

Case C-67/24 [Amozov] ⁱ

Request for a preliminary ruling

Date lodged:

29 January 2024

Referring court:

Sofiyski rayonen sad (Bulgaria)

Date of the decision to refer:

16 January 2024

Applicant:

R. K.

Defendants:

K. Ch.

D. K.

E. K.

ORDER

No 20113271

Sofia, 16 January 2024

THE SOFIYSKI RAYONEN SAD (DISTRICT COURT, SOFIA), [...]

[...]

following consideration of civil case No 22941/2020 and having regard to the following:

- 1 The procedure is governed by the first paragraph of Article 2[67] TFEU.

ⁱ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

- 2 The case concerns the interpretation of recital 15 of 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 (OJ 2009 L 7, p. 1), in conjunction with Article 3(a) and (d) and Article 5 thereof.

PARTIES TO THE MAIN PROCEEDINGS:

3 1. Applicant:

4 The applicant is [R. K.], [...] Sofia [...]

5 [...] [representation]

6 2. Defendants:

7 The defendants are:

8 [K. Ch.], [...] Canada

9 [D. K.], [...] Canada

10 [E. K.], [...] Canada

11 [...] [representation]

FORMS OF ORDER SOUGHT BY THE PARTIES:

12 The subject matter of the main proceedings is an application by [R. K.] against [K. Ch.], [D. K.] and [E. K.] seeking modification of court-ordered maintenance payments.

13 By decision of the Superior Court of Québec, Family Practice Division, [Terrebonne] District, the applicant was ordered to pay twice per month child maintenance to [D. K.] and [E. K.] in the amount of 613.75 Canadian dollars (CAD) and spousal maintenance to [K. Ch.] in the amount of CAD 2 727.50.

14 He is seeking modification of the maintenance payments awarded by reducing the maintenance for [D. K.] from CAD 613.75 to 180 leva (BGN) and discontinuing the [maintenance payments] for [E. K.] and [K. Ch.].

NATIONAL LAW:

15 **1. Grazhdanski protsesualen kodeks** (Code of Civil Procedure) [...] ('the GPK'):

16 **'Appeals**

Article 274. (1) Appeals against orders of the court shall be permissible,

1. where the order precludes further proceedings in the matter, and
2. in the cases expressly provided for by law.

17 Examination of and decision on the appeal

Article 278 [...]

(2) If the court sets aside the order under appeal, it shall rule itself on the case. Evidence may be taken if the court considers it necessary.

(3) The decision on the appeal shall be binding on the lower court. [...]

18 2. Zakon za litsata i semeystvoto (Law on persons and the family) [...]

19 ‘[...]

20 **2.** On attaining the age of 18, a person shall come of age and thus have the unrestricted capacity to enjoy rights and be subject to obligations.

21 **3.** Persons under the age of 14 are minors.’

22 **3. Semeen kodeks (Family Code) [...]:**

Chapter 10

MAINTENANCE

23 ‘Entitlement to maintenance

Article 139. A person shall be entitled to maintenance if that person is incapable of work and unable to support himself or herself from his or her own means.

24 Ranking of more than one maintenance debtor

Article 140. (1) Maintenance creditors may assert their claims in the following order against:

1. children and spouses;
2. parents;
3. former spouses;
4. grandchildren and great-grandchildren;
5. siblings;

6. grandparents and relatives in the ascending line.

[...]

25 Ranking of more than one maintenance creditor

Article 141. If there is more than one maintenance creditor, the maintenance debtor shall be obliged to pay maintenance in the following order to:

1. children and spouses;
2. parents;
3. former spouses;
4. grandchildren and great-grandchildren;
5. siblings;
6. grandparents and relatives in the ascending line.

26 Amount of maintenance

Article 142. (1) The amount of maintenance shall be determined according to the needs of the maintenance creditor and the means of the debtor.

(2) The minimum maintenance for a child shall be one quarter of the statutory minimum wage.

27 Child maintenance for minors

Article 143. (1) Every parent is obliged to ensure, in accordance with his or her means and financial situation, the living conditions necessary for the child's development.

(2) Parents are obliged to provide maintenance for their minor children, irrespective of whether they are capable of work and whether they can support themselves from their own means.

(3) Parents are also obliged to provide maintenance if the child is accommodated outside the family.

(4) [...] [Supplement to maintenance for special needs of the child]

28 Child maintenance for adults in education

Article 144. Parents are obliged to pay maintenance to their adult children who attend, on a full-time basis, a secondary school up to the age of 20 and a further education establishment up to the age of 25 within the standard education period and who are unable to support themselves through their own gainful employment

or from their own means, and it is possible for the parents to provide maintenance without particular difficulty.

29 Maintenance of a former spouse

Article 145. (1) A spouse who is not at fault for the divorce shall be entitled to maintenance.

(2) Maintenance shall be paid for a maximum of three years after the divorce, unless the parties have agreed on a longer period. The court may extend the maintenance period if the maintenance creditor is in a particularly difficult situation and the debtor can pay the maintenance without particular difficulty.

(3) The former spouse's entitlement to maintenance shall be extinguished if he or she remarries.

30 Maintenance by payment of an annuity

Article 146 (1) The annuity shall be payable monthly. In the event of late payment, statutory default interest shall be payable.

[...]

31 Waiver of the claim to maintenance

Article 147. A waiver of maintenance for the future shall be null and void.

32 Prohibition on offsetting

Article 148. Offsetting against a claim for maintenance shall not be permitted.

33 Maintenance for the past

Article 149. The creditor may claim maintenance for the past for a maximum of one year before the action is brought.

34 Modification and cancellation of the maintenance obligation

Article 150. In the event of a change of circumstances, the maintenance awarded or the supplements may be modified or cancelled.

35 [...] [Article 151, Extinguishment of the claim to maintenance]

[...]

36 4. Kodeks na mezhdunarodnoto chastno pravo (Code on private international law; 'the KMChP') [...]

37 'General jurisdiction

Article 4. (1) Bulgarian courts and other bodies shall have international jurisdiction where:

1. the defendant has his, her or its habitual residence, registered office or place of effective management in the Republic of Bulgaria;
2. the applicant is a Bulgarian national or a legal person governed by Bulgarian law.

38 Jurisdiction in matters relating to maintenance

Article 11. The Bulgarian courts shall have jurisdiction for matters relating to maintenance except in the cases referred to in Article 4(1) and where the person making a maintenance claim is habitually resident in Bulgaria.

39 Exclusive jurisdiction

Article 22. The international jurisdiction of the Bulgarian courts and other bodies shall be exclusive only where expressly provided for.

40 Implicit establishment of the jurisdiction of Bulgarian courts

- 41 **Article 24.** [...] If the jurisdiction of the Bulgarian courts may be subject to agreement pursuant to Article 23(1), it may also be established without such agreement by the defendant expressly or implicitly recognising such jurisdiction by taking action in the main proceedings within the period for lodging a defence.

42 Jurisdiction in the event of a change of circumstances

Article 27. (1) If international jurisdiction is established at the commencement of the proceedings, it shall continue to exist even if the requirement relating thereto subsequently ceases to be fulfilled in the course of the proceedings.

(2) If international jurisdiction does not exist at the commencement of the proceedings, it shall be established if the requirement relating thereto is fulfilled in the course of the proceedings.'

43 5. National case-law

- 44 **5.1. Judgment No 131 of the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria; 'the VKS') of 1 June 2015** [...], by which it ruled on the application for a reduction of the maintenance awarded by the Supreme Court of the State of K. [or C.], United States of America, on which the decision under appeal before the VKS was based.

- 45 In the decision under appeal, the Sofiyski gradski sad (Sofia City Court) had held that it had jurisdiction to hear the application (given that the application had been lodged before the entry into force of Council Regulation (EC) No 4/2009 and pursuant to Article 4(1)(2) of the KMChP), found that Bulgarian law was

applicable (Article 87(2) of the KMChP), and dismissed the application as unfounded. It stated that the applicant is the father of the defendant born on 28 January 1996, had lived with his family in the United States, where his daughter had stayed with her mother after the divorce and continued her education. In 2007, the applicant had given up his job and returned to Bulgaria. By decision [...] of the [Sofia City Court] [...] the maintenance decision of the Supreme Court of the State of K. ... was recognised and declared enforceable in so far as A. E. K. was obliged therein to pay his minor child M. A. K., resident in [...] the USA, monthly maintenance in the amount of USD 1 309 from 1 September 2007. The court refused to modify the amount of maintenance awarded as it had been fixed on the basis of the means necessary to support the child, taking into account the circumstances in the State where the child had lived with his or her parents and had remained after the divorce, and the maintenance was to be assessed according to those circumstances. The fact that the applicant has another minor child (born on 3 September 2012) need not be considered further as he does not currently owe any maintenance to the child M., who is now an adult. On the other hand, the applicant had voluntarily given up his well-paid job in the USA and been able to pay the maintenance owed after his return to Bulgaria, changed jobs several times and earned well by the standards of the country, received high severance payments for the termination of employment contracts and salaries and sold a property which he owned in 2010. It was also pointed out that, under Article 143(2) of the GPK, parents are fully liable to pay maintenance to their minor children, regardless of whether the parents themselves are capable of work or able to support themselves from their own means, and a modification of the amount of maintenance cannot be justified by the fact that the income of a parent liable to pay maintenance has fallen or that he has taken up employment which does not correspond to his or her qualifications if that is intended to frustrate the fulfilment of the child's claim to maintenance.

- 46 The decision is available on the internet under the following link:
<https://www.vks.bg/pegled-akt.jsp?type=otdelo&id=50B246F1E99D0F28C2257E53004AF610>
- 47 **5.2. By judgment No 301 of the VKS of 7 October 2013** [...] it was held that the decision under appeal was inadmissible since, according to the assertions in the application, the marriage between the applicant A. B. A. and R. D. G. had been dissolved at first instance by a decision of a court of the Kingdom of Spain of 3 March 2006 [...], by which the appellant had been ordered to pay a monthly maintenance amount of EUR 250 to his minor daughter (the respondent A. B. D.). At the time of the court's decision, both the appellant and the respondent were habitually resident in Spain, a Member State within the meaning of Regulation (EC) No 4/2009. By order No 35 of 9 December 2008 [...] of the Okrazhen sad Targovishte (Regional Court, Targovishte, Bulgaria), the decision of the Spanish court was declared enforceable in the Republic of Bulgaria. At that time, the appellant had moved his habitual residence to Bulgaria, had his earning capacity reduced many times and was unable to pay maintenance in the amount ordered by the Spanish court. The Bulgarian court was therefore requested to reduce the

amount of maintenance which the applicant had to pay to his minor daughter from EUR 250 to BGN 80.

48 As grounds, the VKS stated that it was clear from the submissions and forms of order set out in the application that the Bulgarian court did not have jurisdiction to rule on the application under Article 8(1) of Regulation (EC) No 4/2009. If a court of another Member State has awarded a certain amount of maintenance and the maintenance creditor has not changed his or her habitual residence, the maintenance debtor cannot request a variation of that decision by a court of another Member State. That is only permissible in the exceptional cases referred to Article 8(2) of Regulation (EC) No 4/2009, which do not include a change of habitual residence of the maintenance debtor (in this case the appellant). The respondent's legal representative had already complained in the reply to the application that the Bulgarian court lacked jurisdiction because the respondent was habitually resident in the Kingdom of Spain. That fact was clear from the files and was common ground between the parties. It was neither argued nor established that there were circumstances supporting the application of one of the exceptions provided for in Article 8(2) of Regulation (EC) No 4/2009 and therefore the Bulgarian court should have established and declared of its own motion that it lacked jurisdiction. By failing to do so and instead ruling on the matter, it had adopted an impermissible decision, which constitutes a ground for appeal on a point of law within the meaning of Article 281(2) of the GPK. The decision had therefore to be set aside and the enforcement based thereon discontinued, with the respondent having her costs paid.

49 The decision is available on the website of the Varhoven kasatsionen sad: <https://www.vks.bg/pregled-akt.jsp?type=otdelo&id=B9C4C9AEE38E5D30C2257BFD0028FA2C>

50 5.3. Judgment No 313 of the VKS of 10 September 2012 [...]

According to judgment No 280 of the VKS of 28 September 2011 [...] the needs of the maintenance creditor are determined according to his or her usual living conditions, taking into account his or her age, education and other circumstances relevant to the individual case, whilst the ability of the maintenance debtor to pay is determined according to his or her income, assets and qualifications. Maintenance for minor children is paid by both parents according to their respective ability to pay and taking into account the care of the child by the parent by whom he or she is raised.

That decision is available on the website of the Varhoven kasatsionen sad: <https://www.vks.bg/pregled-akt.jsp?type=otdelo&id=133E725004D449DDC2257919004148A5>

51 FACTS OF THE CASE:

52 The principal subject matter of the main proceedings before the referring court is the action brought by [R. K.] against the defendants: his divorced wife [K. Ch.],

his daughter [D. K.] and his son [E. K.] for a modification of the court-ordered maintenance payments.

- 53 The applicant is a Bulgarian national and was ordered by decision [...] of the Superior Court of the Québec, Family Practice Division, [Terrebonne] District, to pay monthly maintenance in the amount of CAD 613.75 each to his two children, then minors, of Canadian and Bulgarian nationality, and spousal maintenance in the amount of CAD 2 727.50 to his divorced wife, a Canadian national. The decision is final.
- 54 The applicant claims that that maintenance was granted by the decision by which [R. K.] and [K. Ch.] dissolved their marriage through divorce and settled the issue of custody of and maintenance for the children. At the time the application was lodged, he was domiciled in the Republic of Bulgaria, in Sofia.
- 55 He argues that his son [E. K.] is of age, but that he must continue to pay him maintenance on account of that decision.
- 56 He has been unemployed since the end of 2018 and owns neither movable nor immovable property. He had filed for insolvency in Canada and was declared insolvent on 21 June 2018 by a certificate of residual debt discharge issued by [...], an authorised insolvency administrator. He left Canada in 2019 and moved to Sofia.
- 57 The adjudicating chamber attempted to serve court documents on the defendants in Canada at the address stated in the application by way of letter rogatory, but they were not to be found there. It therefore summoned the defendants by affixing a notice at their registered address in Bulgaria and appointed a guardian ad litem for them.
- 58 The guardian ad litem's reply to the application criticises the lack of jurisdiction of the Bulgarian court to rule on the applications. The criticism is based on the fact that the defendants are not habitually resident in the Republic of Bulgaria.
- 59 By order No 20082014/6.3.2023, the adjudicating chamber discontinued the proceedings on the ground that Bulgarian court lacked jurisdiction. In the grounds for the order, reference is made to recital 15 of Council Regulation No 4/2009: *'In order to preserve the interests of maintenance creditors and to promote the proper administration of justice within the European Union, the rules on jurisdiction as they result from Regulation (EC) No 44/2001 should be adapted. The circumstance that the defendant is habitually resident in a third State should no longer entail the non-application of Community rules on jurisdiction, and there should no longer be any referral to national law. This Regulation should therefore determine the cases in which a court in a Member State may exercise subsidiary jurisdiction.'* The order states that the regulation is of general application and applies to third States such as Canada.

- 60 The applicant appealed against that order to discontinue proceedings before the Sofia City Court and requested that it be set aside. In their response to the appeal, the defendants take the view that the order under appeal is lawful and concur with the reasoning of the court.
- 61 By order No 9114 of 1 August 2023 [...] the order of the Sofia District Court was set aside and the case was referred back. The Sofia City Court held that the defendants, namely the children of the applicant and appellant, were Bulgarian nationals with permanent domicile in Canada.
- 62 Sofia City Court reasoned that, since Canada is not a Member State of the European Union, the rules on the delimitation of jurisdiction under Article 3 et seq. of Regulation (EC) No 4/2009 (mistakenly referred to in the order as Article 4 of the regulation) do not apply. Furthermore, recital 15 of that regulation concerns the possibility for ‘maintenance creditors’ to assert their maintenance claims even if the ‘defendant’ is habitually resident in a third State and therefore that recital is not concerned with the rights of maintenance debtors but with the rights of maintenance creditors. Therefore, regard must be had to the definition of the term ‘creditor’ in Article 2(10) of the regulation, according to which a creditor is any ‘individual to whom maintenance is owed or is alleged to be owed’ (reasoning also from the judgment in Case C-501/20, *M P A*). Recital 15 of the regulation is directly linked to Article 6 thereof, which concerns the subsidiary jurisdiction of a Member State, and not to Article 3, which is not applicable in its entirety since it delimits the jurisdictions of the Member States in relation to each other.
- 63 That court found that EU law is not applicable to the applicant’s divorced wife, who is a Canadian national, for the reasons set out above.
- 64 According to the appeal court, no rules arising from international treaties are applicable to the legal relations between the parties to the proceedings since it is not apparent that the two States have concluded a treaty on maintenance obligations.
- 65 Consequently, the appeal court found that jurisdiction to hear the case must be determined in accordance with the provisions of the KMChP. Under Article 11 of the KMChP, in conjunction with Article 4(1)(2) thereof, the Bulgarian court has jurisdiction to rule on the application of a Bulgarian national, as is the case here.
- 66 The referring court does not share the view taken in the order of the Sofia City Court. It has concerns that a resolution of the case based on the binding findings of the appeal court would infringe provisions of EU law, in particular Regulation No 4/2009 on international jurisdiction.
- 67 According to the table on the application of the 2007 Hague Convention on Maintenance Obligations (<https://www.hcch.net/en/instruments/conventions/status-table/?cid=131>), that convention does not apply to the Canadian province of Québec. The convention

will apply from 1 February 2024 to the province of Ontario, where the defendants have their address (although it is not clear whether they are habitually resident there).

68 CONNECTION WITH EU LAW, NEED FOR INTERPRETATION:

- 69 It should be noted that the present case concerns civil proceedings featuring international elements, the defendants being Canadian nationals and the applicant's children also being Bulgarian nationals.
- 70 The adjudicating chamber is faced with several questions concerning its jurisdiction in those cases, namely, first, whether the appeal court was right to take recital 15 of the regulation as a ground for excluding the application of the regulation in relations between persons located in an EU Member State and persons not located there. It should be borne in mind that the regulation is likely to be of general application, which does not depend on whether third-country nationals are concerned and therefore it should be regarded as applicable. It should therefore be examined whether the jurisdiction of the Bulgarian court can be established under Article 6 of Regulation No 4/2009 where one of the parties holds the nationality of a country which is not a Member State of the European Union and the maintenance creditor is a third-country national.
- 71 In view of the appeal court's statements, it is also necessary to clarify whether the term 'applications for maintenance payment', which is decisive in determining the scope *ratione materiae* of the regulation, should be understood as encompassing applications for modification of maintenance payments by reducing them. Doubts arise from the aim of the regulation, set out in recitals 9 to 11, to protect maintenance creditors and not maintenance debtors. The regulation must therefore – as follows from paragraphs 25 to 27 of the judgment of 18 December 2014 in joined cases C-400/13 and C-408/13, *Sanders* – be interpreted in that manner. The question therefore arises as to whether rules of jurisdiction laid down in the regulation, other than Article 8, are applicable to proceedings in which a reduction in the awarded maintenance is requested, given also that not only the interests of maintenance debtors but also those of maintenance creditors are concerned. If the provisions of that regulation were not applicable, national rules of jurisdiction could be applied which would give the maintenance debtor a much greater choice as to the place where he or she initiates the proceedings, thereby making it more difficult to defend the maintenance creditors in need of protection.
- 72 As regards the application of Article 8(1) of the regulation, which prohibits the initiation of proceedings for the modification of maintenance payments in States other than that where the maintenance creditor is habitually resident, the adjudicating chamber considers that it cannot apply those provisions at present as Canada is not party to the 2007 Hague Convention until 1 February 2024. In any event, after that date the convention does not apply to the Province of Québec and, in the present case, the Court is having considerable difficulty (as it does not know the defendants' current address in Canada) in establishing whether the

maintenance creditor's habitual residence is located in the Province of Québec or the Province of Ontario, to which the convention will apply. The accession of some of Canada's provinces to the 2007 Hague Convention is in any case irrelevant to the questions referred because the referring court is currently bound by the findings of the Sofia City Court when resolving the case and, in its view, the regulation is not applicable at all to cases to which Canadian nationals are party.

- 73 If the regulation were to apply to applications for a reduction in maintenance payments, it would also be necessary to clarify whether the subsidiary jurisdiction under Article 6 also applies where two of the defendants also hold a nationality other than the common nationality. Article 6 appears to seek to establish jurisdiction on the basis of the common nationality of the parties concerned as the only possible point of reference in the event that there is no other court of the EU or associated States able to rule on the application, which again seeks to give maintenance creditors the opportunity to assert their claims before a court which can effectively rule on them. However, in cases where the maintenance creditor lives outside the European Union and the application is aimed not at the granting of maintenance payments but their modification through reduction, the common nationality does not prove to be an advantage but rather a disadvantage, and although the maintenance creditor does not have any close link to the State of his or her or second nationality, that person would have to defend him or herself against it in court in that State. In that context, the considerations in paragraphs 30 and 45 of the judgment of 5 September 2019 in Case C-468/18, *R v P*, do not appear to protect the maintenance creditor in need of protection and therefore it is necessary to examine whether 'common nationality' within the meaning of Article 6 of the regulation is to be understood as meaning the completely identical nationalities of the maintenance creditor and the maintenance debtor or whether that provision can also apply in the case of several nationalities which differ depending on the party.
- 74 Lastly, it is necessary to examine whether an application for a reduction in maintenance payments can be made under the provisions on *forum necessitatis* laid down in Article 7 of the regulation. According to recital 16 of Regulation (EC) No 4/2009, that provision applies when the court which would have jurisdiction under the other rules of jurisdiction cannot be seised or to which the applicant cannot be reasonably expected to apply, which requires the existence of 'exceptional' cases. The question therefore arises as to whether the aim is to relieve the burden only on the maintenance creditors, but not the maintenance debtors, for whom there can probably be no exceptional circumstances which require them to receive maintenance payments as a means of subsistence. It should be noted that no such jurisdiction is contained in any of the other regulations governing international jurisdiction in civil or commercial matters.

75 POSITION OF THE REFERRING COURT

- 76 In the view of the referring court, the Bulgarian court does not have jurisdiction to hear the case for the following reasons:
- 77 The applicant, who is a Bulgarian national, has submitted an application for the reduction or discontinuation of the maintenance payments which he was ordered to pay, as a maintenance debtor, by a decision of the Supreme Court of Québec, Canada. Two of the defendants, his children, hold Bulgarian and Canadian nationality, but are habitually resident in Canada. It is in the interests of the maintenance creditors that the case be heard where they are habitually resident, but it is currently unclear whether Article 8 of the regulation, which provides for exceptions thereto, is applicable and the appeal court has made binding findings to the contrary. In that context, the maintenance creditor is a person to whom maintenance is owed and is therefore the weaker party in the proceedings. One of the parties involved in the proceedings was a minor at the time the application was submitted. In the child's interest, the proceedings must be conducted in the State in which he or she is habitually resident.
- 78 In the view of the referring chamber, the jurisdiction of the Bulgarian courts in relation to the divorced wife, who is a Canadian national, cannot be established in accordance with the criteria laid down in Regulation (EC) No 4/2009.
- 79 The fact that the applicant is a maintenance debtor cannot exclude jurisdiction under the regulation in favour of national law and in particular the provisions of the KMChP, as the Sofia City Court stated in its order instructing the referring court to hear the case because it has jurisdiction in respect of all three defendants. The regulation completely replaces the rules on jurisdiction in maintenance matters contained in the KMChP and, in the referring court's view, this harmonisation is necessary and important for the protection of the maintenance creditors.

On those grounds, the District Court, Sofia, has

MADE THE FOLLOWING ORDER:

The Court of Justice of the European Union is requested to give a preliminary ruling pursuant to Article 267 TFEU on the following **questions**:

1. Must recital 15 of 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, be interpreted as

allowing national case-law according to which the international jurisdiction of courts examining applications for maintenance payments for persons who are habitually resident in a third State (in this case Canada) is determined pursuant to national law and not the regulation?

2. Must Articles 3 and 8 of Regulation (EC) No 4/2009 be interpreted as

allowing national case-law according to which the concept ‘application for maintenance payments’ does not cover an application for a reduction in maintenance payments and Articles 3 to 6 of the regulation apply only to applications for the granting of maintenance payments?

3. Must Article 6 of Regulation (EC) No 4/2009 be interpreted as meaning that the concept ‘common nationality’ also covers cases where one or more parties have dual nationality, or does it only cover cases of completely identical nationalities?

4. Must Article 7 of Regulation (EC) No 4/2009 be interpreted as

allowing, where the maintenance debtor makes an application for a reduction in the maintenance payments, that application to be regarded as an ‘exceptional’ case where the maintenance creditor is habitually resident in a third State and has no other connection with the European Union other than his or her nationality?

[...]

[...] [procedure]