

Test-the-Training Session No. 1

VILNIUS (LITHUANIA)

DAY 2

18 September 2018

TRAINING PACKAGE

Programme
Presentations
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Legal terminology
Bibliography

**4 EU training sessions on family law for
Cross-border Lawyers And Social Services**

Test Training Session No. 1

Vilnius (Lithuania)

17-18 September 2018

DAY 2

18 September 2018

09:00 – 10:30	Law applicable in divorce cases: Rome III Regulation Orsolya Szeibert
<i>10:30 – 11:00</i>	<i>Coffee Break</i>
11:00 – 12:30	Maintenance obligations and jurisdiction in maintenance cases Maria Caterina Baruffi and Diletta Danieli
<i>12:30 – 14:00</i>	<i>Lunch break</i>
14:00 – 15:30	Law applicable in maintenance cases Anabela Susana de Sousa Gonçalves
<i>15:30 – 16:00</i>	<i>Coffee Break</i>
16:00 – 17:15	Recognition and enforcement in maintenance cases Ana Pliner
17:15 – 17:30	<i>Conclusions and closing</i>



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Law applicable in divorce cases: Rome III Regulation

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Test-the-Training Session No. 1
Vilnius (Lithuania)
17-18 September 2018

Contents of this session

- 1) Scope of Rome III
- 2) Method of regulating the applicable law
- 3) Choice of law and applicable law in absence of choice
- 4) Divorce law and habitual residence
- 5) Art 10, 12, 13 Rome III
- 6) Sahyouni case

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1) Scope of Rome III

Answers the issue of **conflict of laws**

Does not affect the Brussels IIa Regulation

It was adopted in enhanced cooperation

Italy, Lithuania, Portugal and Hungary are among the participating MSs

sensitive issues are affected concerning divorce

It has to be applied from 21 June 2012

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1) Scope of Rome III

1) Divorce and legal separation (only)

- „dissolution or loosening of marriage ties” (Preamble)
- shall not apply to
 - legal capacity of natural persons
 - existence, validity, recognition of marriage
 - annulment of marriage
 - name of the spouses
 - accessory issues to divorce – property consequences, parental responsibility, maintenance obligations
 - trusts, successions

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1) Scope of Rome III

2) Courts of MSs

- all the authorities in the participating Member States with jurisdiction in the matters falling within the scope of the Regulation
- in 2010 these authorities were ‘courts’
- nowadays some steps towards ‘dejudiciarisation’

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2) Method of regulating the applicable law

- 1) Choice of law by the parties
- 2) Applicable law in the absence of parties' choice
- 3) Universal application – to apply the divorce law of a third state
- 4) No discrimination – Charter of Fundamental Rights of EU
- 5) Special rules
 - Art. 13 Differences in national law
 - Art. 12 Public policy
 - Art. 10 Application the law of the forum in special cases

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- 1) Party-autonomy
 - Advantages
 - Disadvantages
- 2) Choice of law by the parties (Art 5)
 - Limited choice as following
 - State of habitual residence
 - State of last habitual residence + one of them still resides there
 - State of nationality of one spouse
 - *lex fori*

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Choice of law – agreement

- 1) Habitual residence, nationality – at the time the agreement is concluded
- 2) Agreement
 - can be modified
 - until the court is seized
 - existence and (material) validity
 - formal validity
 - informed consent

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Choice of law – agreement

- 1) Material validity (Art 6)
 - by the law which would govern it under this Regulation if the agreement were valid
- 2) Formal validity (Art 7)
 - in writing, dated and signed
 - also electronic – ‘durable record’
 - extra requirements according to the law of the participating MS of their habitual residence at the time of the agreement is concluded

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Applicable law in the absence of choice of law

1) In strict order the following

- State of habitual residence
- State of last habitual residence + did not end more than 1 year + one of them still resides there
- State of nationality of both spouses
- *lex fori*

2) Important: at the time the court is seized

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4) Divorce law

1) Different national solutions

2) Cultural, traditional roots – significance?

3) Hadadi case – Brussels IIa

- Brussels IIa but divorce law has significance
- CJEU C-168/08 [2009]

4) Divorce

- Divorce upon fault
- No fault divorce
- Divorce upon mutual consent
- Divorce 'upon demand'

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Habitual residence

1) No definition

2) Problems

- Autonomous and uniform interpretation
- Different factors
- Children – adults?
- Different (family law) regulations?

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5) Differences in national law Art 13

1) For MSs

- No divorce at all (none of them)
- Marriage in question is not valid
 - same-sex marriages
- Same-sex marriage
 - Existence is questionable
 - Validity is questionable

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Public policy Art 12

1) For MSs

- Application of the designated law may be refused
 - manifestly
 - incompatible
 - with the public policy of the forum
- Same-sex marriage
 - Existence is questionable
 - Validity is questionable

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Spouses' equal access to divorce Art 10

1) *Lex fori* is to be applied

- the law
 - makes no provision for divorce OR
 - no equal access to divorce on the ground of the spouses' sex is guaranteed

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6) Sahyouni case CJEU C-372/16 [2017]

1) Circumstances

2) Legal issue

3) Question

- Rome III has be interpreted as meaning that a divorce resulting from a unilateral declaration made by one of the spouses before a religious court, such as that at issue in the main proceedings, come within the substantive scope of that regulation.

4) Arguments

5) *Ratio decidendi*

6) Private divorce – state law

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Thank you for your attention!

 <p>Partnership</p>      	<h2>Maintenance obligations and jurisdiction in maintenance cases</h2> <p>Maria Caterina Baruffi Full Professor of International Law (University of Verona, Law Dept.)</p> <p>and</p> <p>Diletta Danieli Post-doc Research Fellow in EU Law (University of Verona, Law Dept.)</p> <p>Test-the-Training Session No. 1 Vilnius (Lithuania) 17-18 September 2018</p>
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<h2>Contents of this session</h2> <ol style="list-style-type: none"> 1) The concept of “maintenance obligations” <ul style="list-style-type: none"> - the scope of application of Reg. 4/2009 - the autonomous interpretation under EU law - characterisation issues 2) Jurisdiction in maintenance cases <ul style="list-style-type: none"> - the grounds of jurisdiction - procedural provisions <p>+ A cross-cutting case study on these topics</p> <p>156</p>
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1) The concept of “maintenance obligations”

1.a) The scope of application
of Reg. 4/2009

1.b) The autonomous interpretation
under EU law

1.c) Characterisation issues

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1.a) The scope of application of Reg. 4/2009

“Recap” from yesterday’s introduction:

- complete PIL legal instrument
- applicable since 18 June 2011
- all EU MS, except Denmark (which has nonetheless implemented the contents of this Reg. to the extent that it amends Reg. 44/2001)
- interplay with the 2007 Hague Protocol with regard to the applicable law (Art. 15 Maint. Reg.)
- partial harmonisation of enforcement procedures (abolition of *exequatur* for those MS bound by the Hague Protocol)

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1.a) The scope of application of Reg. 4/2009

Objective scope (Art. 1)

- **maintenance obligations** arising from a **family relationship, parentage, marriage or affinity** (irrespective of a possible family breakdown)



the notion, however, is **not defined** in the Reg., and Recital 11 only clarifies that it should be interpreted **autonomously**, in order to ensure equal treatment to all creditors

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Subjective scope

i. **individuals** within the meaning of Art. 2

- “**creditor**”: the person to whom maintenance **is owed or alleged to be owed**
- “**debtor**”: the person who **owes or is alleged to owe** maintenance



therefore, it is **not limited** to those who have **already been recognised** as entitled to maintenance rights/duties, but also those who seek for maintenance

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Case law on the notion of “maintenance creditor”

CJEU, 20.3.1997, C-295/95, *Farrell*

The jurisdictional provision in force at that time (Art. 5(2) of the 1968 Brussels Conv.) did not clarify this notion: does it cover only persons entitled to maintenance by virtue of a previous decision, or also those bringing an action for the first time?

- **General term**, without distinction between those already recognised and those not yet recognised as entitled to maintenance



interpretation codified in the Maint. Reg.

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Subjective scope

ii. **public bodies** within the meaning of Recital 14 and Art. 64

- for the purposes of **recognition and enforcement** of a maintenance decision, they can **serve as “creditors”** if acting in place of an individual to whom maintenance is owed

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1.b) The autonomous interpretation under EU law

- The **concept of maintenance obligations** laid down in the Maint. Reg. makes **no reference to national law** for the purposes of determining its meaning and scope
- therefore, according to well-established CJEU case law, an **autonomous interpretation** must be given, taking into account
 - the **context**, and
 - the **objective** of the relevant provisions

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What is the nature of maintenance obligations?

CJEU, 6.3.1980, 120/79, *de Cavel v de Cavel* (II)

- The case concerned the **payment of an interim compensation** granted to one of the parties (wife) **in a French divorce judgment**
- the relevant instrument in force at that time (**1968 Brussels Conv.**) **excluded** from its scope the status of natural persons, as well as rights in property arising out of a matrimonial relationship

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- can the Conv. **apply** to an ancillary order concerning maintenance, even though the main dispute (divorce proceedings) falls out of its scope? **YES**



- the nature of the maintenance ancillary claim was found in the **financial obligations between former spouses** after divorce, fixed **on the basis of their respective needs and resources**
- as such, it was a **civil matter** within the meaning of the 1968 Brussels Conv.

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Do the form of payment or a possible transfer of ownership of property matter? NO

CJEU, 27.2.1997, C-220/95, *van den Boogard v Laumen*

- The case concerned the **payment of a lump sum** and **transfer of ownership of property** by one party to his former spouse in the context of **divorce proceedings**
- again, the nature of maintenance was found in its objective to **enable one spouse to provide for himself/herself**, and in the determination of its **amount** according to **needs and resources of both spouses**

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- to establish the nature of maintenance, the **method of payment** (lump sum or periodic instalments) is **not relevant**

↳ even a lump sum may be designed to ensure a predetermined level of income

- likewise, the **transfer of ownership of property** between the former spouses **does not alter** the nature of maintenance

↳ it still is a capital sum for the maintenance of one of the former spouses

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1.c) Characterisation issues

Spousal maintenance or matrimonial property?

The concept of maintenance under EU law may pose certain characterisation problems in relation to **matrimonial property issues** given that both areas present **common features** (the underlying economic considerations), but ultimately pursue **different aims** that are essential to the respective classification

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- From a general perspective, **maintenance** is concerned with the **subsistence and needs** of the spouses, while **matrimonial property regimes** come into play for the **division of assets** (distributive function)
- in addition, questions about **proprietary legal relationships** between spouses **resulting directly** from the **marriage** or its **dissolution** are deemed to be related to **matrimonial property regimes**: see CJEU, 27.3.1979, C-143/78, *de Cavel v de Cavel (I)*

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- The distinction may appear **easier in civil law systems**, where the dissolution of a marriage gives rise to separate consequences in terms of property issues (matrimonial property divided according to objective criteria, and maintenance orders issued according to the needs of the creditor)
- The **common law tradition**, however, does not provide for a legal category entirely equivalent to matrimonial property (see the financial orders in divorce proceedings under English law)

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2) Jurisdiction in maintenance cases

2.a) The grounds of jurisdiction

2.b) Procedural provisions

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2.a) The grounds of jurisdiction

Overview of the jurisdictional regime in the Maint. Reg.

- general grounds
- choice of court
- submission to jurisdiction
- subsidiary jurisdiction
- necessary jurisdiction (*forum necessitatis*)



Recital 15

- regardless of whether the defendant has his/her habitual residence in a MS or not
 - no room for application of national law

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General grounds (Art. 3)

- **Autonomous maintenance claims:**

jurisdiction lies with the **court for the place** where

a) the **defendant** has his/her **habitual residence**,
or

b) the **creditor** has his/her **habitual residence**



- rules determining both international and territorial jurisdiction (“for the place”)
- pro-claimant provisions, designed to protect the maintenance creditor (i.e. the weaker party)
- proximity between the forum and the creditor also for evaluating the creditor’s needs

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Case law on Point b and the concentration of jurisdiction in a MS

CJEU, 18.12.2014, C-400 and 408/13, *Sanders and Huber*

Under German law, in case a party is not habitually resident in Germany, it is provided that jurisdiction to rule on cross-border maintenance obligations is concentrated on the local court (*Amtsgericht*) having jurisdiction for the district of the higher regional court (*Oberlandesgericht*) where the defendant or creditor has his/her habitual residence



such a **centralisation of jurisdiction** is **precluded** by the Maint. Reg., **UNLESS**

- the objective of **proper administration of justice** is achieved
- the **interests of maintenance creditors** are protected

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General grounds (Art. 3)

- **Ancillary maintenance claims:**

jurisdiction lies with the court which

c) has **jurisdiction** to hear proceedings concerning the **status of a person** (i.e. divorce, separation, nullity or annulment of marriage),

or

d) has **jurisdiction** to hear proceedings concerning **parental responsibility**

UNLESS, in both cases, jurisdiction is **based solely on the nationality** (or domicile for Ireland and the UK) of one of the parties

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On which provisions can the **jurisdiction based solely on nationality** be grounded?

- in matrimonial matters
 - Art. 3(b) of Brussels IIa Reg.
- in parental responsibility matters
 - Art. 3(b) + Art. 12(1) of Brussels IIa Reg.
 - Art. 12(3) of Brussels IIa Reg.

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Relationship between the general grounds of jurisdiction (Points *a*, *b*, *c* and *d*)

- considered **together**, they are **alternative** (i.e. there is no hierarchy, and claimant can choose to sue on the basis of each one of them)
- the **two ancillary provisions** (Points **c** and **d**), however, are **mutually exclusive**, with the consequence that claims regarding child maintenance could only be ancillary to parental responsibility proceedings, and not to those on the status of a person (for example, the parents)

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Case law on the relationship between Points *c* and *d*

CJEU, 16.7.2015, C-184/14, *A v B*

The relationship of **mutual exclusivity** has a number of **reasons**

- an application involving maintenance in respect of minor children is **not necessarily linked** to divorce or separation proceedings
- the court with jurisdiction to hear proceedings on parental responsibility is **in the best position** to evaluate *in concreto* the issues involved in the application relating to child maintenance
- the **best interests of maintenance creditors** (i.e. the children) are guaranteed

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Case law on Art. 3(d)

a) CJEU, 12.11.2014, C-656/13, L. v M.

- The jurisdiction of the Czech court in parental responsibility matters is grounded on Art. 12(3) of BIIa Reg. (prorogation)
- Is it also competent on the ancillary maintenance claims? **YES**

The court which has jurisdiction under Art. 12(3) of BIIa will, in principle, also have jurisdiction to hear an application for maintenance which is ancillary to the parental responsibility proceedings pending before it (unless that jurisdiction is based solely on the nationality of one of the parties)

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b) CJEU, 15.2.2017, C-499/15, W, V v Z

- the courts of the Member State which made a decision that has become final concerning parental responsibility and maintenance obligations with regard to a minor child no longer have jurisdiction to decide on an application for variation of the provisions ordered in that decision, inasmuch as the habitual residence of the child is in another Member State



as a consequence of the ancillary relationship

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c) CJEU, 16.1.2018, C-604/17, *PM. v AH.*

- Art. 3(d) of the Maint. Reg. cannot apply whenever the courts of a given MS lack jurisdiction to rule on parental responsibility matters



again, as a consequence of the ancillary relationship

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d) CJEU, 10.4.2018, C-85/18 PPU, *CV v DU*

- The Romanian court, being the MS of refuge in a case of wrongful removal, lacked jurisdiction in custody matters as the conditions laid down in Art. 10 of BIIa Reg. were not met
- Is it competent on the ancillary maintenance claims? **NO**

The courts of the MS of refuge do not have jurisdiction to rule on an application relating to custody or the determination of a maintenance allowance with respect to that child, in the absence of any indication that the other parent consented to his removal or did not bring an application for the return of that child

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General grounds (Art. 3)

In practice:

- Italian nationals, habitually resident in the UK
- child having Italian and English nationalities, habitually resident in the UK
- following the marriage breakdown, before which courts could proceedings for separation, child's custody and maintenance be initiated?
- in a case like this, which could be very frequent, jurisdiction can be grounded on multiple provisions

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Italian jurisdiction with regard to:

- separation, pursuant to Art. 3(b) of BIIa Reg.
- spousal maintenance, pursuant to Art. 3(c) of the Maint. Reg.
- child's custody, pursuant to Art. 12 of BIIa Reg.
- child maintenance, pursuant to Art. 3(d) of the Maint. Reg.

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English jurisdiction with regard to:

- separation, pursuant to Art. 3(a) of BIIa Reg.
- spousal maintenance, pursuant to Art. 3 of the Maint. Reg.
- child's custody, pursuant to Art. 8 of BIIa Reg.
- child maintenance, pursuant to Art. 3 of the Maint. Reg.

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Choice of court (Art. 4)

- **Limited choice** to confer jurisdiction to a court of a MS to settle disputes (actual or future) in matters concerning maintenance obligations
- **NOT applicable** to maintenance proceedings concerning **children under the age of 18**
- the jurisdiction conferred by agreement is **exclusive** (only the prorogated court has the power to adjudicate the case)
- **formal requirements** for the validity of the agreement

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Possible choices, generally applicable

- the court(s) of the MS where **one of the parties** has his/her **habitual residence**
- the court(s) of the MS of which **one of the parties** is a **national** (or is domiciled in the case of Ireland and the UK)



these conditions have to be met at the time
the agreement is concluded
or the court is seised

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Possible choices, applicable only to maintenance obligations between spouses or former spouses

- the **court** which has jurisdiction to hear their **matrimonial disputes**
- the court(s) of the MS where they had their **last common habitual residence**, provided that the residence has lasted for **at least one year**



these conditions have to be met at the time the
agreement is concluded or the court is seised

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Formal requirements of the agreement
(similar to RIII Reg.)

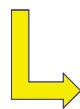
- **in writing**

- not necessarily an agreement signed by both parties, but also a choice expressed in the parties' court documents

- any **communication by electronic means** that provides a **durable record** of the agreement is equivalent to writing

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In case the parties agreed to confer jurisdiction to court(s) of a **State party to the 2007 Lugano Convention that is not a MS** (i.e., currently, Iceland, Norway, Switzerland)



the Reg. **gives way to the Convention**, which shall apply **except** in relation to a dispute relating to maintenance obligations towards **children under the age of 18**

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Submission to jurisdiction (Art. 5)

A court of a MS **acquires jurisdiction** – even though it is not competent pursuant to the general and special grounds – in case **the defendant enters an appearance** before this court **without contesting** its jurisdiction

- it is meant to **prevent delays** in the proceedings
- it is a form of **consent-based** jurisdiction, insofar as a “procedural” acceptance of jurisdiction is inferred from the submission

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For lawyers

- it is advisable to raise a **timely exception of lack of jurisdiction** of the court seised, not only to contest the claimant’s application on the merits
- otherwise the court, when examining its jurisdiction pursuant to Art. 10, shall retain it by virtue of the defendant’s acceptance (even though it is not competent on the basis of the general or special grounds)

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Subsidiary jurisdiction (Art. 6)

The meaning of “subsidiary”:

- when **neither the defendant nor the creditor** are **habitually resident in a MS**
- when **no choice of court** has been made by the parties
- when the **defendant** has **not submitted** to the jurisdiction of the court seised
- when **no court of a non-EU State party to the Lugano Conv.** has jurisdiction



the court seised can have **jurisdiction if** it is **in the MS of common nationality of the parties**

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In practice:

- a couple of Italian nationals moves to Croatia, where they habitually reside
- marriage breakdown, followed by a separation by mutual consent approved by the Croatian court
- the wife relocates in Sweden for employment purposes, and regularly spends several months in Asia for business
- the husband relocates in Tunisia with other relatives, and shortly after files for maintenance before the Italian court
- the wife enters an appearance before the court and contest its jurisdiction

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- the Italian court (MS of common nationality) HAS jurisdiction to hear the maintenance proceedings, because
 - neither the defendant (wife) nor the creditor (husband) have their habitual residence in a MS (the husband lives in Tunisia, while the wife spends several months in Asia)
 - the parties did not make any choice of court
 - the Italian court has not acquired jurisdiction by virtue of the defendant's (wife) submission (she has entered an appearance and contested the jurisdiction)
 - the courts in Iceland, Norway or Switzerland have no jurisdiction on the basis of the Lugano Conv.

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Necessary jurisdiction / *Forum necessitatis* (Art. 7)

- When **no court of a MS** has **jurisdiction** pursuant to **Arts. 3, 4, 5 and 6**
and
- if proceedings **cannot reasonably be brought** or would be **impossible in a third State** with which the dispute is **closely connected**



a court of a MS can hear the case

- on an **exceptional basis**,
and
- if it has a **sufficient connection** with the dispute

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The meaning of “**exceptional basis**”:
examples given in **Recital 16** of the Maint.
Reg.

- the proceedings would be impossible in the third State due to **civil war**
(extremely high threshold, and rarely applicable)
- when the applicant **cannot be reasonably expected** to initiate or conduct proceedings in the third State
(much lower standard)

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The meaning of “**sufficient connection**”
between the MS and the dispute:

- example given in **Recital 16** of the Maint.
Reg.
 - one of the parties is a **national of that MS**
(or has his/her domicile in case of Ireland
and the UK)
- other situations
 - the **debtor's goods/properties** are
located in that MS
 - the **creditor** is **present in that MS**

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In practice:

- a French man and a woman of African descent got married and habitually reside in Bulgaria
- marriage breakdown, and divorce declared by the Bulgarian court
- after the divorce, the man, who retains properties in Bulgaria, has no fixed home and lives between Italy and Asia
- the woman relocates in her State of origin

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- two years since the divorce, she intends to bring maintenance proceedings against the former husband, but
 - in her State of origin, local traditions prevent a woman from suing her husband (otherwise she would be prosecuted and possibly imprisoned)
 - in Bulgaria, the former husband appears before the court seised with maintenance proceedings and contests its jurisdiction

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- can the Bulgarian court retain its jurisdiction as *forum necessitatis*? **YES**
 - the applicant (former wife) cannot reasonably initiate proceedings in the third State of her habitual residence
 - it is impossible to determine the habitual residence of the defendant/debtor (former husband)
 - no choice-of-court agreement has been concluded
 - the Bulgarian court has not acquired jurisdiction by virtue of the defendant's submission
 - the parties have no common nationality of a MS
 - the Bulgarian court has a sufficient connection with the dispute, being the MS where the debtor's properties are located

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Limit on proceedings (Art. 8)

What if a **maintenance decision given in a MS or a Contracting State of the 2007 Hague Conv.** needs to be **modified or replaced** by a new decision?

As long as the **maintenance creditor** was and continues to be **habitually resident in that MS/Contracting State**, changes in the existing decision can **only** be issued **by the courts of that State**



continuing jurisdiction
of the creditor's habitual residence

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Exceptions to the rule of continuing jurisdiction

- choice-of-court agreement between the parties to confer jurisdiction to the courts of another MS (Art. 4)
- creditor's submission to the jurisdiction of the courts of another MS (Art. 5)
- it is impossible to obtain changes to the original decision or a new decision from the competent authority in the 2007 HC Contracting State (the court cannot, or refuses to, exercise jurisdiction)
- the decision given in the 2007 HC Contracting State cannot be recognised or declared enforceable in the MS where the proceedings for modification are contemplated

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2.b) Procedural provisions

The procedural provisions set out in the Chapter II on jurisdiction are the **same** of other **EU family law Regulations**, and pursue the **same objective of approximation** of certain aspects of domestic procedural rules

- seising of a court (Art. 9)
- examination as to jurisdiction (Art. 10) and as to admissibility (Art. 11)
- *lis pendens* (Art. 12)
- related actions (Art. 13)
- provisional, including protective, measures (Art. 14)

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Worth remembering

***Lis pendens* (Art. 12)**

- situation where the **courts of different MS** are seised with proceedings having the **same cause of action** and between the **same parties**
- **first-in-time rule**: any courts other than the court first seised shall
 - **stay the proceedings** of its own motion until the jurisdiction of the court first seised is established
 - as soon as the jurisdiction of the court first seised is established, **decline jurisdiction** in favour of that court

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Worth remembering

Provisional measures (Art. 14)

- jurisdiction conferred **independently from the substance of the matter** under the Maint. Reg. (i.e. even if the courts of another MS have jurisdiction on the merits)
- regarding the **contents** of these measures: reference to the **substantive national law**

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Law applicable in maintenance cases

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Test-the-Training Session No. 1
Vilnius (Lithuania)
17-18 September 2018

Contents of this session

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2. The 2007 Hague Protocol and its scope of application
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8. Other legal provisions

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The law applicable to maintenance obligations

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 (Maintenance Regulation)

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The law applicable to maintenance obligations

Article 15º

«The law applicable to maintenance obligations shall be determined in accordance with the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations (hereinafter referred to as the 2007 Hague Protocol) in the Member States bound by that instrument».

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The law applicable to maintenance obligations

Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations (2007 Hague Protocol)

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2007 Hague Protocol and scope of application

- Material scope: (Article 1, Section 1)
- Spatial Scope: (Article 2)
- Coordination other international instruments (Articles 18 and 19)

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General legal provision

Article 3:

- «(1) Maintenance obligations shall be governed by the law of the State of the habitual residence of the creditor, save where this Protocol provides otherwise.
- (2) In the case of a change in the habitual residence of the creditor, the law of the State of the new habitual residence shall apply as from the moment when the change occurs».

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Special rules

A – Article 4 - Special rules favouring certain creditors.

B – Article 5 - Special rule with respect to spouses and ex-spouses

C- Article 6 - Special rule on defence

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Special rules

Article 4 - Special rules favouring certain creditors

«(1) The following provisions shall apply in the case of maintenance obligations of -

a) parents towards their children;

b) persons, other than parents, towards persons who have not attained the age of 21 years, except for obligations arising out of the relationships referred to in Article 5; and

c) children towards their parents.

(2) If the creditor is unable, by virtue of the law referred to in Article 3, to obtain maintenance from the debtor, the law of the forum shall apply.

(3) 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, if the creditor is unable, by virtue of this law, to obtain maintenance from the debtor, the law of the State of the habitual residence of the creditor shall apply.

(4) If the creditor is unable, by virtue of the laws referred to in Article 3 and paragraphs 2 and 3 of this Article, to obtain maintenance from the debtor, the law of the State of their common nationality, if there is one, shall apply».

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Special rules

Article 5 - Special rule with respect to spouses and ex-spouses

«In the case of a maintenance obligation between spouses, ex-spouses or parties to a marriage which has been annulled, Article 3 shall not apply if one of the parties objects and the law of another State, in particular the State of their last common habitual residence, has a closer connection with the marriage. In such a case the law of that other State shall apply».

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Special rules

Article 6 - Special rule on defence

«In the case of maintenance obligations other than those arising from a parent-child relationship towards a child and those referred to in Article 5, the debtor may contest a claim from the creditor on the ground that there is no such obligation under both the law of the State of the habitual residence of the debtor and the law of the State of the common nationality of the parties, if there is one».

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Party autonomy

- Article 7 - Designation of the law applicable for the purpose of a particular proceeding
- Article 8 - Designation of the applicable law

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Party autonomy

Article 7 - Designation of the law applicable for the purpose of a particular proceeding

«(1) Notwithstanding Articles 3 to 6, the maintenance creditor and debtor for the purpose only of a particular proceeding in a given State may expressly designate the law of that State as applicable to a maintenance obligation.

(2) A designation made before the institution of such proceedings shall be in an agreement, signed by both parties, in writing or recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference».

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Party autonomy

Article 8 - Designation of the applicable law

- (1) Notwithstanding Articles 3 to 6, the maintenance creditor and debtor may at any time designate one of the following laws as applicable to a maintenance obligation -
- a) the law of any State of which either party is a national at the time of the designation;
 - b) the law of the State of the habitual residence of either party at the time of designation;
 - c) the law designated by the parties as applicable, or the law in fact applied, to their property regime;
 - d) the law designated by the parties as applicable, or the law in fact applied, to their divorce or legal separation.
- (2) Such agreement shall be in writing or recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference, and shall be signed by both parties.
- (3) Paragraph 1 shall not apply to maintenance obligations in respect of a person under the age of 18 years or of an adult who, by reason of an impairment or insufficiency of his or her personal faculties, is not in a position to protect his or her interest.
- (4) Notwithstanding the law designated by the parties in accordance with paragraph 1, the question of whether the creditor can renounce his or her right to maintenance shall be determined by the law of the State of the habitual residence of the creditor at the time of the designation.
- (5) Unless at the time of the designation the parties were fully informed and aware of the consequences of their designation, the law designated by the parties shall not apply where the application of that law would lead to manifestly unfair or unreasonable consequences for any of the parties.

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Scope of the applicable law

Article 11 - Scope of the applicable law

The law applicable to the maintenance obligation shall determine *inter alia* -

- a) whether, to what extent and from whom the creditor may claim maintenance;
- b) the extent to which the creditor may claim retroactive maintenance;
- c) the basis for calculation of the amount of maintenance, and indexation;
- d) who is entitled to institute maintenance proceedings, except for issues relating to procedural capacity and representation in the proceedings;
- e) prescription or limitation periods;
- f) the extent of the obligation of a maintenance debtor, where a public body seeks reimbursement of benefits provided for a creditor in place of maintenance.

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Public policy

Article 13 - Public policy

«The application of the law determined under the Protocol may be refused only to the extent that its effects would be manifestly contrary to the public policy of the forum».

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Other legal provisions

Article 10 - Public bodies

«The right of a public body to seek reimbursement of a benefit provided to the creditor in place of maintenance shall be governed by the law to which that body is subject».

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Other legal provisions

Article 14 - Determining the amount of maintenance

«Even if the applicable law provides otherwise, the needs of the creditor and the resources of the debtor as well as any compensation which the creditor was awarded in place of periodical maintenance payments shall be taken into account in determining the amount of maintenance».

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Other legal provisions

Article 12 - Exclusion of *renvoi*

«In the Protocol, the term "law" means the law in force in a State other than its choice of law rules».

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Partnership



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Recognition and enforcement in maintenance cases

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Contents

- Recognition and enforceability
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Interaction of legal sources

- Regulation No. 4/2009 (Chapter IV, Art. 75)
- Lugano Convention (30 October 2007) between the EU member states and Norway, Switzerland and Iceland
- Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance
- Multilateral and bilateral treaties
- National law

Maintenance Regulation Abolition of exequatur (I)

Maintenance Regulation 4/2009

Preamble (paragraph 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.

EUCJ case M.S. v P.S. (C-283/16)

“Member States are to adjust all the procedures to make direct applications for enforcement to competent institutions possible. This also includes change of case-law, and refusal to apply contradicting provisions of the national law.”

Abolition of exequatur (II)

2 sets of rules

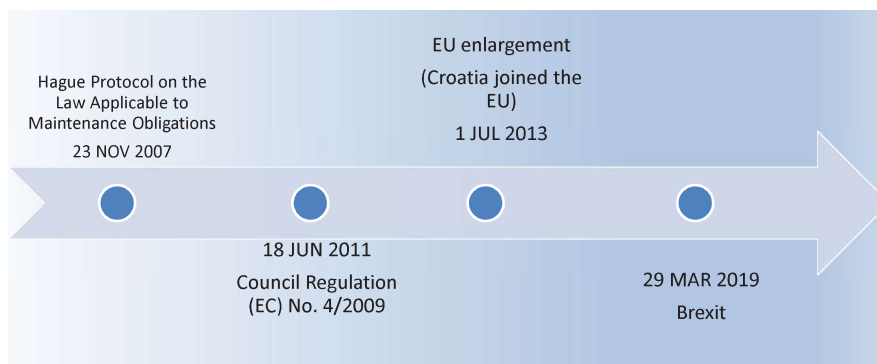
Article 17(1) – decision originating from the Member State bound by the 2007 Hague Protocol – no special procedure required – no possibility to oppose recognition

Article 23 – decision originating from the Member State NOT bound by the 2007 Hague Protocol – declaration of enforceability – possibility of appeal



Abolition of exequatur (III)

Ratione temporis



EUCJ C-467/16 (Schlomp v. Austria)

Procedure and documents Decision is from Member State bound by the 2007 Hague Protocol

**Documents to be presented to the enforcement
authority in the Member State of enforcement:**

- Copy of the decision sufficient for establishing its authenticity (no need to translate as a general rule)
- Extract from the decision (Annex I)
- Optional:
 - Documents related to calculations
 - Translation or transliteration of the extract (Annex I)

Rights of the Debtor to oppose enforcement (I)

Apply for review in the Member State of origin:

- Non-awareness of the process
- Force majeure or extraordinary circumstances prevented the Debtor from contesting the maintenance claim

Non-extendable term of 45 days.

Rights of the Debtor to oppose enforcement (II)

Apply for suspension or refusal of enforcement

- Where the right to enforce is extinguished under the law of either the Member State of enforcement or of origin, whichever provides for a longer limitation period;
- For the time period of review of the decision as requested under Article 19
- If the decision from another Member State is irreconcilable with a decision given in the Member state of enforcement

Procedure and documents: Decision is from Member State NOT bound by the 2007 Hague Protocol (I)

Basic set of documents
to be delivered to the
court (Article 28)

Formal check, no
recourse to the grounds
of refusal of recognition,
no right to contest

Declaration as
enforceable

Notice to the applicant
and to the debtor (if not
served before)

Similar to the procedure under Regulation
Brussels I (No. 44/2001), however with strict
time limits.

**Decision is from Member State
NOT bound by the 2007 Hague Protocol.
Appeal – Grounds for revocation
Exhaustive list in the Article 24**

- Contradiction to public policy (autonomous interpretation of the definition)
- Failure to notify the debtor of the proceedings
- Irreconcilable with another decision, as set in the Article 24(c) and (d)

Central Authorities

Right or obligation to act through a Central Authority? (EUCJ case M.S. v. P.S, No. C-283/16)

It follows from Articles 51 and 56 of Regulation No 4/2009, read in the light of recitals 31 and 32 thereof, that a person has a right but is not under any obligation to make an application to the Central Authorities for assistance pursuant to the provisions in Chapter VII of the regulation. It is, therefore, optional and that right will be exercised only if the maintenance creditor wishes to avail herself of it, in order, for example, to overcome certain specific difficulties, such as the location of the maintenance debtor.

Enforcement

- National law applies:
 - Direct application of national law of other States?
 - Challenges due to cross-border nature of the case
- Cooperation through Central Authorities
 - Applies to all stages of the case
 - Repetitious requests to be granted

Thank you!
Any questions or comments?



Otherwise...



**KEEP
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Test-the-Training Session No. 1

VILNIUS (LITHUANIA)

17-18 September 2018

CASE STUDIES

Prepared by all Partners (UNIVR, UNIMIB, UMINHO, ELTE and TEISE) and collected by TEISE

Case Study No. 8

MAIN TOPIC

Law applicable in divorce cases. Rome III

FACTS

Olga and Peter married in 2010 in Hungary. Olga has Hungarian nationality, Peter has German nationality. Before the marriage Peter worked in Germany, Olga lived in Hungary.

After the marriage, they immediately left Hungary and moved to Austria. They worked and lived in Innsbruck for six years.

Later on, late in 2016 they moved back to Hungary. At first, they lived in Budapest, later on in Sopron which is a city very close to the Hungarian-Austrian border. They lived there but both of them worked in Austria. Olga moved every day to and back to Mattersburg which is in Austria but close to the border. She worked there, while Peter got a job in Wiener Neustadt, in Austria. Because his job he moved every first Monday of the month in Austria and remained there for three weeks. The last week of the month he spent in Hungary. They rent a flat in Sopron where they live together with Olga's sister and the sister's husband.

Before the day they married, they wrote an agreement in Hungary according to which they will divorce according to the German law.

In 2018 Peter decides that he would like to divorce. As he spends much time in Austria he would like to divorce in Austria, while Olga opposes that and would like to divorce in Hungary and according to the Hungarian law.

Related questions

1. Is the agreement on the choice of law valid?
2. Who can adjudge its validity?
3. Where could the divorce proceeding be initiated?
4. Do they have common habitual residence?
5. If not, where does each of them have a habitual residence?

VARIATION No. 1

They have no agreement at all on applicable law on divorce.

Related questions

6. Where can they initiate the divorce proceeding?
7. What are their interests when initiate a divorce proceeding?

LEGAL INSTRUMENT(S) TO BE APPLIED

Regulation No 1259/2010

Case Study No. 9

MAIN TOPIC

Maintenance obligations and jurisdiction in maintenance cases

FACTS

A couple of **Italian nationals** got married in 2005 and moved to the State of **California** (USA), where they have been habitually residing for several years.

In 2010 they had a child, born and grew up in California.

Their marriage started to break down.

At the end of August 2016, the spouses **relocated** in Italy, hoping that the change would help their relationship and started the renovation of the home in Milan. The child was thus supposed to stay in California with other relatives until the renovation was finished.

On 5 September 2016, the husband files for divorce, custody of the child and maintenance before the Tribunal of Milan, by virtue of a written **agreement** concluded between the spouses shortly after the marriage, which provided:

- a choice of Californian law with regard to the divorce/separation and Italian law on maintenance;
- a choice of Italian courts with regard to both spousal and children maintenance.

According to the same choice-of-court clause, the husband claims also the award of the Milan property that should have become the new family home.

The wife enters an appearance before the Italian court and contests the validity of the agreement.

While the Italian proceedings are pending, she also initiates custody proceedings in the State of California.

Related questions

1. Has the Tribunal of Milan jurisdiction over maintenance claims?
2. Is the agreement valid as to the choice of court for maintenance?
3. Which Article is applicable?

VARIATION No. 1

They moved back in Italy in 2015, but the child remained in California due to the renovation of the home in Milan. The husband filed for divorce in 2016. The final decision on divorce was issued in late 2017.

Later on, for employment purposes the mother has **moved to France** with the child. The father continued living in Milan (at least this was his last place of residence known to the former wife). Since he was not compliant to the child maintenance order, on 10 September 2018 the mother seises the Tribunal of Milan to seek the **modification** of that maintenance order. The former husband did not appear before the court.

Related questions

4. Has the Tribunal of Milan jurisdiction over the application for modification of the maintenance order in favour of the child?
5. Which Article is applicable?

LEGAL INSTRUMENT(S) TO BE APPLIED

Regulation No 4/2009

2007 Protocol

Case Study No. 10

MAIN TOPIC

Law applicable in maintenance cases

FACTS

Mother Lithuanian, with habitual residence in Lithuania. Father habitual resident in UK (nationality not clear). After short relations the mother gets pregnant, since then the father does not keep any contact with the mother or the child.

Mother brought an action in Lithuania asking to establish paternity, custody rights and maintenance. The father does not react. The habitual residence of the child is in Lithuania.

As to paternity, the court has jurisdiction and applies Lithuanian law. The court established paternity. Custody is granted to mother, with access rights to father. As to maintenance, Lithuanian courts have jurisdiction as the child's habitual residence.

Related questions

1. What is the applicable law to the maintenance obligation? The fact that the United Kingdom is not a Contracting State of the 2007 has any influence on the answer?

VARIATION No. 1

Suppose that the parents agreed when the child was born that the law applicable to maintenance obligations would be the law of the United Kingdom.

The father does not keep any contact with the mother or the child. The father never did any periodical maintenance payments.

Related questions

2. What is the applicable law to the maintenance obligation?

3. Is it possible the creditor and the debtor to choose the applicable law in a particular proceeding?

LEGAL INSTRUMENT(S) TO BE APPLIED

Regulation No 4/2009; 2007 Protocol

Case Study No. 11

MAIN TOPIC

Law applicable in maintenance cases

FACTS

Parents are Italian and had their habitual residence in the Portugal. The spouses divorced, the mother continued to live in the Portugal. The child has his/her habitual residence in Portugal, with the mother.

Father changed his habitual residence to Italy. The mother brought an action in Portuguese courts against her ex-husband. Mother is asking the establishment of a periodic maintenance payment, as a result of the dissolution of the marriage.

The child, of 4 years old, represented by his/her mother, brought an action in Portuguese courts against the father asking the establishment of a periodic maintenance payment.

Related questions

1. What is the law applicable to the claim of the ex-wife?
2. What is the law applicable to the claim of the child?

VARIATION No. 1

Suppose that the case is before a couple of the same-sex (Italian nationals) that got married in Portugal, place of their habitual residence at the time of marriage. After two years of marriage, the spouses decide to divorce. One of the spouses continues to reside in Portugal.

The other spouse decides to change his habitual residence to Italy, where he brings a claim of periodic maintenance payments against his ex-spouse according to the Portuguese Law.

Related questions

3. What should be the law applicable by the Italian courts to the maintenance obligation claim?

LEGAL INSTRUMENT(S) TO BE APPLIED

Regulation No 4/2009; 2007 Protocol

Case Study No. 12

MAIN TOPIC

Maintenance Obligations: Recognition and Enforcement

FACTS

Lina lives in Lithuania. She wants to recover maintenance for her two children Jenny and Thomas (aged 10 and 13) and herself. Lina has copy of the judgment of an English court effective as of 30 April 2011, which confirmed divorce settlement of Lina and Robert, among other terms, being:

- the court attributed payment of the lump sum of GBP50'000 to Lina by her former husband Robert, being partially (1) compensation for the car that spouses acquired during the marriage, (2) distribution of savings from jointly held bank account and (3) amount for Lina to install separately from Robert and to ensure that she has minimal assets until she finds a job (during marriage Lina first was on maternity leave and then until divorce she was a stay-at-home mom);
- Jenny and Thomas live with their mother in Lithuania, and Robert being their father obliged to pay them monthly maintenance amounting to 20 percent of the father's income, but not less than GBP450 for every child.
- In addition, father obliged to pay for insurance (investment insurance policy with an additional life and health insurance package, beneficiaries of accumulated sums being children of Lina and Robert when each of them turns 18).

Since 2017, Robert stopped paying full amount of maintenance to children, and suspended insurance payments. There is unpaid partial debt of GBP 5000 to Lina that Robert did not pay right after the divorce. Lina knows that Robert lives and works in Brussels, however does not know his address and exact workplace.

Related questions

1. Which amounts that Robert owes Lina shall qualify as maintenance obligations within the scope of the Regulation 4/2009? What is the influence of the fact that the decision is originating from England? What shall be the procedure for enforcement of the decision? What legal aid is able to get? How Central Authorities may be useful for Lina in this case?

LEGAL INSTRUMENT(S) TO BE APPLIED

Regulation No 4/2009, 2007 Protocol

National Law

Case Study No. 13

MAIN TOPIC

Maintenance Obligations: Recognition and Enforcement

FACTS

Juliette and her partner Elizabeth used to live together in their homeland, the Netherlands. In 2012, they adopted Nicholas, 2 years old toddler at that time. Unfortunately, their family life did not go well, and they split up. In order to get distracted from heartbreak, in 2014, Elizabeth went to Africa for volunteering. In that time, Juliette brought maintenance claim in the Dutch court. The documents have been served to Elizabeth's parents' house address, which Juliette has indicated as the last domicile address of Elizabeth in Netherlands. As a proof that the documents have been properly served, Juliette provided an e-mail where Elizabeth stated she knew about the court proceedings but was indifferent towards the outcome of the case and would not attend the hearings of the case. Juliette now holds the court decision setting the obligation over Elizabeth to pay maintenance for the benefit of Nicholas, in periodic quarterly instalments. In 2017, Elizabeth has settled in Hungary, however does not provide maintenance to Nicholas. Juliette would like to enforce the Dutch court decision.

Related questions

2. What does Juliette have to do in order to enforce the court decision? How significant is the fact that in Hungary adoption for homosexual couples is not allowed? Does Elizabeth have any possibility to question or contest recognition and/or enforcement of the Dutch court decision? What legal aid is Juliette able to get? How Central Authorities may be useful for Juliette in this case?

VARIATION No. 1

Juliette and Elizabeth originate from and used to live in Denmark, and the decision setting maintenance obligations over Elizabeth has been taken by a Danish court.

Related questions

3. What does this change in terms of recognition and enforcement order, as set by the Regulation 4/2009?

LEGAL INSTRUMENT(S) TO BE APPLIED

Regulation No 4/2009, National Law

LEGAL TERMINOLOGY

Legal terminology

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	
Matrimonial matters	divorce, legal separation or marriage annulment
Parental responsibility matters	the attribution, exercise, delegation, restriction or termination of parental responsibility
court	all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation
judge	the judge or an official having powers equivalent to those of a judge in the matters falling within the scope of the Regulation
Member State	all Member States with the exception of Denmark
judgment	a divorce, legal separation or marriage annulment, as well as a judgment relating to parental responsibility, pronounced by a court of a Member State, whatever the judgment may be called, including a decree, order or decision
Member State of origin	the Member State where the judgment to be enforced was issued
Member State of enforcement	the Member State where enforcement of the judgment is sought
parental responsibility	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
holder of parental responsibility	any person having parental responsibility over a child
rights of custody	rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence
rights of access	the right to take a child to a place other than his or her habitual residence for a limited period of time
wrongful removal or retention	a child's removal or retention where: (a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law

	<p>of the Member State where the child was habitually resident immediately before the removal or retention; and</p> <p>(b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Custody shall be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility.</p>
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Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation

law applicable	the law to be applied, in situations involving a conflict of laws, to divorce and legal separation
participating Member State'	a Member State which participates in enhanced cooperation on the law applicable to divorce and legal separation by virtue of Decision 2010/405/EU, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU
court	all the authorities in the participating Member States with jurisdiction in the matters falling within the scope of this Regulation

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

maintenance obligations	maintenance obligations arising from a family relationship, parentage, marriage or affinity
decision	a decision in matters relating to maintenance obligations given by a court of a Member State, whatever the decision may be called, including a decree, order, judgment or writ of execution, as well as a decision by an officer of the court determining the costs or expenses. For the purposes of Chapters VII and VIII, the term 'decision' shall also mean a decision in matters relating to maintenance obligations given in a third State
court settlement	a settlement in matters relating to maintenance obligations which has been approved by a court or concluded before a court in the course of proceedings
authentic instrument	(a) a document in matters relating to maintenance obligations which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:

	<p>(i) relates to the signature and the content of the instrument, and</p> <p>(ii) has been established by a public authority or other authority empowered for that purpose; or,</p> <p>(b) an arrangement relating to maintenance obligations concluded with administrative authorities of the Member State of origin or authenticated by them</p>
Member State of origin	the Member State in which, as the case may be, the decision has been given, the court settlement has been approved or concluded, or the authentic instrument has been established
Member State of enforcement	the Member State in which the enforcement of the decision, the court settlement or the authentic instrument is sought
requesting Member State	the Member State whose Central Authority transmits an application pursuant to Chapter VII
requested Member State	the Member State whose Central Authority receives an application pursuant to Chapter VII
2007 Hague Convention Contracting State	a State which is a contracting party to The Hague Convention of 23 November 2007 on the International Recovery of Child Support and other Forms of Family Maintenance (hereinafter referred to as the 2007 Hague Convention) to the extent that the said Convention applies between the Community and that State
court of origin	the court which has given the decision to be enforced
creditor	any individual to whom maintenance is owed or is alleged to be owed
debtor	any individual who owes or who is alleged to owe maintenance
court	<p>administrative authorities of the Member States with competence in matters relating to maintenance obligations provided that such authorities offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State where they are established:</p> <p>(i) may be made the subject of an appeal to or review by a judicial authority; and</p> <p>(ii) have a similar force and effect as a decision of a judicial authority on the same matter.</p> <p>These administrative authorities shall be listed in Annex X. That Annex shall be established and amended in accordance with the management procedure referred to in Article 73(2) at the request of the Member State in which the administrative authority concerned is established.</p>
domicile	For the purposes of Articles 3, 4 and 6, it replaces the concept of 'nationality' in those Member States which use this concept as a

	connecting factor in family matters. For the purposes of Article 6, parties which have their 'domicile' in different territorial units of the same Member State shall be deemed to have their common 'domicile' in that Member State.
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Hague Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children of 19 October 1996

parental responsibility	parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child
measures directed to the protection of the person or property of the child	<p>a) the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation;</p> <p>b) rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence;</p> <p>c) guardianship, curatorship and analogous institutions;</p> <p>d) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;</p> <p>e) the placement of the child in a foster family or in institutional care, or the provision of care by kafala or an analogous institution;</p> <p>f) the supervision by a public authority of the care of a child by any person having charge of the child;</p> <p>g) the administration, conservation or disposal of the child's property.</p>
wrongful removal or retention	<p>where:</p> <p>a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and</p> <p>b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.</p>

Hague Convention on the civil aspects of international child abduction of 25 October 1980

wrongful removal or retention	<p>where</p> <p>a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and</p> <p>b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.</p>
rights of custody	rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence
rights of access	the right to take a child for a limited period of time to a place other than the child's habitual residence

Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance of 23 November 2007 and Hague Protocol on the Law Applicable to Maintenance Obligations

creditor	an individual to whom maintenance is owed or is alleged to be owed
debtor	an individual who owes or who is alleged to owe maintenance
legal assistance	the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested State. The means of providing such assistance may include as necessary legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs of proceedings
agreement in writing	an agreement recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference
maintenance arrangement	<p>an agreement in writing relating to the payment of maintenance which</p> <p>i) has been formally drawn up or registered as an authentic instrument by a competent authority; or</p> <p>ii) has been authenticated by, or concluded, registered or filed with a competent authority, and may be the subject of review and modification by a competent authority</p>
vulnerable person	a person who, by reason of an impairment or insufficiency of his or her personal faculties, is not able to support him or herself

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