The ECJ on the notion of “ancillary matter” for the purposes of the rules on jurisdiction of the Maintenance Regulation

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On 16 July 2015, the European Court of Justice (ECJ) rendered its judgment in the case of *A* v. *B* (C-184/14), clarifying the interpretation of Regulation No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (the Maintenance Regulation).

More specifically, the ruling regarded the interpretation of Article 3 of the Regulation. This provides, *inter alia*, that jurisdiction in matters of maintenance lies with “(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 with “(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”.

The dispute in the main proceedings concerned the legal separation of two Italians and the custody of their children. These proceedings had been brought by A (the husband) against B (the wife) before the District Court of Milan.

The Court of Milan asserted its jurisdiction in respect of legal separation relying on Article 3(1)(b) of Regulation No 2201/2003 (Brussels II*a*), but held that, pursuant to Article 8(1) of that Regulation, it lacked jurisdiction over parental responsibility, as the children were, at the material time, habitually resident in the UK. The Court of Milan further held that, according to Article 3(c) and (d) of the Maintenance Regulation, it had jurisdiction to decide on the issue of maintenance for the benefit of the wife, but not to decide on maintenance for

the benefit of the children, since the latter request was not ancillary to proceedings over personal status, but to proceedings concerning parental responsibility.

The case eventually reached the Italian Supreme Court, which decided to request the ECJ for a preliminary ruling. The Supreme Court asked whether, in circumstances such as those described above, a maintenance request pertaining to the child may be ruled on both by the court that has jurisdiction over legal separation or divorce, as a matter ancillary to the proceedings concerning the status of a person, within the meaning of Article 3(c) of that Regulation, and by the court that has jurisdiction to entertain the proceedings concerning parental responsibility, as a matter ancillary to those proceedings, within the meaning of Article 3(d) of that Regulation; *or* whether a decision on a similar matter can only be taken by the latter court.

Put otherwise, the issue was whether the heads of jurisdiction set out in Article 3(c) and (d) of the Maintenance Regulation must be understood to be mutually exclusive, or whether the conjunction "or" in the provision implies that the courts that have jurisdiction over legal separation and parental responsibility may be both validly seised of an application relating to maintenance in respect of children.

In its judgment, the ECJ begins by observing that the scope of the concept of "ancillary matter" cannot be left to the discretion of the courts of each Member State according to their national law. The meaning of this expression should rather be determined by reference to the wording of the relevant provisions, their context and goals.

The wording of Article 3(c) and (d) indicates that a distinction should be made between proceedings concerning the *status* of a person and proceedings concerning parental responsibility. In the face of this wording, it cannot be unequivocally established "whether the alternative nature of those criteria means that the applications relating to child maintenance are ancillary only to one set of proceedings concerning parental responsibility, or whether those applications may be deemed ancillary also to proceedings concerning the status of a person".

As regards the context of the pertinent provisions, the ECJ notes that the above distinction echoes the distinction made by the Brussels II*a*

Regulation between disputes concerning divorce, legal separation and marriage annulment, on the one hand, and disputes regarding the attribution, exercise, delegation, and restriction or termination of parental responsibility, on the other. The ECJ further notes in this connection, based on Recital 12 of the preamble of the latter Regulation, that the rules on jurisdiction relating to parental responsibility underlie a concern for the best interests of the child, and adds that "an application relating to maintenance in respect of minor children is … intrinsically linked to proceedings concerning matters of parental responsibility".

The ECJ concludes that "it is vital to take into account, in interpreting the rules on jurisdiction laid down by Article 3(c) and (d) of Regulation No 4/2009, the best interest of the child", and that the implementation of such Regulation "must occur in accordance to Article 24(2) of the Charter of Fundamental Rights of the European Union", according to which, in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

Finally, as regards the goals of the provisions at stake, the Court considers that the main objective of the Maintenance Regulation is to ensure, in this field, the proper administration of justice within the EU. This implies that the court to which jurisdiction is conferred to decide on parental responsibility should be the court that finds itself "in the best position to evaluate *in concreto* the issues involved in the application relating to child maintenance, 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 jointly 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".

In light of the above, the ECJ concludes that, when the court of a Member State is seised of proceedings concerning legal separation or divorce between the parents of a minor child, and the court of another Member State is seised of proceedings involving matters of parental responsibility over the same child, Article 3(c) and (d) of Regulation No 4/2009 must be interpreted as meaning that "an application relating to maintenance concerning that child is ancillary only to the proceedings concerning parental responsibility, with the meaning of Article 3(d) of that Regulation".