ON THE REGULATION OF MAINTENANCE OBLIGATIONS IN GREECE

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This paper is based on the Greek report presented at the IIIrd Balkan Meeting on Maintenance Law, which was held in Istanbul, at the Koç University Law School, on 30 September 2013. It aims to provide an overview of the Greek law on maintenance both from substantive (I) and private international law perspective (II), analyzing at the same time the latest developments in this field.

I. SUBSTANTIVE LAW GOVERNING MAINTENANCE OBLIGATIONS

Traditionally substantive maintenance law provisions have been included in the Greek Civil Code (hereinafter: CC), as amended[1]. Recently, maintenance law provisions have been also introduced by virtue of Law 3719/2008 on the cohabitation pact[2]. The duty to maintain is based in principle either

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[1] *Αστικός Κώδικας* (=Astikos Kodikas), Presidential Decree 456/1984 (Government Gazette A 164). For a translation of the Greek CC into English, see C. Taliadoros (translation by), *Greek Civil Code* (Athens/Komotini 2000). The CC has been substantially amended by Law 1329/1983 (Government Gazette A 25), which radically reformed family law to the extent that the term 'new family law' is been used. Some significant amendments to maintenance provisions were also brought about by Law 2447/1996 (Government Gazette A 278). Procedural issues concerning maintenance disputes are governed by the Greek Civil Procedure Code (Presidential Decree 503/1985, Government Gazette A 182); furthermore, Art. 358 of the Greek Criminal Code (Presidential Decree 283/1985, Government Gazette A 106) states that the violation of maintenance obligations constitutes a criminal offence.

[2] Law 3719/2008 (Government Gazette A 241).

on consanguinity, consisting mainly in the maintenance between ascendants and descendants (A), or on marriage or on cohabitation pact, consisting in the maintenance between the spouses or the cohabitants respectively (B).

A. Maintenance on the basis of consanguinity

The basic principles of maintenance between ascendants and descendants are found in Arts 1485-1505 CC under the title 'Statutory Maintenance'[3]. Maintenance rules are of mandatory character, therefore resignation from them or contrary agreements are prohibited[4]. Maintenance right is primarily of personal and family nature, but due to its narrow connection to financial performance, some rules pertaining to the general law of obligations are also applied[5].

1. Persons entitled to maintenance

1.1. Beneficiaries

The reciprocal obligation of maintenance between ascendants and descendants is introduced to Greek law by Art. 1485 CC. This provision only defines the circle of relatives who are under the obligation to maintain each other. Consanguinity is the only crucial point for the existence of maintenance obligation[6]; the same obligation is also created by adoption, since adopted children are considered as full and equal members of the adoptive parent's family[7]. Art. 1485 does not distinct between chil-

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[3] For a thorough reference to recent case-law in matters of maintenance see K. Christakou-Fotiadi & N. Koumouzis, *Care and maintenance of minor child. Right of communication* (Athens 2008) 215-340 [in Greek].

[4] I. Androulidaki-Dimitriadi, *in* A. Georgiadis & M. Stathopoulos (eds), *Civil Code. Vol VII: Family law. Arts 1346-1504* (2nd edn, Athens 2007) Introductory remarks to Arts 1485-1504, no 14 [in Greek]. The mandatory character of maintenance regulation, especially regarding children, is confirmed by Art. 1441 CC on divorce by mutual consent of the spouses: for a divorce to be granted by mutual consent, in case children exist, a written agreement of the spouses must be submitted to court, mainly regulating guardianship of children and contact rights, but also matters of maintenance. Nevertheless, the terms of the agreement on maintenance cannot derogate from the mandatory provisions of the CC.

[5] P. Filios, *Family law* (4th edn, Athens/Thessaloniki 2011) § 99, 264 [in Greek].

[6] I. Androulidaki-Dimitriadi, Greece, *in* W. Pintens (ed.), *International Encyclopedia of Laws. Family and Succession Law* (The Netherlands 2010) 132.

[7] According to Art. 1561 CC with regard to the adoptive parent and the latter's relatives, the adopted minor shall have all the rights and obligations of a child born in marriage. The

dren born in or out of wedlock[8] or by means of artificial insemination[9]. Thus, the right and obligation to maintenance belong to children and their descendants, parents, grand-parents and great grand-parents.

The relationship of a person with his mother and her relatives is constituted by birth[10]. The husband of the mother is presumed to be the father of all children born during marriage, irrespective of the method of conception, so the relationship with the father and his relatives is primarily established through marriage[11]. Paternity for children born out of wedlock is established either by voluntary recognition or by court decision[12]. A child born out of wedlock can be also legitimized by subsequent marriage of his parents, accompanied by voluntary recognition or relevant court decision, before or after marriage. A recognised child enjoys all the rights of children born in marriage[13].

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interruption of all family bonds to the natural family and the full entry of the adopted minor to the adoptive family were introduced in Greece by Law 2447/1996 (*supra* note 1), which radically reformed the law of adoption.

[8] Provisions of 'new family law' abolished any discrimination against children born out of wedlock and introduced their complete assimilation with children born in marriage. The term 'illegitimate child' is no longer used in the CC.

[9] Medically assisted reproduction and surrogate motherhood are governed by Law 3089/2002 (Government Gazette A 327). Posthumous fertilization is allowed under certain conditions. If these conditions are met, bonds of kinship are created (Art. 1457 CC).

[10] Art. 1463 CC. In case of surrogate motherhood the relationship of the child to the mother is created through agreement. The woman, who has obtained the permission of the court to 'borrow' a womb, is presumed to be the mother of that child. The presumption is rebuttable (Art. 1464 CC).

[11] In order for paternity and subsequent maintenance obligation to be established through marriage, the marriage must be valid. Termination of marriage by divorce, death or nullification is irrelevant. The presumption of paternity exists also in case a cohabitation pact under Law 3719/2008 exists between the child's parents. A short presentation of the law regulating the cohabitation pact can be found in A. Fessas, Regulation of same-sex marriage, *RHDI* 2010, 53-78, 66-72, with further references. For an extensive analysis on issues of maintenance, free union and cohabitation pact see S. Tsirou, *in* I. Karakostas (ed.), *Civil Code. Interpretation – Commentary – Case Law. Vol. 8B: Family Law* (Athens 2012) Art. 1485 nos 32-62 [in Greek]. See also *infra* I.B.

[12] If paternity is established by recognition, subsequent maintenance obligation exists only from and after the recognition.

[13] Arts. 1465-1484 CC. For a short but comprehensive presentation on the rules of kinship and filiation in English see A. Grammaticaki-Alexiou, Family Law, *in* K. Kerameus & Ph. Kozyris (eds), *Introduction to Greek Law* (3rd edn, The Netherlands 2007) 179-199, 189-191. For a detailed report on Greek filiation law in French see A. Papachristos, Le droit hellénique de la filiation : parenté biologique et parenté socio-sentimentale, *in* I. Schwenzer

From the combination of Arts 1485, 1488 and 1492 CC[14] derives the conclusion that maintenance obligation exists only between lineal relatives who at the same time have the capacity of heir in an intestate succession; thus relatives by marriage have no right to maintenance[15].

1.2. Exceptions

As mentioned, maintenance obligation stems from family bonds, therefore it applies to those who are connected by blood relationship (consanguinity). Nevertheless, the CC does not extend the ethical obligation of the family to support its destitute members to all relatives, but only to those connected in lineal relationship and in exceptional cases and under a number of conditions, to relatives in collateral relationship[16].

As mentioned, too, maintenance obligation exists only between relatives in lineal relationship (ascendants-descendants). However, in exceptional cases and under certain conditions a court can adjudicate maintenance between siblings: the person requiring maintenance from a sibling must be in no position to support himself due to special reasons, such as minority, old age, serious disease or infirmity, which caused the destitution of the beneficiary[17]. In such case, the amount of maintenance consists of only the basic necessities of life and the expenses for upbringing, professional and general education (reasonable maintenance)[18].

The CC introduces another exception to the consanguinity rule in favor of a child born out of wedlock whose mother is destitute: if his paternity is very probable, the natural father may be forced by provisional court order to provide, as an interim measure, a proper sum of money for the child's

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(ed.), *Tensions Between Legal, Biological and Social Conceptions of Parentage* (Antwerpen/Oxford 2007) 211-220.

[14] Arts. 1488 and 1492 CC regulate the rank of obligors and beneficiaries to maintenance according to the order of succession in intestacy.

[15] Androulidaki-Dimitriadi, *supra* note 4, Art. 1485, nos 24, 25; Filios, *supra* note 5, § 98, 263.

[16] The provision of Art. 1461 CC sets out that blood relatives in lineal relationship are those issued from each other (ascendants and descendants), while blood relatives in collateral relationship are those who, without being lineal relatives, are issued from the one and the same ascendant (i.e. brothers and sisters). The degree of family relationship is determined by the number of births that connect the persons concerned. Blood relatives of one spouse are relatives through marriage with the other spouse (Art. 1462 CC).

[17] Grammaticaki-Alexiou, *supra* note 13, 195.

[18] Art. 1504 CC.

maintenance in the form of advance payment, even before any voluntary or judicial acknowledgement of paternity[19]. The court may also order the natural father of a child born out of wedlock to provide a special kind of maintenance to the child's mother: it may be decided that the mother of a legally recognised child is entitled to the expenses of childbirth and also to six months support (two months before the delivery of the child and four months afterwards), or, in special circumstances (e.g., if the mother has health problems due to childbirth) for one year after the childbirth[20].

1.3. Rank of obligors and beneficiaries

The rank of obligors is governed by Arts 1488-1491 CC. Descendants have the obligation to provide maintenance in the order they are called as heirs in intestacy and proportionally to their share in the estate[21]. If no descendants exist, the closer ascendants are under the obligation to provide maintenance in equal shares. To the extent that one of the obligors (ascendant or descendant) is not in the position to provide maintenance, the obligation falls on the next in rank obligor. The same applies if, for actual or legal reasons, the pursuance of maintenance from the obligor is impossible or very difficult. If a person, who is under no obligation of maintenance, nevertheless provides it, he *ipso iure* subrogates the maintenance's beneficiary to all the latter's rights.

In case of marriage, ascendants and descendants are obligors to maintenance, only if the spouse is not able to provide maintenance without jeopardizing his own support, or it is impossible or extremely difficult due to actual or legal reasons to raise a claim against him. The wealthier spouse is obliged to support the poorer one; if they are both poor, they must provide each other with every necessary mean in order to survive[22]. The above rules also apply in case of divorce, as long as an obligation of maintenance exists between former spouses.

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[19] Art. 1502 CC.

[20] Art. 1503 para. 1 CC. See Grammaticaki-Alexiou, *supra* note 13, 195. The mother's claim shall not extinct due to the father's death but lapses three years after the childbirth. A claim for compensation arising from tort is not excluded (Art. 1503 para. 2 CC).

[21] The classes of intestate heirs are governed by Arts 1813-1814 CC. See A. Grammaticaki-Alexiou, The Law of succession, *in* Kerameus & Kozyris (eds), *supra* note 13, 201-216, 206-207.

[22] Androulidaki-Dimitriadi, *supra* note 6, 134-135.

If there are more beneficiaries, and the obligor cannot afford to provide maintenance to all of them, descendants have priority in their rank of succession in intestacy. If there are more ascendants beneficiaries to maintenance, the closer ones have precedence. The spouse is placed at the same rank as minor children and precedes descendants or other relatives, even after divorce (Art. 1492 CC).

2. Conditions of maintenance

Direct lineal relationship is not the only condition for the creation of maintenance obligations. The right to claim maintenance solely belongs to persons who cannot provide for their own maintenance by means of their property or income, and cannot find employment appropriate to their age and health and other living conditions, also taking into consideration possible educational needs[23]. Consequently, as a general rule, ascendants and descendants cannot request support from their relatives if they own some property.

The inability of a person to support himself must be absolute, in connection to his living conditions: this inability does not equal to total poverty, but to incapability of the beneficiary to comply with his real biotical needs in relation to his personal status, which is defined by age, health, mental condition and educational needs[24]. The inability of support can be permanent or temporary, for example because of illness or difficulty to find a job; it can also be partial. In the latter case the claim refers to the remaining amount necessary to ensure the beneficiary's living conditions[25]. The cause of a person's inability to support himself is irrelevant to the right of maintenance. Nevertheless, descendants and ascendants shall only be entitled to a minimum amount of maintenance, comprising the bear necessities of life, if they have been guilty with regard to the obligor of a fault justifying their disinheritance (reduced maintenance)[26]. In case the benefi-

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[23] Art. 1486 para. 1 CC.

[24] Art. 1486 CC in conjunction with Art. 1493 CC, which regulates the extent of maintenance. See Androulidaki-Dimitriadi, *supra* note 4, Art. 1486, nos 13, 15, 18.

[25] Areios Pagos 1488/1988, *Νομικό Βήμα* (=Nomiko Vima – NoV) 1989, 757 [in Greek]; Areios Pagos 22/1989, *Εφημερίς Ελλήνων Νομικών* (=Efimeris Ellinon Nomikon – EEN) 1989, 927 [in Greek].

[26] Art. 1495 CC. A descendant is disinherited if he (a) has made an attempt on the life of the testator, his spouse or another descendant; (b) is intentionally guilty of bodily harm to the testator or his spouse, from whom the descendant is issued; (c) is guilty of a crime or of serious intentional misdemeanor towards the testator or his spouse; (d) has malevolently

ciary is entitled to this reduced maintenance, he cannot claim for the costs of upbringing and education[27]. If the beneficiary was led to incapability of support himself by actions manifestly exceeding the limits dictated by good faith, good morals, or the social or economic scope of the right to maintenance, the amount of maintenance can also be reduced[28].

Maintenance claim does dot entirely depend on the beneficiary's needs, but also on circumstances affecting the obligor: no obligation to provide maintenance exists if this provision endangers the obligor's own support. The obligor' support is at risk when he cannot comply with his real biotical needs in relation to his personal status and his liabilities; thus it is not necessary for the obligor to be driven to total poverty in order to be discharged from his duty of maintenance[29]. This rule does not apply to the obligation of the parents to provide support to underage children, unless the latter are able to ask for financial provision from other obligors to maintenance or they can support themselves with their own property[30]. The term 'other obligors' comprises ascendants and major siblings of the child, which have a duty to maintenance under the conditions of Art. 1490 para. 1.

An important exception to the rule that maintenance cannot be requested when the claimant owns some property is introduced in favor of minor children. The underage children have the right to maintenance towards their parents, even if they possess property, so long as the income of their property or employment is insufficient to support themselves, taking into

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violated the legal obligation to provide maintenance to the testator; (e) leads a dishonest or immoral life contrary to the testator's will. Grounds (a), (c) and (d) apply to disinheritance of ascendants. (Arts 1840-1841 CC).

27 Filios, *supra* note 5, § 105, 282-283.

28 Art. 281 CC prohibits the exercise of abusive rights. A short presentation of the doctrine of abuse of rights in the Civil Code is provided by S. Symeonides, The General Principles of Civil Law, *in* Kerameus & Kozyris (eds), *supra* note 13, 79-101, 86-87. In the past both legal doctrine and case law were contrary to the application of this article to maintenance claims because rules on maintenance are defined as public policy ones. According to recent doctrinal opinions, principles on abuse of right can also be applied to public policy rights. The application of Art. 281 CC to maintenance claims does not lead though to their rejection but to the reduction of the adjudicated sum (argument stemming from Art. 1495 CC). See Androulidaki-Dimitriadi, *supra* note 4, Art. 1486, nos 22-27; Piraeus Court of Appeal 3/1996, *NoV* 1996, 1023; Thessaloniki Court of Appeal 1705/2003, *Αρμενόπουλος* (=Armenopoulos – Arm.) 2004, 75; Athens One-Member Court of First Instance 6373/2005, *NoV* 2007, 356.

29 Art. 1487 para 1 CC; Androulidaki-Dimitriadi, *supra* note 6, 134.

30 Art. 1487 para. 2 CC

consideration their living conditions[31]. As a result of this rule, minor children are obliged to spend their wage, but they do not have to liquidate their property before claiming support from their parents, nor is there any requirement that they seek employment while they are still attending school[32]. Parents have a steady obligation to jointly maintain their minor children, regardless of the exercise of parental care, the dissolution of marriage or the children's age[33]. Parents must provide maintenance to their adult children under the general maintenance conditions, *i.e.,* if the latter are not able to support themselves by their assets or appropriate employment. When children after attaining majority (completion of eighteen years of age), continue their studies, parents can still provide financial support, taking into consideration children's educational needs and under specific circumstances their inability to find appropriate employment. Special weight should be given to the child's ability and wish to pursue education; parents may be bound to finance post-graduate studies at university if the child is capable and really willing to complete such studies[34].

3. Content and payment of maintenance

Maintenance covers all material means that a person needs to satisfy his biotical needs[35]. The concept of maintenance is not defined by the CC, which only states its extent and content[36]. The extent of maintenance mainly refers to the specific beneficiary and does not depend on his social

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[31] Art. 1486 para. 2 CC. The living conditions depend on several factors such as age, health, place of residence, educational needs: Areios Pagos 416/2007, *Χρονικά Ιδιωτικού Δικαίου* (=Chronika Idiotikou Dikaiou – ChrID) 2007, 499 [in Greek].

[32] E. Kounougeri-Manoledaki, Greece, *in* C. Hamilton & K. Standley (eds), *Family Law in Europe* (London/Dublin/Edinburgh 1995) 225. The right of a minor child to work in order to meet his living costs starts at the age of fifteen (Art. 136 CC).

[33] Filios, *supra* note 5, § 103, 276. The common obligation of the parents to maintain their children, each one according to his capacity, is based on Art. 1489 para. 2 CC. For the parent's obligation to provide maintenance after the dissolution of marriage see Areios Pagos 319/1999, *Ελληνική Δικαιοσύνη* (=Elliniki Dikaiosyni – EllDni) 1999, 1717.

[34] Androulidaki-Dimitriadi, *supra* note 4, Art. 1486, nos 98-106; Kounougeri-Manoledaki, *supra* note 32; Areios Pagos 212/1999, *EllDni* 1999, 1043.

[35] Androulidaki-Dimitriadi, *supra* note 6, 131.

[36] According to Art. 1493 CC, the extent of maintenance is determined by the needs of the beneficiary, as these arise according to his living conditions, while the content of maintenance comprises all that is necessary for his support, as well as expenses for his upbringing and his professional and general education.

position but his living conditions[37]. It is determined on the basis of the needs of the person entitled to it, according to the circumstances of his life (proportional maintenance). Its content relates to the beneficiary's real needs, which maintenance can satisfy[38], and comprises all that is necessary for the support of the beneficiary, as well as his upbringing and education (full maintenance)[39]. In some cases, as it will be shown below, maintenance can be reduced (Art. 1495 CC), or only reasonable (Art. 1504 CC).

Maintenance is usually furnished in cash and in advance on a monthly basis. However, parties may agree that support should be provided in kind, and this may also be ordered by the court, taking into consideration special circumstances. Parents have the right to unilaterally decide how they will fulfill their support obligation towards their underage child[40]. If either party's means or resources change, the court may alter the amount of support, or even order its cessation[41].

The beneficiary of maintenance cannot resign from his future rights (Art. 1499 CC) and claims for future maintenance are not prescribed. Delayed periodical maintenance installments are subject to five years' prescription, starting from the day the claim may be judicially pursued. Prescription for maintenance claims accrues from the expiration of the year in course during which the starting point of prescription occurs[42]. The term of prescription for maintenance claims is suspended though, during marriage for claims between spouses, and during minority for claims between parents and children[43].

Due to the personal character of the right to maintenance, such obligations are extinct with the death of either party (obligor/beneficiary), except for past claims or installments due and payable at the time of death (Art. 1500 CC).

Maintenance for the past is due only after default of the obligor. Past maintenance refers to the period before an action on maintenance has been lawfully served to the obligor. In order to put the obligor in default, the beneficiary must make a protest, either by instituting judicial proceedings

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37 Prior to 'new family law', the social position was taken into consideration to determine maintenance's extent.

38 Androulidaki-Dimitriadi, *supra* note 4, Art. 1493, nos 8, 9.

39 Filios, *supra,* n. 5, § 98, 262.

40 Arts 1496-1497 CC. See Kounougeri-Manoledaki, *supra* note 32.

41 Art. 1494 CC.

42 Arts 250 et seq. CC. See Androulidaki-Dimitriadi, *supra* note 6, 137.

43 Art. 256 CC.

or by extrajudicial means; the protest can also have the form of an oral declaration, so long as the amount of maintenance and the beneficiary's particular needs are specified[44].

B. Maintenance on the basis of marriage or cohabitation pact

1. The spouses' duty to maintain

The spouses' duty to maintain may be examined during the marriage (a), on the one hand, and in case of divorce (b), on the other hand.

1.1. Duty to maintain during the marriage

Arts 1389-1390 CC governing the relations between the spouses resulting from marriage provide for the reciprocal obligation of the spouses for their maintenance as particular expression of their common obligation to contribute to the needs of the family. It is stated, more specifically, that the spouses are obliged to contribute jointly, according to their means, in order to meet the needs of their family. Such contribution shall consist in the personal labor, their income as well as their property. As explicitly provided, this general obligation of the spouses is divided, among others, into: (a) the reciprocal obligation for each other's maintenance; (b) the common obligation to maintain their children; and (c) the obligation to contribute to the functioning of their common living. Such reciprocal obligation depends only on the existence of marriage[45] and cohabitation. It has both personal and property character and covers all the costs for the living of the family, including personal ones according to their needs (e.g. food, clothing, education, medical coverage entertainment, vacation etc.)[46]. Its extent is determined in accordance with the particular circumstances of the family life

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[44] Areios Pagos 342/2001, *NoV* 2002, 341. The general principles for the debtor's default according to the law of obligations (Arts 340 et seq. CC) also apply to maintenance (see Androulidaki-Dimitriadi, *supra* note 4, Art. 1498, nos 6-7). Thus, if the obligor's default is attributable to a circumstance for which he is not responsible, the beneficiary is not entitled to damages for delay. See Ph. Christodoulou, Law of Obligations, *in* Kerameus & Kozyris (eds), *supra* note 13, 102-152, 111-112.

[45] Even if the marriage is void or voidable, provided that this has not been pronounced by virtue of an irrevocable court judgment. See D. Kallinikou, *in* Georgiadis & Stathopoulos (eds), *supra* note 4, Arts 1389-1390, no 6.

[46] Kounougeri-Manoledaki, *supra* note 32, 205; Androulidaki-Dimitriadi, *supra* note 6, 68. It does not cover the marriage expenses: see Filios, *supra* note 5, § 32, 88.

– as particularly determined by the financial and social status of the family, the standard of living and the professional status of the spouses[47] – and is satisfied according to the available means. The CC neither requires the destitution of the spouse nor contains particular provisions on the calculation of such maintenance[48] or the specific time of performance.

In case of interruption of marital cohabitation, the said duty to maintain shall consist only in the payment of a specific amount of money to the financially weaker spouse. According to the wording of Art. 1391 CC, in case of interruption of marital cohabitation for a reasonable cause, the maintenance owed by one spouse to the other shall be paid in cash and in advance on a monthly basis. This obligation may stop or be raised or reduced, depending on the particular circumstances (e.g. according to the increase of needs due to the interruption of marital cohabitation, the person who caused this, the reason etc.), with a view to maintaining the standard of living of the spouse entitled thereto as it was before the interruption of marital cohabitation[49]. The claiming spouse, therefore, must have relied on the maintenance of the other during the marriage[50]. Neither in this case, however, does the CC regulate specifically the calculation of the maintenance[51]. In this respect, it should be noted that the financially weaker spouse is entitled to maintenance if (a) he or she interrupts marital cohabitation with a reasonable cause or (b) the other spouse interrupts marital cohabitation (with or without reasonable cause); if the financially weaker spouse interrupts marital cohabitation without reasonable cause, he or she cannot claim maintenance[52]. Such reasonable cause may consist i.e. in the expulsion of the weaker spouse without reasonable cause or even in the common decision of the spouses to interrupt marital cohabitation in order to get a divorce[53]. The duty to maintain in case of

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47 Piraeus One-Member Court of First Instance 62/1987, *Αρχείο Νομολογίας* (=Archeio Nomologias – ArchN) 1988, 626; Kallinikou, *supra* note 45, Arts 1389-1390, no 46.

48 Legal doctrine has suggested certain methods of calculation. See Kallinikou, *supra* note 45, Arts 1389-1390, nos 15-21; I. Pitsirikos, *in* Karakostas (ed.), *supra* note 11, Arts 1389-1390, nos 36-38.

49 Androulidaki-Dimitriadi, *supra* note 6, 69.

50 Kounougeri-Manoledaki, *supra* note 32, 208.

51 Legal doctrine has suggested certain methods of calculation. See Kallinikou, *supra* note 45, Art. 1391, nos 14 et seq.; Pitsirikos, *supra* note 48, Art, 1391, nos 21 et seq.

52 Grammaticaki-Alexiou, *supra* note 13, 186; Androulidaki-Dimitriadi, *supra* note 6, 69.

53 Areios Pagos 645/1985, *EllDni* 1986, 84; Piraeus Court of Appeal 7497/2004, *NoV* 2005, 119; Athens Court of Appeal 7133/1986, *EllDni* 1987, 671; Athens Court of Appeal

interruption of marital cohabitation terminates when the court judgment pronouncing the divorce becomes irrevocable[54]. Thereon, the divorced spouse may claim maintenance only on the conditions provided for in Arts 1442 et seq. CC[55].

Art. 1392 CC makes explicit reference by analogy to the general provisions of Arts 1494, 1495 and 1498-1500 CC governing statutory maintenance[56]. Therefore: (a) in case the circumstances change after the court judgment determining the maintenance, the latter may be reformed, even ordering the suspension of the maintenance (Art. 1494 CC); (b) if there exists a proper ground for divorce imputable to the fault of the financially weaker spouse, the latter shall only be entitled to a minimum of maintenance comprising the bear necessities of life (Art. 1495 CC); (c) maintenance for the past shall only be due after default of the obligor (Art. 1498 CC)[57]; (d) the spouse entitled to maintenance cannot resign from his or her future rights (Art. 1499 CC); and (e) maintenance claims are extinct with the death of either spouse, except for past claims or installments due and payable at the time of death (Art. 1500 CC).

Delayed periodical maintenance installments are subject to five years' prescription, starting from the day the claim can be judicially pursued[58].

1.2. Duty to maintain in case of divorce

Under the 'new family law' it has been considered inappropriate for a divorced spouse to receive life-long maintenance. Each spouse, thus, should try to become financially independent as soon as possible after the divorce. In this spirit, the divorce – regardless of its type – terminates the spouses' obligation to contribute to the family needs; therefore, the

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4159/1986, *EllDni* 1986, 1329; Athens Court of Appeal 1680/1986, *EllDni* 1986, 662; Athens Court of Appeal 4524/1985, *EllDni* 1985, 964, etc. See Kallinikou, *supra* note 45, Art. 1391, no 8, notes 17, 18; Filios, *supra* note 5, § 47, 127; Pitsirikos, *supra* note 48, nos 8 et seq., with further references.

54 Athens Court pf Appeal 1774/2009, *EllDni* 2010, 521; Piraeus Court of Appeal 155/2004, *EllDni* 2005, 1518; Athens Court of Appeal 2209/2002, *EllDni* 2001, 1451; Piraeus Court of Appeal 192/1996, *EllDni* 1997, 1442. See Filios, *supra* note 5, § 46, 123-124, note 4.

55 *Infra* I.B.1.(1.2).

56 *Supra* I.A.3.

57 See *supra* note 44.

58 Arts 250 et seq. CC. See *supra* I.A.3.

spouses are in principle required to support themselves from their own income and assets[59].

Where this is not possible, however, Art. 1442 CC recognises the right of the divorced spouse to claim maintenance from the other on the following conditions: (a) if at the pronouncement of the divorce the spouse is of an age or in a health condition not allowing him or her to pursue an appropriate employment that would secure his or her maintenance; (b) if the divorced spouse is unable to work because he or she is entrusted with the care of a minor child; (c) if the divorced spouse cannot find a steady and appropriate employment or needs professional training – even though in this case the duty to maintain shall not exceed a period of three years from the pronouncement of the divorce; (d) in any other case where the duty to maintain derives from reasons of equity[60]. It is clear that in the present case – by contrast with the duty to maintain during the marriage – the CC only requires the destitution of the beneficiary, on the one hand, and the prosperity of the obligor, on the other hand[61], and dissociates the duty to maintain from the apportionment of blame on the divorce.

Under Art. 1443 CC, the maintenance shall be paid in cash and in advance on a monthly basis or in one lump sum payment if the former spouses agree so in writing or upon a court judgment, where this is justified by particular reasons. The said Article, further, makes explicit reference by analogy to the general provisions of Arts 1487, 1493, 1494 and 1498 CC governing statutory maintenance. Consequently: (a) regardless of the prosperity of the obligor, no obligation to provide maintenance exists if such provision endangers the obligor's own support after taking account of his or her other obligations (Art. 1487 CC)[62]; (b) apart from the obligor's means, in determining the amount of maintenance the court takes into account the needs of the claimant spouse after the divorce and the standard of living within the marriage so that the maintenance comprises all that is necessary for his or her support (appropriate maintenance, Art. 1493 CC); (c) if after the court judgment determining the maintenance either party's needs or means change, the court may revise the amount of

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[59] Kounougeri-Manoledaki, *supra* note 32, 214.

[60] For a detailed analysis, see among others F. Skorini-Paparrigopoulou & G. Lekkas, *in* Georgiadis & Stathopoulos (eds), *supra* note 4, Art. 1442, nos 24 et seq.; K. Voulgari, *in* Karakostas (ed.), *supra* note 11, Art. 1442, nos 11 et seq., with further references to the case-law.

[61] Filios, *supra* note 5, § 62, 167.

[62] *Supra* I.A.4.

the periodic payments or even order the suspension of the maintenance (Art. 1494 CC), by contrast with the case of a lump sum payment, which, once paid, cannot be revised[63]; and (d) maintenance for the past shall only be due after default of the obligor (Art. 1498 CC)[64].

According to Art. 1444 CC maintenance may be limited or even excluded if there are serious reasons, particularly if the marriage lasted only for a short period of time or if the spouse entitled thereto has caused the divorce on his fault or has intentionally caused his or her destitution. The right to maintenance shall also cease if the divorced spouse entitled thereto remarries or cohabits permanently with another person outside marriage. Nonetheless, it shall not cease with the death of the person obliged to provide it, but it shall cease with the death of the person entitled to it, unless it concerns past periods or installments due at the time of the death[65].

In order that the duty to maintain is fulfilled, Art. 1445 CC provides for the obligation of each of the divorced spouses to furnish to the other accurate information about his property and income, insofar as this is useful for the determination of the maintenance amount. Upon request of one of the ex-spouses, which is forwarded by the district attorney, the employer of the spouses, the competent public authority and the tax officer shall furnish any useful information about the financial state and particularly the income of the divorced spouse.

It should be noted that Arts 1442 et seq. CC concerning the statutory duty to maintain in case of divorce are not of mandatory character[66]; therefore, irrespectively of the type of divorce, the spouses may conclude agreements as to post-divorce maintenance either before or after the divorce, either permanently or temporarily. The relevant claim may even be waived altogether, for both the past and the future[67].

In the present case, too, delayed periodical maintenance installments are subject to five years' prescription, starting from the day the claim can be judicially pursued; such prescription term shall be suspended during the marriage[68].

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63 Kounougeri-Manoledaki, *supra* note 32, 214.

64 See *supra* note 44.

65 For a detailed analysis, see among others Skorini-Paparrigopoulou & Lekkas, *supra* note 60, Art. 1444; Voulgari, *supra* note 60, Art. 1444, with further references.

66 Areios Pagos 92/2006, *EllDni* 2005, 1022; Filios, *supra* note 5, § 65, 174.

67 Given also that Art. 1443 CC does not refer to Art. 1499 CC. Filios, *supra* note 5, § 65, 175.

68 Arts 250 et seq., 256 CC. See *supra* I.A.3. and I.B.1.

2. The cohabitants' duty to maintain

Particular provisions on maintenance are included in Law 3719/2008[69] on the cohabitation pact, which admittedly introduced a progressive modification to Greek family law. The said Law regulates in a systematic manner the cohabitation of adult persons of the opposite sex[70] by explicitly setting out their rights, obligations and commitments. Such couples wishing to enter into a cohabitation pact shall sign a notarial deed, subsequently filed with the competent registry. The cohabitation pact may be terminated by unilateral declaration or mutual agreement following the same formalities, by subsequent marriage and by death. Law 3719/2008 contains provisions regulating the ownership of the property acquired during the cohabitation, the status of the children born during the cohabitation as well as succession law issues[71].

Art. 7 of Law 3719/2008 provides for the cohabitants' contractual duty to maintain after the termination of the cohabitation. Specifically, the cohabitants may agree – by virtue of the cohabitation pact or a subsequent notarial deed – that after the dissolution of the pact of cohabitation one of them shall be obliged to maintain the other or that both of them shall be obliged to maintain each other. The provision of such maintenance depends on two conditions: first, the party seeking maintenance shall be unable to support him- or herself and, second, the provision of the maintenance shall not endanger the obligor's own support after taking account of his or her other obligations.

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[69] *Supra* note 2.

[70] As to the doctrinal debate with regard to the exclusion of same-sex couples, see among others Fessas, *supra* note 11, 70 et seq., with further references. The European Court of Human Rights recently held that the fact that the civil unions introduced by Greek Law no. 3719/2008 were designed only for couples composed of different-sex adults infringes Articles 8 and 14 of the European Convention on Human Rights. See *Valianatos and Others v. Greece*, nos. 29381/09 and 32684/09, ECHR 2013.

[71] For a detailed analysis of Law 3719/2008 on the pact of cohabitation, see among others K. Christodoulou, Cohabitation pact. Issues of substantive and procedural law, *Δίκη* (=Dike) 2009, 346 et seq. [in Greek]; A. Kotzambasi (ed.), *Cohabitation pact and family law amendments* (Athens/Thessaloniki 2009) [in Greek]; A. Koutsouradis, Law 3719/2008: *audietur et altera pars et cetera*!, *Εφαρμογές Αστικού Δικαίου* (=Efarmoges Astikou Dikaiou – EfAD) 2009, 56 et seq. [in Greek]; Th. Papachristou, N. Koumoutzis & Chr. Tsouca, *Cohabitation pact* (Athens 2009) [in Greek]; I Spyridakis, *The cohabitation pact according to Law 3719/2008* (Athens/Komotini 2009) [in Greek]; Tsirou, *supra* note 11, Art. 1485, nos 32 et seq.

It is stated, furthermore, that the beneficiary former cohabitant shall concur with the obligor's divorced spouse. However, if the cohabitation pact is dissolved by death, the said maintenance may not be claimed by the obligor's heirs. On the other hand, after the dissolution of the cohabitation pact, the obligor may not rely on the duty to maintain by virtue of the pact of cohabitation so as to avoid providing the due maintenance to his or her spouse or children.

The said provision also stipulates that the contractual duty of the one ex-cohabitant to maintain the other ex-cohabitant who lacks the ability of self-support precedes the statutory duty of other persons to maintain the latter.

As in the case of the maintenance between the spouses, the relevant claims of the former cohabitant are subject to the five years' prescription period, which shall be suspended as long as the cohabitation pact is in force[72].

One should note that the regime provided for in the CC or in Law 3719/2008 as regards the spouses' or the cohabitants' duty to maintain is not applicable to the formless free unions outside marriage, which remain essentially unregulated in the Greek legal order[73]. Only by explicit agreement can a duty to mutual maintenance be provided in such a case.

II. Private international law governing maintenance obligations[74]

In Greece, the private international law provisions governing maintenance obligations are currently contained in 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 (hereinafter: the Maintenance Regulation)[75].

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[72] Arts 250 et seq., 256 CC, Art. 12 of Law 3719/2008. See *supra* note 68.

[73] Legal doctrine has attempted to place free union outside marriage under special provisions of property law and partnerships law. See Androulidaki-Dimitriadi, *supra* note 6, 84.

[74] See Douga & Koumpli, Cross-border maintenance obligations in Europe: the EU Maintenance Regulation, *in Essays in honour of Spyridon Vl. Vrellis* (Athens 2014) 239 et seq., where this chapter has already been published.

[75] 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 [2009] OJ L 7/1.

A. Introductory remarks

For a number of years the European Union tried to standardize legislation and procedures concerning maintenance obligations in connection with the right to access to justice and to the recovery of claims. Although maintenance obligations were dealt with in the Brussels I Regulation[76], differences still remained between the national legal systems of the Members States, which were eventually detrimental to creditors. Cross-border procedures remained long and complicated and difficulties still occurred with regard to mutual recognition and enforcement[77]. Thus, in December 2005 the European Commission presented a proposal for a Regulation on maintenance with five main objectives: (a) harmonization of rules on recognition and enforcement in the EU by eliminating the application of the Hague Maintenance Enforcement Convention of 1973 between Member Sates, (b) abolishment of exequatur, (c) simplification of enforcement, (d) enhancement of cooperation, (e) establishment of conflict of laws rules[78].

While proposing this Regulation, the European Commission was well aware that the Hague Conference on Private International Law was also preparing a new convention on maintenance obligations in order to extend and simplify the rules of private international law in this field with regard to Contracting States; as a matter of fact, the European Union actively participated in the relative works as a full member of the Hague Conference[79]. The Twenty-First Session of the Hague Conference on Private International Law closed on 23 November 2007 with the signing of the

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[76] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2001] OJ L12/1. As from 10 January 2015, Regulation (EC) No 44/2001 shall be replaced by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, 1.

[77] F. Ferrand, The 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, *in* B. Campuzano Diaz, M. Czepelak, A. Rodriguez Benot & A. Rodriguez Vazquez (eds), *Latest Developments in EU Private International Law* (London 2011) I 1.

[78] P. Beaumont, International Family Law in Europe – The Maintenance Project, The Hague Conference and The EC: A Triumph of Reverse Subsidiarity, *RbZ* 2009, 509 et seq., at 543.

[79] Its competence derived from Article 65 TEC, currently Article 81 TFEU.

Final Act of the Session, which contains the text of the Convention of 23 November 2007 on the International Recovery of Child Support and other Forms of Family Maintenance (hereinafter: the Hague Convention), and the Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations (hereinafter: the Hague Protocol)[80]. Both new instruments were agreed by consensus[81]. Intention of the negotiators was to produce instruments designed to respond to the needs of maintenance beneficiaries by providing international procedures that are simple, swift, cost-effective, accessible, fair and built upon features of existing international instruments[82]. A number of months later, 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[83] was adopted[84]. Article 15 of the Maintenance Regula-

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[80] The reason for drafting two separate instruments is that many States were not interested in harmonising the applicable law rules; therefore this issue was negotiated in a separate Protocol. According to Art. 23(3) of the Protocol, this is autonomous from the Convention: any State may sign, ratify or accede to the Protocol, even if it has not signed, ratified or acceded to the Convention. According to Beaumont (*supra* note 78, 519), the application of the *lex fori* was a general wish.

[81] W. Duncan, The Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance. Comments on Its Objectives and Some of Its Special Features, *YPIL* 2008, 313 et seq., at 314.

[82] E. Long, The New Hague Maintenance Convention, *ICLQ* 2008, 984 et seq., at 984.

[83] *Supra* note 75.

[84] For an overview, see I. Bambust, Le règlement européen 4/2009 en matière d'obligations alimentaires, *Journal des Tribunaux*, no 6356 (6 juin 2009), 381 et seq.; D. Eames, Maintenance Enforcement: The 2007 Hague Convention and the EC Regulation, *IFL* 2009, 47 et seq.; *idem*, The New Maintenance Regulation, *IFL* 2011, 143 et seq. ; P. Gruber, Die neue EG-Unterhaltsverordnung, *IPRax* 2010, 128 et seq.; Ch. Kohler, Elliptiques variations sur un thème connu : compétence judiciaire, conflits de lois et reconnaissance de décisions en matière alimentaire d'après le règlement (CE) no 42009 du Conseil, *in* K. Boele-Woelki, T. Einhorn, D Girsberger & S. Symeonides (eds), *Convergence and Divergence in Private International Law. Liber Amicorum Kurt Siehr* (Zurich/The Hague 2010) 277 et seq.; M. Hellner, The Maintenance Regulation: A Critical Assessment of the Commission's Proposal, *in* K. Boele-Woelki & T. Sverdrup (eds), *European Challenges in Contemporary Family Law* (Antwerp/Oxford/Poland 2008) 343 et seq.; A. Malatesta, La Convenzione e il Protocolo dell'Aja del 2007 in material di alimenti, *RivDIPP* 2009, 829 et seq.; E. Moustaira, Thoughts on Regulation 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance, *Επιθεώρηση Πολιτικής Δικονομίας* [=Epitheorisi Politikis Dikonomias - EPolD) 2011, 709 et seq. [in Greek]; F. Pocar & I. Viarengo, Il Regolamento (CE) N. 4/2009 in materia di obbligazioni alimentary, *RivDIPP* 2009, 805 et seq.; G. Smith, The Recognition and Enforcement of Maintenance Orders within the European Union: The EU Maintenance Regula-

tion directly refers to the Hague Protocol for the determination of the law applicable to maintenance obligations[85]. This insertion of the Hague rules to the EU legislation gave to the European Union the external competence needed to ratify the Hague Protocol[86]; at the same time, it satisfied the European Commission's conviction that the inclusion of conflict of laws rules in the Maintenance Regulation would strengthen legal certainty and, therefore, facilitate enforcement of maintenance decisions[87].

B. Law applicable to maintenance obligations

1. The reference to the Hague Protocol

As already stated, the Maintenance Regulation refers to the Hague Protocol for the determination of the law applicable to maintenance obligations. The latter represents an innovative instrument with multiple goals. First, it was designed to replace the existing Hague Conventions on the law applicable to maintenance obligations of 1956 and 1973[88], which were in some respects criticized and in need of reform. Its second goal was to enlarge the number of Contracting States, since the above-mentioned Hague Conventions have been in force in a limited number of jurisdictions[89]. Indeed, the

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tion, *IFL* 2011, 187 et seq.; W. Tyzack, Mapping the Jurisdiction Minefield: Steering Clear of the Traps of the EU Maintenance Regulation, *IFL* 277 et seq. Cf. also M. Harding, The Harmonisation of Private International Law in Europe: Taking the Character out of Family Law? *JPIL* 2008, 203 et. seq.

[85] On the reasons for the European Union directly refer to the Protocol, see A. Borràs, The Necessary Flexibility in the Application of the New Instruments on Maintenance, *in* Boele-Woelki, Einhorn, Girsberger & Symeonides, *supra* note 84, 173 et seq., 178-179.

[86] Council Decision of 30 November 2009 on the conclusion by the European Community of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations (2009/941/EC) [2009] OJ L 331/17. The Hague Protocol was signed and ratified by the European Union on 8 April 2010 and entered into force on 1 August 2013; in the European Union, the Hague Protocol is unilaterally applied from 18 June 2011, at the same time with the Maintenance Regulation.

[87] Ferrand, *supra* note 77, III 14. Different opinion in B. Ancel & H. Muir Watt, Aliments sans frontières. Le règlement CE no 4/2009 du 18 décembre 2008 relatif à la compétence, la loi applicable, la reconnaissance et l'exécution des décisions et la coopération en matière d'obligations alimentaires, *RevCritDIP* 2010, 457 et seq., 479.

[88] For an overview, see S. Vrellis, *The Hague Conventions on maintenance obligations* (Athens 1988) [in Greek].

[89] The 1956 Convention is in force in 6 states and the 1973 Convention in 14 States, including Greece.

Hague Protocol already enjoys broader acceptance: its application in EU Member States[90] may be considered as an important step forward, as compared to the restricted number of Contracting States to the existing instruments. Finally, the reinforcement of the *lex fori* is expected to contribute to a harmonization of the private international law rules on maintenance, by filling the gap between common law jurisdictions, which systematically submit maintenance obligations to the law of the *forum*, and countries following the Roman law tradition[91].

2. On the scope of application

The Hague Protocol determines the law applicable to maintenance obligations arising from a family relationship, parentage, marriage or affinity. Its scope of application *ratione materiae* is, thus, quite broad, even though not all States may recognise such relationships. Its provisions do not particularly specify whether same-sex marriages or same-sex partnerships are included within its scope[92]. Regarding Contracting States refusing such institutions, like Greece[93], two solutions could be proposed: (a) such relationships may not be considered as family relationships and, therefore, the Hague Protocol should not apply[94]; or (b) such relationships may be considered as family relationships, but not as marriage and, therefore, the Hague Protocol should apply[95]. The material scope of the Hague Protocol shall not, however, be restricted and necessarily encompasses all maintenance obligations arising out of family relationships[96]. Rather than excluding certain obligations from its scope or giving a right to reservation, a special defense rule is provided by Article 6 of the Hague Protocol, stating that the debtor may contest the creditor's claim on the grounds that

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90 Except for Denmark and the United Kingdom.

91 See A. Bonomi, The Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, *YPIL* 2008, 333-357, 334-335.

92 According to Bonomi, *ibid.*, 339, who was directly involved in the elaboration and the adoption of the Protocol, this omission was intentional, in order to avoid the Hague Protocol running up against the fundamental opposition existing between States on these issues.

93 See, however, *supra* note 70.

94 In this case national conflict rules shall apply.

95 With the exception of Article 5 of the Hague Protocol, which introduces a special rule with respect to spouses and ex-spouses.

96 Article 1 of the 1973 Maintenance Obligations Convention provided for reservations enabling Contracting States to exclude from its scope maintenance obligations arising out of certain family relationships.

there is no such obligation under both the law of the State of the debtor's habitual residence and the law of the State of the common nationality of the parties, if there is one.

Given its universal scope, the Hague Protocol does not exclude the application of the law of a non-Contracting State (*erga omnes effect*)[97]. At the same time, *renvoi*[98] is explicitly excluded, whereas it is provided that the application of the determined law may only be refused to the extent that its effects would be manifestly contrary to the public policy of the *forum*[99].

The Hague Protocol enumerates a non-exhaustive list of issues that shall be regulated by the applicable law, such as (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[100].

3. Conflict of laws rules

Maintenance obligations are in principle governed by the law of the State of the creditor's habitual residence[101]. This means that the existence and amount of the maintenance obligation are determined with regard to the legal and factual conditions of the country where the creditor lives. Equal treatment among creditors is, thus, secured, regardless of their nationality. In addition, the fact that the law of the creditor's habitual residence and that of the *forum* in most cases normally coincide contributes to the simplification and efficiency of the process[102].

This general rule is, nevertheless, limited by specific exceptions. In this respect, Article 4 of the Hague Protocol contains special rules in favour of certain privileged creditors: parents toward children, regardless of the

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97 Article 2 of the Hague Protocol.

98 Article 12 of the Hague Protocol.

99 Article 13 of the Hague Protocol.

100 Article 11 of the Hague Protocol.

101 Article 3 of the Hague Protocol.

102 Bonomi, *supra* note 91, 341-342.

age of the child; persons other than parents towards persons that have not reached the age of 21 years; children towards their parents. In such cases, if the creditor is unable, by virtue of the law of his habitual residence, to obtain maintenance from the debtor, the law of the *forum* shall apply. If the creditor continues to be unable to pursue a maintenance claim, then the law of the creditor's and the debtor's common nationality – if one exists – shall apply. Against these subsidiary connections, the same provision also introduces a principal connection to the law of the *forum*, when the creditor has seized the competent authority of the State where the debtor has his habitual residence. Of course, if the creditor is unable to obtain maintenance under the law of the *forum,* the law of the creditor's habitual residence and the law of the common nationality become applicable again on a subsidiary basis.

Furthermore, Article 5 of the Hague Protocol introduces an escape clause for maintenance between spouses and ex-spouses. It is specifically provided that at the request of one of the parties, the law of the State of the spouses' last common residence applies, if that law has a closer connection with the marriage.

In the same spirit, Articles 7 and 8 of the Hague Protocol allow the designation by the parties of the applicable law. This admission of the principle of party autonomy constitutes, indeed, one of the novelties of the Hague Protocol as compared to the previous Hague Conventions. The said provisions introduce two variations of such party autonomy. Article 7 of the Hague Protocol, on the one hand, provides that creditor and debtor may expressly designate *lex fori* as applicable for the purpose of a particular proceeding. Article 8 of the Hague Protocol, on the other hand, generally provides for the designation of the applicable law when no particular proceeding has been brought before court. In the latter case, creditor and debtor are offered the following options: (a) the law of nationality of either party, (b) the law of habitual residence, (c) the law designated by the parties to govern their property regime, (d) the law designated by the parties to govern their legal separation or divorce, or the law actually applied to those matters. Maintenance obligations towards minors are excluded from such agreements, which, on the contrary, are particularly useful in marital relationships, especially when they are concluded before or during marriage and, as a result, the law applicable to maintenance is determined in advance[103].

[103] *Ibid.*, 353.

4. Substantive rule

One should note that, apart from the conflict of laws rules, the Hague Protocol also contains a substantive rule. It is stated, in particular, that 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 in any case be taken into account in determining the amount of maintenance, even if the applicable law provides otherwise[104].

B. Jurisdiction, recognition and enforcement of foreign decisions

1. Purpose of the Maintenance Regulation

The Maintenance Regulation[105], in force as of the 18th June 2011[106], was designed to replace the provisions in the Brussels I Regulation[107] relating to maintenance. It aims at enabling a maintenance creditor to obtain easily in one Member State a decision which will automatically be enforceable in another Member State without further formalities. The underlying objective is the proper functioning of the internal market.

2. On the scope of application

As well as the Hague Protocol, the Maintenance Regulation applies to maintenance obligations arising from family relationships, parentage, marriage or affinity. No particular definition of the concept of 'maintenance' is provided; on the contrary, it is stated that such term shall be interpreted autonomously[108].

It is to be noted that the new rules are limited only to maintenance obligations, and do not determine the law applicable to the establishment of the family relationships upon which such maintenance obligations are based.

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104 Article 14 of the Hague Protocol.

105 *Supra* note 75.

106 *Supra* note 86.

107 *Supra* note 76.

108 The problem of adhering to a European definition of 'maintenance' is not a new one. Guidance can be taken from the decision of the Court of Justice of the European Union (CJEU, formerly ECJ): Case C-220/95, *Van den Boogaard v. Laumen* [1997] ECR I-1147. As the Hague Protocol constitutes a part of the Hague Convention, the conception of maintenance in the Hague Protocol can also be autonomously interpreted by the CJEU.

Family relationships are still determined by national law. The term 'affinity', though, may be applied more widely in different Member States to include decisions in relation to types of relationships which the courts of a particular Member State will have to automatically recognise and enforce, even if such types of relationships do not exist under its law. However, recognition in a Member State of a decision relating to maintenance made in another Member State does not imply the recognition by the latter of the particular family relationship out of which the maintenance obligation arose; the only object of recognition is the recovery of maintenance under the decision.

The Maintenance Regulation applies not only to strict court proceedings, but also to procedures before administrative authorities of the Member States with competence in matters related to maintenance obligations, under certain conditions[109].

According to Article 69 of the Maintenance Regulation, the application of bilateral or multilateral conventions and agreements to which Member States are parties is in principle not affected. The Maintenance Regulation shall, however, prevail over conventions and agreements to which Member States are parties in the case of relations between Member States.

3. Jurisdiction

The first remarkable novelty in the field of jurisdiction is that the Maintenance Regulation contains no limitation in its geographical scope, by contrast with the Brussels I Regulation, which is limited in its scope to situations where the defendant has his habitual residence in a Member State[110]. As a consequence, the Maintenance Regulation rules on jurisdiction are always to be applied by the courts of Member States, leaving no longer room for national law[111].

Jurisdiction relating to maintenance can be established under one of five different grounds as set out in Articles 3 to 7 of the Maintenance Regulation. The use of 'domicile' as under the Brussels I Regulation is removed. Jurisdiction shall lie with the court (a) where the defendant is habitually resident; or (b) where the creditor is habitually resident; or (c) with juris-

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[109] See Article 2(2) of the Maintenance Regulation.

[110] Article 3 of the Brussels I Regulation.

[111] As to the advantages of such universal application, see among others Ferrand, *supra* note 77, II 6.

diction to entertain proceedings as to the status of a person, where maintenance is ancillary to those proceedings; or (d) with jurisdiction to entertain proceedings regarding parental responsibility, where maintenance is ancillary to those proceedings[112]. Those four rules are equal: none of them has priority over the others. The Maintenance Regulation does not contain any definition of the term 'habitual residence', either, so the latter is subject to an autonomous European interpretation.

In order to increase legal certainty, predictability and the autonomy of the parties, agreements on jurisdiction can also be concluded. Article 4 of the Maintenance Regulation provides that jurisdiction may be agreed between the parties for (a) the court of a Member State in which one of the parties is habitually resident; or (b) where one of the parties has his/her nationality; or (c) in disputes between spouses, the court with jurisdiction to deal with the divorce, or the court where the spouses had their last common habitual residence for at least one year. Such agreements are to be in writing and shall be exclusive unless the parties have agreed otherwise. One should note that the said provision does not apply in case of disputes relating to maintenance for children under 18. This exception undoubtedly constitutes a notable departure from the situation under the Brussels I Regulation.

A ground of jurisdiction based on submission is set out in Article 5 of the Maintenance Regulation. A court before which the defendant enters an appearance shall have jurisdiction, save for where the defendant appears only to contest jurisdiction[113]. Article 6 of the Maintenance Regulation provides for a subsidiary jurisdiction on the basis of the common nationality of the parties where no court of a Member State has jurisdiction under Articles 3, 4 or 5. It is, therefore, no longer left to national law to determine, as was the case under Article 4 of the Brussels I Regulation. Article 7 of the Maintenance Regulation, entitled '*forum necessitatis*', provides jurisdiction for the court of a Member State on an exceptional basis so that this may hear the case if proceedings cannot reasonably be brought or conducted, or would be impossible, in a third State with which the dispute is closely connected. The dispute must still, though, have a sufficient connection with the *forum necessitatis*.

Article 7 of the Maintenance Regulation attempts to limit the possibility of forum shopping by preventing a debtor from seeking in a Member State a new decision or the modification of an existing one made in another

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[112] Article 3 of the Maintenance Regulation.

[113] As under Article 24 of the Brussels I Regulation.

Member State, whilst the creditor remains habitually resident in the first Member State[114]. This is subject to situations where there is an agreement as to jurisdiction under Article 4 or where the creditor submits to that new jurisdiction under Article 5. In this sense, Article 8 of the Maintenance Regulation represents a notable change from the position under the Brussels I Regulation, in which variation of registered orders was possible if based on a change of circumstances.

4. Recognition and enforcement of foreign decisions

As mentioned above, the new Maintenance Regulation aims at the automatic enforcement in a Member State of a decision relating to maintenance made in another Member State. Under the Brussels I Regulation, not only was the scope of maintenance narrower, but also decisions required a declaration of enforceability (*exequatur*). In this respect, the Maintenance Regulation introduces a two-track system depending on whether the decision was given in a Member State bound by the Hague Protocol.

The process of exequatur is abolished in relation to decisions made in those Member States bound by the Hague Protocol[115]. Where a decision of a Member State bound by the Hague Protocol is enforceable in this Member State, it shall be also enforceable in another Member State without the need for a declaration of enforceability[116]. There are no grounds for refusing to recognise the decision, but there are grounds to refuse or suspend enforcement, such as in relation to limitation periods or where the decision is irreconcilable[117].

Whilst Article 42 of the Maintenance Regulation in principle provides for no review as to the substance in the Member State where recognition or enforcement is sought, there is an exceptional possibility for review of the decision made in a Member State bound by the Hague Protocol, if a defendant did not enter an appearance due to not having been properly served, or was prevented from contesting the maintenance claim by reason of *force majeure* or other extraordinary circumstances without fault on his/her part[118].

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114 Article 8 of the Maintenance Regulation.

115 All Member States except Denmark and the UK. See *supra* note 90.

116 Article 17 of the Maintenance Regulation.

117 Article 21 of the Maintenance Regulation.

118 Article 19 of the Maintenance Regulation.

Such right to a review is subject to strict time restrictions and should in any case be considered an extraordinary remedy.

By contrast with the decisions of those Member States bound by the Hague Protocol, a decision made in a Member State not bound by the Hague Protocol shall not be recognised (a) if it is manifestly contrary to the public policy in the Member State of enforcement; (b) where it was given in default of appearance (unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so); or (c) the decision is irreconcilable[119].

Finally, under the common provisions for recognition and enforcement (Articles 39 to 43), procedure for enforcement will be under local law (Article 41).

C. The application of the Maintenance Regulation in Greece: an assessment

Arts 4 et seq. of the Greek Civil Code (hereinafter: GrCC) are the main source of Greek private international law. In this framework, the law applicable to maintenance obligations between the spouses was governed by Article 14 GrCC titled 'personal relationships between spouses'. The law applicable to maintenance obligations between parents and children was governed by Article 18 GrCC titled 'relationship between parents and child'. In case of a child born outside marriage of its parents, the law applicable to maintenance obligations of its father and mother was governed by Articles 19 and 20 GrCC respectively. These provisions, which have been regularly referred to by the Greek case-law[120], provide for three

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[119] Article 24 of the Maintenance Regulation.

[120] See, for instance, Athens Court of Appeal 192/2009, *EllDni* 2009, 1499; Thessaloniki Court of Appeal 116/2009, *EpolD* 2009, 792; Naoussa One-Member Court of First Instance 14/2009, not published; Patra Court of Appeal 307/2008, *AchN* 2009, 23; Athens Court of Appeal 239/2006, not published; Thraki Court of Appeal 13/2006, *Επιδικία* (=Epidikia) 2007, 260; Athens Court of Appeal 322/2005, *EllDni* 2006, 576; Piraeus Court of Appeal 120/2004, *EllDni* 2004, 876; Athens Court of Appeal 6824/2000, *EllDni* 2001, 479; Athens Court of Appeal 344/1999, *EllDni* 1999, 1106; Athens One-Member Court of First Instance 5227/2009, not published; Athens One-Member Court of First Instance 2470/2009, not published; Thessaloniki One-Member Court of First Instance 15346/2008, not published; Rodos One-Member Court of First Instance 184/2007, not published; Thessaloniki One-Member Court of First Instance 17924/2006, not published; Athens One-Member Court of First Instance 3874/2006, not published; Piraeus Administrative Court of First Instance 1667/2008, NOMOS.

consecutive connecting factors for the determination of the applicable law, namely: (a) the common nationality of the spouses or of the child and its parents; (b) the latest habitual residence (during the marriage, in case of spouses); and (c) the country to which the spouses were most closely connected at the crucial time or the nationality of the child. In practice, the law of the common nationality has been generally applied to maintenance obligations, to the exclusion of the other two connecting factors[121].

Particularly with regard to maintenance obligations, the said provisions of the GrCC ceased to apply after the enactment of Law 3137/2003, which ratified the Hague Convention of 2 October 1973 on the law applicable to maintenance obligations. This applied to maintenance obligations arising from a family relationship, parentage, marriage or affinity, including maintenance obligations in respect of a child who is not legitimate. Maintenance obligations were thereon governed by the law of the habitual residence of the maintenance creditor, whether or not it was the law of a Contracting State. If by virtue of this law the creditor was unable to obtain maintenance from the debtor, the law of their common nationality should apply. If even by virtue of this law the creditor was unable to obtain maintenance from the debtor, the *lex fori* (i.e. the law of the authority seized) should apply. Nonetheless, as regards maintenance obligations between the divorced spouses and the revision of decisions relating to these obligations, it was provided that they should be governed by the law applied to divorce as long such divorce was granted or recognised in the given Contracting State[122].

It is remarkable, however, that the Greek courts have been seemingly unwilling to apply the Hague Convention of 2 October 1973 on the law applicable to maintenance obligations. Interestingly, to date there is no case-law referring to its provisions in order to determine the law applicable to maintenance obligations. On the contrary, the case-law continues to apply the old provisions of the GrCC, holding that the law of the common nationality primarily governs such obligations[123].

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[121] See, however, Areios Pagos (Full Bench) 3/2004, *NoV* 2004, 960, which stated that Greek law was applicable as the law of the latest habitual residence of the parties (Greece), excluding the main connecting factor of their common nationality, which was the Albanian. For a comment on this judgment, see E. Vassilakakis, Application of more than one laws to different issues of the same case (Remarks on Areios Pagos 3/2007, NoV 55. 67), *NoV* 2007, 1238 et seq. [in Greek].

[122] S. Vrellis, *Private international law* (3rd edn, Athens 2008) 307, 328 [in Greek].

[123] *Supra* note 120. See also Douga & Koumpli, Thoughts on the law applicable to non-contractual obligations and its limits, particularly in the event of wrongful death of foreign

In this respect, the Hague Protocol is hopefully expected to consolidate the swift from the law of common nationality to that of habitual residence of the creditor as the main connecting factor. This is an important change, since the habitual residence of only one of the parties, namely the creditor, was not a connecting factor as far as the provisions of the GrCC were concerned. Only the law of the last common residence, which in the Hague Protocol is reserved to spouses and former spouses, existed as a subsidiary connection. At the same time *lex fori* is for the first time introduced for some privileged classes of creditors, which could eventually result in the application of Greek law to such cases. In practice, the Hague Protocol's rules will lead to the implementation of Greek law to the majority of cases, since usually a creditor seizing a Greek court will have a habitual residence in Greece[124].

It should be stressed out that although agreements, which exclusively settle maintenance issues, are scarce in Greece – maybe because of the obligatory nature of most maintenance provisions – and in any case, where maintenance towards children is concerned, they are excluded from both the Hague Protocol and the Hague Convention[125]. Clauses on applicable law on maintenance, as well as on court's jurisdiction could be inserted, as both the Hague Protocol and the Maintenance Regulation provide, protecting the beneficiaries' needs and ensuring their rights. The same goes for free union contracts and pacts of cohabitation. Even limited scope agreements – such as the mere procedural ones provided by Article 7 of the Hague Protocol – could be a decisive step towards faster and safer decision-making.

As far as changes brought about by the Maintenance Regulation on issues of jurisdiction, recognition and enforcement of foreign decisions are concerned, here the field is narrower.

Universal application of the rules on jurisdiction is a factor that will of course facilitate procedures, especially in Greece, where many third-countries citizens reside. The term 'domicile' is replaced by 'habitual resi-

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citizens and with applicable Greek law, *NoV* 2013, 667 et seq., at 679-681 [in Greek].

[124] It should be noted that in provisional measures, Greek courts most of the time did apply Greek law due to the urgent character of the case, even if according to conflict of laws rules the law of common nationality of the parties were to be applied.

[125] By contrast with the universal application of the rules of the Maintenance Regulation concerning jurisdiction, one should note that as regards recognition and enforcement of decisions given in a non Member State the ordinary provisions of Articles 323 and 905 of the Greek Code of Civil Procedure are still applicable.

dence'. The use of the latter as both jurisdictional basis and main connecting factor with regard to applicable law will hopefully make process easier and more efficient.

Automatic enforcement of decisions relating to maintenance, at least for the Member States bound by the Hague Protocol, is admittedly a novelty and an important step towards the European Union's goals as regards access to justice[126]. Nevertheless, it is questionable whether this two-track-system contains all the necessary factors to ensure a smooth circulation of decisions. Particularly, it is doubtful whether the abolishment of the public policy clause for Member States bound by the Hague Protocol will lead to desirable effects, given that the Hague Protocol does not harmonize substantive law on maintenance so as to lead to uniform European decisions on maintenance claims. Under this perspective, a public policy clause would be useful for all Member States and not just for the ones not bound by the Hague Protocol; as already stated, this discrimination seems in any case meaningless with regard to its effects.

[126] This is not the case for agreements settling property regimes between spouses or divorce agreements.