

Norwegian Court of Appeals on the Lugano Convention Article 1, 5, 27 and 28

The Norwegian Court of Appeals (Frostating lagmannsrett) recently handed down a decision on enforcement in Norway, in accordance with the Lugano Convention, of a German court decision on maintenance obligations between two spouses. The decision (Frostating lagmannsrett (kjennelse)) is dated 2007-05-04, was published in LF-2007-17684, and is retrievable from [here.](#)

Parties, facts, conclusions, legal basis for appeal, contentions before the court

Amtsgericht Dortmund ruled in its decision of 27 September 2005 that maintenance creditor A pay maintenance debtor B (A and B were spouses) a monthly maintenance sum of 1251 Euro. On 3 July 2006, B applied to the Norwegian court of first instance (Romsdal tingrett) that court use coercive means to collect maintenance fallen due, which totalled the sum of 8757 Euro. B remarried on 21 July 2006, where upon B's right to maintenance from A came to an end. The Norwegian court of first instance authorized on 5 October 2006 (Romsdal tingrett TROMS-2006-100712) that the court decision of the German Amtsgericht Dortmund, which accorded B a right to maintenance from A, was to be enforced, without hearing the arguments of A, in accordance with the Lugano Convention Article 34. The appealing party, maintenance creditor A, appealed the decision of the Norwegian court of first instance to the Norwegian Court of Appeals in accordance with the Lugano Convention Articles 36, first paragraph and 37, and asked the latter Court not to admit authorisation to enforce, where upon the Norwegian Court of Appeals affirmed the decision of the Court of first instance.

Before the Norwegian Court of Appeals, A contended that since A went bankrupt in September 2006, the right person to pay the maintenance obligation was, in accordance with the German Insolvenzordnung (InsO) §§ 40 and 100, A's estate in bankruptcy, whose administrator could, with authorisation from the creditors of that estate, pay B maintenance. By consequence, A first argued, the right person to be served with the claim is A's estate in bankruptcy located in Germany, and any attempt to seek the maintenance obligation enforced towards A in Norway is a circumvention of German laws of bankruptcy. Second, A argued that the decision to take A's estate under bankruptcy in Germany also compass the obligation for A to pay B maintenance as decided by the German Amtsgericht Dortmund on 27 September 2005. Therefore, the decision on bankruptcy is a decision falling under the scope of §2 nr. 4, in precept to the Hague Convention of 2 October 1973 on recognition and enforcement of maintenance obligations, where, by consequence, the decision shall not be enforced, in accordance with §2 nr. 4, in precept to the Hague Convention of 2 October 1973 on recognition and enforcement of maintenance obligations, if a) that decision is irreconcilable with a decision given in Norway involving the same parties, their same cause of action and object of action, or b) that decision is irreconcilable with a decision involving the same parties, their same cause of action and object of action, provided the latter decision has been given in another State and fulfils the requirements for enforcement in Norway.

Before the Norwegian Court of Appeals, B contended that, first, the appeal was applied for too late, and, second, claims for maintenance obligations fallen due could only be made up until the time of declaring bankruptcy, and the German Insolvenzordnung (InsO) §§ 40 and 100 refers only to claims for maintenance obligations fallen due before the time of bankruptcy, and, third, a decision on having been legally declared bankrupt in Germany is not a decision falling under the scope of §2 nr. 4, in precept to the Hague Convention of 2

October 1973 on recognition and enforcement of maintenance obligations, since a court declaration on bankruptcy does not compass a decision declaring that maintenance creditor A pay maintenance debtor B a monthly maintenance sum, and no new decision on the legal relationship exist, so that the decision by the German Amtsgericht Dortmund of 27 September 2005 is binding between the parties.

Ratio decidendi of the Norwegian Court of Appeals

First, the Court identified the legal question in issue, stating that the case at hand raised the question whether the decision of the German Amtsgericht Dortmund of 27 September 2005, which was enforceable in Germany, was enforceable in Norway in accordance with the Lugano Convention when A's estate had been declared bankrupt. The Court reasoned that in accordance with the Lugano Convention Article 1, second paragraph nr. 1, the Lugano Convention shall not apply to "the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession", and therefore does not compass maintenance obligations between spouses, since such obligations are compassed by the Lugano Convention Article 5 nr. 2 (where upon the Court referred to legal theory; Rognlien, *Luganokonvensjonen* (1993, p. 124), and Thue, *Internasjonal privatrett* (p. 481). Hence, the Court of appeal affirmed the Court of first instance's opinion that the Lugano Convention was applicable.

Second, on the contention that the decision of the German Amtsgericht Dortmund of 27 September 2005 – wherein the maintenance creditor A was obliged to pay maintenance debtor B a monthly maintenance sum of 1251 Euro – only could be enforced against A's estate of bankruptcy in Germany, the Court reasoned that in accordance with the Lugano Convention Article 1, second paragraph, nr. 2, bankruptcy is not compassed by the Convention, where upon A in Norway, and independent from German authority, both can be sued and

declared bankrupt, but that A's estate in Norway was not declared bankrupt. Declaring bankruptcy in one State is not tantamount to being declared bankrupt in other States. (Norway has a system in its law on bankruptcy § 106, which is similar to the German Insolvenzordnung (InsO) §§ 40 and 100).

Third, the Court reasoned that it does not follow from §2 nr. 4, in precept to the Hague Convention of 2 October 1973 on recognition and enforcement of maintenance obligations that declaring bankruptcy in Germany hinders enforcement in Norway of the decision of the German Amtsgericht Dortmund of 27 September 2005, since declaring bankruptcy of A's estate is not the same legal relationship as a legal relationship involving maintenance obligations and does not involve the same parties.

Fourth, the Court reasoned that recognition and enforcement of the decision of the German Amtsgericht Dortmund of 27 September 2005 is not contrary to Norwegian Public policy, in accordance with the Lugano Convention Article 27 nr. 1. Further, that decision, the Court found no reason not to recognise in accordance with the Lugano Convention Articles 27 and 28. Furthermore, the Court lacked authority to assess the substance matter of the case, in accordance with the Lugano Convention Article 29. Hence, the Norwegian Court of appeal affirmed the decision of the Court of first instance, where upon the case was sent to the latter court for enforcement.