

Characterization of 'spousal maintenance obligations' in European private international law

Maarja Torga

Legislative framework

The Proposal on the Matrimonial Property Regimes (MPR)

‘Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes’ (16 March 2011)

The Maintenance Regulation

Council Regulation (EC) 4/2009 of 18 December on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations [2009] OJ L 007/1.

Introduction to the problem

- The Proposal on the MPR Art 1(3)b
 - *The following are excluded from the scope of this Regulation:*
 - (b) *maintenance obligations*
 - *'The system of maintenance settlements should be excluded.'* (Thein Report)
- Characterization of the term 'spousal maintenance obligations'?
 - 'pure' maintenance?
 - matrimonial property?

Finding solutions to the problem

- Establishing the functions of the relevant PIL rules
- Comparing the laws of different Member States (English law vs German law)
- Analyzing the case-law of the Court of Justice of the European Union

1. Functions of the autonomous concept/PIL rules

- **The Maintenance Regulation:**
 - To prevent all obstacles which prevent the recovery of maintenance within the EU (the abolition of the *exequatur*)
 - The economic perspective - choosing between the debtor and the state
- **The Proposal on the MPR:**
 - To guarantee the mutual recognition of judgments (but no abolition of *exequatur* foreseen)
 - Division of matrimonial property

2. English vs German law

- **The German position**

- Abolition of *exequatur*
- BGB Section 1360a(1) (Scope of the obligation to maintain):
 - *The reasonable maintenance of the family includes everything that is necessary, depending on the circumstances of the spouses, to pay the costs of the household and to satisfy the personal needs of the spouses and the necessities of life of the children of the family entitled to maintenance.*
- Supportive function of the rules on maintenance
- Distributive and compensatory functions of the rules on matrimonial property
- *Bundesgerichtshof* 12 August 2009 BGH FPR 2009, 541.

2. English vs German law

- **The English position**

- No abolition of *exequatur*
- No formal distinction between the property division and maintenance upon divorce
- Discretion for the court to take into account various policies (the 'need' of the spouse, compensation, 'sharing').
- *Moore vs Moore* [2007] Court of Appeal (Civil Division) EWCA Civ 361

3. Case-law of the CJEU

- Case 143/78 *de Cavel v de Cavel (No 1)* [1979] ECR 1055.
 - Autonomous nature of the terms ‘rights in property arising out of a matrimonial relationship’ and ‘maintenance’
- Case 120/79 *de Cavel v de Cavel (No 2)* [1980] ECR 731.
 - ‘The rules of maintenance are concerned with financial obligations between the former spouses after divorce, are fixed on the basis of their respective needs and resources and are in the nature of maintenance.’
- Case C-220/95 *Van den Boogaard v Laumen* [1997] ECR I-1147
 - Reasoning of the judgment as a crucial factor

Conclusions

- Lessons from the case-law are not enough to solve the characterization problem
- The ‘necessity of the spouse to acquire maintenance for his subsistence’ as a starting point in the law of the Member States
- The (economic) necessity of interpreting the term ‘spousal maintenance obligations’ as widely as possible