2) of the Brussels Convention.

36. As regards the regulation usually called the 'Brussels IIa Regulation',[36] it is true that maintenance obligations are excluded from its scope of application,[37] owing to the existence of special provisions, contained at the time of its adoption in the Brussels I Regulation and now in Regulation No 4/2009. However, it may be observed, by way of comparison, that the rules of jurisdiction which it states have in common that they designate 'the courts [of a] Member State',[38] not 'the court for the place where', as Article 3(b) of Regulation No 4/2009 does.[39]

2. *Scope of the comparison with other instruments*

37. I should point out at the outset that although, in my view, the rules of jurisdiction laid down by Regulation No 4/2009 are to be interpreted in the light of the Court's case-law relating to the corresponding provisions of the Brussels Convention and the Brussels I Regulation, the principles deriving from that case-law cannot be applied mechanically.

38. Indeed, such an interpretation by analogy is limited owing to the specific subject-matter of Regulation No 4/2009, which rendered it necessary to make adjustments in relation to the rules of jurisdiction in the Brussels I Regulation,[40] even though, contrary to what may have been maintained in respect of the Brussels IIa Regulation,[41] Regulation No 4/2009 concerns not only non-property matters but also property matters. I note that the scope of that hybrid instrument was conceived more widely than the scope of the Brussels I Regulation, from both a substantive[42] and a geographical[43] point of view.

39. In my view, there need be few doubts concerning the application by analogy in the present case of the rule, consistently applied by the Court in regard to the interpretation of the provisions of the Brussels Convention and those of the Brussels I Regulation,[44] that terms such as those used in Regulation No 4/2009 are to be given a definition which is autonomous, that is to say, unconnected with the meaning prevailing in one or other of the Member States, in order to ensure, as far as possible, the equality and uniformity of the rights and obligations arising from that instrument for the Member States and the persons concerned. In that regard, recital 11 in the preamble to Regulation No 4/2009 states that the expression 'maintenance obligation' within the meaning of that regulation 'should be interpreted autonomously',[45] which enshrines the method followed by the Court in its

36 — Council Regulation No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1), 'the Brussels IIa Regulation'.

37 — See recital 11 and Article 1(3) of the Brussels IIa Regulation.

38 — See Articles 3 and 9 to 13 of the Brussels IIa Regulation.

39 — The specific character of this latter expression will require further explanation (see point 54 et seq. of this Opinion).

40 — See recital 15 in the preamble to Regulation No 4/2009 and Point 32 of this Opinion.

41 — See the Opinion of Advocate General Kokott in *A* (C-523/07, EU:C:2009:39, points 63 and 64); the Opinion of Advocate General Sharpston in *Purrucker* (C-256/09, EU:C:2010:296, point 126) and the position I adopted in *Purrucker* (C-296/10, EU:C:2010:578, point 95).

42 — In particular, the term 'court' within the meaning of Regulation No 4/2009 includes 'administrative authorities of the Member States with competence in matters relating to maintenance obligations' provided that they offer certain guarantees (see recital 12 in the preamble to and Article 2(2) of that regulation.

43 — Regulation No 4/2009 establishes rules of jurisdiction which extend to disputes which are not restricted to the territories of the Member States, for example when the defendant's habitual residence is in a third State, as in *Huber* (C-408/13) (see, in particular, recital 15). However, in spite of that universal aim, it governs the jurisdiction only of the courts of the Member States.

44 — See, inter alia, my Opinion in *Weber* (C-438/12, EU:C:2014:43, footnote 48) and the judgment in *Weber* (C-438/12, EU:C:2014:212, paragraph 40).

45 — Similarly, recital 11 in the preamble to the Brussels I Regulation states that '[t]he domicile of a legal person must be *defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction*' (emphasis added).

case-law relating to Article 5(2) of the Brussels Convention,[46] which also expressly accepted the autonomy of the term 'maintenance creditor'.[47] Therefore, I consider that, for the purposes of replying to the questions posed in the present cases, it is necessary to refer to the scheme and objectives of the regulation concerned.[48]

40. Moreover, although the preamble to Regulation No 4/2009 does not expressly say so, it seems to me undeniable that the general aims stated in recital 15 in the preamble to the Brussels I Regulation[49] also form the basis for the rules of jurisdiction laid down by Regulation No 4/2009.[50] However, it is principally the specific aims of the latter, namely 'to preserve the interests of maintenance creditors' and 'to promote the proper administration of justice within the European Union',[51] which must guide the Court's interpretation in the present case. It must not be forgotten that the aim of increasing protection for the lawful interests of all maintenance creditors[52] was actually one of the major reasons for which the European legislature decided to remove maintenance obligations from the scope of application of the Brussels I Regulation, which related to financial obligations in general, and to adopt the specific instrument constituted by Regulation No 4/2009.[53] That aim is apparent from the provisions of Regulation No 4/2009.[54]

41. I therefore consider that, in the present cases, it is necessary to take into account as far as possible the Court's previous case-law concerning the interpretation of the equivalent provisions of the Brussels Convention and the Brussels I Regulation, but with the adaptations which may be required by the particular features of Regulation No 4/2009.

C – *Interpretation of the expression 'the court for the place where the creditor is habitually resident' within the meaning of Article 3(b) of Regulation No 4/2009*

42. The questions referred for a preliminary ruling by the Amtsgericht Düsseldorf and the Amtsgericht Karlsruhe are essentially the same. In the light of the clarifications provided above,[55] they must be understood as seeking to determine whether Article 3(b) of Regulation No 4/2009 is to be interpreted, in my view autonomously,[56] as meaning that it is permissible for legislation of a Member State, such as that at issue in the main proceedings,[57] to provide, for cross-border disputes, for a regional

46 — See judgments in *Cavel* (120/79, EU:C:1980:70, paragraph 6 et seq.), and *van den Boogaard* (C-220/95, EU:C:1997:91, paragraph 22 et seq).

47 — See judgments in *Farrell* (C-295/95, EU:C:1997:168, paragraph 12 et seq.), and *Blijdenstein* (C-433/01, EU:C:2004:21, paragraph 24 et seq.).

48 — With regard to the Brussels I Regulation see, inter alia, *Cartier parfums-lunettes and Axa Corporate Solutions assurances* (C-1/13, EU:C:2014:109, paragraph 32), and *Coty Germany* (C-360/12, EU:C:2014:1318, paragraph 43).

49 — According to recital 15 in the preamble to the Brussels I Regulation, '[i]n the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States'. That rule is reiterated in recital 21 in the preamble to Regulation No 1215/2012 which recasts the aforementioned regulation.

50 — See also, from the point of view of the enforcement and recognition of judgments, Articles 21(2) and 24(c) of Regulation No 4/2009.

51 — See recital 15 in the preamble to Regulation No 4/2009.

52 — All types of maintenance creditors are covered, whatever position they occupy in the family relationships or other relationships referred to in Article 1(1) of the regulation, although, in practice, the provisions of the regulation are more likely to protect children owing to the fact that the majority of maintenance claims involve them (see, by analogy, Proposal for a Council Decision on the conclusion by the European Community of the Protocol on the Law Applicable to Maintenance Obligations (COM(2009) 81 final, point 1)).

53 — See, inter alia, Paragraph 1.2 of the Proposal for a Regulation (COM(2005) 649 final).

54 — See, inter alia, 5, 9, 11, 15, 17, 26 and 27 and also Article 8.

55 — Point 19 et seq. of this Opinion.

56 — For the reasons stated in point 39 of this Opinion.

57 — I note that Paragraph 28(1) AUG provides that, when one of the parties to the proceedings — irrespective of whether it is the maintenance creditor or the defendant — resides abroad, jurisdiction lies exclusively with the Amtsgericht which has jurisdiction for the seat of the Oberlandesgericht within whose area of jurisdiction the party residing in Germany is habitually resident, to the detriment, in some circumstances, of the Amtsgericht to which the party concerned ought in principle to have recourse as the court in the place where he or she is resident.

centralisation of jurisdiction in a first instance court which is not necessarily the same as the court of the same level within whose area of jurisdiction the creditor is habitually resident but whose territorial jurisdiction is determined according to the seat of the appeal court within whose area of jurisdiction the creditor is habitually resident.

43. In their observations, the German Government and the Commission both propose that the reply should be that EU law does not preclude a rule of jurisdiction such as that deriving from the German provision concerned. In contrast, both in *Sanders* (C-400/13) [58] and in *Huber* (C-408/13), [59] the referring courts have expressed a contrary point of view.

44. This latter approach seems to be the better founded for reasons relating to the purpose of Article 3(b) of Regulation No 4/2009 (1), to the wording of that provision and the very nature of the instrument in which it is included (2), and to the scheme of which it is part (3). All these considerations lead, in my view, to a conclusion which cannot reasonably be countered by the arguments put forward in support of the German rule at issue in the main proceedings (4).

1. *Purposive interpretation*

45. The German Government and the Commission concede that Article 3(b) of Regulation No 4/2009 is intended to govern both the cross-border jurisdiction of the courts of the Member States and territorial jurisdiction within each Member State. [60]

46. As I have already pointed out, [61] one of the principal aims of Regulation No 4/2009, applied in Article 3 thereof, is to protect the maintenance creditor, who is considered to be the more vulnerable party in the relationship arising from a maintenance obligation and in the proceedings which may follow. [62] That point was also emphasised by the Court in its case-law relating to Article 5(2) of the Brussels Convention. [63]

47. In that regard, recitals 5 and 9 in the preamble to Regulation No 4/2009 make the point that one of the purposes of the adoption of the regulation was to simplify for creditors, even more than the Brussels Convention and the Brussels I Regulation permitted, the means of obtaining and recovering maintenance, inter alia by abolishing the exequatur procedure for decisions in that sphere provided that they have been given in accordance with certain minimum procedural safeguards stated in that regulation. [64]

58 — The Amtsgericht Düsseldorf maintains that the centralisation of jurisdiction provided for by Paragraph 28(1) AUG has the effect of depriving applicants residing in Germany of the advantage conferred on them by Article 3 of Regulation No 4/2009 of being able to bring proceedings before the court which has jurisdiction where they are habitually resident. Moreover, it disputes the view which has been expressed in some German academic writing and case-law that Paragraph 28(1) AUG is a purely domestic measure of judicial organisation.

59 — According to the Amtsgericht Karlsruhe, Article 3(a) and (b) of Regulation No 4/2009 governs a court's international and local jurisdiction to rule on a cross-border dispute to which that regulation applies. Under the principle of primacy, Member States are prohibited from adopting rules of jurisdiction which disregard it, as here, so that the creditor loses the right to bring proceedings before his or her 'ordinary forum', namely that of the town in which he or she habitually resides.

60 — However, the German Government maintains that that provision does not directly state which specific court has jurisdiction to give a ruling and its wording allows the Member States some discretion in determining the area of jurisdiction of the court which is relevant according to the place where the creditor is habitually resident.

61 — See point 40 of this Opinion.

62 — Although that regulation also seeks to ensure a balance between the maintenance creditors' and debtors' rights; in particular, debtors are always to have the right to a fair trial (see Paragraph 1.2.3 of the Proposal for a Regulation (COM(2005) 649 final)).

63 — *Farrell* (EU:C:1997:168, paragraph 19) states that '*the derogation provided for in Article 5(2) is intended to offer the maintenance applicant, who is regarded as the weaker party in such proceedings, an alternative basis of jurisdiction. In adopting that approach, the drafters of the Convention considered that that specific objective had to prevail over the objective of the rule contained in the first paragraph of Article 2, which is to protect the defendant as the party who, being the person sued, is generally in a weaker position*' (emphasis added). That criterion of 'inferior position' was repeated in *Blijdenstein* (EU:C:2004:21, paragraph 29 et seq).

64 — See Articles 22 to 25 of Regulation No 4/2009.

48. According to the German Government and the Commission, the German legislation at issue in the main proceedings is not contrary to Article 3(b) of Regulation No 4/2009 and, in particular, the function of protecting creditors which they recognise as pertaining to the provision.

49. I think that is debatable, above all having regard to the additional objective of that provision, namely to ensure proximity between the creditor and the court seized. That dual aim, of protection and proximity, already formed the basis for the rule of jurisdiction laid down in Article 5(2) of the Brussels Convention,[65] of which Article 3(b) of Regulation No 4/2009 is clearly the equivalent, and it has been strengthened by the latter provision.[66] Indeed, according to the Explanatory Memorandum of the Commission's Proposal for the adoption of that regulation, '[t]he rules on jurisdiction laid down in the Brussels I Regulation *already allow the maintenance creditor to bring an action before an authority close to him or her*, but the situation can *still be improved*'.[67] This specifically entails ensuring that the creditor may bring proceedings without too much financial difficulty as a result of journeys, but also that he may assert his rights before a court which is the best placed to be aware of particular local economic circumstances, in order to establish the creditor's resources and needs and, accordingly, the maintenance debtor's ability to contribute to them.[68]

50. I consider that the harmonised system of rules of jurisdiction established by Regulation No 4/2009 and the advantages deriving from it would risk losing their effectiveness, particularly from the point of view of legal certainty, if the Court were to accept, in the present case, an interpretation of Article 3(b) of that regulation which permits the Member States to introduce at national level rules of jurisdiction for cross-border disputes, such as that at issue in the main proceedings, which confers jurisdiction only on the court of first instance of the seat of the Higher Regional Court within whose area of jurisdiction the creditor has his or her habitual residence even if that residence is not situated within the area of ordinary jurisdiction of that local court.

51. In circumstances such as those of the disputes in the main proceedings, the creditor does indeed reside within the area of jurisdiction of the Higher Regional Court concerned, but not in the area of jurisdiction of the court of first instance to which the German provision at issue grants territorial jurisdiction. In fact, there is no doubt that, in the present case, the Amtsgericht Mettmann and the Amtsgericht Kehl are the courts for the places where the maintenance creditors have their respective habitual residence. In other words, the first sentence of Paragraph 28(1) AUG does not merely give a national definition of the 'court for the place where the creditor is habitually resident', within the meaning of Article 3(b) of Regulation No 4/2009, but constitutes rather a provision which allocates jurisdiction to the courts of first instance according to the location of that residence within the area of jurisdiction of appeal courts which do not themselves have jurisdiction to rule at first instance in a dispute relating to a maintenance obligation.

52. Another, more general objective of the harmonised system laid down by Regulation No 4/2009, following that established by the Brussels Convention and then by the Brussels I Regulation, is to avoid as far as possible referral to the rules of jurisdiction under national law.[69] As pointed out in the Reports on the Brussels Convention, the special rules of jurisdiction which it contains were designed to enable the jurisdiction of the courts of the States concerned to be established without the need to refer

65 — See the Report of Mr P. Jenard on the Brussels Convention (OJ 1979 C 59, p. 1, especially p. 22 and p. 24 et seq.) ('the Jenard Report'), and Paragraph 104 of Preliminary Document No 3 on the Hague Convention, mentioned in footnote 5 of this opinion.

66 — Gallant, E., 'Le nouveau droit international privé alimentaire de l'Union: du sur-mesure pour les plaideurs', *Europe*, 2012, No 2, study 2, paragraph 3 et seq.

67 — See Paragraph 1.2.1 of Proposal for a Regulation (COM(2005) 649 final) (emphasis added).

68 — Moreover, the Commission concedes that the allocation of territorial jurisdiction made by Article 3(b) of Regulation No 4/2009 'seeks essentially to protect particularly vulnerable parties by ensuring that they have access to an effective remedy' and assumes that 'the local court, owing to its proximity to the facts, is best placed to carry out an appropriate assessment of the subject-matter of the dispute'.

69 — Recital 15 in the preamble to Regulation No 4/2009 states that 'there should no longer be any referral to national law'.

to the law of the forum.[70] That rejection of national or exorbitant rules of jurisdiction also facilitates the recognition of decisions in all the Member States, which is the cornerstone of the European system of judicial cooperation in civil matters. One of those special rules of jurisdiction is Article 5(2) of that Convention, which is applicable to maintenance obligations, from which Article 3(b) of Regulation No 4/2009 is derived.

53. That exclusion of rules of jurisdiction contained in national law is confirmed by the wording of Article 3(b) of Regulation No 4/2009, particularly if that wording is compared with the formulation of other similar provisions.

2. *Literal interpretation*

54. I wish to say at the outset that I think it is unreasonable to consider that, as the German Government suggests, if the approach advocated by the referring courts were adopted, it would lead to the expression 'place where' in Article 3(b) of Regulation No 4/2009 being interpreted literally, so that the creditor would have to be able to bring proceedings in the town in which he resides and a court would therefore have to be available 'at each imaginable geographical point or in each municipality of the Member State'.

55. It is unquestionably customary for the judicial organisation of the Member States to be based on the principle that every court has a geographical area of jurisdiction corresponding to a part of the national territory throughout which it exercises its powers, which may include not one but several localities, towns or municipalities.[71]

56. In my view, that expression should rather be understood to mean that the rule of jurisdiction at issue designates the court within whose area of ordinary jurisdiction the creditor's habitual residence is situated, without any implementing measure in national law being needed or even envisaged.[72]

57. In that regard, I would point out that, under Article 288 TFEU, regulations of Union law are of general application, binding in their entirety and directly applicable in all Member States.[73] According to settled case-law, any national measure designed to incorporate or transpose a regulation into domestic law is precluded, if the Member States do not have legislative powers. Only if the regulation itself refers to national provisions implementing it, or if, to ensure its application, it is necessary to adopt more detailed provisions at national level, are Member States required to supplement it by national measures.[74] In my view, Paragraph 28(1) AUG goes beyond what is allowed to the national legislature, since the rule of jurisdiction laid down in Article 3(b) of Regulation No 4/2009, which is directly applicable, does not need any specific implementation at national level.

70 — The Report of Professor Schlosser on the Convention of 9 October 1978 on the Association of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice (OJ 1979 C 59, p. 71 et seq., especially Paragraph 70) states that, in those rules, '[w]here the [Brussels] Convention itself lays down both the international and local jurisdiction of the courts, as for example in Articles 5 and 6, jurisdiction is given to only one of the many courts with equal status in a State'. See also p. 22 of the aforementioned Jenard Report.

71 — Given that the geographical area of jurisdiction of a court is usually defined in relation to the divisions or subdivisions of the territorial administrative bodies.

72 — The geographical area of a court's jurisdiction may vary according to the nature of the disputes. Accordingly, certain fields such as maritime law or intellectual property may be excluded from the jurisdiction of the lower courts in favour of the jurisdiction of a higher court. This type of division of substantive powers leading to a centralisation of territorial jurisdiction is, however, entirely different from the present situation, since the German provision at issue divides territorial jurisdiction *for disputes having similar subject-matter*, namely those relating to maintenance obligations, differently, depending on whether or not there are foreign aspects to the case.

73 — The fact that the cross-border rules of jurisdiction applicable in the Member States in matters of maintenance obligations have been transferred from an intergovernmental instrument, such as the Brussels Convention, to an instrument of EU law, such as the Brussels I Regulation or Regulation No 4/2009, has not radically altered their content but the legal nature of the provisions concerned has become fundamentally different at national level.

74 — See, inter alia, judgments in *Norddeutsches Vieh- und Fleischkontor* (39/70, EU:C:1971:16, paragraph 4); *Commission* v *Italy* (39/72, EU:C:1973:13, paragraph 3 et seq.), and *Variola* (34/73, EU:C:1973:101, paragraph 3).

58. Indeed, Article 3(b) of Regulation No 4/2009 uses particular wording in that, by referring to 'the courts of the place where', it lays down a special rule of jurisdiction which makes it possible to identify a court without having to make a detour via the domestic law of the Member States.[75] As the Commission acknowledges, that provision differs from those which refer not to a single court but, on the contrary, to all the courts of a Member State, such as Article 6 of that regulation[76] or Article 2(1) of the Brussels I Regulation.[77] Moreover, the drafters of Regulation No 4/2009 opted, in Article 3(a) and (b), for an expression, 'the place where', which is significantly different from that of 'the Member State' in which one of the parties is habitually resident, which was used, for example, in Article 4(a).

59. In my view, that particular wording should lead the Court to eschew the application by analogy in the present case of the position it adopted in *Apostolides*,[78] according to which the determination of the courts having jurisdiction within the meaning of Article 22 of the Brussels I Regulation does not restrict the right of each Member State to determine its own judicial organisation and to allocate judicial powers within its territory.[79] In fact, Article 22(1), which was interpreted in that judgment, refers to the '*courts of the Member State* in which the property is situated', whereas Article 3(b) of Regulation No 4/2009 refers to '*the court for the place where* the creditor is habitually resident' (emphasis added). In my view, the difference in wording allows for a different, or even conflicting interpretation of those two provisions.

60. In spite of its particular wording, Article 3(b) of Regulation No 4/2009 is not, however, innovative, since an equivalent expression is found in a series of provisions of the Brussels Convention and the Brussels I Regulation,[80] for which the Court has never considered, to my knowledge, that Member States have the right to change the scope of the regulation by means of rules of jurisdiction deriving from national law.[81] There is therefore no need, in my view, to allow it in the context of the present cases.

3. *Systematic interpretation*

61. In accordance with the approach adopted by the Court with regard, inter alia, to other instruments relating to judicial cooperation in civil matters,[82] Article 3(b) of Regulation No 4/2009 must be interpreted taking into account the provisions which surround it in that regulation, because the rule of jurisdiction which it lays down is not isolated but forms part of a body of rules which are supplementary to each other.

75 — See, inter alia, Nord, N., 'Présentation du règlement "obligations alimentaires"', *AJ Famille*, 2011, p. 238; Ferrand, F., 'The Council Regulation (EC) No 4/2009 […]', in *Latest Developments in EU Private International Law*, edited by B. Campunzano Díaz, and Others, Intersentia, Cambridge, 2011, p. 92; and Fongaro, E., 'Obligations alimentaires', *Répertoire de droit communautaire*, Dalloz, Paris, 2013, paragraph 19.

76 — Article 6 designates, in respect of 'subsidiary jurisdiction', '*the courts of the Member State* of the common nationality of the parties' (emphasis added).

77 — With regard to Article 2 of the Brussels Convention, the aforementioned Jenard Report states that '[a] defendant domiciled in a Contracting State need not necessarily be sued in the court for the place where he is domiciled or has his seat. He may be sued in any court of the State where he is domiciled which has jurisdiction under the law of that State, ... the Convention determines whether the courts of the State in question have jurisdiction, and the law of that State in turn determines whether a particular court in that State has jurisdiction' (see p. 18). The analysis must be reversed in accordance with a special rule of jurisdiction such as that laid down in Article 3(b) of Regulation No 4/2009.

78 — (C-420/07, EU:C:2009:271, paragraphs 48 and 50).

79 — In that regard, the Court pointed out that Article 22, which 'contains a mandatory and exhaustive list of the grounds of exclusive international jurisdiction of the Member States', 'merely designates the Member State whose courts have jurisdiction *ratione materiae*' (paragraph 48 of that judgment).

80 — In the Brussels I Regulation, in addition to Article 5(2) relating to maintenance obligations, many other provisions refer to 'the courts for the place where' See, inter alia, Article 5(1)(a), in matters relating to a contract; Article 5(3), in matters relating to tort, *delict* or *quasi-delict*; Articles 9(1)(b) and 10, in matters relating to insurance, and Article 19(1) and (2), in matters relating to individual contracts of employment. See also judgment in *Color Drack* (C-386/05, EU:C:2007:262, paragraph 30).

81 — The Jenard Report states that the insertion of special rules of jurisdiction in the Brussels Convention, such as that applicable in matters of maintenance obligations, made it possible to 'designat[e] the competent court without referring to the rules of jurisdiction in force in the State where such a court might be situated' and 'to facilitate implementation of the Convention' by making sure that the Member States which ratified it did not takes measures to adapt their internal legislation (see p. 22).

82 — See, inter alia, the case-law cited above in footnote 48.

62. First of all, it may be noted that Article 3 of that regulation sets out four bases of jurisdiction which apply as alternatives, with no order of precedence, unlike the relationship between the general rule of jurisdiction and the special rules of jurisdiction in the Brussels Convention and the Brussels I Regulation.[83] Moreover, the option given to the applicant in particular by Article 3(a) and (b) appears to be more neutral than in those other two instruments, since it is immaterial whether it is the maintenance creditor or the maintenance debtor who exercises that option, although, in practice, Regulation No 4/2009 is less favourable to the maintenance debtor than to the creditor.[84]

63. I consider that the particular structure of Article 3 of Regulation No 4/2009 provides extensive guidance for replying to the questions posed in these cases. In that regard, it should be pointed out that paragraphs (a) and (b) of Article 3 both govern situations in which the application relating to maintenance obligations is brought as the principal claim. On the other hand, paragraphs (c) and (d) of Article 3 apply in cases in which the application is not isolated but 'accessory' to another action relating either to the status of a person or to parental responsibility, respectively. It is only in these latter cases that express provision is made for referral to national law in order to determine which court has jurisdiction.[85] Conversely, no space has been left for national rules in connection with Article 3(a) and (b); this, in my view, was intentional.

64. This view is supported in the light of a comparison with other provisions in Regulation No 4/2009. In particular, Article 71(1) provides that the Member States are to communicate information concerning, inter alia, the names of the courts with competence to deal with applications for a declaration of enforceability in accordance with Article 27(1) of that regulation.[86] It is for that purpose alone that the Federal Republic of Germany, like the other Member States, was able to decide that, with regard to its own territory, '[d]ecisions on [such] an application ... are taken by the family division of the local court (*Amtsgericht*) in the locality where a Higher Regional Court (*Oberlandesgericht*), in whose district the person against whom the application is made is habitually resident or in whose district enforcement is sought, is situated (centralisation of jurisdiction) ...'.[87] In contrast, Article 3(b) of that regulation does not offer a comparable possibility.

65. It is apparent from this analysis carried out from the point of view of the general scheme of the regulation concerned that, by the way in which it formulated the latter provision, the Union legislature intentionally restricted the latitude of the Member States to determine which national courts have jurisdiction in matters of maintenance obligations.

4. *Reasons for centralisation of jurisdiction*

66. In order to defend the German rule at issue here, the German Government and the Commission develop a line of argument which, in my view, is not persuasive.

83 — Article 2 of the Brussels Convention and Article 2 of the Brussels I Regulation lay down the principle of the jurisdiction of the courts of the defendant's domicile, whereas Article 5(2) of those two instruments provide derogating rules of jurisdiction in matters of maintenance obligations.

84 — If the debtor is the applicant, he or she can bring proceedings only before the court for the place where the defendant-creditor is habitually resident, since the bases of jurisdiction laid down in Article 3(a) and (b) merge in that situation, which is statistically more unusual. With regard to the inequality between creditors and debtors, see Ancel, B., and Muir Watt, H., 'Aliments sans frontières, Le règlement CE No 4/2009 […]', *Revue critique de droit international privé*, 2010, p. 457 et seq., especially paragraph 9.

85 — Article 3(c) and (d) of Regulation No 4/2009 use the criterion of '*the court which, according to its own law, has jurisdiction* to entertain proceedings concerning the status of a person [or, respectively] parental responsibility ...' (emphasis added) A similar referral system was already included both in Article 5(2) *in fine* of the Brussels Convention (amended to that effect in 1978) and in Article 5(2) *in fine* of the Brussels I Regulation.

86 — Similar information is also required for the appeals brought against decisions given on those applications (see paragraph 32(2)).

87 — See the consolidated version of the 'Informations communicated by Member States in accordance with Article 71 of [Regulation No 4/2009]', especially p. 13 (http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_en_4.pdf).

67. According to them and to documents in the case, it appears that the German legislature considered that the centralisation of jurisdiction provided for in Article 28 AUG in matters of international maintenance obligations would have a positive impact on the organisation of justice, because it would make it possible to have a specialised court, which therefore has greater expertise in this kind of proceedings, operating in each region of Germany.

68. In *Huber* (C-408/13), the referring court states that it considers that Paragraph 28(1) AUG contains in essence rules of jurisdiction *ratione loci*, even though the German legislature associated that provision with the organisation and simplification of the judicial procedure. Accordingly, under the guise of such procedural advantages which, moreover, that court doubts are genuine,[88] the legislation at issue might affect the rules of cross-border jurisdiction laid down by EU law.

69. It is true that promoting the proper administration of justice, inter alia by grouping together the most complex cases in the same court, corresponds to one of the objectives of Regulation No 4/2009 mentioned in recital 15 in the preamble thereto. However, that objective must be understood not only as the most rationalised judicial organisation possible but also from the point of view of the interests of the litigant, whether applicant or defendant, in gaining, inter alia, easy access to justice and foreseeability of jurisdiction, owing to a close link between the court and the dispute.[89]

70. In that regard, some of the Court's judgments relating to national rules of jurisdiction adopted by a Member state may be cited, but I believe there is serious doubt as to whether that case-law may be applied by analogy to this sphere of civil judicial cooperation between the Member States.

71. The Court has already held that, in the absence of EU rules governing the matter, it is for the domestic legal system of each Member State to define the number of judicial instances or to regulate the detailed procedural rules and to designate the courts having jurisdiction over internal legal remedies, since such rules which pursue a general interest in the proper administration of justice must prevail over individual interests, subject however to observance of the principles of equivalence and effectiveness.[90]

72. Under those principles, the adoption by a Member State of such rules of procedure or jurisdiction is acceptable only if actions intended to safeguard the rights of litigants under EU law are not brought in circumstances which are less favourable than those designed to protect rights under national law, and that those rules do not cause litigants procedural problems which make it excessively difficult to exercise rights deriving from EU law.[91]

88 — The Amtsgericht Karlsruhe maintains that, contrary to the objective of simplification referred to by Regulation No 4/2009, the centralisation of jurisdiction provided for by Paragraph 28 complicates the international recovery of maintenance debts because the court afforded jurisdiction by that provision might be far away from the creditor's habitual residence and not be the court which knows most about the local economic situation.

89 — See, by analogy, recital 12 in the preamble to the Brussels I Regulation, and the judgment in *Kainz* (C-45/13, EU:C:2014:7, paragraph 27 et seq).

90 — See, regarding matters of competition, the common agricultural policy and consumer protection, respectively, judgment in *Manfredi and Others* (C-295/04 to C-298/04, EU:C:2006:461, paragraph 62) and the Opinion delivered by Advocate General Geelhoed in those joined cases (C-295/04 to C-298/04, EU:C:2006:67, point 49 et seq.); judgments in *Agrokonsulting-04* (C-93/12, EU:C:2013:432, paragraph 35 et seq.) and *Asociación de Consumidores Independientes de Castilla y León* (C-413/12, EU:C:2013:800, paragraph 38 et seq).

91 — See, inter alia, judgment in *Agrokonsulting-04* (EU:C:2013:432, paragraph 39 et seq).

73. However, I consider that that case-law relating to the procedural autonomy of the Member States is not relevant in the present case in view of the significant differences between the context of the judgments in question and that of the present cases. In the present case, the Court is asked not about procedural provisions of the national law of a single Member State, but about the interpretation of rules of jurisdiction which have been standardised between all the Member States in respect of judicial cooperation in civil matters. [92] Moreover, it is not a question here of the judicial protection, at national level, of the exercise of substantive rights conferred by EU law.

74. In any event, if that case-law is nevertheless applied by analogy in circumstances such as those of the disputes in the main proceedings, the justification based on the objective of proper administration of justice is circumscribed by the conditions laid down by the Court, which control the intervention of the Member States in respect of legal proceedings, namely, inter alia, that the exercise by litigants of their rights and powers under EU law should not be less favourable. However, in the present case, it seems to me that the consequence of the German legislation, as regards cross-border maintenance obligations, is to withdraw powers from the court which would normally have jurisdiction because it is in the place of the creditors' habitual residence, that is to say, on the basis of a close link between the forum and the dispute, although that jurisdiction remains in place for ruling on applications which are identical but which do not have a foreign aspect.

75. I therefore consider that the expression 'the court for the place where the creditor is habitually resident' is to be interpreted as meaning that jurisdiction within the meaning of Article 3(b) of Regulation No 4/2009 lies with the court within whose area of ordinary jurisdiction the maintenance creditor concerned is habitually resident. It follows that legislation of a Member State such as that at issue in the main proceedings is not compatible with those provisions in that it may lead, for cross-border situations, to a transfer of territorial jurisdiction to a first instance court other than that which covers the place of residence of the person concerned.

V – **Conclusion**

76. In the light of the above considerations, I propose that the Court give the following reply to the questions referred for a preliminary ruling by the Amtsgericht Düsseldorf (Case C-400/13) and the Amtsgericht Karlsruhe (Case C-408/13):

Article 3(b) of Council Regulation No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations is to be interpreted as meaning that 'the court for the place where the creditor is habitually resident' means that territorial jurisdiction lies with the court within whose area of ordinary jurisdiction the party concerned habitually resides, so that legislation of a Member State such as that at issue in the main proceedings, which, in the case of cross-border disputes, reserves exclusive jurisdiction to the first instance court established in the seat of the Higher Regional Court in whose area of jurisdiction the party residing in that Member State is habitually resident, is not compatible with that provision.

92 — In my view, that distinction is apparent from a reading *a contrario* of paragraphs 46 and 47 of *Asociación de Consumidores Independientes de Castilla y León* (EU:C:2013:800).