Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

27 March 2025*

(Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in civil matters – Jurisdiction in matters relating to maintenance obligations – Regulation (EC) No 4/2009 – Maintenance allowances set by a decision of a court of a third State – Maintenance creditors residing in that third State and holding either the nationality of that third State alone or the nationality of that third State and of a Member State – Maintenance debtor, a national of that Member State and habitually resident in that Member State – Application to modify that decision made by that maintenance debtor to a court of that Member State – Determination of the court with jurisdiction)

In Case C-67/24 [Amozov],[i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski rayonen sad (Sofia District Court, Bulgaria), made by decision of 16 January 2024, received at the Court on 29 January 2024, in the proceedings

R. K.

v

K. Ch.,

D. K.,

E. K.,

THE COURT (Eighth Chamber),

composed of S. Rodin, President of the Chamber, N. Piçarra and O. Spineanu-Matei (Rapporteur), Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Bulgarian.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

after considering the observations submitted on behalf of:

– the Portuguese Government, by P. Barros da Costa, J. Ramos, V. Sequeira and M. Vara, acting as Agents,

– the European Commission, by E. Rousseva and W. Wils, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of recital 15 and Articles 3 and 6 to 8 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 R. K., on the one hand, and his former spouse, K. Ch., and their children, D. K. and E. K., on the other, concerning the modification of a decision of a court of a third State setting the amount of maintenance allowances.

Legal context

European Union law

3 Recitals 9 to 11 and 15 to 17 of Regulation No 4/2009 state:

‘(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.

…

(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 44/2001of 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.

(16) In order to remedy, in particular, situations of denial of justice this Regulation should provide a *forum necessitatis* allowing a court of a Member State, on an exceptional basis, to hear a case which is closely connected with a third State. Such an exceptional basis may be deemed to exist when proceedings prove impossible in the third State in question, for example because of civil war, or when an applicant cannot reasonably be expected to initiate or conduct proceedings in that State. Jurisdiction based on the *forum necessitatis* should, however, be exercised only if the dispute has a sufficient connection with the Member State of the court seised, for instance the nationality of one of the parties.

(17) An additional rule of jurisdiction should provide that, except under specific conditions, proceedings to modify an existing maintenance decision or to have a new decision given can be brought by the debtor only in the State in which the creditor was habitually resident at the time the decision was given and in which he remains habitually resident. To ensure proper symmetry between 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")] and this Regulation, this rule should also apply as regards decisions given in a third State which is party to the said Convention in so far as that Convention is in force between that State and the Community and covers the same maintenance obligations in that State and in the Community.'

4 Article 1 of that regulation, headed 'Scope of application', provides, in paragraph 1:

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

5 Article 2 of that regulation, headed 'Definitions', states, in paragraph 1(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 …'

6 Article 3 of that regulation, headed 'General provisions', 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.'

7 Article 4 of Regulation No 4/2009, headed 'Choice of court', provides as follows in paragraph 1:

'The parties may agree that the following court or courts of a Member State shall have jurisdiction to settle any disputes in matters relating to a maintenance obligation which have arisen or may arise between them:

…'

8 Article 5 of that regulation, headed 'Jurisdiction based on the appearance of the defendant', provides:

'Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction.'

9 Article 6 of that regulation, headed 'Subsidiary jurisdiction', provides:

'Where no court of a Member State has jurisdiction pursuant to Articles 3, 4 and 5 and no court of a State party to the [Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Lugano on 30 October 2007 ("the Lugano Convention"), the conclusion of which was approved on behalf of the European Community by Council Decision 2009/430/EC of 27 November 2008 (OJ 2009 L 147, p. 1),] which is not a Member State has jurisdiction pursuant to the provisions of that Convention, the courts of the Member State of the common nationality of the parties shall have jurisdiction.'

10 Article 7 of that regulation, headed '*Forum necessitatis*', reads as follows:

'Where no court of a Member State has jurisdiction pursuant to Articles 3, 4, 5 and 6, the courts of a Member State may, on an exceptional basis, hear the case if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the dispute is closely connected.

The dispute must have a sufficient connection with the Member State of the court seised.'

11 Article 8 of Regulation No 4/2009, headed 'Limit on proceedings', provides:

'1. Where a decision is given in a Member State or a 2007 Hague Convention Contracting State where the creditor is habitually resident, proceedings to modify the decision or to have a new decision given cannot be brought by the debtor in any other Member State as long as the creditor remains habitually resident in the State in which the decision was given.

2. Paragraph 1 shall not apply:

(a) where the parties have agreed in accordance with Article 4 to the jurisdiction of the courts of that other Member State;

(b) where the creditor submits to the jurisdiction of the courts of that other Member State pursuant to Article 5;

(c) where the competent authority in the 2007 Hague Convention Contracting State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or give a new decision; or

(d) where the decision given in the 2007 Hague Convention Contracting State of origin cannot be recognised or declared enforceable in the Member State where proceedings to modify the decision or to have a new decision given are contemplated.'

Bulgarian law

12 Article 4(1)(1) and (2) of the Kodeks na mezhdunarodnoto chastno pravo (Code on private international law) provides:

'(1) Bulgarian courts and other bodies shall have international jurisdiction where:

1. the habitual residence, registered office in accordance with its statutes or place of effective management of a defendant is in the Republic of Bulgaria;

2. the applicant or claimant is a Bulgarian national or a legal person governed by Bulgarian law.'

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

13 R. K., a Bulgarian national, was married to K. Ch., a Canadian national. They had two children, D. K. and E. K., who are nationals of Canada and Bulgaria.

14 By a judgment given in 2017, the Cour supérieure de la province du Québec, division des affaires familiales, district de Terrebonne (Superior Court of Québec, Family Practice Division, Terrebonne District, Canada) ordered the divorce of R. K. and K. Ch. and adjudicated on parental responsibility. By that judgment, the court ordered the applicant in the main proceedings to pay a maintenance allowance of 613.75 Canadian dollars (CAD) (approximately EUR 407) to each of those two children and a maintenance allowance of CAD 2 727.50 (approximately EUR 1 809) to his former spouse.

15 The applicant in the main proceedings applied to the Sofiyski rayonen sad (Sofia District Court, Bulgaria), the referring court, for a modification of the maintenance obligations thus set, seeking a reduction of the amount of the maintenance allowance granted to one of those children, who was still a minor, and the discontinuance of the maintenance allowances set for his former spouse and for the other child, who had become an adult. On the date on which that application was made, the applicant in the main proceedings was resident in Sofia (Bulgaria) and the defendants in the main proceedings were resident in Canada.

16 In support of that application, the applicant in the main proceedings stated that he had requested the commencement of bankruptcy proceedings in Canada, that he had been declared bankrupt on 21 June 2018 by means of a certificate of discharge of liabilities drawn up by an authorised liquidator, and that he had left Canada in 2019 in order to settle in Sofia. He also stated that he had been unemployed since the end of 2018 and that he owned no immovable or movable property.

17 The Sofiyski rayonen sad (Sofia District Court) served the relevant judicial documents on the defendants in the main proceedings at their address in Canada indicated in the case file, by means of letters rogatory. Those defendants having not been found at that address, they were invited to appear by the affixing of a notice at their registered address in Bulgaria and a special representative was appointed to act for them.

18 In the response submitted by that representative, the latter argued that the Bulgarian courts lacked jurisdiction to hear the application to modify the maintenance obligations at issue because the defendants in the main proceedings, the maintenance creditors, were not habitually resident in Bulgaria.

19 By an order of 6 March 2023, the Sofiyski rayonen sad (Sofia District Court) closed the proceedings on the ground that the Bulgarian courts lacked international jurisdiction. That court held, on the basis in particular of recital 15 of Regulation No 4/2009, that that regulation is universal in scope and applies to relations with third States, such as Canada.

20 The applicant in the main proceedings lodged an appeal against that order before the Sofiyski gradski sad (Sofia City Court, Bulgaria). By an order of 1 August 2023, that court set aside the aforementioned order of the Sofiyski rayonen sad (Sofia District Court) and referred the case back to it for the proceedings to be continued.

21 As grounds for that decision to set aside, the Sofiyski gradski sad (Sofia City Court) held, first, that the rules on jurisdiction laid down in Article 3 et seq. of Regulation No 4/2009 do not apply in relations with third States. Second, it stated that recital 15 of that regulation does not concern applications made by maintenance debtors but those made by maintenance creditors and that that recital should not be read in conjunction with Article 3 of that regulation, which lays down general rules on jurisdiction, but in conjunction with Article 6, which governs subsidiary jurisdiction. Third, that court held that, as a Canadian national, the former spouse of the applicant in the main proceedings is not subject to EU law. Fourth, it noted that, since there is no treaty on maintenance obligations between the Republic of Bulgaria and Canada, the relations between the parties in the main proceedings are not governed by international law. Accordingly, the Sofiyski gradski sad (Sofia City Court) established the jurisdiction of the Bulgarian courts on the basis of the Bulgarian nationality of the applicant in the main proceedings, in accordance with the national rules of private international law.

22 The Sofiyski rayonen sad (Sofia District Court) states that it disagrees with the interpretation reached by the Sofiyski gradski sad (Sofia City Court) and entertains doubts as to whether the provisions of Regulation No 4/2009 would be complied with if the dispute in the main proceedings were determined in accordance with the binding instructions of the latter court.

23 In that regard, the referring court is uncertain, in the first place, whether the Sofiyski gradski sad (Sofia City Court) was correct to hold that recital 15 of Regulation No 4/2009 means that the regulation does not apply to relations between persons residing in the territory of a Member State of the European Union and nationals of third States.

24 In the second place, that court questions whether an application to modify a decision setting the amount of maintenance allowances, which seeks, on the one hand, a reduction of that amount and, on the other, the termination of those allowances, falls within the concept of ‘application for maintenance payments’, a key concept for determining the material scope of Regulation No 4/2009. The referring court indicates that there is room for doubt in that regard as a result of

the objective of protecting maintenance creditors highlighted by recitals 9 to 11 of that regulation. That court also seeks to ascertain whether the rules on jurisdiction laid down by Regulation No 4/2009 – with the exception of that set out in Article 8 thereof, which is in its view inapplicable because Canada has only been a party to the 2007 Hague Convention since 1 February 2024 – apply to such applications for modification.

25 In the event of the Court holding that such applications are governed by the rules on jurisdiction established by Regulation No 4/2009, the referring court seeks to ascertain, in the third place, whether the subsidiary jurisdiction under Article 6 of that regulation applies where, in addition to the common nationality that they share with the applicant in the main proceedings, two of the defendants in the main proceedings hold the nationality of a third State.

26 In the fourth and last place, that court enquires whether it can declare itself to have jurisdiction on the basis of the '*forum necessitatis*', in accordance with Article 7 of that regulation.

27 In those circumstances, the Sofiyski rayonen sad (Sofia District Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must recital 15 of [Regulation No 4/2009] be interpreted as allowing national case-law according to which the international jurisdiction of courts examining applications for maintenance payments for persons who are habitually resident in a third State (in this case Canada) is determined pursuant to national law and not [that] regulation?

(2) Must Articles 3 and 8 of Regulation [No 4/2009] be interpreted as allowing national case-law according to which the concept "application for maintenance payments" does not cover an application for a reduction in maintenance payments and Articles 3 to 6 of the regulation apply only to applications for the granting of maintenance payments?

(3) Must Article 6 of Regulation [No 4/2009] be interpreted as meaning that the concept "common nationality" also covers cases where one or more parties have dual nationality, or does it only cover cases of completely identical nationalities?

(4) Must Article 7 of Regulation [No 4/2009] be interpreted as allowing, where the maintenance debtor makes an application for a reduction in the maintenance payments, that application to be regarded as an "exceptional" case where the maintenance creditor is habitually resident in a third State and has no other connection with the European Union other than his or her nationality?'

Consideration of the questions referred

Preliminary observations

28 According to settled case-law, in the procedure laid down in Article 267 TFEU, which provides for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to decide the case before it. With that in mind, the Court may have to reformulate the questions referred to it. The fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not prevent the Court from providing the national court with all the points of interpretation which may be of assistance in adjudicating on the case

pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 4 October 2024, *Herbaria Kräuterparadies II*, C-240/23, EU:C:2024:852, paragraph 46 and the case-law cited).

29 As the request for a preliminary ruling makes clear, the referring court's uncertainty concerns, first, the material scope of Regulation No 4/2009 inasmuch as, by its first and second questions, it wishes to ascertain whether an application to modify a decision on maintenance obligations falls within the scope of that regulation and of the rules on jurisdiction that it lays down, on the same basis as an application seeking to obtain such a decision, where that application to modify seeks, on the one hand, a reduction of the amount of a maintenance allowance and, on the other, termination of the obligations in question, and is brought by the maintenance debtor against maintenance creditors who habitually reside in a third State other than a State which is a contracting party to the 2007 Hague Convention. Second, if that regulation is applicable in the present case, the referring court enquires as to the interpretation of certain of those rules in order to determine whether it has jurisdiction, under that regulation, to hear an application such as that in the main proceedings.

30 Consequently, it is appropriate to examine the first and second questions together, relating as they do to the scope of Regulation No 4/2009, and then to analyse in turn the third and fourth questions, which relate to the rules on jurisdiction established in Articles 6 and 7 of that regulation.

The first and second questions

31 By its first and second questions, the referring court is asking, in essence, whether Article 1(1) of Regulation No 4/2009, read in the light of recital 15 of that regulation, must be interpreted as meaning that an application to modify a decision on maintenance obligations given by a court of a third State other than a State which is a contracting party to the 2007 Hague Convention falls within the scope of that regulation where it seeks, on the one hand, a reduction of the amount of a maintenance allowance and, on the other, termination of the obligations in question and is brought before a court of a Member State by the maintenance debtor, a national of that Member State and habitually residing in the territory of that Member State, against the maintenance creditors, who habitually reside in the territory of that third State, of whom one is a national only of that third State and the others are nationals of that State and of the Member State in question.

32 According to Article 1(1) of Regulation No 4/2009, that regulation applies to 'maintenance obligations' arising from a family relationship, parentage, marriage or affinity.

33 According to recital 15 of that regulation, 'the circumstance that the defendant is habitually resident in a third State should no longer entail the non-application of Community rules on jurisdiction'.

34 It is therefore apparent from the wording itself of Article 1(1) of Regulation No 4/2009, read in the light of recital 15, that the rules on jurisdiction laid down by that regulation are intended to be universal, since they can have the result of establishing the jurisdiction of a court of a third State and since that regulation applies to 'maintenance obligations' without any distinction drawn between, on the one hand, applications for the grant of maintenance or for an increase in the

amount of maintenance allowances, brought by maintenance creditors, and, on the other, applications to modify maintenance obligations seeking a reduction in those amounts or the termination of those obligations, brought by maintenance debtors.

35 The scheme of Regulation No 4/2009 bears out that interpretation.

36 The regulation sets out, in Chapter II, headed 'Jurisdiction', all the applicable rules for designating the court with jurisdiction in relation to maintenance obligations, while recital 15 stipulates that there should no longer be any referral to the rules on jurisdiction in national law, since the rules resulting from that regulation must be considered to be exhaustive (see, to that effect, judgment of 5 September 2019, *R (Jurisdiction for parental responsibility and maintenance)*, C-468/18, EU:C:2019:666, paragraph 42).

37 As regards specifically whether, in the same way as an application for the grant of maintenance, an application brought by the maintenance debtor to modify a decision on maintenance obligations given by a court of a third State other than a State which is a contracting party to the 2007 Hague Convention falls within the scope of Regulation No 4/2009, and, consequently, within the scope of the rules on jurisdiction set out in Articles 3 to 7 of that regulation, it should be observed in the first place that, as recital 11 of that regulation indicates, the concept of 'maintenance obligation' is an autonomous concept of EU law.

38 In the second place, Regulation No 4/2009 consistently uses the expression 'maintenance obligations'. Accordingly, by way of illustration, Article 2(1)(1) of that regulation defines 'decision' as a decision in matters relating to 'maintenance obligations'; the rules on general jurisdiction in Article 3 of the regulation are designed to determine which courts have jurisdiction to rule in matters relating to 'maintenance obligations'; and, under Article 4 of that regulation, the parties can choose the court to settle disputes in matters relating to 'a maintenance obligation'.

39 In the third place, although Regulation No 4/2009 distinguishes between maintenance creditors and maintenance debtors, it nonetheless also uses the concept of 'defendant' without drawing a distinction according to whether that defendant is a maintenance debtor or a maintenance creditor. Accordingly, recital 15 of that regulation refers to the 'defendant' being habitually resident in a third State and Article 3(a) establishes the rule whereby jurisdiction lies with the court for the place where the 'defendant' is habitually resident.

40 In that regard, the Court has held that under Article 3 of that regulation a maintenance creditor, 'when he [or she] acts as the applicant', is offered the possibility of bringing his or her claim under bases of jurisdiction other than that provided for in Article 3(a) (see, to that effect, judgment of 5 September 2019, *R (Jurisdiction for parental responsibility and maintenance)*, C-468/18, EU:C:2019:666, paragraph 30 and the case-law cited).

41 Consequently, proceedings concerning an application to modify a decision on maintenance obligations, brought by the debtor, in which the maintenance creditor is a party as defendant, are proceedings 'in matters relating to a maintenance obligation' and fall within the scope of Regulation No 4/2009 in the same way as proceedings concerning an application for the grant of maintenance brought by the maintenance creditor.

42 Although Article 8(1) of Regulation No 4/2009 addresses the specific situation of an application to modify a decision on maintenance obligations given in a Member State or in a State which is a contracting party to the 2007 Hague Convention in which the creditor is habitually resident, that fact does not mean that an application to modify a decision on maintenance obligations given by a court of a third State which is not a contracting party to that convention does not fall within the scope of that regulation.

43 Accordingly, in situations other than that under Article 8(1) of Regulation No 4/2009, the court with international jurisdiction to hear such an application should be determined in accordance with the rules on jurisdiction laid down in Articles 3 to 7 of that regulation.

44 That interpretation is consistent with the objective of protecting maintenance creditors pursued by Regulation No 4/2009. Under the rules on general jurisdiction set out in Article 3 of that regulation, the jurisdiction of the court called upon to hear an application to modify a decision concerning a maintenance obligation that is not ancillary to proceedings relating to the status of a person or to parental responsibility will be established according to the criterion of the place where the creditor is habitually resident, either under Article 3(a) of that regulation, where the creditor is a party as defendant, or under Article 3(b) where the creditor is a party as applicant.

45 In the present case, it should be observed at the outset that, on the date on which the judgment referred to in paragraph 14 of the present judgment was delivered, Canada was not a contracting party to the 2007 Hague Convention. Nevertheless, it is clear from the foregoing discussion that, even though the conditions laid down in Article 8(1) of Regulation No 4/2009 are not satisfied in the case in the main proceedings, the application to modify the maintenance obligations set by that judgment falls within the scope of that regulation. Consequently, the referring court should determine whether it has jurisdiction to hear that application by examining in turn whether the conditions are satisfied for Article 3 of that regulation to apply and, as the case may be, for Articles 6 and 7 thereof to apply.

46 In addition, as regards the bases of jurisdiction under Article 3 of Regulation No 4/2009, it should be noted that paragraphs (c) and (d) of that article cannot apply in the present case because the application for modification in question is not ancillary to proceedings relating to the status of a person or to proceedings relating to parental responsibility. Nor does it appear that the referring court can establish its jurisdiction on the basis of paragraphs (a) or (b) of Article 3. Those provisions refer either to the place where the defendant is habitually resident or to the place where the creditor is habitually resident, that is to say, in the present case, in both instances, Canada.

47 For the foregoing reasons, the answer to the first and second questions is that Article 1(1) of Regulation No 4/2009, read in the light of recital 15 of that regulation, must be interpreted as meaning that an application to modify a decision on maintenance obligations given by a court of a third State other than a State which is a contracting party to the 2007 Hague Convention falls within the scope of that regulation where it seeks, on the one hand, a reduction of the amount of a maintenance allowance and, on the other, termination of the obligations in question and is brought before a court of a Member State by the maintenance debtor, a national of that Member State and habitually residing in the territory of that Member State, against the maintenance creditors, who habitually reside in the territory of that third State, of whom one is a national only of that third State and the others are nationals of that State and of the Member State in question.

The third question

48 By its third question, the referring court is seeking to ascertain, in essence, whether Article 6 of Regulation No 4/2009 must be interpreted as meaning that the rule whereby the courts of the Member State of the common nationality of the parties have subsidiary jurisdiction applies where, in addition to the nationality of the Member State of the court seised, the defendants hold the nationality of a third State.

49 Article 6 of Regulation No 4/2009 establishes subsidiary jurisdiction for the courts of the Member State of the common nationality of the parties, where no court of a Member State has jurisdiction pursuant to Articles 3 to 5 of that regulation and where no court of a State party to the Lugano Convention which is not a Member State has jurisdiction pursuant to the provisions of that convention.

50 In that regard, it should be noted that Article 6 of that regulation makes no reference to the law of the Member States for the purposes of defining the precise scope of the concept of 'common nationality' and draws no distinction according to whether a person holds one nationality or two or more, the sole condition necessary in order for the basis of jurisdiction under Article 6 to apply being that the parties must have a common nationality.

51 In the present case, since the applicant in the main proceedings and his children have a common nationality that is to say, Bulgarian nationality, the jurisdiction of the referring court to hear the applications at issue in the main proceedings in relation to those children can be established on the basis of that connecting factor, pursuant to Article 6 of Regulation No 4/2009. By contrast, that court would not have jurisdiction to hear the application concerning the former spouse of the applicant in the main proceedings, because she holds only Canadian nationality.

52 For those reasons, the answer to the third question is that Article 6 of Regulation No 4/2009 must be interpreted as meaning that the rule whereby the courts of the Member State of the common nationality of the parties has subsidiary jurisdiction applies where, in addition to the nationality of the Member State of the court seised, the defendants hold the nationality of a third State.

The fourth question

53 As a preliminary point, it should be noted that, since it is clear from the answer to the third question that, in order to hear the applications at issue in the main proceedings in relation to the children of the applicant in those proceedings, the referring court could establish its jurisdiction on the basis of Article 6 of Regulation No 4/2009, the only application to be examined in the light of Article 7 of that regulation is that seeking termination of the maintenance allowance granted to the former spouse of that applicant.

54 Consequently, by its fourth question, the referring court is enquiring, in essence, whether Article 7 of Regulation No 4/2009 must be interpreted as meaning that a situation in which an application to modify a decision on maintenance obligations given by a court of a third State other than a State which is a contracting party to the 2007 Hague Convention, seeking termination of the obligations concerned, is brought before a court of a Member State by the maintenance debtor, a national of that Member State and habitually resident in the territory of that State, against the maintenance creditor, a national of that third State and habitually resident in the territory of that third State,

falls within the concept of 'an exceptional basis' for the purposes of that article, with the effect that a court of a Member State can hear a dispute pursuant to the rule on the jurisdiction of the *forum necessitatis* that it lays down.

55 The first paragraph of Article 7 of Regulation No 4/2009 provides that, where no court of a Member State has jurisdiction pursuant to Articles 3to 6 of that regulation, the courts of a Member State may, on an exceptional basis, hear the case if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the dispute is closely connected. Under the second paragraph of Article 7, the dispute must have a sufficient connection with the Member State of the court seised.

56 Article 7 of Regulation No 4/2009 thus lays down four cumulative conditions to be satisfied in order for a court of a Member State seised of an application relating to maintenance obligations to be able, on an exceptional basis, to establish that it has jurisdiction by reason of the *forum necessitatis*. First, that court must find that no court of a Member State has jurisdiction under Articles 3 to 6 of Regulation No 4/2009. Second, the dispute before the court must be closely connected with a third State. Third, the proceedings in question cannot reasonably be brought or conducted or would be impossible in that third State. Fourth and last, the dispute must have a sufficient connection with the Member State of the court seised (judgment of 1 August 2022, *MPA (Habitual residence – Third State)*, C-501/20, EU:C:2022:619, paragraph 99).

57 Although it is for the referring court to determine whether all those conditions are satisfied so that it can, if applicable, rely on the rule of jurisdiction laid down in Article 7 of Regulation No 4/2009, in view of the information provided by that court the following points need to be clarified, for each of those conditions in turn.

58 In the first place, as regards the first condition referred to in paragraph 56 of the present judgment, it must be observed that it is not sufficient for the court seised to establish that it has no jurisdiction under Articles 3 to 6 of Regulation No 4/2009, but rather that court should also ensure that no court of a Member State has jurisdiction under those articles (judgment of 1 August 2022, *MPA (Habitual residence – Third State)*, C-501/20, EU:C:2022:619, paragraph 101).

59 In the present case, that condition appears to be satisfied in relation to the application to terminate the maintenance allowance established for the former spouse of the applicant in the main proceedings since, first, if Article 3(a) and (b) of that regulation were applied, the Canadian courts would be found to have jurisdiction while, second, Article 3(c) and (d) and Articles 4 and 5 of that regulation appear not to be applicable in the case in the main proceedings. Similarly, given that the applicant in the main proceedings and his former spouse have no common nationality, Article 6 of that regulation is likewise not applicable.

60 In the second place, the condition that the dispute of which the court is seised must be closely connected with a third State appears also to be satisfied in the case in the main proceedings since the former spouse of the applicant in the main proceedings, a maintenance creditor under the decision that it is sought to modify, is habitually resident in Canada and holds Canadian nationality. Moreover, that decision was given by a court of that third State.

61 In the third place, in order for the court of a Member State to be able, on an exceptional basis, to exercise the jurisdiction under Article 7 of Regulation No 4/2009, it is also important that the proceedings in question cannot reasonably be brought or conducted or would be impossible before the courts of the third State concerned (judgment of 1 August 2022, *MPA (Habitual residence – Third State)*, C-501/20, EU:C:2022:619, paragraph 106).

62 In that regard, although recital 16 of that regulation refers to civil war as an example of a situation in which proceedings in the third State in question would be impossible, thus illustrating the exceptional nature of the cases in which jurisdiction based on the *forum necessitatis* may be exercised, it is clear that that regulation does not give any indication as to the circumstances in which the court of a Member State might find that proceedings relating to maintenance obligations cannot reasonably be brought or conducted before the courts of the third State concerned. However, it is apparent from recital 16 that it was 'to remedy, in particular, situations of denial of justice' that the *forum necessitatis* was established, allowing a court of a Member State, on an exceptional basis, to hear a case which is closely connected with a third State 'when an applicant cannot reasonably be expected to initiate or conduct proceedings' in that third State (judgment of 1 August 2022, *MPA (Habitual residence – Third State)*, C-501/20, EU:C:2022:619, paragraph 107).

63 Accordingly, first, in order to establish its jurisdiction under Article 7 of Regulation No 4/2009, the court of a Member State cannot require the maintenance applicant to show that he or she has unsuccessfully brought or attempted to bring the proceedings in question before the courts of the third State concerned. It is therefore sufficient that the court of a Member State, in the light of all the matters of fact and of law in the case, be able to satisfy itself that the obstacles in the third State concerned are such that it would be unreasonable to require the applicant to apply for maintenance before the courts of that third State (judgment of 1 August 2022, *MPA (Habitual residence – Third State)*, C-501/20, EU:C:2022:619, paragraph 108).

64 Second, to the extent that the objective of the jurisdiction based on the *forum necessitatis* is to remedy 'in particular' situations of denial of justice, as stated in recital 16 of Regulation No 4/2009, it is, in principle, justified for the court of a Member State to rely on that jurisdiction, on an exceptional basis and subject to a detailed analysis of the procedural conditions of the third State concerned, where access to justice in that third State is, in law or in fact, hindered, in particular by the application of procedural conditions that are discriminatory or contrary to the fundamental guarantees of a fair trial (judgment of 1 August 2022, *MPA (Habitual residence – Third State)*, C-501/20, EU:C:2022:619, paragraph 110).

65 In the present case, the request for a preliminary ruling contains no assessment of any inability on the part of the applicant in the main proceedings to bring an action in Canada. Although it is for the referring court to conduct that assessment in the light of all the circumstances of the case, it should be noted that, in line with the position expressed by the European Commission in its written observations, it is not apparent from the information available to the Court that any such inability to bring an action could be invoked in relation to Canada.

66 In the fourth and last place, the dispute in question must have 'a sufficient connection' with the Member State of the court seised and, as recital 16 of Regulation No 4/2009 makes clear, that connection may consist in the nationality of one of the parties (judgment of 1 August 2022, *MPA (Habitual residence – Third State)*, C-501/20, EU:C:2022:619, paragraph 111). There appears to be such a connection in the present case, since the applicant in the main proceedings is a Bulgarian national.

67 For the foregoing reasons, the answer to the fourth question is that Article 7 of Regulation No 4/2009 must be interpreted as meaning that a situation in which an application to modify a decision on maintenance obligations given by a court of a third State other than a State which is a contracting party to the 2007 Hague Convention, seeking termination of the obligations concerned, is brought before a court of a Member State by the maintenance debtor, a national of that Member State and habitually resident in the territory of that Member State, against the maintenance creditor, a national of that third State and habitually resident in the territory of that third State, falls within the concept of 'an exceptional basis' for the purposes of that article, with the effect that a court of a Member State can hear a dispute pursuant to the rule on the jurisdiction of the *forum necessitatis* laid down in that article, provided that no such application could reasonably be brought, or the related procedure be conducted, or would be impossible before the courts of the third State concerned.

Costs

68 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Eighth Chamber) hereby rules:

1. **Article 1(1) 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, read in the light of recital 15 of that regulation,**

   must be interpreted as meaning that an application to modify a decision on maintenance obligations given by a court of a third State other than a State which is a contracting party to the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded in The Hague on 23 November 2007, falls within the scope of that regulation where it seeks, on the one hand, a reduction of the amount of a maintenance allowance and, on the other, termination of the obligations in question and is brought before a court of a Member State by the maintenance debtor, a national of that Member State and habitually residing in the territory of that Member State, against the maintenance creditors, who habitually reside in the territory of that third State, of whom one is a national only of that third State and the others are nationals of that State and of the Member State in question.

2. **Article 6 of Regulation No 4/2009**

   must be interpreted as meaning that the rule whereby the courts of the Member State of the common nationality of the parties has subsidiary jurisdiction applies where, in addition to the nationality of the Member State of the court seised, the defendants hold the nationality of a third State.

3. **Article 7 of Regulation No 4/2009**

   must be interpreted as meaning that a situation in which an application to modify a decision on maintenance obligations given by a court of a third State other than a State which is a contracting party to the Convention on the International Recovery of Child

Support and Other Forms of Family Maintenance, concluded in The Hague on 23 November 2007, seeking termination of the obligations concerned, is brought before a court of a Member State by the maintenance debtor, a national of that Member State and habitually resident in the territory of that Member State, against the maintenance creditor, a national of that third State and habitually resident in the territory of that third State, falls within the concept of 'an exceptional basis' for the purposes of that article, with the effect that a court of a Member State can hear a dispute pursuant to the rule on the jurisdiction of the *forum necessitatis* laid down in that article, provided that no such application could reasonably be brought, or the related procedure be conducted, or would be impossible before the courts of the third State concerned.

[Signatures]