Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 18 June 2020[1]

Case C-540/19

WV
v
Landkreis Harburg

(Request for a preliminary ruling
from the Bundesgerichtshof (Federal Court of Justice, Germany)

(Request for a preliminary ruling — Area of freedom, security and justice — Jurisdiction in matters relating to maintenance obligations — Maintenance creditor's place of habitual residence — Statutory subrogation of a public body to a maintenance creditor's claims)

1. The Bundesgerichtshof (Federal Court of Justice, Germany) asks the Court of Justice whether, under Regulation (EC) No 4/2009,[2] German courts have jurisdiction to rule on an action brought by a German public body, which has taken the place of a maintenance creditor by way of statutory subrogation, against the maintenance debtor concerned, who is resident in Austria.

2. At first sight, it would appear that the Court already answered that question in 2014 when it replied to another, similar reference for a preliminary ruling. In the *Blijdenstein* judgment,[3] the Court held that a public body subrogated to a maintenance creditor's rights could not claim maintenance before the courts of the maintenance creditor's place of habitual residence. The provision applicable at that time was Article 5(2) of the 1968 Brussels Convention.[4]

3. Despite the formal identity of the jurisdiction criterion examined in the *Blijdenstein* judgment and the criterion laid down in Article 3(b) of Regulation No 4/2009, there are reasons which now give rise to a different interpretation.

4. The 1968 Brussels Convention (and its successor, Regulation (EC) No 44/2001)[5] has given way to Regulation No 4/2009, which does not merely replicate the earlier texts. In order to further guarantee the same objectives, the new regulation adapts the rules on the allocation of international jurisdiction between Member States, meaning that its interpretation must take account of that new framework.

5. Therefore, the Court has the opportunity to review its previous case-law, in so far as that case-law is incompatible with the legislative framework in force.

1 Original language: Spanish.

2 Council Regulation 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).

3 Judgment of 15 January 2004, (C-433/01, EU:C:2004:21 '*Blijdenstein* judgment').

4 Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36; 'the 1968 Brussels Convention' or 'the 1968 Convention').

5 Council Regulation of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

I. Legal framework

A. EU law. Regulation No 4/2009

6. According to recital 15 of the regulation:

'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 (EC) No 44/2001 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.'

7. Recital 44 reads:

'This Regulation should amend Regulation (EC) No 44/2001 by replacing the provisions of that Regulation applicable to maintenance obligations. …'

8. Article 2(1) provides:

'For the purposes of this Regulation:

…

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

…'

9. Pursuant to Article 3:

'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.'

10. Article 64 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.

…

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. German law

11. Pursuant to Paragraph 1601 of the Bürgerliches Gesetzbuch:[6]

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

12. The first sentence of Paragraph 94(1) of Book 12 of the Sozialgesetzbuch[7] provides:

'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 provided for under maintenance law.'

13. The third sentence of Paragraph 94(5) of the SGB XII stipulates:

'The rights referred to in subparagraphs 1 to 4 shall be exercised pursuant to civil law.'

II. Facts of the dispute and question referred for a preliminary ruling

14. WV's mother, born in 1948, has been living since 2009 in a residential care home for the elderly in Cologne (Germany). Since her income and assets are not sufficient to cover her residential costs in full, she receives regular social assistance from the Landkreis Harburg (Administrative District of Harburg, Germany) in accordance with Book XII of the SGB.

15. WV, the son who is obliged to provide maintenance, resides in Vienna (Austria).

16. The Landkreis Harburg claims from WV the payment of maintenance arrears for the period from April 2017 to April 2018 and the payment of regular maintenance from May 2018.

17. The application was lodged with the Amtsgericht Köln (Local Court, Cologne, Germany) and in it the public body stated that, under Paragraph 94(1) of the SGB XII, it had taken over WV's mother's maintenance claim against WV. The Landkreis Harburg submitted that, during the period in question, it provided social assistance benefits to the mother in an amount that clearly exceeded the amount of maintenance claimed.

18. WV countered that the German courts lacked international jurisdiction.

19. The Amtsgericht Köln (Local Court, Cologne), hearing the case at first instance, found that it lacked international jurisdiction and ruled that the action was inadmissible. That court took the view that, under Article 3(b) of Regulation No 4/2009, only a person to whom maintenance is owed can be a 'creditor', and not a public body subrogated to that claim.

6 Civil Code ('BGB').

7 Social Code ('SGB XII').

20. The applicant public body appealed to the Oberlandesgericht (Higher Regional Court, Germany), which set aside the contested decision and remitted the case to the first-instance court in order for it to be heard again.

21. In the opinion of the appellate court, the German courts do have international jurisdiction, because, under Article 3(a) and (b) of Regulation No 4/2009, the maintenance creditor is entitled to choose between bringing a claim for maintenance before the competent court for that creditor's place of residence (Germany) or before the competent court for the defendant's place of residence (in this case, Austria). The public body which has been subrogated to the maintenance claim is also entitled to make that choice.

22. WV lodged an appeal with the Bundesgerichtshof (Federal Court of Justice), which has referred 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?'

III. Procedure before the Court of Justice

23. The reference for a preliminary ruling was received at the Registry of the Court on 16 July 2019.

24. Written observations were lodged by the Governments of the Federal Republic of Germany and of the Kingdom of Spain, and by the European Commission.

25. It was not considered necessary to hold a hearing.

IV. Analysis

A. Preliminary observation

26. The guarantee of effective and rapid recovery of maintenance claims is essential to the welfare of very large numbers of people in Europe.[8] In order to strengthen that guarantee in cross-border situations, the 1968 Brussels Convention already included a special provision in relation to international jurisdiction.[9] In accordance with that provision (Article 5(2) of the Convention), a maintenance creditor could bring his claim before the competent court of the debtor's Member State of domicile or the courts of the Member State where the maintenance creditor was domiciled or habitually resident. That rule was included in Regulation No 44/2001.

8 That statement is set out in the Draft programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters (OJ 2001 C 12, p. 1), which was the initial impetus for the preparatory work on the new legislation concerning cooperation in matters relating to maintenance obligations.

9 As the Jenard Report on the 1968 Convention (OJ 1979 C 59, p. 1) explains, the provision was established as an extension of the Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations.

27. The European Council, meeting in Tampere on 15 and 16 October 1999, invited the Council to draw up, on the basis of proposals from the Commission, common procedural rules to simplify and accelerate the settlement of cross-border disputes relating to maintenance obligations. The definitive impetus would be given by the Hague Programme and the subsequent action plan, [10] which led, in that regard, to the current Regulation No 4/2009.

28. To protect the interests of maintenance creditors and promote the sound administration of justice in the European Union, Regulation No 4/2009 adapted the pre-existing provisions relating to jurisdiction. In particular, the regulation contains specific rules governing claims for maintenance which, while related to the other instruments concerning judicial cooperation in civil matters, have their own objectives and also their own scheme.

29. As I shall explain below, those factors should take precedence in the interpretation of the (new) text, thereby helping to guarantee the uniformity of its application, which must be autonomous.

B. Current state of the debate. The previous case-law

30. Since the entry into force of Regulation No 4/2009, [11] the Court of Justice of the European Union has been seised of a number of references for a preliminary ruling concerning Article 3 of the regulation, [12] and in particular Article 3(b), [13] albeit from a different perspective to that in this case.

31. Regulation No 4/2009 does not provide a direct answer to the question referred by the national court, which gave rise to a number of comments concerning its lack of clarity on that point. [14]

32. To my mind, it is possible to identify sufficient information in Regulation No 4/2009 to enable the question referred for a preliminary ruling to be answered in the affirmative. I shall endeavour to explain why a public body which has provided social assistance benefits to a maintenance creditor can assert a maintenance claim [15] transferred to it by way of statutory subrogation, before the courts of the place where that creditor is habitually resident, and against the maintenance debtor concerned.

33. That answer involves overriding the *Blijdenstein* judgment in which, as I already pointed out, the Court held that, under Article 5(2) of the 1968 Brussels Convention, the jurisdiction criterion of the place where the maintenance creditor is habitually resident only benefits someone who is 'personally the applicant'. [16]

10 The Hague Programme: strengthening freedom, security and justice in the European Union (OJ 2005 C 53, p. 1).

11 See Article 76. The regulation entered into force on 30 January 2009; the date on which it was to become fully applicable was 18 June 2011, which was the date from which the 2007 Hague Protocol on the law applicable to maintenance obligations was provisionally to become applicable.

12 Judgments of 16 July 2015, *A* (C-184/14, EU:C:2015:479); of 15 February 2017, *W and V* (C-499/15, EU:C:2017:118); and of 5 September 2019, *R (Jurisdiction in matters of parental responsibility and maintenance obligations)* (C-468/18, EU:C:2019:666; 'judgment in *R*'). See also the orders of 16 January 2018, *PM* (C-604/17, EU:C:2018:10), and of 3 October 2019, *OF (Divorce involving a minor)* (C-759/18, EU:C:2019:816).

13 Judgment of 18 December 2014, *Sanders and Huber*, C-400/13 and C-408/13, EU:C:2014:2461 ('judgment in *Sanders and Huber*').

14 Lipp, V., 'Vorbemerkung zu Artikel 3 Verordnung (EG) Nr. 4/2009 des Rates über die Zuständigkeit, das anwendbare Recht, die Anerkennung und Vollstreckung von Entscheidungen und die Zusammenarbeit in Unterhaltssachen (EG-UntVO)', *Münchener Kommentar FamFG*, vol. 2, 3rd edition, 2019, paragraph 29 et seq.

15 The public body could not rely on the jurisdiction rules laid down in Regulation No 4/2009 for the reimbursement of any sums it paid in respect of items other than maintenance.

16 *Blijdenstein* judgment, paragraph 28 and, using different words, the operative part.

34. In that judgment:

– After referring to the principle, which is common in matters of international jurisdiction, that rules which constitute exceptions to the jurisdiction of the courts of the defendant's State of domicile must be interpreted strictly, and to the 1968 Convention's *hostility* to the allocation of jurisdiction to the courts for the applicant's place of domicile,[17] the Court categorised the maintenance creditor as the 'weaker party' in proceedings to claim maintenance.

– On that basis, the Court maintained that 'a public body which brings an action for recovery against a maintenance debtor is not in an inferior position with regard to the latter'.[18]

– The Court explained that, from the debtor's perspective, the first paragraph of Article 2 of the 1968 Convention (which stipulated as the general rule that jurisdiction lies with the courts for the defendant's State of domicile) serves 'to protect the defendant as the party who, being the person sued, is generally in a weaker position'.[19]

– Finally, the Court asserted that the courts for the defendant's domicile 'are better placed to determine the latter's resource'.[20]

35. In subsequent judgments, this time concerning Article 3 of Regulation No 4/2009, the Court retained from its earlier case-law:

– The relevance of that case-law for the purpose of analysing the provisions of the new regulation, in so far as these replaced the provisions in Regulation No 44/2001.[21]

– The belief that the right to choose, granted to the maintenance creditor (Article 3 of Regulation No 4/2009), is derived from the maintenance creditor's position as the 'weaker party' when he acts as the applicant.[22]

C. Arguments for the change of case-law

36. I shall set out below the reasons which, as a whole,[23] may justify abandoning the position taken in the *Blijdenstein* judgment, in the light of the new legislative framework (Regulation No 4/2009). I agree on this point with the German and Spanish Governments and the Commission, which have proposed that same approach.

17 Ibid., paragraph 25.

18 Ibid., paragraph 30. The Court went on to state: 'Moreover, the maintenance creditor, whose maintenance has been covered by the payments of the public body, is no longer in a precarious financial position.' On the advisability of not reiterating that assertion, see point 69 below.

19 Ibid., paragraph 29.

20 Ibid., paragraph 31.

21 Judgment in *Sanders and Huber*, paragraph 23.

22 Judgment in *Sanders and Huber*, paragraph 27, and judgment in *R*, paragraph 30. Both refer to paragraph 29 of the *Blijdenstein* judgment.

23 It is possible that, individually, some of those reasons may not have the necessary capacity to bring about a change of case-law.

1. A new system of rules of international jurisdiction

(a) A complete system

37. First, the proposition concerning continuity between consecutive instruments is neither absolute nor automatic.[24] It is reasonable to follow previous case-law if there have been no legislative amendments. There are amendments in Regulation No 4/2009, although these are not evident from merely reading the applicable provision, that is Article 3(b).

38. Unlike the Brussels Convention and Regulation No 44/2001, 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.[25]

39. That legislative fact is the basis for an initial argument in favour of permitting public bodies which are subrogated to maintenance claims pursuant to statute to seise the courts of the State where the creditor is resident: the protection of the creditor's rights.[26]

40. As the Commission points out,[27] if the maintenance debtor was domiciled in a third country, it is highly likely that, were the action brought by the public body subrogated to the creditor's rights ruled inadmissible in the courts of the State where the creditor is habitually resident, the public body would be required to bring proceedings outside the European Union.

41. For it to be otherwise, there would need to be a choice of court agreement in favour of the courts of a Member State (Article 4), implied acceptance by the defendant of the jurisdiction of the courts of a Member State (Article 5), or the holding of the common nationality of a Member State by the defendant and the public body (Article 6). *Forum necessitatis*, provided for in Article 7, applies only in exceptional circumstances, as that provision indicates.

42. A public body forced to bring its claim in a State outside the European Union would not only experience additional difficulties as regards declaratory proceedings[28] but would probably also experience difficulties later if it were required to seek recognition or enforcement of a decision given in another State. In those circumstances, the applicable rules would not be any of those laid down in Regulation No 4/2009 but rather the rules laid down in a (multilateral or bilateral) agreement or the rules of the court in which recognition or enforcement is to be sought.[29]

24 Advocate General Jääskinen indicated as much in his Opinion in *Sanders and Huber* (C-400/13 and C-408/13, EU:C:2014:2171, points 37 and 41): the principles deriving from the case-law on the subject of earlier instruments cannot be applied mechanically.

25 Recital 15 of Regulation No 4/2009 refers to this change and addresses its effects on the grounds of jurisdiction: since the residual national systems have been eliminated, it is essential that the regulation complete the body of rules on international jurisdiction by providing them with subsidiary criteria (Articles 6 and 7).

26 The difficulties involved in obtaining that protection may in turn have a negative impact on the objectives of the regulation itself: see point 54 et seq. below.

27 Commission's written observations, paragraph 20. See, in the literature, Lipp, V, loc. ult. cit., paragraph 32.

28 Quite apart from the difficulties involved in litigating abroad, which are common to all applicants, a public body may encounter obstacles specifically linked to its public nature.

29 Which means that, as a rule, enforcement of the decision will require a prior declaration of enforceability (*exequatur*), which is usually subject to conditions relating to review of the jurisdiction of the court of origin, respect for the rights of defence, compatibility with earlier decisions, the absence of other proceedings concerning the same or a connected matter pending before the court with jurisdiction, and, sometimes, review of the law applied to the substance of the case.

(b) A system involving alternative international jurisdiction criteria [30]

43. In addition to dispensing with the requirement that the defendant must be domiciled in a Member State for its provisions to apply, Regulation No 4/2009 abandons the rule/exception system in force in the 1968 Brussels Convention and Regulation No 44/2001, which gave preference to the courts for the defendant's place of domicile and provided that other grounds of jurisdiction were to be interpreted strictly, in particular rules under which jurisdiction was granted on the basis of the matter in dispute.

44. Under Regulation No 4/2009, the defendant's habitual residence is indeed the first option laid down by Article 3, but the options which follow are structured as alternatives to it. [31]

45. Since all the jurisdiction criteria laid down in Article 3 are placed on an equal footing in the new legislative framework, it is possible to reject the Court of Justice's earlier reasoning based on *aversion* to the jurisdiction of the applicant's forum and on the classification in general of the defendant as the weaker party. [32]

2. 'Creditor' does not equate to 'applicant'

46. In the judgment in *R*, the Court stated that, where a maintenance creditor is the applicant, he has at his disposal a number of grounds of jurisdiction; this was explained by the creditor's position as the 'weaker party' and by the fact that the objective of Regulation No 4/2009 is to preserve the creditor's interests. [33]

47. Those assertions do not mean that other applicants do not have the same possibility of choosing between the courts referred to in Article 3 of Regulation No 4/2009. The reasoning in the judgment in *R* reflected the circumstances of the case in which that judgment was given but there is, in fact, no reason why that judgment (and, by extension, Regulation No 4/2009 itself) should be construed as restricting the jurisdiction criteria laid down in Article 3 of the regulation solely to proceedings which a 'weaker party' commences *in person*.

48. Regulation No 4/2009 does not establish equivalence between 'creditor' and 'applicant' [34] or between 'debtor' and 'defendant'. In fact, Article 8(1) refers to a situation in which the debtor is the applicant and restricts the debtor's right to bring proceedings to the Member State in which the creditor is habitually resident (under certain conditions).

49. The definition of creditor — like that of debtor — in Article 2 of Regulation No 4/2009 only covers *natural persons*, but, as I have just stated, the concepts of 'creditor' and 'applicant' are not necessarily identical.

50. In other words, it does not follow from Article 2(1)(10) of Regulation No 4/2009 that the only courts available to a public body that has taken the place of a creditor are the courts of the defendant's place of habitual residence. The exclusion of public bodies from the definition in Article 2(1)(10) means only that the fact that a public body *itself* is habitually resident (or established) in a particular Member State is not a ground for the international jurisdiction of the courts of that State under Article 3(b). [35]

30 Here, I am referring solely to the relationship between the jurisdiction rules in Article 3 of Regulation No 4/2009.

31 Advocate General Jääskinen previously drew attention to that specific feature of Regulation No 4/2009 in his Opinion in Joined Cases *Sanders and Huber* (C-400/13 and C-408/13, EU:C:2014:2171, point 62).

32 Supra, point 34.

33 Paragraphs 28 to 33, in particular paragraph 30.

34 The Brussels Convention and Regulation No 44/2001 did not do so either. The Jenard Report on the Convention refers to the 'applicant' but not to the 'creditor' (p. 25).

35 In the literature, see, for example, Lipp, V., loc. ult. cit., paragraph 30.

51. The possibility of restricting the jurisdiction criteria available to public bodies was considered at some point during the legislative process but was not included in the final document. In its legislative resolution of 13 December 2007,[36] the Parliament proposed two sets of wording that are relevant for the present purposes: (a) in Article 2(9), public bodies were included in the definition of 'debtor'; and (b) a new Article 2a provided that public bodies would not have access to a court other than the court for the defendant's place of habitual residence. Both proposals later disappeared.[37]

52. Article 64 of Regulation No 4/2009 lends further support to the view I am proposing, since it refers to public bodies which claim the payment of benefits provided in place of maintenance:

– Article 64(1), in line with recital 14,[38] extends the definition of 'creditor' to public bodies, which are entitled to apply for recognition or enforcement, or for *exequatur*, where appropriate.[39]

– Article 64(3), which proceeds on that basis, creates a link between the legal standing granted and two types of decision, of which a decision 'given against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance' is relevant here. Given that the normal situation would be for the application for recognition, enforcement or *exequatur* to be lodged in the State where the defendant is habitually resident, the decision at issue will, by definition, have been given in another State.

53. Therefore, Regulation No 4/2009 does allow, albeit implicitly, public bodies to use grounds of jurisdiction other than that of the debtor's habitual residence.

3. The objectives of Regulation No 4/2009

54. As I have already pointed out, Regulation No 4/2009 is concerned in general with the protection of maintenance creditors. That is the purport of recital 15 of the regulation, which links that objective to the aim of ensuring the effective recovery of maintenance claims in cross-border situations.[40]

55. The fact that a public body which has taken the place of a maintenance creditor pursuant to statute may bring an action for recovery or reimbursement in the place where the maintenance creditor is habitually resident better reflects that aim. It makes the recovery of maintenance claims easier because, frequently, that place will also be the public body's place of establishment.[41]

36 European Parliament Legislative Resolution of 13 December 2007 on the proposal for a Council regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (COM(2005) 0649 — C6-0079/2006 — 2005/0259(CNS)), P6_TA(2007)0620, amendments 19 and 21 to the Commission's proposal.

37 See document 14066/08 (Add. 1) of 21 October 2008 containing the Council's proposal, approved by Legislative Resolution of the Parliament of 4 December 2008, P6_TA (2008)0574.

38 '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 …'

39 Article 64 is modelled directly on Article 36 of the Hague Convention of 23 November 2007 on the international recovery of child support and other forms of family maintenance: see document 14066/08 (Add. 1) of 21 October 2008 (to which I referred in footnote 37), which contains the Council's proposal, Article 47b, now Article 64. For its part, the article of the Hague Convention referred to reproduces (with some differences) Articles 18 and 19 of the Hague Convention of 2 October 1973 on the recognition and enforcement of decisions relating to maintenance obligations. The classification of public bodies as 'creditors' in that context is intended to authorise their use of central authorities as intermediaries.

40 See recital 45; other, earlier recitals, such as recital 22 and recital 31, link the same objective to other approaches or specific parts of the regulation.

41 The argument, which is also set out in the German Government's observations (paragraph 20), should, perhaps, be qualified in view of the fact that, frequently, a debtor's assets will be situated in another State. In any event, where a public body — or any applicant — is permitted to bring proceedings in the courts of its place of establishment, and that is also the creditor's place of habitual residence, that body will obtain an enforceable instrument more easily.

56. It could be argued that enabling public bodies to bring proceedings on that basis is not favourable to the creditor himself; nor is it likely that this approach encourages the payment of advances of the creditor's maintenance. It should be recalled that that argument was raised by the national court in *Blijdenstein* and rejected by the Court of Justice, which pointed out that public bodies make advances in accordance with their legal obligations. [42]

57. Regulation No 4/2009 focuses principally on creditors who are natural persons but that does not inevitably mean that it limits the aim of ensuring the recovery of claims (in cross-border situations) to claims that are owed to that creditor, if there has been a statutory subrogation in favour of a public body.

58. Furthermore, the interpretation I am suggesting enhances the protection of creditors by imbuing the jurisdiction rules laid down in Regulation No 4/2009 with a certain dissuasive effect for the debtor, who will be aware that he may also be sued by a public body away from his place of habitual residence.

59. This brings about a qualitative change in relation to the previous situation, which was addressed in the *Blijdenstein* judgment. In that situation, while the public body provided assistance benefits to the maintenance creditor, the debtor (against whom proceedings had been brought for failure to pay maintenance) obtained an advantage from the jurisdiction rule. That imbalance can, and must, be corrected.

60. As was previously made clear [43] in the context of comments on the *Blijdenstein* judgment, and as the parties point out in their observations, preventing a public body from lodging its application in the maintenance creditor's place of residence discourages the debtor from voluntarily meeting his obligations. [44]

4. Other additional arguments

61. The approach which I am now proposing is supported by another, perhaps less theoretically important, reason, albeit one imbued with practical importance: ensuring that, as far as possible, a court applies its own law.

62. That argument was also put forward in *Blijdenstein* [45] but the Court did not accept it then because, at that time, there was no instrument common to the Member States concerning the law applicable in matters relating to maintenance obligations. [46]

63. Now those States (with the exception of Denmark) have the Hague Protocol on the law applicable to maintenance obligations, which was approved by the EU and which, in Article 3, lays down the rule that the law of the place where the maintenance creditor is habitually resident is applicable. [47]

42 *Blijdenstein* judgment, paragraph 33.

43 See Álvarez González, S., 'Acción de regreso alimenticio y competencia judicial internacional: un nuevo paso en la progresiva delimitación del artículo 5.2 del Convenio de Bruselas', *La Ley-Unión Europea*, year XXV, No 6116, paragraph 5, together with other references.

44 Written observations of the Commission, paragraph 25, and of the Spanish Government, paragraph 26.

45 Opinion of Advocate General Tizzano in *Blijdenstein* (C-433/01, EU:C:2003:231, points 28 and 29). The Advocate General himself described that argument as 'secondary'.

46 The Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations was in force in 11 Member States.

47 With a view to ensuring a forum-law parallel, the Protocol on the law applicable to maintenance obligations, established at The Hague on 23 November 2007, provides in Article 4(3) that, 'notwithstanding Article 3, if the creditor has seised the competent authority of the State where the debtor has his habitual residence, the law of the forum shall apply …' However, it does not exclude other approaches based on other objectives.

64. On the same note, allowing a public entity to bring a claim in the place where the maintenance creditor is habitually resident leads to a forum-law parallel because, as I have already explained, that place is usually also the place where the public body is established. It should be recalled that, in accordance with Article 64(2) of Regulation No 4/2009, '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'.

65. Finally, acceptance in those situations of the creditor's habitual residence as a ground of jurisdiction is justified by procedural reasons of proximity and the sound administration of justice, as is the jurisdiction rule of the debtor's habitual residence: there is a reason why they are alternatives. Those reasons do not vanish if the action is not brought by the creditor himself but by another (public) person who has been subrogated to the creditor's rights.

66. The court for the place where the creditor is habitually resident is best placed to determine what the creditor's needs are; that court is also, therefore, best placed to determine what, specifically, a body subrogated to the maintenance creditor's claim is entitled to recover. [48]

5. Consequences for the debtor?

67. Lastly, I shall make an additional point concerning the effects for the debtor of the fact that a public body subrogated to the creditor's claim is entitled to sue in the State where the creditor is habitually resident. The parties intervening in these preliminary-ruling proceedings have also referred to this point.

68. Acceptance of that right does not place the defendant debtor at a further disadvantage: the court which will hear the claim against him will, ultimately, be the same court in which the creditor, as the directly affected party, could have brought proceedings.

D. Considerations set out in the alternative

69. If, contrary to the view I have put forward, the Court opts to uphold the reasoning in the *Blijdenstein* judgment, I believe, in the alternative, that the scope of that judgment should be qualified in two respects:

– The jurisdiction rule based on a maintenance creditor's habitual residence should not be restricted to actions brought by a creditor *personally*. [49] In its most literal construction, that limitation would have the illogical result of denying, for example, the legal guardian of a person lacking capacity (a guardian may be a natural person or a legal person) the right to claim maintenance in the place where the protected person habitually resides.

– The assertion that 'the maintenance creditor, whose maintenance has been covered by the payments of the public body, is no longer in a precarious financial position' should not be upheld. [50] That assertion could make the jurisdiction criterion dependent on the resources of the applicant (whether this is the person in receipt of maintenance or a third party subrogated to his claim, who may be a natural or legal person), to the extent that it would be necessary to assess the applicant's precarious position on a case-by-case basis.

48 As paragraph 50 of the judgment of 4 June 2020, *FX (Opposing enforcement of a maintenance claim)* (C-41/19, EU:C:2020:425) states, echoing point 80 of the Opinion of Advocate General Bobek (EU:C:2020:132), the intervention of a public body relates to the way in which the debt is discharged, and has no impact on the substance of the maintenance decision, which remains untouched.

49 Supra paragraph 33.

50 *Blijdenstein* judgment, paragraph 30.

V. Conclusion

70. In the light of the foregoing considerations, I propose that the following reply be given to the Bundesgerichtshof (Federal Court of Justice, Germany):

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 meaning that a public body which has provided a maintenance creditor with social assistance benefits, and which has been subrogated to the maintenance claim pursuant to statute, may demand payment of that debt from the person liable to pay it by means of an action for recovery brought before the courts of the State where the creditor is habitually resident.