Reports of Cases

OPINION OF ADVOCATE GENERAL
BOBEK
delivered on 27 February 2020[1]

Case C-41/19

FX
v
GZ, represented by her mother

(Request for a preliminary ruling from the Amtsgericht Köln (District Court, Cologne, Germany))

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction in matters relating to maintenance obligations — Regulation (EC) No 4/2009 — Jurisdiction to rule on an application opposing enforcement of a maintenance decision)

I. Introduction

1. The defendant in the present case is a dependent child who is resident in Poland. She has obtained a decision from the Polish courts establishing the maintenance obligations of her father (the applicant), who resides in Germany. After having obtained a declaration of the enforceability of the Polish maintenance decision in Germany, the defendant now seeks to have that decision enforced in that Member State. The applicant opposes enforcement of the decision on the basis that his payment obligations have been largely fulfilled. He claims that he himself made maintenance payments and that State benefits have also been paid to the defendant through the Polish maintenance fund on his behalf.

2. The present case concerns the application opposing enforcement based on the discharge of the debt, lodged by the applicant before the German courts. The key issue raised by this request for a preliminary ruling is whether the German courts have jurisdiction to rule on that application on the basis 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]

1 Original language: English.

2 OJ 2009 L 7, p. 1.

II. Legal framework

A. EU law

1. Regulation No 4/2009

3. According to Article 1(1) of Regulation No 4/2009, 'this Regulation shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity'.

4. Pursuant to Article 2(1) of Regulation No 4/2009, for the purposes of that regulation: 'the term "decision" shall mean a decision in matters relating to maintenance obligations given by a court of a Member State, whatever the decision may be called, including a decree, order, judgment or writ of execution, as well as a decision by an officer of the court determining the costs or expenses. …'

5. Article 3 of Regulation No 4/2009 states that 'in 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

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

…'

6. According to Article 8 of Regulation No 4/2009, entitled 'Limit on proceedings', paragraph 1 states: 'Where a decision is given in a Member State or a 2007 Hague Convention Contracting State where the creditor is habitually resident, proceedings to modify the decision or to have a new decision given cannot be brought by the debtor in any other Member State as long as the creditor remains habitually resident in the State in which the decision was given.'

7. Chapter IV of Regulation No 4/2009 is concerned with the 'recognition, enforceability and enforcement of decisions'. That chapter has three sections: Section 1 is applicable to decisions given in a Member State bound by the 2007 Hague Protocol (Articles 17 to 22);[3] Section 2 is applicable with regard to decisions given in a Member State not bound by the 2007 Hague Protocol (Articles 23 to 38); and Section 3 contains common provisions (Articles 39 to 43).

8. Article 21 of Regulation No 4/2009, entitled 'Refusal or suspension of enforcement', contained in the abovementioned Section 1, provides as follows:

'1. The grounds of refusal or suspension of enforcement under the law of the Member State of enforcement shall apply in so far as they are not incompatible with the application of paragraphs 2 and 3.

3 The European Union and its Member States took part in the negotiations in the framework of the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded in The Hague on 23 November 2007, approved, on behalf of the European Union, by Council Decision 2011/432/EU of 9 June 2011 (OJ 2011 L 192, p. 39; 'the 2007 Hague Convention') and 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 (OJ 2009 L 331, p. 17; 'the 2007 Hague Protocol'). Recital 8 of Regulation No 4/2009 states that both of those instruments should be taken into account in that regulation.

2. The competent authority in the Member State of enforcement shall, on application by the debtor, refuse, either wholly or in part, the enforcement of the decision of the court of origin if the right to enforce the decision of the court of origin is extinguished by the effect of prescription or the limitation of action, either under the law of the Member State of origin or under the law of the Member State of enforcement, whichever provides for the longer limitation period.

Furthermore, the competent authority in the Member State of enforcement may, on application by the debtor, refuse, either wholly or in part, the enforcement of the decision of the court of origin if it is irreconcilable with a decision given in the Member State of enforcement or with a decision given in another Member State or in a third State which fulfils the conditions necessary for its recognition in the Member State of enforcement.

A decision which has the effect of modifying an earlier decision on maintenance on the basis of changed circumstances shall not be considered an irreconcilable decision within the meaning of the second subparagraph.

…'

9. Article 41(1) of Regulation No 4/2009 reads as follows: 'Subject to the provisions of this Regulation, the procedure for the enforcement of decisions given in another Member State shall be governed by the law of the Member State of enforcement. A decision given in a Member State which is enforceable in the Member State of enforcement shall be enforced there under the same conditions as a decision given in that Member State of enforcement.'

10. Pursuant to Article 42 of Regulation No 4/2009: 'Under no circumstances may a decision given in a Member State be reviewed as to its substance in the Member State in which recognition, enforceability or enforcement is sought.'

11. Article 75 of Regulation No 4/2009 contains the transitional provisions. It states that:

'1. This Regulation shall apply only to proceedings instituted, to court settlements approved or concluded, and to authentic instruments established after its date of application, subject to paragraphs 2 and 3.

2. Sections 2 and 3 of Chapter IV shall apply:

(a) to decisions given in the Member States before the date of application of this Regulation for which recognition and the declaration of enforceability are requested after that date;

…

[Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [4]] shall continue to apply to procedures for recognition and enforcement under way on the date of application of this Regulation.

…'

4 Council Regulation of 22 December 2000 (OJ 2001 L 12, p. 1).

2. Regulation (EU) No 1215/2012

12. Recital 10 of 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 [5] reads as follows:

'(10) The scope of this Regulation should cover all the main civil and commercial matters apart from certain well-defined matters, in particular maintenance obligations, which should be excluded from the scope of this Regulation following the adoption of [Regulation No 4/2009].'

13. According to Article 1(2) of Regulation No 1215/2012:

'This Regulation shall not apply to:

…

(e) maintenance obligations arising from a family relationship, parentage, marriage or affinity;

…'

14. Article 24 of Regulation No 1215/2012, which forms part of Section 6 of Chapter II, devoted to 'exclusive jurisdiction', provides that 'the following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

…

(5) in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.'

B. German law

15. According to Paragraph 66 of the Gesetz zur Geltendmachung von Unterhaltsansprüchen mit ausländischen Staaten, or Auslandsunterhaltsgesetz (Law on the Recovery of Maintenance in Relations with Foreign States, or Foreign Maintenance Law; 'the AUG'): [6]

'(1) If a foreign decision is enforceable in accordance with [Regulation No 4/2009] without exequatur proceedings or is declared enforceable in accordance with that regulation …, the debtor may raise objections to the claim itself in proceedings brought in accordance with Paragraph 120(1) of the [Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (Law on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction; "the FamFG")], in conjunction with Paragraph 767 of the [Zivilprozessordnung (German Code of Civil Procedure; "the ZPO")]. If the decision is a judicial decision, this shall apply only to the extent to which the reasons on which the objections are based did not arise until after the decision had been issued.

5 OJ 2012 L 351, p. 1.

6 BGBl. 2011 I, p. 898, as subsequently amended.

(2) If compulsory enforcement of a decision is authorised in accordance with one of the conventions named in Paragraph 1(1), first sentence, number 2, the debtor may raise objections against the claim itself in proceedings brought in accordance with Paragraph 120(1) of [the FamFG], in conjunction with Paragraph 767 of [the ZPO], only if the reasons on which his or her objections are based did not arise:

1. until after expiry of the period within which he or she could have lodged the appeal, or

2. if the appeal has been lodged, after termination of those proceedings.

(3) The application made in accordance with Paragraph 120(1) of [the FamFG], in conjunction with Paragraph 767 of [the ZPO], shall be lodged with the court which has ruled on the application for issuance of the order for enforcement. In cases coming under subparagraph (1), jurisdiction shall be determined in accordance with Paragraph 35(1) and (2).'

16. According to Paragraph 767 of the ZPO:

'(1) Debtors are required to raise objections that concern the claim itself as established by the judgment by bringing a corresponding action before the court of first instance dealing with the case.

(2) Such objections by way of an action may admissibly be raised only in so far as the grounds on which they are based did not arise until after the close of the hearing that was the last opportunity, pursuant to the stipulations of the present Code, for objections to be raised, and thus can no longer be raised by entering a challenge.

(3) In the action that he is to bring, the debtor must raise all objections that he could have raised at the time when he brought the action.'

17. Paragraph 120(1) of the FamFG states:

'Enforcement in cases concerning marital and family-dispute matters shall take place in accordance with the provisions of [the ZPO] concerning compulsory enforcement.'

III. Facts, procedure and the questions referred for a preliminary ruling

18. The applicant in the present case resides in Germany. He is the father of a dependent child who is resident in Poland.

19. By decision of 26 May 2009 of the Krakow District Court, the applicant was ordered to pay monthly maintenance of 500.00 Polish zloty (PLN) for his daughter from 1 September 2008, as well as PLN 430.00 per month retroactively for the period from 19 June 2008 to 31 August 2008 ('the Polish maintenance decision').

20. On 20 July 2016, the defendant lodged with the Amtsgericht Köln (District Court, Cologne, Germany), the referring court, an application requesting the recognition of the Polish maintenance decision and a declaration of its enforceability in Germany in accordance with Regulation No 4/2009.

21. By order of 27 July 2016, the referring court decided, in accordance with Article 23 et seq. and Article 75(2) of Regulation No 4/2009, that an order for enforcement was to be issued in respect of the Polish maintenance decision. On the basis of that order, the defendant seeks the enforcement of the Polish maintenance decision against the applicant in Germany.

22. By application lodged on 5 April 2018 before the referring court, the applicant opposed the enforcement of the maintenance decision. According to the applicant, the defendant's maintenance claim underlying the Polish maintenance decision has been settled by payment. The applicant states that he himself made maintenance payments totalling PLN 6 640.05 from 2008 up to and including 2010 and that, since December 2010, State benefits of PLN 500 per month have also been paid to the defendant through the Polish maintenance fund. The applicant explains that that maintenance fund was in contact with him and that he has reimbursed the sums paid to the defendant by that fund within the scope of his economic capacity. According to the applicant, the defendant's maintenance claim has in any event been largely settled.

23. The referring court explains that it considers that the application opposing enforcement is a matter relating to maintenance within the meaning of Regulation No 4/2009. That court considers, however, that according to that regulation, it lacks jurisdiction. This is because the conditions of Article 3 of that regulation are not satisfied. Nevertheless, the referring court considers itself precluded from declaring that it lacks jurisdiction of its own motion on the basis of Article 10 of Regulation No 4/2009 because, unlike proceedings to modify a maintenance decision according to Article 8 of that regulation, applications opposing enforcement are not expressly mentioned in Regulation No 4/2009 or in Regulation No 1215/2012.

24. It is in those circumstances that the Amtsgericht Köln (District Court, Cologne) stayed the proceedings and referred the following questions for a preliminary ruling:

'(1) Does an application opposing enforcement made pursuant to Paragraph 767 [of the ZPO] against a foreign maintenance order constitute a matter relating to maintenance within the meaning of [Regulation No 4/2009]?

(2) If not, does an application opposing enforcement made pursuant to Paragraph 767 [of the ZPO] against a foreign maintenance order constitute proceedings concerned with the enforcement of judgments within the meaning of Article 24(5) of [Regulation No 1215/2012]?'

25. The defendant, the German, Polish and Portuguese Governments, as well as the European Commission, submitted written observations. The applicant, the German and Polish Governments and the European Commission presented oral submissions at the hearing held on 27 November 2019.

IV. Analysis

26. This Opinion is structured as follows. First, I will offer some preliminary clarifications about the scope and meaning of the two questions referred to this Court (A). Second, I shall identify the relevant legal framework for the circumstances of the present case. For that purpose, I will focus on whether Regulation No 4/2009 is applicable at the stage of enforcement of maintenance decisions and what can be inferred from that regulation with regard to jurisdiction for matters relating to enforcement (B). Finally, I shall address the specific question whether an application opposing enforcement on the basis of the discharge of the debt forms part of the procedure of enforcement, so that the courts of the Member State of enforcement have jurisdiction (C).

A. Preliminary clarifications

27. The two questions posed by the referring court in the present case, which, in my view, are best dealt with together, essentially aim at ascertaining whether that court has jurisdiction to rule on an application opposing the enforcement of the Polish maintenance decision in Germany. The questions are not, however, posed in those terms. The referring court asks, first, whether an application

opposing enforcement constitutes a matter relating to maintenance for the purposes of Regulation No 4/2009. Second, the referring court asks, in the event that that question is answered in the negative, if an application opposing enforcement is covered by the notion of proceedings concerned with the enforcement of judgments within the meaning of Article 24(5) of Regulation No 1215/2012.

28. The way in which the first question is drafted is based on the following assumption. The referring court is inclined to the view that if the Court were to find that an application opposing enforcement constitutes a matter relating to maintenance for the purposes of Regulation No 4/2009, that would mean that the referring court lacks jurisdiction. This is because the referring court considers that, in such a scenario, the general criteria for determining jurisdiction in matters relating to maintenance obligations, as laid down in Article 3 of Regulation No 4/2009, would have to be met, including with regard to an application opposing enforcement, which is not the case in the main proceedings. Furthermore, the referring court considers that the courts in Poland would be better placed to deal with the applicant's claim that he has fulfilled his obligation, pursuant to Article 3(a) and (b) of Regulation No 4/2009. Therefore, by its second question, the referring court asks, in the event that the Court answers the first question in the negative, whether its jurisdiction can be founded on Article 24(5) of Regulation No 1215/2012.

29. In a nutshell, it seems that the referring court understands that there are two mutually exclusive possibilities. If Regulation No 4/2009 were applicable, that would mean that the referring court lacks jurisdiction under Article 3 of that regulation. It is only if Regulation No 4/2009 cannot be applied that it would be possible to base jurisdiction on Article 24(5) of Regulation No 1215/2012, according to which the courts of the Member State of enforcement have jurisdiction in proceedings concerned with such enforcement.

30. In my view, the reasoning described in the previous point is based on an incorrect assumption. Indeed, as will be explained below, the applicability of Regulation No 4/2009 does not lead to the referring court lacking jurisdiction. In my view, in order to provide a useful answer to the referring court, it is necessary to identify in the first place whether Regulation No 4/2009 is applicable at the stage of enforcement of maintenance decisions and what can be inferred from that regulation with regard to jurisdiction at that stage. I will undertake that analysis in the next section of this Opinion (B). After concluding that Regulation No 4/2009 is applicable at the stage of enforcement and that it is inherent in the system of that regulation that jurisdiction falls to the courts of the Member States of enforcement, I will analyse the specific question underlying the present case, concerning jurisdiction to rule on an application opposing enforcement based on the discharge of the debt (C).

B. Regulation No 4/2009 and jurisdiction for enforcement of maintenance decisions

31. The Brussels Convention and Regulation No 44/2001 contained specific provisions regarding jurisdiction in matters relating to maintenance obligations.[7] Regulation No 4/2009 modified Regulation No 44/2001 by replacing its provisions applicable to matters relating to maintenance obligations.[8] Regulation No 4/2009 constitutes therefore *lex specialis* with regard to the issues of jurisdiction, applicable law, recognition of decisions and cooperation in the specific field of maintenance obligations. Regulation No 1215/2012 repealed Regulation No 44/2001. Unlike its predecessors – Regulation No 44/2001 and the Brussels Convention — Regulation No 1215/2012 now explicitly excludes maintenance obligations from its scope, which are covered by Regulation No 4/2009.[9]

7 See Article 5(2) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), amended by successive conventions on the accession of new Member States, as well as Article 5(2) of Regulation No 44/2001.

8 Recital 44 and Article 68(1) of Regulation No 4/2009.

9 See recital 10 and Article 1(2)(e) of Regulation No 1215/2012.

32. Despite the fact that Regulation No 4/2009 contains specific chapters devoted to jurisdiction (Chapter II) and recognition, enforceability and enforcement of decisions (Chapter IV), it does not contain any explicit rule on *jurisdiction* regarding the *enforcement* of decisions in matters relating to *maintenance*.

33. That situation contrasts with Regulation No 1215/2012, which contains, in Article 24(5), an explicit rule granting exclusive jurisdiction in proceedings concerned with the enforcement of judgments to the courts of the Member State in which the judgment has been or is to be enforced. Such a rule was also contained in Regulation No 44/2001 and in the Brussels Convention. [10]

34. Based on that legal background, the interested parties that presented observations in this case have arrived at different conclusions.

35. The Portuguese Government, following the approach preferred by the referring court, considers that due to the protective aim of Regulation No 4/2009 with regard to maintenance creditors, an application opposing enforcement is to be regarded as an action concerning maintenance obligations governed by that regulation. Although not explicitly put in those terms, it appears that the Portuguese Government is arguing, in line with the approach adopted by the referring court, that the jurisdictional rules in Articles 3 and 4 of that regulation should apply. The defendant adopts a similar approach.

36. In its written submissions, the Polish Government relies on the assumption that Regulation No 4/2009 does not regulate jurisdiction at the stage of enforcement. That government submits, in its written observations, that since the rights and obligations recognised in the maintenance decision are not affected, the application opposing enforcement does not relate to maintenance and is therefore governed by Article 24(5) of Regulation No 1215/2012. In response to a question posed by the Court, the Polish Government changed its position regarding the temporally applicable rule and submitted at the hearing that the relevant provision is Article 22(5) of Regulation No 44/2001.

37. The German Government and the Commission submit, essentially, that Regulation No 4/2009 is applicable. However, contrary to the views expressed by the referring court, they consider that, if Regulation No 4/2009 is applicable, that does not mean that the referring court lacks jurisdiction, but rather that that court *has* jurisdiction in the present case. That position is, in the main, shared by the applicant. According to both the German Government and the Commission, neither Regulation No 1215/2012 nor Regulation No 44/2001 are applicable in the present case.

38. I agree with the latter view: only Regulation No 4/2009 is applicable. However, that does not lead to a finding that the referring court lacks jurisdiction.

39. First, there is no question that the maintenance decision at issue in this case, the enforcement of which is now being sought by the defendant, relates to a maintenance obligation arising from a family relationship within the meaning of Article 1 of Regulation No 4/2009. The Polish maintenance decision falls squarely within the scope of Regulation No 4/2009. The present case is concerned with the enforcement of that decision.

40. The fact that the procedural stage in the present case is that of enforcement does not lead to the conclusion that the underlying subject matter no longer relates to maintenance obligations. The subject matter of the case remains the same. Indeed, Regulation No 4/2009 contains, in Chapter IV, specific rules devoted to recognition and *enforcement* of decisions in matters relating to maintenance obligations.

10 See Article 16(5) of the Brussels Convention, which recognises that, 'in proceedings concerned with the enforcement of judgments, the courts of the Contracting State in which the judgment has been or is to be enforced' have exclusive jurisdiction. The same is stated in Article 22(5) of Regulation No 44/2001.

41. Second, it is true that Chapter IV, relating to recognition and enforcement of maintenance decisions, does not contain any explicit rule concerning jurisdiction at the stage of enforcement.

42. However, contrary to what the referring court and the Portuguese Government seem to be asserting, it does not follow from that fact that the jurisdictional rules established in Chapter II of Regulation No 4/2009 are applicable. As the German Government correctly points out, Chapter II and, in particular, Article 3 of Regulation No 4/2009 establish the rules governing jurisdiction with regard to the main *procedure on the merits*, but not with regard to the *enforcement* of such decisions.

43. Third, even though Chapter IV of Regulation No 4/2009 does not contain any explicit jurisdictional rule with regard to enforcement, that rule can be considered inherent in the system of that regulation.

44. In general terms, international jurisdiction for enforcement belongs to the courts of the Member State where enforcement is sought. As the Polish Government points out, that rule is an expression of what could be considered a general principle of international law connected with State sovereignty: it is only the authorities of the State of enforcement that are empowered to rule on the execution of decisions, as enforcement measures can only be carried out by the authorities of the Member State(s) where the assets or persons against which enforcement is sought are situated. That rule is valid, a fortiori, where a decision has already been recognised as enforceable in the Member State where enforcement is sought.

45. Therefore, it is not necessary to have recourse to Article 24(5) of Regulation No 1215/2012 as a supplementary provision in order to be able to establish that the courts of the Member State of enforcement also have jurisdiction with regard to the enforcement of maintenance decisions within the scope of Regulation No 4/2009. Indeed, that article can be considered as an expression of the general principle just mentioned. [11]

46. Moreover, supplementary application of Regulation No 1215/2012 in this context would prove rather problematic, as maintenance obligations are explicitly excluded from its scope of application. [12] In any case, bearing in mind that Article 24(5) of Regulation No 1215/2012 contains a rule that can be considered inherent in the system of Regulation No 4/2009, one may wonder what would be the added value of such supplementary application.

47. Similarly, no valid conclusion can be drawn from the fact that Regulation No 1215/2012 contains an explicit rule in this regard while Regulation No 4/2009 does not: as pointed out by the Commission at the hearing, the fact that that rule is explicitly recognised in Regulation No 1215/2012 is linked to the structure of that regulation, which contains several heads of exclusive jurisdiction. That is not the case with regard to Regulation No 4/2009, which does not create exclusive jurisdiction. I agree with the Commission that the EU legislature might have considered it unnecessary to restate that rule in the context of Regulation No 4/2009. Where else would jurisdiction regarding enforcement lie other than in the Member State where enforcement is sought?

11 See, for example, de Lima Pinheiro, L., 'Exclusive juridiction. Article 24', in Ulrich Magnus, et al., *Brussels Ibis Regulation - Commentary*, Verlag Otto Schmidt KG, 2016, p. 581.

12 From the explanations contained in the draft of the AUG corresponding to its Paragraph 66, as reproduced in the order for reference, it appears that the German legislature relied on Article 22(5) of Regulation No 44/2001 as a supplementary law with regard to enforcement of decisions in matters relating to maintenance obligations. That regulation indeed did not contain the exclusion that currently features in Regulation No 1215/2012. However, Article 22(5) of Regulation No 44/2001 cannot be considered as applicable, even in a supplementary manner, in the present case. Indeed, according to Article 75(2) of Regulation No 4/2009, '[Regulation No 44/2001] shall continue to apply to procedures for recognition and enforcement under way on the date of application of this Regulation'. That date is, according to Article 76 of Regulation No 4/2009, 18 June 2011. The procedure for recognition and enforcement in the present case was not under way at that point, since it commenced on 27 July 2016, on which date, in any case, Regulation No 1215/2012 would also have been temporally applicable (since, according to Article 81 of that regulation, it applies from 10 January 2015). See, on the temporal scope of application of that regulation, judgment of 9 March 2017, *Pula Parking* (C-551/15, EU:C:2017:193, paragraphs 25 to 28).

48. That is also confirmed by Article 41(1) of Regulation No 4/2009, which states that 'subject to the provisions of this Regulation, the procedure for the enforcement of decisions given in another Member State shall be governed by the law of the Member State of enforcement'. According to that provision, 'a decision given in a Member State which is enforceable in the Member State of enforcement shall be enforced there under the same conditions as a decision given in that Member State of enforcement'. It would be difficult to explain that provision if jurisdiction for enforcement did not fall to the courts of the Member State where enforcement is sought.

49. It is, however, now necessary to clarify whether an application opposing enforcement based on the discharge of the debt forms part of enforcement proceedings, with the result that it also falls within the jurisdiction of the courts of the Member State of enforcement.

C. Applications opposing enforcement

50. The key question that then arises is whether an application seeking to oppose enforcement based on the discharge of the debt is to be considered as appertaining, for the purposes of jurisdiction, to enforcement proceedings. The case-law of the Court concerning the Brussels Convention and Regulation No 44/2001 suggests that that question should be answered in the affirmative (1). The conclusion arrived at in that case-law is valid with regard to Regulation No 4/2009, having due regard to the specific limitations established both by the case-law of the Court and by that regulation (2). That leads me to the conclusion that the courts of the Member State of enforcement enjoy jurisdiction regarding applications seeking to oppose enforcement on the ground that the debt has been discharged, even if the intervention of the Polish maintenance fund in the payment of the debt indeed adds a certain degree of complexity (3).

1. The case-law of the Court on the Brussels Convention and on Regulation No 44/2001

51. Whether on the basis of the provisions on jurisdiction in the Brussels Convention or in Regulation No 44/2001, the case-law of the Court has confirmed that jurisdiction as regards remedies against enforcement, such as actions or applications opposing enforcement, falls, in principle, to the courts of the Member State where enforcement is sought.

52. The judgment in *AS-Autoteile Service* concerned an application opposing the enforcement of a judgment given by a German court awarding costs in court proceedings, on the basis of the same national provision that is at issue in the present case (Paragraph 767 of the ZPO). The application pleaded a set-off between the right the enforcement of which was sought (the right to costs) and the claim that formed the basis of the initial proceedings, with regard to which the German courts had already declared that they had no jurisdiction. As a matter of principle, the Court declared that proceedings 'such as those provided for under Paragraph 767 of the [ZPO] fall, as such, within the jurisdiction provision [contained in the Brussels Convention] by virtue of their close link with the enforcement procedure'.[13]

53. In a similar vein, the Court found in *Hoffmann*, after acknowledging that the Brussels Convention did not contain specific rules on execution, that 'a foreign judgment for which an enforcement order has been issued is executed in accordance with the *procedural rules of the domestic law of the court in which execution is sought*, including those on legal remedies'.[14]

13 Judgment of 4 July 1985 (220/84, EU:C:1985:302, paragraph 12).

14 Judgment of 4 February 1988 (145/86, EU:C:1988:61, paragraphs 27 and 28). Emphasis added.

54. That approach was later confirmed in *Prism Investments*. That case concerned an action for annulment taken by a debtor against a declaration of enforceability made by a Dutch court in respect of a judgment handed down in Belgium, on the basis that the judgment had already been complied with by means of a financial settlement. The Court found that Regulation No 44/2001 did not permit the refusal or revocation of a declaration of enforceability of a judgment on that basis.[15] However, it confirmed that a ground based on compliance with the obligation may be brought 'before the court or tribunal responsible for enforcement in the Member State in which enforcement is sought' since 'in accordance with settled case-law, once that judgment is incorporated into the legal order of the Member State in which enforcement is sought, national legislation of that Member State relating to enforcement applies in the same way as to judgments delivered by national courts'.[16]

55. From that case-law it should not, however, be inferred that any type of application lodged at the stage of enforcement based on any kind of ground is to be considered admissible before the courts of the Member State of enforcement. Indeed, the case-law has also explicitly set out the limits to the jurisdiction of the courts of the Member State of enforcement based on the jurisdictional provisions contained in the Brussels Convention, as well as in Regulation No 44/2001 and Regulation No 1215/2012.

56. More precisely, in *AS Autoteile Service*, the Court stated that the fact that proceedings opposing enforcement, such as those provided for under Paragraph 767 of the ZPO, fell within Article 16(5) of the Brussels Convention did not resolve the question of *what objections could be raised* without overstepping the limits of that provision.[17]In order to resolve that question, the Court took account of the general scheme of the Brussels Convention, in particular, of the relationship between the specific jurisdictional provision concerning enforcement and the general rule according to which persons domiciled in a contracting State are to be sued in the courts of that State.[18] Because the exclusive jurisdiction of the courts of a Member State where a judgment is to be enforced is based on the specific connection between the proceedings and that Member State, the Court found that a party cannot make use of that head of exclusive jurisdiction in order to bring before those courts a dispute which falls within the jurisdiction of the courts of another State according to the application of the general rules.[19]

57. Similarly, in *Hoffmann*, in the context of the Brussels Convention, the Court set out the limits to the remedies against enforcement that are available before the courts of the Member State of enforcement, declaring that such remedies are precluded when 'an appeal against the execution of a foreign judgment for which an enforcement order has been issued is lodged by the same person who could have appealed against the enforcement order and is based on an argument which could have been raised in such an appeal'.[20]

58. The limits to the jurisdiction of the courts of the Member State of enforcement with regard to some applications seeking to oppose enforcement have recently been confirmed in *Reitbauer and Others*. In that case, the Court rejected a ground of opposition to enforcement whereby a declaration was sought that the claim no longer existed due to a counterclaim, because such an application went beyond questions relating to enforcement as such and, therefore, did not present the degree of proximity to enforcement required to justify the application of the rule of exclusive jurisdiction in Article 24(5) of Regulation No 1215/2012.[21]

15 Judgment of 13 October 2011 (C-139/10, EU:C:2011:653, paragraph 37).

16 Ibid. (paragraph 40 and the case-law cited).

17 Judgment of 4 July 1985 (220/84, EU:C:1985:302, paragraph 12).

18 Ibid. (paragraphs 14 and 15).

19 Ibid. (paragraphs 16 and 17).

20 Judgment of 4 February 1988 (145/86, EU:C:1988:61, paragraph 30).

21 Judgment of 10 July 2019 (C-722/17, EU:C:2019:577, paragraphs 54 and 55).

59. It therefore appears from the case-law of the Court that, *in principle*, jurisdiction regarding actions opposing enforcement falls to the courts of the Member State of enforcement based on two elements: first, because of their close link with the enforcement procedure; second, based on the rule that provides that once incorporated into a Member State legal system, decisions originating in another Member State are to be treated in the same way as national decisions. In the absence of specific rules in EU legislation, judgments of one Member State recognised in another Member State are to be enforced in accordance with the procedural rules of the domestic law of the court before which execution is sought.

60. However, there are *limitations* as regards the kind of legal remedies that can be sought at that stage before those courts. First, the courts of the Member State of enforcement do not have jurisdiction regarding disputes that do not present a sufficient degree of proximity to enforcement or that would fall within the jurisdiction of the courts of another State if they were raised independently. Second, a party cannot plead before those courts grounds that could have been raised by way of an appeal against the decision on the application for a declaration of enforceability. A fortiori, grounds that could have been raised within the initial proceedings are also to be precluded at the enforcement stage.

2. Jurisdiction for applications opposing enforcement in the context of Regulation No 4/2009

61. The next question to be addressed is whether the principles that follow from the case-law analysed in the previous section are equally valid for the purposes of interpreting Regulation No 4/2009.

62. The referring court expresses the view that if the maintenance creditor were required to defend himself or herself against an application opposing enforcement in the State of enforcement, the protective objective of Regulation No 4/2009 would not be fulfilled. The maintenance creditor who, in accordance with the jurisdictional principles of Regulation No 4/2009, has secured a maintenance order in the Member State of his or her habitual residence would therefore be required to defend that order in a different Member State against attack from the initially unsuccessful maintenance debtor. In addition, the referring court considers that the courts of the State in which the claim was originally adjudicated are better placed to assess substantive objections to the claim than the courts of a different Member State in which the order is only to be enforced.

63. That is, in essence, also the view supported by the Portuguese Government, which has cast some doubt on the pertinence of the previous case-law in the context of Regulation No 4/2009 due to its specific aim of protecting the maintenance creditor.

64. To my mind, the main lines of reasoning that follow from the case-law summarised in the previous section are equally applicable with regard to applications opposing enforcement within the framework of Regulation No 4/2009. Even if the aim of protecting the maintenance creditor as the weaker party is clearly acknowledged by Regulation No 4/2009, that should not, to my mind, lead to abandoning one of the basic tenets common to all civil cooperation measures, namely that enforcement-related measures are a matter for the enforcing Member State.

65. First, confirming that logic, Article 41(1) of Regulation No 4/2009 acknowledges the main premiss underlying the case-law mentioned above, as it establishes that ‘subject to the provisions of this Regulation, the procedure for the enforcement of decisions given in another Member State shall be governed by the law of the Member State of enforcement’ and that ‘a decision given in a Member State which is enforceable in the Member State of enforcement shall be enforced there under the same conditions as a decision given in that Member State of enforcement’.

66. Second, the finding that the courts of the Member State where enforcement is sought must, in principle, enjoy jurisdiction regarding applications opposing enforcement does not in any way detract from the specific jurisdictional guarantees provided for in Regulation No 4/2009, bearing in mind the limitations already established by the case-law.

67. Indeed, having regard to the specific objective of Regulation No 4/2009 of protecting the maintenance creditor as the weaker party, the jurisdictional rules contained therein are designed to make it easier for that party to defend his or her claim.[22] For that reason, once a decision has been given in the Member State where the maintenance creditor is resident, only the courts of that Member State can take actions modifying or reviewing that decision. Two rules in Regulation No 4/2009 embody that protective aim. First, according to Article 8 of Regulation No 4/2009, proceedings to modify a decision given in a Member State where the creditor is habitually resident cannot be brought by the debtor in any other Member State, as long as the creditor remains in the Member State where the decision was given. Second, Article 42 prohibits the review as to its substance of a decision given in the first Member State in the Member State in which enforcement is sought.

68. However, those two provisions do not preclude an application opposing enforcement *that does not entail a modification or a review of a maintenance decision given in the first Member State* from being dealt with under the jurisdiction of the courts of the Member State of enforcement.

69. Third, it is to be noted that, in the present case, the maintenance decision has been 'incorporated' into the legal system of Germany — the Member State of enforcement — through a declaration of enforceability issued in accordance with Article 23 of Regulation No 4/2009. What sense would there be in having to go back, at the subsequent stage relating to the enforcement itself, to the Member State that issued the maintenance decision? In my view, such a solution would only pay lip service to the regulation's protective aim. It would rather be a recipe for uncertainty.

70. Finally, the specific objective of Regulation No 4/2009 of protecting the maintenance creditor should not have the effect of allocating jurisdiction in matters closely connected to enforcement to the courts of the State in which the maintenance creditor resides. It is true that the objective of Regulation No 4/2009 is to facilitate, as far as possible, the recovery of international maintenance claims. However, 'facilitate' does not mean reversing the entire logic that underlies the system of recognition and enforcement of maintenance decisions. Contrary to what the referring court, the Portuguese Government and the defendant seem to believe, the protective aim of Regulation No 4/2009 should not lead to a finding that the application at issue in the present case is an independent action opening up a new matter relating to maintenance, the jurisdiction for which must be allocated *ex novo* in accordance with the criteria of Article 3 of the regulation. For one thing, that could have a detrimental impact on the effective recovery of the maintenance claim by unduly prolonging the enforcement proceedings.

71. Moreover, on a subsidiary note, as the German Government argued at the hearing, Regulation No 1215/2012 lays down jurisdictional rules designed to protect various 'weaker parties' (as noted in recital 18, in relation to insurance, consumer and employment contracts). However, the jurisdictional rule relating to *enforcement* (and remedies against enforcement) is not modified by the fact that jurisdiction in the original proceedings was determined according to one of the specific regimes aimed at protecting one of those weaker parties.

72. It is therefore my view that the finding that jurisdiction for an application opposing enforcement falls, in principle, to the courts of the Member State where enforcement is sought, is also valid in the context of Regulation No 4/2009.

22 See, to that effect, judgment of 18 December 2014, *Sanders and Huber* (C-400/13 and C-408/13, EU:C:2014:2461, paragraphs 26 to 28).

3. The present case: an application opposing enforcement based on the discharge of the debt

73. The application opposing enforcement in the present case is based on the applicant's claim that the debt established by the maintenance decision has already, at least for the most part, been discharged. He has paid part of the amount due directly to the defendant. The Polish maintenance fund has also paid part of the maintenance debt, stepping into the shoes of the applicant. The applicant also claims that he has refunded those sums to the Polish maintenance fund to the extent of his financial capabilities. As the applicant explained at the hearing, the dispute in the present case arises because the defendant does not recognise that the amount paid by the Polish maintenance fund corresponds to the debt owed by the applicant.

74. In my view, an application opposing enforcement based on the abovementioned ground appears to comply with the limits, set out in Regulation No 4/2009 and in the case-law of the Court, to the general rule according to which jurisdiction for actions closely related to enforcement belongs with the courts of the Member State where enforcement is sought.

75. First, the ground underlying the application opposing enforcement in the present case is closely linked with enforcement proceedings and cannot be considered as amounting to an action seeking the modification of a maintenance decision within the meaning of Article 8 of Regulation No 4/2009, nor as seeking to review the substance of the decision, within the meaning of Article 42 of that regulation.

76. The doubts of the referring court arise precisely because it considers that the application opposing enforcement in the present case may be tantamount to an action seeking to modify the maintenance decision, within the meaning of Article 8 of Regulation No 4/2009. That position is essentially shared by the Portuguese Government and the defendant.

77. I do not share that view. As the German Government submits, there is an important distinction to be made between applications relating to enforcement and those aiming at the modification of a maintenance decision. While the latter may ultimately lead to the modification of the substance of the decision establishing the maintenance debt, the former have no impact on the merits of the judicial decision.

78. The satisfaction of a claim is one of the grounds of opposition typically recognised at the stage of enforcement.As both the German Government and the Commission submit, an application opposing enforcement based on the discharge of the debt neither modifies nor seeks to review the substance or the legal value of the underlying decision declaring the debt, but is exclusively directed against the enforceability of that decision. More precisely, as noted by the Polish Government, what is at stake is the monetary amount up to which the maintenance decision can be enforced. Consequently, in my view, such an application is closely connected with enforcement, and amounts neither to 'proceedings to modify the decision' under Article 8 nor to a review of the substance of the decision as referred to in Article 42 of Regulation No 4/2009.

79. However, it seems that the involvement of the Polish maintenance fund may be at the root of the referring court's assessment that the Polish courts would be better placed to adjudicate on the discharge of the debt. I do not think that the involvement of the Polish maintenance fund changes the conclusion that follows from the previous point.

80. The Polish Government explained at the hearing that the Polish maintenance fund intervenes by operation of law, and becomes the substitute debtor of the creditor: the debt is extinguished with regard to the sums paid by the fund in the place of the maintenance debtor, who must then refund those sums directly to the fund. That system is consistent with role of public bodies that often provide benefits to maintenance creditors in the place of maintenance debtors. That role is recognised

in Article 64 of Regulation No 4/2009.[23] From the point of view of the debt owed by the maintenance debtor, the intervention of the fund relates to the way in which the debt is discharged, and has no impact on the substance of the maintenance decision, which remains untouched. Thus, what appears to have happened is a partial discharge of the debt by a third party acting on behalf of the debtor, confirming that the application opposing enforcement in the main proceedings is one of the common objections to enforcement of a debt.

81. It is true that the involvement of public bodies such as the Polish maintenance fund in cross-border maintenance proceedings may indeed lead to some additional complexity as regards evidence. In this regard, it may be useful to recall that Article 64(4) of Regulation No 4/2009 explicitly provides, with regard to enforcement proceedings in which such bodies are directly involved, that they are to provide upon request any document necessary to establish that benefits have been provided to the creditor. I am of the view that, to ensure the effective operation of Regulation No 4/2009, such an obligation on the part of public bodies also exists with regard to proceedings under that regulation where they have granted benefits in the place of maintenance payments by the debtor and where the maintenance debtor claims to have refunded those sums to the maintenance fund.

82. Second, as the German Government notes, it appears from recital 30 of Regulation No 4/2009 that the EU legislature has explicitly considered that the maintenance debtor should be able to invoke the discharge of the debt under the conditions provided for in the Member State where enforcement is sought. Indeed, that recital offers 'the debtor's discharge of his debt at the time of the enforcement' as an example of a ground for refusal of enforcement that is admissible under Article 21 of Regulation No 4/2009.[24] It is true that Article 21 is not applicable in the circumstances of the present case.[25] However, the fact that Article 21 appears in Section 1 of Chapter IV can be explained in the context of the abolition of the system of exequatur, due to the need to establish some limitations to the grounds for refusal of execution available under national law. Against that backdrop, if the discharge of the debt at the time of the enforcement is considered as one of the admissible grounds for refusing enforcement, if provided for by the law of the Member State of enforcement in the framework of Section 1 of Chapter IV, the same should apply, a fortiori, with regard to Section 2 of Chapter IV, where no limitations as to the grounds for refusal of enforcement, such as those contained in Article 21, apply.[26]

83. Third, the limitations provided for by the national provisions applicable in the present case ensure that grounds that could have been raised before the Polish courts cannot be brought through that procedural avenue before the German courts. As the German Government clarifies, Paragraph 66(1) of the AUG only allows the maintenance debtor to raise objections based on circumstances that arose *after* the issuance of the maintenance decision. The claims underlying the application at issue, based on the discharge of the maintenance payments, could not have been raised in the main maintenance

23 That provision regulates the law applicable to right of public bodies to act in place of the maintenance creditor and to seek reimbursement, as well as the rules applicable to the recognition, the declaration of enforceability or the enforcement of a decision given against maintenance debtors.

24 That provision states that the grounds of refusal or suspension of enforcement under the law of the Member State of enforcement are to apply in so far as they are not incompatible with the application of the other paragraphs of that article.

25 As noted at point 7 above, Regulation No 4/2009 establishes a two-track system in Chapter IV. Section 1, to which Article 21 belongs, abolishes the exequatur for decisions given in a Member State bound by the 2007 Hague Protocol. Section 2, however, maintains the system of exequatur for decisions given in a Member State not bound by the 2007 Hague Protocol. Even though Poland and Germany are bound by the Hague Protocol, Section 1 does not apply in the present case due to the transitional provisions of Regulation No 4/2009. According to Article 75(2)(a), Sections 2 and 3 of Chapter IV apply 'to decisions given in the Member States before the date of application of this Regulation for which recognition and the declaration of enforceability are requested as from that date'. Pursuant to Article 76, Regulation No 4/2009 became applicable on 18 June 2011. As a result, Section 1 is not applicable to the present case, because the maintenance decision the enforcement of which is sought was given in Poland on 26 May 2009, and recognition was requested by the defendant on 20 July 2016.

26 The fact that Regulation No 4/2009 does not contain any explicit provision governing that issue in Section 2 of Chapter IV, where the exequatur system remains in force, is not surprising. The different EU regulations in the field of civil cooperation that still rely on a system of exequatur contain grounds of refusal of recognition but do not generally contain any rules regarding grounds of refusal of enforcement, relying for that purpose on the internal rules of the State of execution. See, for example, Jimenez Blanco, P., 'La ejecución forzosa de las resoluciones judiciales en el marco de los reglamentos europeos' in *Revista Española de Derecho Internacional*, vol. 70 (2018), pp. 101-125.

proceedings. Additionally, it is also noteworthy that those claims could not have been raised by way of an appeal against the decision on the application for a declaration of enforceability before the German courts. Those courts can refuse or revoke such a declaration only on the grounds specified in Article 24 of Regulation No 4/2009, and the discharge of the debt does not feature among them.[27]

84. I therefore conclude that an application opposing enforcement based on the discharge of the debt appertains to the procedure for, and the conditions of, enforcement, which, according to Article 41(1) of Regulation No 4/2009, are to be governed by the law of the Member State of enforcement under the same conditions as decisions given in that Member State. First, such an application is intrinsically connected with enforcement. Second, such an application does not seek to modify or review the maintenance decision on the merits. Third, it does not raise any claim that could have been pleaded before the Polish courts during the proceedings that led to the maintenance decision (nor, for that matter, any ground for refusal or revocation of the declaration of enforceability before the German courts).

85. For those reasons, it is my view that jurisdiction to adjudicate on an action opposing enforcement based on the discharge of debt falls to the courts of the Member State where the enforcement is sought. For the sake of completeness, I wish to stress two points in lieu of a conclusion. First, the discussion in the present Opinion and the conclusion reached concerned only the ground of opposition based on the discharge of the debt. Second, beyond that specific ground, no position is taken on the overall compatibility of Paragraph 767 of the ZPO with EU law.

V. Conclusion

86. I propose that the Court answer the questions referred by the Amtsgericht Köln (District Court, Cologne, Germany) in the following terms:

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, and, in particular, Article 41(1) thereof, should be interpreted as meaning that the courts of the Member State where the enforcement of a maintenance decision given in another Member State is sought have jurisdiction to adjudicate on an application opposing enforcement, in so far as it is intrinsically connected with enforcement proceedings, it does not seek the modification or review of the maintenance decision, and it is based on grounds that could not have been raised before the court that issued the maintenance decision. Those conditions appear to be fulfilled by the application of opposition to enforcement based on the discharge of the debt at issue in the present case, which is nonetheless ultimately for the referring court to verify.

27 Article 34(1) of Regulation No 4/2009.