

Cross-border maintenance obligations in Europe: the EU Maintenance Regulation

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I. Introduction

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 Regulation¹, differences still remained between the national legal systems of the Member States, which were eventually detrimental to creditors. Cross-border procedures remained long and complicated and difficulties still occurred with regard to mutual recognition and enforcement². 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 States, (b) abolishment of *exequatur*, (c) simplification of enforcement, (d) enhancement of cooperation, (e) establishment of conflict of laws rules³.

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

* This paper is based on the Greek report presented at the IIIrd Balkan Meeting on Maintenance Law, which was held in Istanbul (Koç University Law School) on 30 September 2013.

1. 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.
2. 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.
3. 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.

the Hague Conference⁴. The Twenty-First Session of the Hague Conference on Private International Law closed on 23 November 2007 with the signing of the 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)⁵. Both new instruments were agreed by consensus⁶. 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 instruments⁷. 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 maintenance⁸ (hereinafter: the Maintenance Regulation), was adopted⁹. Article 15 of the Maintenance Regulation directly refers to the Hague Protocol for the determination of the law applicable to maintenance obligations¹⁰. This insertion

4. Its competence derived from Article 65 TEC, currently Article 81 TFEU.
5. 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 3, 519), the application of the *lex fori* was a general wish.
6. 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* 10/2008, 313 et seq., at 314.
7. E. Long, The New Hague Maintenance Convention, *ICLQ* 2008, 984 et seq., at 984.
8. 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.
9. 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 4/2009 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 Protocollo dell'Aja del 2007 in materia 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 - EPoID) 2011, 709 et seq. [in Greek]; F. Pocar & I. Viarengo, Il Regolamento (CE) N. 4/2009 in materia di obbligazioni alimentari, *RivDIPP* 2009, 805 et seq.; G. Smith, The Recognition and Enforcement of Maintenance Orders within the European Union: The EU Maintenance Regulation, *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.
10. 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 9, 173 et seq., 178-179.

of the Hague rules to the EU legislation gave to the European Union the external competence needed to ratify the Hague Protocol¹¹; 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 decisions¹².

The honorandum has always been particularly interested in this field, dedicating one of his earlier publications to the analysis of the Hague Conventions on maintenance obligations¹³. This contribution to the Volume in his honour aims at providing a succinct illustration of the above mentioned rules currently regulating the law applicable to maintenance obligations (II) and the jurisdiction, recognition and enforcement of foreign decisions in relative matters (III), assessing their impact on the Greek legal order (IV).

II. Law applicable to maintenance obligations

A. 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, 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 jurisdictions¹⁴. Indeed, the Hague Protocol already enjoys broader acceptance: its application in EU Member States¹⁵ 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

11. 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.

12. Ferrand, *supra* note 2, 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, 457-484, 479.

13. S. Vrellis, *The Hague Conventions on maintenance obligations* (Athens 1988) [in Greek].

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

15. Except for Denmark and the United Kingdom.

law jurisdictions, which systematically submit maintenance obligations to the law of the *forum*, and countries following the Roman law tradition¹⁶.

B. 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 recognize such relationships. Its provisions do not particularly specify whether same-sex marriages or same-sex partnerships are included within its scope¹⁷. Regarding Contracting States refusing such institutions, like Greece¹⁸, two solutions could be proposed: (a) such relationships may not be considered as family relationships and, therefore, the Hague Protocol should not apply¹⁹; or (b) such relationships may be considered as family relationships, but not as marriage and, therefore, the Hague Protocol should apply²⁰. The material scope of the Hague Protocol shall not, however, be restricted and necessarily encompasses all maintenance obligations arising out of family relationships²¹. 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 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*)²². At the same time, *renvoi*²³ 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*²⁴.

16. See A. Bonomi, The Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, *YPII* 10/2008, 333-357, 334-335.

17. 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.

18. However, 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.

19. In this case national conflict rules shall apply.

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

21. 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.

22. Article 2 of the Hague Protocol.

23. Article 12 of the Hague Protocol.

24. Article 13 of the Hague Protocol.

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*²⁵.

C. Conflict of laws rules

Maintenance obligations are in principle governed by the law of the State of the creditor's habitual residence²⁶. 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 process²⁷.

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 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

25. Article 11 of the Hague Protocol.

26. Article 3 of the Hague Protocol.

27. Bonomi, *supra* note 16, 341-342.

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 advance²⁸.

D. 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 otherwise²⁹.

III. Jurisdiction, recognition and enforcement of foreign decisions

A. Purpose of the Maintenance Regulation

The Maintenance Regulation³⁰, in force as of the 18th June 2011³¹, was designed to replace the provisions in the Brussels I Regulation³² 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.

28. *Ibid.*, 353.

29. Article 14 of the Hague Protocol.

30. *Supra* note 8.

31. *Supra* note 11.

32. *Supra* note 1.

B. 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 autonomously³³.

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. 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 conditions³⁴.

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.

C. 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 State³⁵. 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 law³⁶.

33. 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.

34. See Article 2(2) of the Maintenance Regulation.

35. Article 3 of the Brussels I Regulation.

36. As to the advantages of such universal application, see among others Ferrand, *supra* note 2, II 6.

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 jurisdiction 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 proceedings³⁷. 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 jurisdiction³⁸. 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 Member State, whilst the creditor remains habitually resident in the first Member State³⁹. This is subject to

37. Article 3 of the Maintenance Regulation.

38. As under Article 24 of the Brussels I Regulation.

39. Article 8 of the Maintenance Regulation.

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.

D. 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 Protocol⁴⁰. 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 enforceability⁴¹. 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 irreconcilable⁴².

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 part⁴³. 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 irreconcilable⁴⁴.

40. All Member States except Denmark and the UK. See *supra* note 15.

41. Article 17 of the Maintenance Regulation.

42. Article 21 of the Maintenance Regulation.

43. Article 19 of the Maintenance Regulation.

44. Article 24 of the Maintenance Regulation.

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

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

Articles 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-law⁴⁵, provide for three 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 factors⁴⁶.

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

45. See, for instance, Athens Court of Appeal 192/2009, *Ελληνική Δικαιοσύνη* (=Elliniki Dikaiosyni – EllDni) 2009, 1499; Thessaloniki Court of Appeal 116/2009, *ΕπολD* 2009, 792; Naoussa One-Member Court of First Instance 14/2009, not published; Patra Court of Appeal 307/2008, *Αχαϊκή Νομολογία* (=Achaiki Nomologia - 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.

46. See, however, Areios Pagos (Full Bench) 3/2004, *Νομικό Βήμα* (= Nomiko Vima - 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].

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 State⁴⁷.

It is remarkable, however, that the Greek courts have been seemingly unwilling to apply the Hague Convention of 2 October 1973. 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 obligations⁴⁸.

In this respect, the Hague Protocol is hopefully expected to consolidate the shift 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 Greece⁴⁹.

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 both from the Hague Protocol and the Hague Convention⁵⁰, this is not the case for agreements settling property regimes

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

48. *Supra* note 45. See also A. Douga & V. Koumpli, Thoughts on the law applicable to non-contractual obligations and its limits, particularly in the event of wrongful death of foreign citizens and with applicable Greek law, *NoV* 2013, 667 et seq., at 679-681 [in Greek]; V. Koumpli, Art. 4 - Annex II, Tort obligations arising from traffic accidents, in A. Bolos & D.-P. Tzakas (eds), *The private international law of non-contractual obligations - Interpretation of Regulation (EC) No. 867/2007 [Rome II]* (Athens 2014) 183 et seq., at 192-194 [in Greek].

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

50. 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

between spouses or divorce agreements. 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 residence'. 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 justice⁵¹. 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.

Member State the ordinary provisions of Articles 323 and 905 of the Greek Code of Civil Procedure are still applicable.

51. This is not the case for agreements settling property regimes between spouses or divorce agreements.