Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

16 July 2015*

(Reference for a preliminary ruling — Judicial cooperation in civil and commercial matters — Jurisdiction in matters relating to maintenance obligations — Regulation (EC) No 4/2009 — Article 3(c) and (d) — Matter relating to maintenance in respect of minor children concurrent with the parents' separation proceedings, brought in a Member State other than that in which the children are habitually resident)

In Case C-184/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Italy), made by decision of 25 February 2014, received at the Court on 14 April 2014, in the proceedings

A

v

B,

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: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— A, by C. Rimini, avvocato,

— B, by S. Callegaro, avvocato,

— the Italian Government, by G. Palmieri, acting as Agent, and G. Palatiello, avvocato dello Stato,

— the Greek Government, by M. Germani and I. Kotsoni, acting as Agents,

— the Polish Government, by B. Majczyna, acting as Agent,

* Language of the case: Italian.

— the European Commission, by F. Moro and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 April 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(c) and (d) 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 A and that person's spouse, B, concerning an application relating to maintenance obligations in respect of their two minor children, filed in a Member State other than that in which those children are habitually resident, concurrently with proceedings for the parents' legal separation.

EU law

The Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

3 The preamble to the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded in The Hague on 23 November 2007 ('the 2007 Hague Convention'), approved, on behalf of the European Union, by Council Decision 2011/432/EU, of 9 June 2011 (OJ 2011 L 192, p. 39), states that the best interests of the child are to be a primary consideration in all actions concerning children.

4 Article 20(1)(f) of that convention provides:

'A decision made in one Contracting State ("the State of origin") shall be recognised and enforced in other Contracting States if:

…

(f) the decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.'

The Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters

5 Article 5(2) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1972 L 299, p. 32), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1; 'the Brussels Convention'), was worded 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 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;

…'

Regulation (EC) No 44/2001

6 Article 5(2) of 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), is contained in Section 2 of that regulation, entitled 'Special jurisdiction'. That article 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;

…'

Regulation (EC) No 2201/2003

7 Recitals 5 and 12 in the preamble to Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1) state:

'(5) In order to ensure equality for all children, this Regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding.

…

(12) The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.'

8 Article 1 of that regulation, entitled 'Scope', provides:

'(1) This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

(a) divorce, legal separation or marriage annulment;

(b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

…

(3) This Regulation shall not apply to:

…

(e) maintenance obligations;

…'

9 Article 2(7) of Regulation No 2201/2003 defines parental responsibility as 'all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect'; those rights and duties 'shall include rights of custody and rights of access'.

10 Article 8(1) of that regulation provides:

'The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.'

Regulation No 4/2009

11 According to recitals 1 to 3 of Regulation No 4/2009, that regulation and, inter alia, Regulations Nos 44/2001 and 2201/2003, seek the adoption of measures relating to judicial cooperation in civil matters having cross-border implications and aim, inter alia, to promote the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction.

12 Recital 8 of Regulation No 4/2009 recalls that, in the context of that regulation, inter alia, the 2007 Hague Convention should be taken into account.

13 Recital 15 of that regulation is worded as follows:

'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 Regulation [No 44/2001] should be adapted. …'

14 Article 3 of that regulation, contained in Chapter 3, which is entitled 'Jurisdiction', 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, 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.'

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

15 A and that person's spouse, B, and their two minor children are Italian nationals and have their permanent residence in London (United Kingdom). The children were born in that city on 4 March 2004 and 5 August 2008, respectively.

16 By application of 28 February 2012, A brought, before the Tribunale di Milano (District Court, Milan), proceedings against B, seeking a declaration of separation on the basis of the latter's fault and that custody over their two children be shared between them, and fixing their place of residence with their mother. A proposed to pay, by way of contribution to the children's education and healthcare costs, the monthly sum of EUR 4 000.

17 B filed a counterclaim similarly seeking a declaration of separation from A, based on the latter's fault, and the grant of a monthly allowance of EUR 18 700, nevertheless contesting the jurisdiction of the Italian court in matters of custody rights, place of residence, maintenance of relations and contacts and the contribution to the children's maintenance, given that it is, in B's view, the United Kingdom courts that ought to be recognised as having jurisdiction over those matters, on the basis of Regulation No 2201/2003, since A and B have always lived in London and their minor children were born and are resident there.

18 By an order of 16 November 2012, the Tribunale di Milano declared that it had jurisdiction to entertain the legal separation proceedings, on the basis of Article 3 of Regulation No 2201/2003.

19 However, that court inferred from Article 8(1) of Regulation No 2201/2003 that only the United Kingdom courts had jurisdiction to entertain proceedings relating to 'parental responsibility', within the meaning of Article 2(7) of that regulation, in view of the fact that the children are habitually resident in London.

20 Accordingly, A brought proceedings before the High Court of Justice (England & Wales), Family Division, in London, seeking to have the procedures for the exercise of parental responsibility defined.

21 With regard to the maintenance allowances in favour, first, of B and, second, of the minor children, the Tribunale di Milano also made a distinction. It therefore treated itself as having jurisdiction to entertain proceedings concerning the allowance application in respect of B on the ground that it is a matter ancillary to proceedings concerning the status of a person, or to the application for legal separation, within the meaning of Article 3(c) of Regulation No 4/2009. On the basis of Article 3(d) of that regulation, that court, however, ruled that it lacked jurisdiction to rule on the minor children's

maintenance application, that matter being ancillary to the proceedings concerning parental responsibility. Jurisdiction to decide on the latter application therefore fell also to the United Kingdom courts.

22 A brought an appeal before the Corte suprema di cassazione (Italian Court of Cassation) against the decision of the Tribunale di Milano, based on a single plea, alleging infringement of Article 3(c) of Regulation No 4/2009, in that the Italian courts also have jurisdiction over matters relating to the child maintenance obligations.

23 In A's view, the interpretation of Article 3(d) of Regulation No 4/2009 adopted by the Tribunale di Milano — which was the basis of that court's decision to declare that it did not have jurisdiction to entertain the application relating to the child maintenance obligations — is incorrect, as such an exclusion of jurisdiction cannot be inferred from the wording of that provision.

24 According to the referring court, the decision on the appeal requires determining the manner in which the provisions of Article 8 of Regulation No 2201/2003 and Article 3 of Regulation No 4/2009 relate to one another, in the light, in particular, of the conditions listed in Article 3(c) and (d) of the latter regulation.

25 In those circumstances, the Corte suprema di cassazione decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'May the decision on a request for child maintenance raised in the context of proceedings concerning the legal separation of spouses, being ancillary to those proceedings, be taken both by the court before which those separation proceedings are pending and by the court before which proceedings concerning parental responsibility are pending, on the basis of the prevention criterion, or must that decision of necessity be taken only by the latter court, as the two distinct criteria set out in points (c) and (d) of [Article 3 of Regulation No 4/2009] are alternatives (in the sense that they are mutually exclusive)?'

The question referred for a preliminary ruling

26 By its question, the referring court essentially seeks to ascertain whether Article 3(c) and (d) of Regulation No 4/2009 must be interpreted as meaning that, where a court of a Member State is seised of proceedings involving the separation or dissolution of a marital link between the parents of a minor child and a court of another Member State is seised of proceedings in matters of parental responsibility involving that child, a maintenance request pertaining to that same child may be ruled on both by the court that has jurisdiction to entertain the proceedings involving the separation or dissolution of the marital link, as a matter ancillary to the proceedings concerning the status of a person, within the meaning of Article 3(c) of that regulation, and by the court that has jurisdiction to entertain the proceedings concerning parental responsibility, as a matter ancillary to those proceedings, within the meaning of Article 3(d) of that regulation, or whether a decision on such a matter must necessarily be taken by the latter court.

27 In other words, the referring court seeks to ascertain whether the criteria for attributing jurisdiction set out in Article 3(c) and (d) of Regulation No 4/2009, taking into account the inclusion of the conjunction 'or', are mutually exclusive or whether that conjunction signifies that the respective courts that have jurisdiction to entertain the proceedings for legal separation and the proceedings concerning parental responsibility may be both validly seised of an application relating to maintenance in respect of minor children.

28 In that regard, it should be observed that such a matter arises only, however, if an application relating to maintenance in respect of a minor child is deemed ancillary both to 'proceedings concerning the status of a person' and to 'proceedings concerning parental responsibility', within the meaning of those provisions, and not only to one of those sets of proceedings.

29 Accordingly, the scope of the concept of 'ancillary matter' contained in Article 3(c) and (d) must be delineated.

30 In that regard, it should be noted that, although those provisions expressly permit the national court to declare that it has jurisdiction to entertain an application relating to maintenance in a cross-border context where the law of the forum recognises its jurisdiction to entertain respectively proceedings concerning the status of a person or proceedings concerning parental responsibility, the scope of the concept of 'ancillary matter', referred to in those provisions, cannot, however, be left to the discretion of the courts of each Member State according to their national law.

31 The need for the uniform application of EU law requires that, to the extent that the provisions of Article 3(c) and (d) of Regulation No 4/2009 make no express reference to the law of the Member States for the purpose of determining the meaning and scope of that concept, that concept must be given an autonomous and uniform interpretation throughout the European Union (see, to that effect, judgment in *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraph 37).

32 That interpretation must take into account the wording of the provision and the objective pursued by the legislation in question (see, to that effect, judgment in *A*, C-523/07, EU:C:2009:225, paragraph 34 and the case-law cited).

33 On the basis of a literal interpretation of the provisions of Article 3(c) and (d) of Regulation No 4/2009, it must be stated that they distinguish proceedings concerning the status of persons from proceedings concerning parental responsibility.

34 While the criteria for attributing jurisdiction set out therein are alternative in so far as they are linked by the conjunction 'or', it cannot however be unequivocally established from that wording whether the alternative nature of those criteria means that the applications relating to child maintenance are ancillary only to one set of proceedings concerning parental responsibility, or whether those applications may be deemed ancillary also to proceedings concerning the status of a person.

35 With regard to the context of that provision, it must be stated that the distinction made by its wording echoes the one made by the provisions of Regulation No 2201/2003.

36 That latter regulation, which states in recital 5 that it covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding, and in order to ensure equality for all children, makes an express distinction between disputes concerning divorce, legal separation and marriage annulment, on the one hand, and the attribution, exercise, delegation, and restriction or termination of parental responsibility, on the other.

37 Jurisdiction for divorce, legal separation and marriage annulment is attributed, in accordance with Article 3(1)(a) of Regulation No 2201/2003, on the basis of criteria which primarily take into account the current or former residence of the spouses or of one of them, whereas in matters of parental responsibility, the rules on jurisdiction are, according to recital 12 of that regulation, shaped in the light of the best interest of the child and, in particular, on the criterion of proximity.

38 The provisions of Article 3(c) and (d) of Regulation No 4/2009 distinguish, as regards the criteria for attributing jurisdiction set out therein, between legal proceedings depending on whether they concern the rights and obligations of the spouses or the rights and obligations of the parents towards one or more of their children.

39 An application relating to maintenance obligations in respect of minor children concerns the latter type of proceedings, since it entails the imposition on one or other of the parents of the obligation to pay maintenance in respect of their children in order to cover the children's maintenance and education costs.

40 By its nature, an application relating to maintenance in respect of minor children is thus intrinsically linked to proceedings concerning matters of parental responsibility.

41 With regard to the objectives pursued by Regulation No 4/2009, it should be noted that, according to recital 15, that regulation is aimed at preserving the interests of maintenance creditors and promoting the proper administration of justice within the European Union.

42 As regards the objective concerning the proper administration of justice, it should be observed that an application involving maintenance in respect of minor children is not necessarily linked to divorce or separation proceedings. Moreover, such proceedings do not necessarily lead to obligations to pay maintenance towards a minor child being imposed.

43 However, the court with jurisdiction to entertain proceedings concerning parental responsibility, as defined in Article 2(7) of Regulation No 2201/2003, is in the best position to evaluate *in concreto* the issues involved in the application relating to child maintenance, to set the amount of that maintenance intended to contribute to the child's maintenance and education costs, by adapting it, according to (i) the type of custody (either joint or sole) ordered, (ii) access rights and the duration of those rights and (iii) other factual elements relating to the exercise of parental responsibility brought before it.

44 The interests of maintenance creditors is therefore also guaranteed, in that, first, the minor child will easily be able to obtain a decision relating to his maintenance claim from the court with the best knowledge of the key elements for assessing his claim.

45 Second, the court with jurisdiction to entertain the application concerning such a maintenance claim is designated in accordance with the rules on jurisdiction under EU law laid down by Regulation No 2201/2003 in order to determine the court that can be validly seised of proceedings concerning parental responsibility, which are shaped, as has been recalled in paragraph 37 of this judgment, in the light of the best interests of the child.

46 It is vital to take into account, in interpreting the rules on jurisdiction laid down by Article 3(c) and (d) of Regulation No 4/2009, the best interest of the child. That is true all the more given that the implementation of Regulation No 4/2009 must occur in accordance with Article 24(2) of the Charter of Fundamental Rights of the European Union, according to which, in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

47 It follows, therefore, from the wording, the objectives pursued and the context of Article 3(c) and (d) of Regulation No 4/2009, that, where two courts are seised of proceedings, one involving proceedings concerning the separation or dissolution of the marital link between married parents of minor children and the other involving proceedings involving parental responsibility for those children, an application for maintenance in respect those children cannot be regarded as ancillary both to the proceedings concerning parental responsibility, within the meaning of Article 3(d) of that regulation, and to the proceedings concerning the status of a person, within the meaning of Article 3(c) of that regulation. They may be regarded as ancillary only to the proceedings in matters of parental responsibility.

48 Consequently, the answer to the question asked is that Article 3(c) and (d) of Regulation No 4/2009 must be interpreted as meaning that, where a court of a Member State is seised of proceedings involving the separation or dissolution of a marital link between the parents of a minor child and a court of another Member State is seised of proceedings in matters of parental responsibility involving the same child, an application relating to maintenance concerning that child is ancillary only to the proceedings concerning parental responsibility, within the meaning of Article 3(d) of that regulation.

Costs

49 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(c) and (d) 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 understood as meaning that, in the event that a court of a Member State is seised of proceedings involving the separation or dissolution of a marital link between the parents of a minor child and a court of another Member State is seised of proceedings in matters of parental responsibility involving that same child, an application relating to maintenance concerning that child is ancillary only to the proceedings concerning parental responsibility, within the meaning of Article 3(d) of that regulation.

[Signatures]