

Judgment of the Court (Sixth Chamber) of 7 June 2018 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — KP v LO

(Case C-83/17) ⁽¹⁾

(Reference for a preliminary ruling — Judicial cooperation in civil matters — 2007 Hague Protocol — Law applicable to maintenance obligations — Article 4(2) — Change in the habitual residence of the creditor — Possibility of the retroactive application of the law of the State of the creditor's new habitual residence, that law coinciding with the law of the forum — Scope of the terms 'if the creditor is unable ... to obtain maintenance from the debtor' — Situation where the creditor does not satisfy a formal legislative condition)

(2018/C 268/15)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: KP

Defendant: LO

Operative part of the judgment

1. Article 4(2) of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, approved on behalf of the European Community by Council Decision 2009/941/EC of 30 November 2009 must be interpreted as meaning that:

— the fact that the State of the forum corresponds to the State of the creditor's habitual residence does not preclude the application of that provision as long as the law designated by the ancillary connecting rule in that provision does not coincide with the one as the law designated by the main connecting rule in Article 3 of that Protocol;

— in a situation in which the maintenance creditor, who has changed his usual residence, has brought before the courts of the State of his new habitual residence a maintenance claim against the debtor in respect of a period in the past during which the creditor resided in another Member State, the law of the forum, which is also the law of the State of the creditor's new habitual residence, can apply provided the courts of the Member State of the forum had jurisdiction to adjudicate on the disputes concerning those parties as to the maintenance relating to that period.

2. The phrase 'is unable ... to obtain maintenance' in Article 4(2) of the Hague Protocol of 23 November 2007 must be interpreted as also covering the situation in which the creditor is unable to obtain maintenance under the law of the State of his previous habitual residence on the ground that he does not meet certain conditions imposed by that law.

⁽¹⁾ OJ C 168, 29.5.2017.