Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

18 December 2014*

(Reference for a preliminary ruling — Area of freedom, security and justice — Cooperation in civil matters — Regulation No 4/2009 — Article 3 — Jurisdiction to rule on an action relating to a maintenance obligation in respect of a person resident in another Member State — National legislation establishing a centralisation of jurisdiction)

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

REQUESTS for a preliminary ruling under Article 267 TFEU from the Amtsgericht Düsseldorf and the Amtsgericht Karlsruhe (Germany), by decisions of 9 July and 17 June 2013, respectively, received at the Court on 16 and 18 July 2013, in the proceedings

Sophia Marie Nicole Sanders, represented by Ms Marianne Sanders,

v

David Verhaegen (C-400/13),

and

Barbara Huber

v

Manfred Huber (C-408/13),

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh, C. Toader (Rapporteur), E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the German Government, by T. Henze and J. Kemper, acting as Agents,

— the European Commission, by B. Eggers and A.-M. Rouchaud-Joët, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 4 September 2014,

gives the following

Judgment

1 These requests for a preliminary ruling concern 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 (OJ 2009 L 7, p. 1).

2 The requests have been made in two sets of proceedings, in one case, between Miss Sanders, a minor represented by her mother, Ms Sanders, and Mr Verhaegen, Miss Sanders' father, and, in the other, between Mrs Huber and her husband, Mr Huber, from whom Mrs Huber is separated. Those sets of proceedings concern maintenance claims.

Legal context

European Union law

3 Recitals 4, 9, 11, 15, 23, 44 and 45 in the preamble to Regulation No 4/2009 are worded as follows:

'(4) The European Council in Tampere on 15 and 16 October 1999 invited the Council and the Commission to establish special common procedural rules to simplify and accelerate the settlement of cross-border disputes concerning, inter alia, maintenance claims. It also called for the abolition of intermediate measures required for the recognition and enforcement in the requested State of a decision given in another Member State, particularly a decision relating to a maintenance claim.

…

(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.

…

(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.

…

(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.

…

(23) To limit the costs of proceedings subject to this Regulation, the greatest possible use of modern communications technologies, particularly for hearing parties, would be helpful.

…

(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 [TEU]. In accordance with the principle of proportionality as set out in that Article this Regulation does not go beyond what is necessary to achieve those objectives.'

4 Article 1(1) of Regulation No 4/2009 states:

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

5 Article 3 of that regulation provides:

'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 Articles 4 and 5 of the regulation concern the choice of court and jurisdiction, respectively, on the basis of the appearance of the defendant.

7 Article 5 of Regulation No 44/2001 provides:

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

…

(2) in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;

…'

German law

8 Paragraph 28 of the Law on the Recovery of Maintenance in Relations with Foreign States (Auslandsunterhaltsgesetz) of 23 May 2011 (BGBl. 2011 I, p. 898; 'the AUG'), entitled 'Centralisation of jurisdiction; regulatory powers', provides:

'(1) 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 [Local Court] which has jurisdiction for the seat of the Oberlandesgericht [Higher Regional Court] in whose area of jurisdiction the defendant or creditor has his or her habitual residence.

For the district of the Kammergericht (Berlin) [Berlin Higher Regional Court], the Amtsgericht Pankow-Weißensee shall have jurisdiction.

(2) The governments of the *Länder* are empowered to transfer that jurisdiction, by regulation, to another Amtsgericht in the district of the Oberlandesgericht or, where there is more than one Oberlandesgericht in a *Land*, to an Amtsgericht for the districts of all Oberlandesgerichte [Higher Regional Courts] or a number of Oberlandesgerichte. The governments of the *Länder* may delegate their powers in this regard to the Landesjustizverwaltungen [judicial administrations] by regulation.'

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-400/13

9 The applicant in the main proceedings, who is habitually resident in Mettmann (Germany), claimed [child] maintenance from her father, Mr Verhaegen, resident in Belgium, by an action brought on 29 May 2013 before the local court for her place of residence, namely, the Amtsgericht Mettmann. Having heard the parties, that court referred the case to the Amtsgericht Düsseldorf, in accordance with Paragraph 28(1) of the AUG.

10 The Amtsgericht Düsseldorf takes the view that, pursuant to Article 3(b) of Regulation No 4/2009, it does not have jurisdiction to hear the case. According to that court, jurisdiction lies with the court for the place, in a Member State, where the applicant is habitually resident, in this case, the Amtsgericht Mettmann.

11 The Amtsgericht Düsseldorf expresses doubts, in particular, as regards the 'centralisation of jurisdiction' rule provided for in Paragraph 28 of the AUG in the case of proceedings relating to maintenance obligations. More specifically, such a centralisation of jurisdiction may have the effect of denying children resident in Germany the possibility of being able to bring proceedings before the court which has jurisdiction for the place where they are habitually resident.

12 In those circumstances, the Amtsgericht Düsseldorf decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

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

Case C-408/13

13 Mrs Huber lives in Kehl (Germany) and claims from her husband, who lives in Barbados, the payment of maintenance, which she considers is payable to her following their separation. She brought her claim before the local court for her place of residence, namely, the Amtsgericht Kehl. That court referred the

case to the Amtsgericht Karlsruhe on the basis of Paragraph 28(1) of the AUG, on the ground that the latter had jurisdiction since the applicant was habitually resident in the district of the Oberlandesgericht Karlsruhe (Karlsruhe Higher Regional Court).

14 The Amtsgericht Karlsruhe also expresses doubts as regards the compatibility of Paragraph 28(1) of the AUG with Article 3(a) and (b) of Regulation No 4/2009.

15 According to that court, under the principle of the primacy of EU law, Regulation No 4/2009 fully prevails over national rules on jurisdiction. If Article 3(a) and (b) of that regulation is in fact to govern both international jurisdiction and territorial jurisdiction, the Member States would be prohibited from adopting rules on jurisdiction which deviate from those laid down in the regulation.

16 The Amtsgericht Karlsruhe takes the view that the national provision in question renders the international recovery of maintenance claims significantly more complicated, contrary to the objective of Regulation No 4/2009, inasmuch as maintenance creditors have to assert their claims before a court other than that for their place of residence, which results in time being wasted. Furthermore, such a court does not have relevant information as to the local economic situation of the creditor for the purposes of ascertaining the latter's needs, nor as to the debtor's ability to pay.

17 The Amtsgericht Karlsruhe refers, moreover, to the willingness of the parties to the main proceedings to submit to the jurisdiction of the court for the place where the applicant in the main proceedings is habitually resident, namely, the Amtsgericht Kehl, either by agreeing on the choice of court or by the defendant's entering an appearance there.

18 In those circumstances, the Amtsgericht Karlsruhe decided to stay the proceedings and to refer the following question to the Court of Justice 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) [of the 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?'

19 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.

Consideration of the questions referred

20 Having regard to the circumstances referred to in paragraph 17 above, the Amtsgericht Karlsruhe suggests that the German law may be incompatible with Articles 4 and 5 of Regulation No 4/2009. However, it must be observed that, as the Commission pointed out, the Amtsgericht Karlsruhe has asked the Court only about the effect of Article 3 of that regulation.

21 It should be added that it is clear from the requests for a preliminary ruling that the disputes in the main proceedings relate only to the situation where legal proceedings are brought against the debtor by the maintenance creditor before the court for the latter's place of habitual residence. Consequently, the questions referred by the referring courts should be answered having regard only to Article 3(b) of the regulation.

22 By their respective questions, the referring courts ask, in essence, whether Article 3(b) of Regulation No 4/2009 is to be interpreted as precluding national legislation such as that at issue in the main proceedings which establishes a centralisation of judicial jurisdiction in matters relating to cross-border maintenance obligations in favour of a first instance court which has jurisdiction for the seat of the appeal court.

23 A preliminary point to note is that, as the Advocate General has observed at point 33 of his Opinion, in so far as the provisions of Regulation No 4/2009 relating to the rules on jurisdiction replaced those in Regulation No 44/2001, the Court's case-law concerning the provisions on jurisdiction in matters relating to maintenance obligations in the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36, 'the Brussels Convention') and in Regulation No 44/2001, which follows on from the Brussels Convention, remains relevant for the purposes of analysing the corresponding provisions of Regulation No 4/2009.

24 It should also be recalled that it is settled case-law that the provisions relating to the rules on jurisdiction must be interpreted independently, by reference, first, to the objectives and scheme of the regulation under consideration and, secondly, to the general principles which stem from the corpus of the national legal systems (see, by analogy, judgments in *Cartier parfums-lunettes and Axa Corporate Solutions assurances*, C-1/13, EU:C:2014:109, paragraph 32 and the case-law cited, and *flyLAL-Lithuanian Airlines*, C-302/13, EU:C:2014:2319, paragraph 24 and the case-law cited).

25 Against that background, Article 3(b) of Regulation No 4/2009 must be interpreted in the light of its aims, wording and the scheme of which it forms part.

26 In this connection, first, it is apparent from recital 45 in the preamble to Regulation No 4/2009 that the regulation aims to introduce 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. According to recital 9 of that regulation, 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.

27 Secondly, recital 15 in the preamble to the regulation states that the rules on jurisdiction as they result from Regulation No 44/2001 should be adapted in order to preserve the interests of maintenance creditors and to promote the proper administration of justice within the European Union.

28 As regards the rules on jurisdiction in cross-border disputes concerning maintenance obligations, the Court has stated, in the context of Article 5(2) of the Brussels Convention, that the derogation relating to the rules on jurisdiction in matters relating to maintenance obligations is intended to offer special protection to the maintenance creditor, who is regarded as the weaker party in such proceedings (see, to that effect, judgments in *Farrell*, C-295/95, EU:C:1997:168, paragraph 19, and *Blijdenstein*, C-433/01, EU:C:2004:21, paragraphs 29 and 30). The rules on jurisdiction provided for in Regulation No 4/2009, like the rule set out in Article 5(2) of the Brussels Convention, are intended to ensure proximity between the creditor and the competent court, as indeed the Advocate General has observed at point 49 of his Opinion.

29 It should also be pointed out that the objective of the proper administration of justice must be seen not only from the point of view of optimising the organisation of courts, but also, as the Advocate General has observed at point 69 of his Opinion, 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.

30 Article 3(b) of Regulation No 4/2009 specifies the criterion for identifying the court which has jurisdiction to rule on cross-border disputes concerning maintenance obligations, namely, 'the place where the creditor is habitually resident'. That provision, which determines both international and territorial jurisdiction, seeks to unify the rules of conflict of jurisdiction (see, to that effect, judgment in *Color Drack*, C-386/05, EU:C:2007:262, paragraph 30).

31 In their written observations submitted to the Court, the German Government and the Commission state that, even though Article 3(b) of Regulation No 4/2009 determines the international and territorial jurisdiction of the courts competent to hear cross-border disputes concerning maintenance obligations, it is nevertheless for the Member States alone, in the framework of the organisation of their courts, to identify the court with specific jurisdiction to rule on such disputes and to define the area of jurisdiction of the courts for the place where the creditor is habitually resident as referred to in Article 3(b) of Regulation No 4/2009.

32 In this connection, it should be stated that, although the rules of conflict of jurisdiction have been harmonised by the determination of common connecting factors, the identification of the competent court remains a matter for the Member States (see, to that effect, judgments in *Mulox IBC*, C-125/92, EU:C:1993:306, paragraph 25, and *GIE Groupe Concorde and Others*, C-440/97, EU:C:1999:456, paragraph 31), provided that the national legislation does not undermine the objectives of Regulation No 4/2009 or render it ineffective (see, inter alia, to that effect, judgment in *Zuid-Chemie*, C-189/08, EU:C:2009:475, paragraph 30, and, by analogy, judgment in *C.*, C-92/12 PPU, EU:C:2012:255, paragraph 79).

33 In this case, it is appropriate to examine, in the first place, whether, in proceedings whose subject-matter is maintenance, the consequence of a centralisation of jurisdiction, such as that at issue in the cases in the main proceedings, is that persons who live in Germany lose the advantage provided by Regulation No 4/2009, that is, of being able to bring proceedings before the court which has jurisdiction for the place where they are habitually resident.

34 In this connection, as stated at page 25 of the Report on the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1979 C 59, p. 1), drawn up by Mr Jenard, 'the court for the place of domicile of the maintenance creditor is in the best position to know whether the creditor is in need and to determine the extent of such need.'

35 It should be stated that the implementation of the objectives referred to in paragraphs 28 and 29 above does not imply that the Member States have to establish competent courts in each place.

36 On the other hand, it is important that, amongst the courts designated to deal with disputes in matters relating to maintenance obligations, the court which has jurisdiction is the one which ensures a particularly close connection with the place where the maintenance creditor is habitually resident.

37 The Commission states in this connection that Regulation No 4/2009 restricts Member States' freedom as regards the determination of the competent court, in so far as territorial jurisdiction must be connected to the place where the creditor is habitually resident. Therefore, the designation of the competent court must be based on there being a reasonable connection between that court and the place where the creditor is habitually resident, within the framework of the organisation of the courts of the Member State concerned.

38 In the present case, the court which has jurisdiction, pursuant to the rule set out in Paragraph 28 of the AUG, is the Amtsgericht which has jurisdiction for the seat of the Oberlandesgericht with territorial jurisdiction before which the creditor would, if necessary, have to appear in appeal proceedings.

39 Therefore, the national provision in question, by designating as the court for the place where the creditor is habitually resident, as referred to in Article 3(b) of Regulation No 4/2009, a court whose area of jurisdiction may not be the same as that of the court which has jurisdiction in respect of domestic disputes with the same subject-matter, does not necessarily help to achieve the objective of proximity.

40 However, although proximity between the competent court and the maintenance creditor is one of the objectives pursued by Article 3(b) of Regulation No 4/2009, it is not, as has been stated in paragraphs 26 to 29 above, the only objective of that regulation.

41 Accordingly, in the second place, it is appropriate to examine whether national legislation such as that at issue in the main proceedings may undermine the objective pursued by Regulation No 4/2009, which is to facilitate as far as possible the recovery of international maintenance claims, in so far as it may render the procedure more cumbersome by causing the parties to spend a considerable amount of additional time.

42 The German Government and the Commission submit that a centralisation of judicial jurisdiction in matters relating to maintenance obligations, such as that at issue in the main proceedings, has a positive effect on the administration of justice, because it makes it possible to have access to courts which are specialised, and thus have greater expertise in that type of litigation, which, they submit, is often of great factual and legal complexity.

43 In this connection, it must be observed, first, that although, given the different geographical remit of the courts having jurisdiction in matters relating to maintenance claims, it might be assumed, in cases of cross-border disputes, that the maintenance creditor may sometimes have to travel further, that is not necessarily the case. The bringing of proceedings before a court does not automatically require the parties to travel at each stage of the proceedings. Accordingly, and as stated in recital 23 in the preamble to Regulation No 4/2009, in order to limit the costs of proceedings subject to that regulation, the greatest possible use should be made of modern communications technologies, particularly for hearing the parties to the dispute, as such procedural means obviate the need for the parties to travel.

44 Secondly, a rule of jurisdiction, such as that at issue in the main proceedings, may serve to satisfy all three of the requirements set out in paragraphs 26 to 29 above, namely, the introduction of measures to ensure the effective recovery of maintenance claims in cross-border situations, to preserve the interests of maintenance creditors and to promote the proper administration of justice.

45 Thus, a centralisation of jurisdiction, such as that at issue in the main proceedings, promotes the development of specific expertise, of such a kind as to improve the effectiveness of recovery of maintenance claims, while ensuring the proper administration of justice and serving the interests of the parties to the dispute.

46 However, it is not inconceivable that such a centralisation of jurisdiction may restrict the effective recovery of maintenance claims in cross-border situations. This requires a specific examination, by the referring courts, of the situation in the Member State concerned.

47 It follows from all those considerations that Article 3(b) of Regulation No 4/2009 must be interpreted as precluding national legislation such as that at issue in the main proceedings which establishes a centralisation of judicial jurisdiction in matters relating to cross-border maintenance obligations in favour of a first instance court which has jurisdiction for the seat of the appeal court, except where that rule helps to achieve the objective of a proper administration of justice and protects the interests of maintenance creditors while promoting the effective recovery of such claims, which is, however, a matter for the referring courts to verify.

Costs

48 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:

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, must be interpreted as precluding national legislation such as that at issue in the main proceedings which establishes a centralisation of judicial jurisdiction in matters relating to cross-border maintenance obligations in favour of a first instance court which has jurisdiction for the seat of the appeal court, except where that rule helps to achieve the objective of a proper administration of justice and protects the interests of maintenance creditors while promoting the effective recovery of such claims, which is, however, a matter for the referring courts to verify.

[Signatures]