



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

5 September 2019*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matters relating to maintenance obligations — Regulation (EC) No 4/2009 — Article 3(a) and (d) and Article 5 — Court seised of three joined claims concerning the divorce of the parents of a minor child, parental responsibility and the maintenance obligation with regard to that child — Court declaring that it has jurisdiction relating to the divorce and no jurisdiction relating to parental responsibility — Jurisdiction to entertain proceedings with regard to the claim concerning the maintenance obligation — Court for the place where the defendant is habitually resident and before which he has entered an appearance)

In Case C-468/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Judecătoria Constanța (Court of First Instance, Constanța, Romania), made by decision of 11 July 2018, received at the Court on 18 July 2018, in the proceedings

R

v

P,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, F. Biltgen, J. Malenovský, C.G. Fernlund (Rapporteur) and L.S. Rossi, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Romanian Government, by C. Canțăr, E. Gane and A. Voicu, acting as Agents,
- the European Commission, by M. Wilderspin, acting as Agent, and by D. Calciu, avocate,

after hearing the Opinion of the Advocate General at the sitting on 29 July 2019,

gives the following

* Language of the case: Romanian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(a) and (d) and Article 5 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, resident in the United Kingdom, and P, resident in Romania, concerning divorce petitions, maintenance claims for their minor child and claims concerning parental responsibility.

Legal context

European Union law

Regulation (EC) No 2201/2003

- 3 Recitals 5 and 12 of 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 as follows:

‘(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.’
- 4 Article 1 of that regulation 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;

...’

5 Article 2(7) of that regulation provides as follows:

‘For the purposes of this Regulation:

(7) the term “parental responsibility” shall mean 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. The term shall include rights of custody and rights of access.’

6 Under Article 3(1)(b) of that regulation, in matters relating to divorce, jurisdiction is to lie with the courts of the Member State of the nationality of both spouses.

7 Article 8 of Regulation No 2201/2003 provides as follows:

‘1. 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.

2. Paragraph 1 shall be subject to the provisions of Articles 9, 10 and 12.’

8 Article 12 of that regulation, entitled ‘Prorogation of jurisdiction’, provides as follows:

‘1. The courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:

(a) at least one of the spouses has parental responsibility in relation to the child;

and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised, and is in the superior interests of the child.

...’

Regulation No 4/2009

9 According to recitals 1 and 2 of Regulation No 4/2009, that regulation seeks the adoption of measures relating to judicial cooperation in civil matters having cross-border implications and aims, inter alia, to promote the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction.

10 According to recital 9 of Regulation No 4/2009:

‘A maintenance creditor should be able to obtain easily, in a Member State, a decision which will be automatically enforceable in another Member State without further formalities.’

11 Recital 15 of that regulation states:

‘In order to preserve the interests of maintenance creditors and to promote the proper administration of justice within the European Union, the rules on jurisdiction as they result from [Council] Regulation (EC) No 44/2001 [of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1)] should be adapted. The circumstance

that the defendant is habitually resident in a third State should no longer entail the non-application of Community rules on jurisdiction, and there should no longer be any referral to national law. This Regulation should therefore determine the cases in which a court in a Member State may exercise subsidiary jurisdiction.’

12 Under Article 2(1)(10) of that regulation, the term ‘creditor’ is to mean ‘any individual to whom maintenance is owed or is alleged to be owed’.

13 Article 3 of that regulation provides as follows:

‘In matters relating to maintenance obligations in Member States, jurisdiction shall lie with:

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

14 Article 5 of Regulation No 4/2009, entitled ‘Jurisdiction based on the appearance of the defendant’, provides as follows:

‘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.’

15 Article 10 of the regulation, entitled ‘Examination as to jurisdiction’, provides as follows:

‘Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation it shall declare of its own motion that it has no jurisdiction.’

Romanian law

16 According to the order for reference, the Romanian courts must verify of their own motion whether they have jurisdiction. A plea alleging lack of jurisdiction may nevertheless be raised by one of the parties at any stage of the proceedings against a court which has declared that it has jurisdiction, and the court is required to examine that plea.

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

17 R and P, who are Romanian nationals, were married on 15 August 2015 in Romania. They are the mother and father, respectively, of a child born on 8 November 2015 in Belfast (United Kingdom), where they lived before before separating.

18 Upon their separation in 2016, P, the father, returned to Romania while R, the mother, stayed in Belfast with the child.

- 19 By application of 29 September 2016, R issued proceedings against P before the Judecătoria Constanța (Court of First Instance, Constanța, Romania) seeking the dissolution of the marriage, the fixing of the place of residence of the child with her, authorisation to exercise sole parental responsibility and an order for P to pay maintenance for the child.
- 20 P contested the jurisdiction of the referring court thus seised.
- 21 On the basis of Article 3(1)(b) of Regulation No 2201/2003, that court declared that it had jurisdiction, owing to the nationality of the spouses, to hear the divorce petition.
- 22 On 8 June 2017, that court nevertheless decided to separate the head of claim in relation to the exercise of parental responsibility by the mother and the fixing of the place of residence of the child with her from that in relation to the payment of maintenance for the child. It accordingly initiated two new cases concerning those two heads of claim respectively.
- 23 As regards the first head of claim, relating to the exercise of parental responsibility, the referring court, having found that the conditions for the prorogation of jurisdiction set out in Article 12(1) of Regulation No 2201/2003, including that relating to the best interests of the child, were not satisfied, declared that it had no jurisdiction. In addition, that court held that the courts of the United Kingdom had jurisdiction to adjudicate on that head of claim in accordance with Article 8(1) of Regulation No 2201/2003, since the child had been habitually resident in that Member State from birth. The parties did not appeal the decision by which the referring court declared that it had no jurisdiction in that connection.
- 24 As regards the second head of claim, relating to the payment of maintenance by the father for the child, the referring court declared that it had jurisdiction on the basis of Article 3(a) of Regulation No 4/2009 on account of the place of habitual residence of the defendant. That court adds that, while P entered an appearance before it without raising a plea alleging lack of jurisdiction for that head of claim, he claimed, like R, that the referring court should refer a question concerning that issue to the Court of Justice for a preliminary ruling.
- 25 The referring court shares the doubts of the parties to the dispute before it and points out that it may, under Romanian law, verify of its own motion whether it has jurisdiction at any stage of the case. It raises the issue of whether it follows from the judgment of 16 July 2015, *A* (C-184/14, EU:C:2015:479), that, where a court has jurisdiction to rule on the dissolution of marriage between the parents of a minor child and another court has jurisdiction to rule on the issue of parental responsibility with respect to the child, only the latter court has jurisdiction to rule on the obligation to pay maintenance for that child.
- 26 The referring court states that it has doubts in particular as to the relationship between Article 3(a) of Regulation No 4/2009, which designates as the court with jurisdiction the court for the place where the defendant is habitually resident, Article 3(d) of that regulation, which designates the court which has jurisdiction to adjudicate on the issue of parental responsibility, and Article 5 of that regulation, which designates the court before which the defendant has entered an appearance without raising a plea of lack of jurisdiction.
- 27 In those circumstances, the Judecătoria Constanța (Court of First Instance, Constanța) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) In the context of an action before the courts of a Member State which comprises three heads of claim concerning (i) the dissolution of the marriage of the parents of a minor child, (ii) parental responsibility for that minor child and (iii) maintenance obligations with regard to that minor child, may Article 3(a) and (d) and Article 5 of Regulation No 4/2009 be interpreted as meaning that the court seised of the divorce petition, being also a court for the place where the defendant

is habitually resident and the court before which the defendant has entered an appearance, has jurisdiction to give a decision on the claim concerning maintenance obligations in respect of the minor child, notwithstanding its finding that it has no jurisdiction in the matter of parental responsibility for the minor child, or may the claim concerning maintenance obligations be decided only by a court having jurisdiction to adjudicate the claim concerning parental responsibility for the minor child?

- (2) In the circumstances relating to the jurisdiction of the national court described above, is the claim concerning maintenance obligations with regard to the minor child ancillary to the claim concerning parental responsibility, within the meaning of Article 3(d) of Regulation No 4/2009?
- (3) In the event that the second question is answered in the negative, is it in the best interests of the child for a court of a Member State which has jurisdiction pursuant to Article 3(a) of Regulation No 4/2009 to decide the claim concerning the maintenance obligations of the parents toward the minor child of the marriage of which the dissolution is sought, notwithstanding the fact that that court has found itself to have no jurisdiction in the matter of parental responsibility and has held, with the force of *res judicata*, that the conditions laid down by Article 12 of [Regulation No 2201/2003] are not fulfilled?

Consideration of the questions referred

- 28 By its three questions, which must be examined together, the referring court asks, in essence, whether Article 3(a) and (d) and Article 5 of Regulation No 4/2009 must be interpreted as meaning that where there are three joined claims before a court of a Member State concerning, respectively, the divorce of the parents of a minor child, parental responsibility in respect of that child and the maintenance obligation with regard to that child, the court ruling on the divorce, which has declared that it has no jurisdiction to rule on the claim concerning parental responsibility, nevertheless has jurisdiction to rule on the claim concerning the maintenance obligation with regard to that child since it is also the court for the place where the defendant is habitually resident and the court before which the defendant has entered an appearance, or if solely the court with jurisdiction to hear the claim concerning parental responsibility in respect of the child may rule on the claim concerning the maintenance obligation with regard to that child.
- 29 It is apparent from the wording of Article 3 of Regulation No 4/2009, entitled ‘General provisions’, that that article lays down general criteria for attributing jurisdiction for the purposes of the courts of the Member States ruling on maintenance obligations. Those criteria are alternative, as is attested to by the use of the coordinating conjunction ‘or’ after each of them (see, to that effect, judgment of 16 July 2015, *A*, C-184/14, EU:C:2015:479, paragraph 34).
- 30 In this connection, since the objective of Regulation No 4/2009, as is apparent from recital 15 thereof, consists in preserving the interest of the maintenance creditor, who is regarded as the weaker party in an action relating to maintenance obligations, Article 3 of that regulation offers that party, when he acts as the applicant, the possibility of bringing his claim under bases of jurisdiction other than that provided for in Article 3(a) of that regulation (see, to that effect, judgments of 15 January 2004, *Blijdenstein*, C-433/01, EU:C:2004:21, paragraph 29, and of 18 December 2014, *Sanders and Huber*, C-400/13 and C-408/13, EU:C:2014:2461, paragraphs 27 and 28).
- 31 The maintenance creditor can thus bring his application either before the court for the place where the defendant is habitually resident, in accordance with point (a) of Article 3, or before the court for the place where the creditor is habitually resident, in accordance with point (b) of that article, or further, in accordance with points (c) and (d) of that article, if the maintenance application is ancillary to a

main action, relating to the status of a person, such as a divorce petition (under point (c)), or to an action concerning parental responsibility (under point (d)), before the court with jurisdiction to entertain either the former or the latter proceedings respectively.

- 32 Article 5 of Regulation No 4/2009 provides, moreover, for the court of a Member State before which the defendant enters an appearance to have jurisdiction, unless the purpose of the defendant entering an appearance was to contest that jurisdiction. As is apparent from the words ‘apart from jurisdiction derived from other provisions of this Regulation’, that article provides for a head of jurisdiction applicable by default where, *inter alia*, the criteria under Article 3 of that regulation are not applicable.
- 33 Thus, in a situation such as that at issue in the present case, the court for the place where the defendant is habitually resident, seised by the maintenance creditor, has jurisdiction to rule on the application relating to maintenance obligations for the child under Article 3(a) of Regulation No 4/2009. It also has jurisdiction under Article 5 of that regulation as the court before which the defendant entered an appearance without raising a plea alleging lack of jurisdiction.
- 34 However, the referring court wishes to ascertain whether the fact that it declared that it has no jurisdiction to rule on the application relating to parental responsibility covering, in particular, the exercise of parental responsibility and the right of custody, including the place of residence of the child, deprives it of jurisdiction to rule on the application concerning the maintenance obligation with respect to the child.
- 35 As stated in paragraph 23 above, that court has pointed out that it declared that it has no jurisdiction to rule on the head of claim relating to the exercise of parental responsibility on the grounds that the conditions for the prorogation of jurisdiction, laid down in Article 12 of Regulation No 2201/2003, were not satisfied. It also takes the view that, under Article 8(1) of that regulation, the courts of the United Kingdom, where the child is habitually resident, have jurisdiction. It is furthermore apparent from the order for reference that no application relating to the exercise of parental responsibility has been brought before the courts of that Member State.
- 36 It must be observed in this connection that, in paragraph 40 of the judgment of 16 July 2015, *A* (C-184/14, EU:C:2015:479), the Court held that, by its nature, an application relating to maintenance in respect of minor children is intrinsically linked to proceedings concerning matters of parental responsibility. The Court also stated, in paragraph 43 of that judgment, that the court with jurisdiction to entertain proceedings concerning parental responsibility is in the best position to evaluate *in concreto* the issues involved in the application relating to child maintenance and 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.
- 37 In concluding its reasoning, the Court held in paragraph 48 of that judgment 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 Regulation No 4/2009.
- 38 However, it does not follow from the judgment of 16 July 2015, *A* (C-184/14, EU:C:2015:479), that where, as in the case in the main proceedings, a court has declared that it has no jurisdiction to rule on an action in relation to the exercise of parental responsibility for a minor child and has designated another court as having jurisdiction to rule on that action, only that latter court has jurisdiction, in all cases, to rule on any application in relation to maintenance obligations with respect to that child.

- 39 It is important to note in this connection that, in the judgment of 16 July 2015, *A* (C-184/14, EU:C:2015:479), the Court interpreted only points (c) and (d) of Article 3 of Regulation No 4/2009 and not the other criteria for jurisdiction provided for in Article 3 or Article 5 thereof. Those other criteria were not relevant in that case since, unlike the facts of the case in the main proceedings, the spouses who were the parents of the maintenance creditor children had their habitual residence in the same Member State as their children, as the Advocate General observed in point 52 of his Opinion, and, furthermore, the defendant had put in an appearance before the court seised only to contest the jurisdiction of that court.
- 40 Consequently, the fact that a court has declared that it has no jurisdiction to rule on an action in relation to the exercise of parental responsibility for a minor child is without prejudice to its jurisdiction to rule on applications relating to maintenance obligations with regard to that child if that jurisdiction may be founded, as in the case in the main proceedings, on Article 3(a) of Regulation No 4/2009 or Article 5 of that regulation.
- 41 That finding is supported by the scheme and the objectives of Regulation No 4/2009.
- 42 So far as the scheme of Regulation No 4/2009 is concerned, that regulation sets out, in Chapter II thereof, entitled 'Jurisdiction', all of the applicable rules to designate the court having jurisdiction with respect to maintenance obligations. Recital 15 of that regulation stipulates in that regard 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.
- 43 Thus, if a court seised of an application concerning maintenance obligations with regard to a child does not have jurisdiction to entertain proceedings in relation to an action concerning the parental responsibility for that child, it is first of all necessary to ascertain whether that court has jurisdiction to entertain proceedings on another basis under that regulation (orders of 16 January 2018, *PM*, C-604/17, not published, EU:C:2018:10, paragraph 33, and of 10 April 2018, *CV*, C-85/18 PPU, EU:C:2018:220, paragraph 55).
- 44 It must also be noted that Regulation No 4/2009 does not provide for the option, for a court with jurisdiction under one of the provisions of that regulation before which an application has legitimately been brought, to decline jurisdiction with regard to that application in favour of a court which, in its view, would be better placed to hear the case, as Article 15 of Regulation No 2201/2003 permits in the matter of parental responsibility.
- 45 Such an interpretation also corresponds to the objective of Regulation No 4/2009, recalled in paragraph 30 above. As the Advocate General observed in points 59 and 61 of his Opinion, that regulation provides for alternative and non-hierarchised criteria for jurisdiction which give priority to the applicant's choice.
- 46 The importance of that choice given the aim of protecting the maintenance creditor reflects the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations, approved on behalf of the European Community by Council Decision 2009/941/EC of 30 November 2009 (OJ 2009 L 331, p. 17), the Court having observed that that protocol has close links with Regulation No 4/2009 (judgment of 7 June 2018, *KP*, C-83/17, EU:C:2018:408, paragraph 49). The Court has thus ruled that that protocol enables the maintenance creditor, *de facto*, to choose the law applicable to his application concerning maintenance obligations by providing that the law of the forum, rather than the law of the State of the habitual residence of the creditor, may be applied as a matter of priority when the creditor introduces his application before the competent authority of the State where the debtor has his habitual residence (see, to that effect, judgment of 20 September 2018, *Mölk*, C-214/17, EU:C:2018:744, paragraphs 31 and 32).

- 47 An interpretation of Regulation No 4/2009 according to which only the court with jurisdiction in respect of parental responsibility has jurisdiction to rule on an application concerning maintenance obligations is liable to limit that option for the maintenance creditor applicant to choose not only the court with jurisdiction, but also, as a result, the law applicable to his application.
- 48 In a situation such as that at issue in the main proceedings, the initial choice of the parent representing the minor maintenance-creditor child to regroup all his heads of claim before the same court is rendered inadmissible by the plea raised by the defendant alleging lack of jurisdiction of that court and a decision of that court declaring that it has no jurisdiction, under Article 12 of Regulation No 2201/2003, in respect of the head of claim in relation to parental responsibility.
- 49 In the light of the risk of having to bring his applications concerning maintenance obligations and concerning parental responsibility before two separate courts, that parent may wish, in the child's best interests, to withdraw his initial application concerning maintenance obligations brought before the court ruling on the divorce petition so that the court with jurisdiction in matters of parental responsibility also has jurisdiction to rule on that application concerning maintenance obligations.
- 50 Nevertheless, that parent may also wish, in the child's best interests, to retain his initial application concerning maintenance obligations with respect to the child before the court ruling on the divorce petition, where that court is also the court of the place in which the defendant has his habitual residence.
- 51 Many reasons, like those mentioned by the Advocate General in points 65 to 71 of his Opinion, may be behind such a choice by the maintenance creditor, in particular the possibility of ensuring that the law of the forum is applied, that being Romanian law in the present case, the ability to express himself in his native language, the possibility of lower costs in the proceedings, the knowledge by the court seised of the defendant's ability to pay and exemption from the requirement to seek leave to enforce decisions.
- 52 Consequently, the answer to the questions referred is that Article 3(a) and (d) and Article 5 of Regulation No 4/2009 must be interpreted as meaning that where there is an action before a court of a Member State which includes three claims concerning, respectively, the divorce of the parents of a minor child, parental responsibility in respect of that child and the maintenance obligation with regard to that child, the court ruling on the divorce, which has declared that it has no jurisdiction to rule on the claim concerning parental responsibility, nevertheless has jurisdiction to rule on the claim concerning the maintenance obligation with regard to that child where it is also the court for the place where the defendant is habitually resident or the court before which the defendant has entered an appearance, without contesting the jurisdiction of that court.

Costs

- 53 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(a) and (d) and Article 5 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 where there is an action before a court of a Member State which includes three claims concerning, respectively, the divorce of the parents of a minor child, parental responsibility in respect of that child and the maintenance obligation with regard to that child, the court ruling on the divorce, which has

declared that it has no jurisdiction to rule on the claim concerning parental responsibility, nevertheless has jurisdiction to rule on the claim concerning the maintenance obligation with regard to that child where it is also the court for the place where the defendant is habitually resident or the court before which the defendant has entered an appearance, without contesting the jurisdiction of that court.

[Signatures]