



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

17 September 2020*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction in matters relating to maintenance obligations – Regulation (EC) No 4/2009 – Article 3(b) – Court for the place where the maintenance creditor is habitually resident – Action for recovery brought by a public body subrogated to the claims of a maintenance creditor)

In Case C-540/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 5 June 2019, received at the Court on 16 July 2019, in the proceedings

WV

v

Landkreis Harburg

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Third Chamber, L.S. Rossi (Rapporteur), F. Biltgen and N. Wahl, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the German Government, by J. Möller, M. Hellmann, U. Bartl and E. Lanckenau, acting as Agents,
- the Spanish Government, by L. Aguilera Ruiz, acting as Agent,
- the European Commission, by M. Wilderspin and M. Heller, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 June 2020,

gives the following

* Language of the case: German.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(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 (OJ 2009 L 7, p. 1).
- 2 The request has been made in proceedings between WV, who is resident in Vienna (Austria), and Landkreis Harburg (Administrative District of Harburg, Germany) ('the applicant body') concerning the payment of a maintenance claim to WV's mother, who is resident in Germany and whose rights have been transferred by way of statutory subrogation to the applicant body.

Legal context

EU law

The Brussels Convention

- 3 The first paragraph of Article 2 of the Convention of 27 September 1968 on the jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32), as amended by successive conventions on the accession of new Member States to that convention ('the Brussels Convention'), reads as follows:

'Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.'

- 4 Article 5(2) of the Brussels Convention provides as follows:

'A person domiciled in a Contracting State may, in another Contracting State, be sued:

...

2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident'.

The Hague Protocol

- 5 The Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations was approved on behalf of the European Community by Council Decision 2009/941/EC of 30 November 2009 (OJ 2009 L 331, p. 17) ('the Hague Protocol').

- 6 Article 3 of the Hague Protocol, entitled 'General rule on applicable law', provides:

'1. Maintenance obligations shall be governed by the law of the State of the habitual residence of the creditor, save where this Protocol provides otherwise.

2. In the case of a change in the habitual residence of the creditor, the law of the State of the new habitual residence shall apply as from the moment when the change occurs.'

- 7 Article 10 of the Hague Protocol provides that the right of a public body to seek reimbursement of a benefit provided to the creditor in place of maintenance is to be governed by the law to which that body is subject.

Regulation No 4/2009

8 Recitals 8, 9, 10, 11, 14, 15, 44 and 45 of Regulation No 4/2009 are worded as follows:

- (8) In the framework of The Hague Conference on Private International Law, the [European] Community and its Member States took part in negotiations which led to the adoption on 23 November 2007 of ... [the Hague Protocol]. [That instrument] should therefore be taken into account in this Regulation.
- (9) A maintenance creditor should be able to obtain easily, in a Member State, a decision which will be automatically enforceable in another Member State without further formalities.
- (10) In order to achieve this goal, it is advisable to create a Community instrument in matters relating to maintenance obligations bringing together provisions on jurisdiction, conflict of laws, recognition and enforceability, enforcement, legal aid and cooperation between Central Authorities.
- (11) The scope of this Regulation should cover all maintenance obligations arising from a family relationship, parentage, marriage or affinity, in order to guarantee equal treatment of all maintenance creditors. For the purposes of this Regulation, the term “maintenance obligation” should be interpreted autonomously.

...

- (14) It should be provided in this Regulation that for the purposes of an application for the recognition and enforcement of a decision relating to maintenance obligations the term “creditor” includes public bodies which are entitled to act in place of a person to whom maintenance is owed or to claim reimbursement of benefits provided to the creditor in place of maintenance. Where a public body acts in this capacity, it should be entitled to the same services and the same legal aid as a creditor.
- (15) In 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 [Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1)] should be adapted. The circumstance that the defendant is habitually resident in a third State should no longer entail the non-application of Community rules on jurisdiction, and there should no longer be any referral to national law. This Regulation should therefore determine the cases in which a court in a Member State may exercise subsidiary jurisdiction.

...

- (44) This Regulation should amend Regulation [No 44/2001] by replacing the provisions of that Regulation applicable to maintenance obligations. Subject to the transitional provisions of this Regulation, Member States should, in matters relating to maintenance obligations, apply the provisions of this Regulation on jurisdiction, recognition, enforceability and enforcement of decisions and on legal aid instead of those of Regulation [No 44/2001] as from the date on which this Regulation becomes applicable.
- (45) Since the objectives of this Regulation, namely the introduction of a series of measures to ensure the effective recovery of maintenance claims in cross-border situations and thus to facilitate the free movement of persons within the European Union, cannot be sufficiently achieved by the

Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. ...'

9 Article 1(1) of Regulation No 4/2009 provides as follows:

'This Regulation shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity.'

10 Article 2 of that regulation states:

'1. For the purposes of this Regulation:

(1) 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. For the purposes of Chapters VII and VIII, the term "decision" shall also mean a decision in matters relating to maintenance obligations given in a third State;

...

(10) the term "creditor" shall mean any individual to whom maintenance is owed or is alleged to be owed;

...'

11 Article 3 of Regulation No 4/2009 is worded as follows:

'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, or
- (c) the court which, according to its own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties, or
- (d) the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties.'

12 Article 15 of that regulation, headed 'Determination of the applicable law', provides:

'The law applicable to maintenance obligations shall be determined in accordance with [the Hague Protocol] in the Member States bound by that instrument.'

13 Article 64 of that regulation, headed 'Public bodies as applicants', states:

'1. For the purposes of an application for recognition and declaration of enforceability of decisions or for the purposes of enforcement of decisions, the term "creditor" shall include a public body acting in place of an individual to whom maintenance is owed or one to which reimbursement is owed for benefits provided in place of maintenance.'

2. The right of a public body to act in place of an individual to whom maintenance is owed or to seek reimbursement of benefits provided to the creditor in place of maintenance shall be governed by the law to which the body is subject.

3. A public body may seek recognition and a declaration of enforceability or claim enforcement of:

- (a) a decision given against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance;
- (b) a decision given between a creditor and a debtor to the extent of the benefits provided to the creditor in place of maintenance.

4. The public body seeking recognition and a declaration of enforceability or claiming enforcement of a decision shall upon request provide any document necessary to establish its right under paragraph 2 and to establish that benefits have been provided to the creditor.'

German law

- 14 Paragraph 1601 of the Bürgerliches Gesetzbuch (German Civil Code), headed 'Persons with an obligation to pay maintenance', provides as follows:

'Direct relatives are obliged to provide one another with maintenance.'

- 15 The first sentence of Paragraph 94(1) of the Sozialgesetzbuch XII (Twelfth Book of the Social Code; 'the SGB XII'), headed 'Transfer of claims against a person with an obligation to pay maintenance under civil law', states:

'If the person entitled to benefits has a maintenance claim under civil law for the period for which benefits are provided, this shall pass to the social assistance institution up to the amount of the expenses incurred, together with the right to information under maintenance law.'

- 16 According to the third sentence of Paragraph 94(5) of the SGB XII, claims transferred under the first sentence of subparagraph 1 are to be enforced before the civil courts.

The dispute in the main proceedings and the question referred for a preliminary ruling

- 17 WV's mother, who lives in a care home for the elderly in Cologne (Germany) is entitled to maintenance as a relative in the direct ascending line under Paragraph 1601 of the Civil Code, which must be paid by WV, who resides in Vienna (Austria). WV's mother, however, regularly receives social assistance from the applicant body pursuant to the SGB XII. That body submits that, in accordance with the first sentence of Paragraph 94(1) of the SGB XII, it is subrogated to WV's mother's claim for assistance from WV in respect of the benefits that it has paid in favour of WV's mother since April 2017.

- 18 Hearing an action for recovery of maintenance brought against WV by the applicant body, the Amtsgericht Köln (Local Court, Cologne, Germany) held, at first instance, that the German courts did not have international jurisdiction to rule on the action. According to that court, jurisdiction under Article 3(b) of Regulation No 4/2009 could be invoked only by an individual to whom maintenance is owed.

- 19 In the appeal proceedings, the Oberlandesgericht Köln (Higher Regional Court, Cologne, Germany) set aside the first-instance judgment. That court found that the option available to the maintenance creditor under Article 3(a) and (b) of Regulation No 4/2009 could also be exercised by the applicant body as transferee of the maintenance claim.
- 20 Hearing an appeal on a point of law brought by WV against the decision of the Oberlandesgericht Köln (Higher Regional Court, Cologne), the Bundesgerichtshof (Federal Court of Justice, Germany) is uncertain whether a public body that has paid social assistance can claim that the court for the place where the creditor is habitually resident has jurisdiction pursuant to Article 3(b) of Regulation No 4/2009, where that body brings a claim by way of statutory subrogation against a maintenance debtor on the basis of provisions of national civil law relating to maintenance.
- 21 In that regard, the referring court states, as a preliminary point, that the claim to which the applicant body is subrogated satisfies the conditions for a maintenance obligation within the meaning of Regulation No 4/2009, and that that body must assert such a claim under civil law.
- 22 The referring court considers that the action for recovery of maintenance brought by the applicant body falls within the scope of Regulation No 4/2009 and notes that, while, with regard to that regulation, the Court is yet to give judgment on the question raised in paragraph 20 above, German legal academic writing is divided on the answer that should be given. According to the referring court, some writers answer that question in the affirmative by highlighting a concern for effective enforcement of maintenance decisions in order, in particular, to prevent a maintenance debtor who resides abroad from benefiting from preferential treatment as a result of the intervention of a public body. By contrast, other writers support the opposite approach as identified in the judgment of 15 January 2004, *Blijdenstein* (C-433/01, EU:C:2004:21), concerning the interpretation of Article 5(2) of the Brussels Convention, and which, they claim, also applies in the context of Regulation No 4/2009, with the result that a public body seeking to recover a maintenance claim, by an action for recovery, could not invoke the jurisdiction of the court for the habitual residence of the maintenance creditor against a maintenance debtor.
- 23 The referring court considers that, unlike the ‘rule/exception’ relationship which predominates in the context of the Brussels Convention, the rules on jurisdiction laid down in Article 3 of Regulation No 4/2009 are general and alternative rules of jurisdiction which, therefore, rank equally. In addition, even if Article 2(1)(10) of Regulation No 4/2009 defines the term ‘creditor’ as an individual, that court considers that both the provisions of that regulation concerning the enforcement of maintenance claims, in particular Article 64 thereof, and the objectives pursued by that regulation militate in favour of an approach which ensures the effectiveness of the recovery of maintenance claims by making it possible for a public body to which maintenance claims have been transferred by way of statutory subrogation to invoke the jurisdiction rule laid down in Article 3(b) of Regulation No 4/2009.
- 24 Since it was, however, uncertain as to its proposed interpretation, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Can a public body which has provided a maintenance creditor with social assistance benefits in accordance with provisions of public law invoke the forum of jurisdiction at the place of habitual residence of the maintenance creditor under Article 3(b) of Regulation No 4/2009 in the case where it asserts the maintenance creditor’s maintenance claim under civil law, transferred to it on the basis of the granting of social assistance by way of statutory subrogation, against the maintenance debtor by way of an action for recovery?’

Consideration of the question referred

- 25 By its question, the referring court asks, in essence, whether a public body which seeks to recover, by way of an action for recovery, sums paid in place of maintenance to a maintenance creditor, and to which the claims of that maintenance creditor against the maintenance debtor have been transferred by way of subrogation, may validly invoke the jurisdiction of the court for the place where the creditor is habitually resident, as provided in Article 3(b) of Regulation No 4/2009.
- 26 As a preliminary point, it should be noted that the documents in the file available to the Court allow it to be concluded that the provisions of Regulation No 4/2009 are applicable in the context of an action for recovery brought by a public body, such as the action at issue in the main proceedings.
- 27 As the German Government and the European Commission point out, the claim of a public body acting as an applicant is derived from the maintenance obligations arising from a family and parental relationship, one which, in the case in the main proceedings, WV has towards his mother. With regard to a debtor, the enforcement of such a claim entails maintenance obligations under Article 1(1) of Regulation No 4/2009.
- 28 That being said, it should be recalled that since the provisions relating to the rules on jurisdiction must be interpreted independently, by reference, inter alia, to the objectives and scheme of the regulation under consideration, Article 3 of Regulation No 4/2009 must be interpreted in the light of its wording, objectives and the scheme of which it forms part (see, to that effect, judgment of 18 December 2014, *Sanders and Huber*, C-400/13 and C-408/13, EU:C:2014:2461, paragraphs 24 and 25).
- 29 It is apparent from the wording of Article 3 of Regulation No 4/2009, headed ‘General provisions’, that that article lays down general criteria for attributing jurisdiction for the purposes of the courts of the Member States ruling on maintenance obligations. Unlike the relevant provisions of the Brussels Convention, which were examined by the Court in the case that gave rise to the judgment of 15 January 2004, *Blijdenstein* (C-433/01, EU:C:2004:21), Article 3 contains neither a general principle, such as jurisdiction of the court for the defendant’s domicile, nor derogating rules which would have to be interpreted strictly, such as that laid down in Article 5(2) of that convention, but rather a number of criteria which are equal and alternative, as is attested to by the use of the coordinating conjunction ‘or’ after each of them (see, to that effect, judgment of 5 September 2019, *R (Jurisdiction for parental responsibility and maintenance)*, C-468/18, EU:C:2019:666, paragraph 29).
- 30 Article 3 of Regulation No 4/2009 offers a maintenance creditor, when he or she acts as the applicant, the possibility of bringing his or her claim relating to a maintenance obligation under various bases of jurisdiction which include, inter alia, before the court for the place where the defendant is habitually resident, in accordance with point (a) of Article 3, and before the court for the place where the creditor is habitually resident, in accordance with point (b) of that article (see, to that effect, judgment of 5 September 2019, *R (Jurisdiction for parental responsibility and maintenance)*, C-468/18, EU:C:2019:666, paragraphs 30 and 31).
- 31 However, since the wording of Article 3 of Regulation No 4/2009 does not specify that the claim must be brought by the maintenance creditor himself or herself before the courts identified in paragraphs (a) and (b), that article does not, subject to the objectives and scheme of that regulation being observed, preclude a claim relating to a maintenance obligation from being brought by a public body, to which the claims of that creditor have been transferred by way of statutory subrogation, before one or the other of those courts.

- 32 As was asserted by both the referring court and all the interested parties in the present case, neither the objectives nor the scheme of Regulation No 4/2009 preclude the court for the place where the creditor is habitually resident from having jurisdiction to rule on a claim relating to a maintenance obligation brought by such a public body pursuant to Article 3(b) of that regulation.
- 33 In the first place, acknowledging that the court referred to in Article 3(b) of Regulation No 4/2009 has jurisdiction to rule on that claim is consistent with the objectives pursued by that regulation, which include, as the Court has previously had the opportunity to point out, both proximity between the competent court and the maintenance creditor and the objective of facilitating as far as possible the recovery of international maintenance claims, as referred to in recital 45 of that regulation (see, to that effect, judgments of 18 December 2014, *Sanders and Huber*, C-400/13 and C-408/13, EU:C:2014:2461, paragraphs 26, 28, 40 and 41, and of 4 June 2020, *FX (Opposing enforcement of a maintenance claim)*, C-41/19, EU:C:2020:425, paragraphs 40 and 41).
- 34 In particular, granting a public body subrogated to the claims of the maintenance creditor the possibility of bringing an action before the court for the place where that creditor is habitually resident is sufficient to ensure the effectiveness of the recovery of international maintenance claims; that objective would, however, be undermined if such a public body were deprived of its right to invoke the alternative jurisdiction criteria provided in favour of the applicant in matters relating to maintenance obligations, in Article 3(a) and (b) of Regulation No 4/2009, both within the European Union and, as the case may be, when the defendant is resident in the territory of a third State.
- 35 In that regard, it should be noted, as the Advocate General pointed out in points 38 and 40 of his Opinion, that, since Article 3(a) of Regulation No 4/2009 does not make the application of its rules on international jurisdiction subject to the condition that the defendant must be domiciled in a Member State, refusing to allow a public body subrogated to the claims of a creditor to bring an action before the courts where that creditor is habitually resident in circumstances where the maintenance debtor is domiciled in a third State is most likely tantamount to requiring that public body to bring its action outside the European Union. That situation, as well as the resulting legal and practical difficulties, such as those highlighted by the Advocate General in point 42 of his Opinion, would be liable to jeopardise the effective recovery of maintenance claims.
- 36 Furthermore, acknowledging that a public body subrogated to the claims of a maintenance creditor may validly bring an action before the courts identified in Article 3(b) of Regulation No 4/2009 would in no way undermine the objective of the proper administration of justice, which is also pursued by that regulation.
- 37 In that respect, as the Court has held, that objective must be understood not only from the point of view of optimising the organisation of the courts but also from that of the interests of the litigant, whether claimant or defendant, who must be able to benefit, inter alia, from easier access to justice and predictable rules on jurisdiction (see judgments of 18 December 2014, *Sanders and Huber*, C-400/13 and C-408/13, EU:C:2014:2461, paragraph 29, and of 4 June 2020, *FX (Opposing enforcement of a maintenance claim)*, C-41/19, EU:C:2020:425, paragraph 40).
- 38 The transfer of the maintenance creditor's claims to such a public body impairs neither the interests of the maintenance debtor nor the predictability of the applicable rules of jurisdiction; that debtor must, in any event, expect to be sued either before the court for the place where he or she is habitually resident or before the courts for the place where that creditor is habitually resident.
- 39 In the second place, the fact that a public body to which a maintenance creditor's claims are transferred by way of statutory subrogation is allowed to bring an action before the courts where the creditor is habitually resident is also consistent with the scheme of Regulation No 4/2009 and with its background, as reflected, inter alia, in recital 14 of that regulation.

- 40 In that regard, it should be noted that Article 64 of Regulation No 4/2009 specifically envisages intervention by a public body, as an applicant, either acting in the place of an individual to whom maintenance is owed or as a body to which reimbursement is owed for benefits provided in place of maintenance. According to Article 64(1) of Regulation No 4/2009, such a body is included in the definition of the term ‘creditor’ for the purposes of an application for recognition and declaration of enforceability of decisions or for the purposes of enforcement of decisions, a term which, under Article 2(1)(10) of that regulation, refers, in principle, only to an individual to whom maintenance is owed or is alleged to be owed. Further, above all, Article 64(3)(a) of that regulation states that that public body is entitled to seek the recognition and declaration of the enforceability or claim the enforcement of a decision given against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance.
- 41 That provision means that such a public body has already been given the opportunity to bring an action before the courts identified in Article 3(b) of Regulation No 4/2009, so that that court may issue a decision in matters relating to maintenance obligations within the meaning of Article 2(1)(1) of that regulation.
- 42 It follows from all the provisions referred to above that, although a public body to which a maintenance creditor’s claims have been transferred by way of statutory subrogation may not itself rely on having the status of a ‘creditor’ in order to establish the existence of a maintenance obligation, it must, however, be given an opportunity to bring an action to that effect before the competent court of the place where the maintenance creditor has his or her habitual residence under Article 3(b) of Regulation No 4/2009. Once a decision has been issued by that court in the State of origin, such a public body will be entitled to be granted the status of creditor for the purposes, where appropriate, of an application for recognition, declaration of enforceability or enforcement of that decision in the requested State, pursuant to the provisions of Article 64 of that regulation.
- 43 Finally, acknowledging that the public body subrogated to the maintenance creditor’s claims has the possibility of invoking the jurisdiction of the courts provided in Article 3(b) of Regulation No 4/2009 is also consistent with the Hague Protocol, which is referred to in Article 15 of that regulation in the context of the determination of the law applicable to maintenance obligations. Inasmuch as, first, Article 3(1) of that protocol provides that, in principle, maintenance obligations are governed by the law of the State of habitual residence of the creditor and, secondly, Article 10 of that protocol, which was reproduced in Article 64(2) of that regulation, states that the right to reimbursement of a public body which has paid benefits to the creditor in place of maintenance is to be governed by the law to which the body is subject, such a possibility ensures, in the vast majority of cases – which are those in which the seat of the public body and the habitual residence of the creditor are in the same Member State – a parallel between the rules on jurisdiction and those concerning the applicable substantive law which is favourable to the disposal of cases in matters relating to maintenance obligations.
- 44 In the light of all of the foregoing considerations, the answer to the question referred is that a public body which seeks to recover, by way of an action for recovery, sums paid in place of maintenance to a maintenance creditor, and to which the claims of that maintenance creditor against the maintenance debtor have been transferred by way of subrogation, may validly invoke the jurisdiction of the court for the place where the creditor is habitually resident, as provided in Article 3(b) of Regulation No 4/2009.

Costs

- 45 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

A public body which seeks to recover, by way of an action for recovery, sums paid in place of maintenance to a maintenance creditor, and to which the claims of that maintenance creditor against the maintenance debtor have been transferred by way of subrogation, may validly invoke the jurisdiction of the court for the place where the creditor is habitually resident, as provided in Article 3(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.

[Signatures]