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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY TKF FOR JUDICIAL REVIEW

-V-

CLERK OF PETTY SESSIONS, DISTRICT OF BELFAST AND NEWTOWNABBEY

_____

McCloskey J

Introduction

[1] The Applicant, who is a national of Poland resident in Northern Ireland since 2006, has been granted leave to apply for judicial review. His case raises issues of construction of certain measures of EU Law. The target of his legal challenge, per the amended Order 53 Statement, is:

> *"The decision of the Clerk of Petty Sessions, District of Belfast and Newtownabbey, to register in this jurisdiction and declare enforceable the maintenance decisions made by the District Court in Bialystock, Poland, on 14 February 2003 ….*
>
> *(i) The registration on 24 October 2013 of a maintenance decision in relation to maintenance for* [**KKF**];
>
> *(ii) The registration on 24 October 2013 of a maintenance decision in favour of* [**AKF**] *relation* [sic] *to maintenance for* [**KKF**];
>
> *(iii) The registration on 15 August 2014 of a maintenance decision made in relation to maintenance for* [**KKF**] *and required me* [sic] *to*

> *pay £83.55 per month until he ceased full-time education.*"

[2] The second target of the Applicant's challenge is:

> "*The summons for arrears issued on 02 December 2014 by a District Judge …. in relation to maintenance decisions registered in this jurisdiction on 15 August 2014.*"

The Applicant also challenges, thirdly and finally:

> "*The order of a District Judge ….. of 06 October 2015 to make an attachment of earnings order of £25 per week from 01 October 2015.*"

[3] These have been regrettably slow moving proceedings. Leave to apply for judicial review was granted ten months ago and the Respondent's affidavit evidence was completed five months ago. Yet another delay ensued when the scheduled hearing date of 02 February 2018 had to be vacated by reason of breaches of the Judicial Review Practice Note.

Dramatis Personae

[4] The protagonists are:

(a) TKF, the Applicant.

(b) AKF, the Applicant's spouse.

(c) KKF, son of TKF and AKF.

(d) KKT2, *ditto.*

In passing, while the court ordered anonymity in order to protect the identity of the two sons, it has been confirmed that they have now reached their majority. The abbreviations are maintained for convenience.

Agreed Material Facts

[5] These are the following:

(i) TKF and AKF, both Polish nationals, were married in Poland in 1991.

(ii) In the same year KKF was born.

(iii) KKF2 was born in 1997.

(iv) On 01 April 1999 a Polish Court made a maintenance decision in favour of AKF against TKF.

(v) In 2001 TKF left Poland to work in Germany.

(vi) Between December 2002 and February 2003, when TKF was resident and working in Poland, there were further maintenance proceedings in a Polish Court giving rise to an updated maintenance order dated 14 February 2003.

(vii) TKF and AKF divorced in 2004.

(viii) On 01 May 2004 Poland acceded to the EU.

(ix) In August 2006 TKF came to Northern Ireland, where he has resided ever since.

(x) On 24 October 2013 the first and second of the two impugned maintenance registration decisions were made by the relevant Clerk of Petty Sessions.

(xi) On 15 August 2014 the third of the impugned maintenance registration decisions was similarly made.

(xii) Between September 2014 and September 2016 there were various forms of interaction between TKF and his solicitors (on the one hand) and NICTS (on the other) involving distress warrants, an attachment of earnings order and attempts to vary the amounts payable on foot of the Polish Court Orders.

[6] As regards contested facts, the Applicant avers in his first affidavit that he had no knowledge of the 1999 Polish Court proceedings and neither attended nor was represented at any hearing. He further avers that while he received notification of the commencement of the second set of Polish Court proceedings, which spanned the period December 2002 to February 2003, he was not notified of the operative hearing, which was held on 31 January 2003.

[7] It is convenient to interpose here the following juridical acts of significance:

(a) Poland acceded to the EU on 01 May 2004.

(b) On 08 April 2010 Poland became bound by the Hague Protocol.

(c) On 18 June 2011 Council Regulation (EC) Number 4/2009 (the "Maintenance Regulation") came into operation.

Grounds of Challenge

[8] These are the following:

(i) **Illegality**: as Poland was not a Member State of the European Union ("EU") when the Polish Court decisions were made, Section 2 of Chapter 4 of Council Regulation (EC) No 4/2009 of 18 December 2008 (the "*Maintenance Regulation*") did not apply, thereby vitiating in law all of the impugned decisions.

(ii) **Illegality in the alternative:** in any event the Maintenance Regulation, specifically Articles 23 and 26, did not apply to the Polish Court decisions, with the result that the impugned decisions could not be made under paragraph 6 of Part 3 of the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (the "*2011 Regulations*").

(iii) **Illegality in the further alternative:** the Polish Court decisions were not in compliance with Article 24 of the Maintenance Regulation, there being no evidence that the Applicant was aware of, attended or was represented at the proceedings in question.

EU Law Framework

[9] Council Regulation (EC) Number 44/2001 (the "2001 Regulation") has as its subject matter the "Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters". It has no direct application to any aspect of the Applicant's case. However, as will become apparent, it has some indirect relevance. This arises out of Article 66, which is positioned in Chapter VI and, under the rubric of "Transitional Provisions", provides:

> "*1. This Regulation shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after the entry into force thereof.*
>
> *2. However, if the proceedings in the Member State of origin were instituted before the entry into force of this Regulation, judgments given after that date shall be recognised and enforced in accordance with Chapter III,*
>
> *(a) if the proceedings in the Member State of origin were instituted after the entry into force of the Brussels or the Lugano Convention both in the Member State or origin and in the Member State addressed;*
>
> *(b) in all other cases, if jurisdiction was founded upon rules which accorded with those provided for*

> *either in Chapter II or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.*"

The 2001 Regulation is one of a large number of EU legislative measures adopted with the aim (per its recitals) of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. More specifically, the Regulation has the discrete aim of advancing the "*proper functioning of the internal market*".

[10] The second important measure of EU law is Council Regulation (EC) No 4/2009 which I have described above, in shorthand, as the "*Maintenance Regulation*". This, per its recitals, has the same stated aims as the 2000 Regulation. Its discrete aim is clear from its subject matter, namely –

> "*Jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations.*"

This is refined by Article 1 in the following terms:

> "*This Regulation shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity.*"

By Article 1(2):

> "*In this Regulation, the term 'Member State' shall mean Member State to which this Regulation applies.*"

The term "*Member States to which this Regulation applies*" takes its colour from recitals [46] – [48], which record that in accordance with the Protocol annexed to the TEU, the United Kingdom and Denmark are excluded from this Regulation.

[11] Article 2(1) contains the following definition:

> "*The term 'decision' shall mean a decision in matters relating to maintenance obligations given by a court of a Member State, whatever the decision may be called, including a decree, order, judgment or writ of execution, as well as a decision by an officer of the court determining the costs or expenses. For the purposes of Chapters VII and VIII, the term 'decision' shall also mean a decision in matters relating to maintenance obligations given in a third State.*"

By Article 16, under the rubric of "Scope of application of [Chapter IV – recognition, enforceability and enforcement of decisions]" provides:

> *"1. This Chapter shall govern the recognition, enforceability and enforcement of decisions falling within the scope of this Regulation.*
>
> *2. Section 1 shall apply to decisions given in a Member State bound by the 2007 Hague Protocol.*
>
> *3. Section 2 shall apply to decisions given in a Member State not bound by the 2007 Hague Protocol.*
>
> *4. Section 3 shall apply to all decisions."*

Article 24 is a member of "Section 2". It provides, under the rubric of "Grounds of Refusal of Recognition":

> *"A decision shall not be recognised:*
>
> *(a) if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought. The test of public policy may not be applied to the rules relating to jurisdiction;*
>
> *(b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so;"*

[12] Article 56(1) provides:

> *"A creditor seeking to recover maintenance under this Regulation may make applications for the following:*
>
> *(a) recognition or recognition and declaration of enforceability of a decision;*
>
> *(b) enforcement of a decision given or recognised in the requested Member State;*
>
> *(c) establishment of a decision in the requested Member State where there is no existing decision, including where necessary the establishment of parentage;*
>
> *(d) establishment of a decision in the requested Member State where the recognition and*

declaration of enforceability of a decision given in a State other than the requested Member State is not possible;

(e) modification of a decision given in the requested Member State;

(f) modification of a decision given in a State other than the requested Member State."

The minimum requirements for an application under Article 56 are prescribed by Article 57.

[13] The two provisions of the Maintenance Regulation forming the centrepiece of the Applicant's challenge are, firstly, Article 75. This, under the rubric of "Transitional Provisions", provides:

> "*1. This Regulation shall apply only to proceedings instituted, to court settlements approved or concluded, and to authentic instruments established after its date of application, subject to paragraphs 2 and 3.*
>
> *2. Sections 2 and 3 of Chapter IV shall apply:*
>
> *(a) to decisions given in the Member States before the date of application of this Regulation for which recognition and the declaration of enforceability are requested after that date;*
>
> *(b) to decisions given after the date of application of this Regulation following proceedings begun before that date, in so far as those decisions fall with the scope of Regulation (EC) No 44/2001 for the purposes of recognition and enforcement.*
>
> *Regulation (EC) No 44/2001 shall continue to apply to procedures for recognition and enforcement under way on the date of application of this Regulation.*
>
> *The first and second subparagraphs shall apply mutatis mutandis to court settlements approved or concluded and to authentic instruments established in the Member States.*
>
> *3. Chapter VII on cooperation between Central Authorities shall apply to requests and applications received by the Central Authority as from the date of application of this Regulation.*"

Article 76, entitled "Entry into force" states:

> "*This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.*
>
> *Articles 2(2), 47(3), 71, 72 and 73 shall apply from 18 September 2010.*
>
> *Except for the provisions referred to in the second paragraph, this Regulation shall apply from 18 June 2011, subject to the 2007 Hague Protocol being applicable in the Community by that date. Failing that, this Regulation shall apply from the date of application of that Protocol in the Community.*
>
> *This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.*"

International Law

[14] The matrix of the Applicant's challenge entails consideration of two instruments of international law, namely:

(a) The Convention on the international recovery of child support and other forms of family maintenance, dated 23 November 2007 (the "*Hague Convention*").

(b) The Protocol on the law applicable to maintenance obligations, also dated 23 November 2007 (the "*Hague Protocol*").

These two international law measures devise a regime which has as its central aim, the "*recovery*" of child support and other forms of family maintenance in favour of the child beneficiaries concerned.

[15] The Hague Conference On Private International Law adopted the "Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations" (the *"Hague Protocol").* On the same date the Hague Conference, at its 21st Session, adopted the "Hague Convention On The international Recovery Of Child Support And Other Forms Of Family Maintenance" (the "*Hague Convention").* These extended and simplified certain predecessor measures. In particular, the Protocol was devised to introduce uniform international rules for the determination of the law applicable to maintenance obligations. Replacing the 1956 and 1973 Hague Conventions on the same subject, the Protocol maintained the habitual residence of the creditor as the main "connecting factor" and extended this to maintenance obligations between spouses and ex-spouses, reinforcing the prominence of the *lex fori*; it introduced an "escape" clause regarding obligations between spouses and ex-spouses based on the concept of close connection; and it conferred on the parties

to maintenance arrangements and disputes a measure of autonomy, whereby the law of the forum *(lex fori)* for the purposes of a specific type of proceeding could be selected and a restrictive and conditional option became exercisable regarding the applicable law. In common with the 2007 Convention, the Protocol had as its overarching aim the effective recovery of family maintenance in cross-border circumstances. In any Contracting State its rules take precedence over the applicable law of a non-Contracting State, giving it a greater reach and impact than the Convention which applies only in relations between Contracting States.

[16] Against this background, on 08 April 2010 the Hague Protocol was signed and ratified by the EU. By dint of this measure all EU Member States, including Poland, with the exception of Denmark and the United Kingdom, became bound. The Protocol entered into force for all EU Member States on 01 August 2013, in accordance with Article 25. It had previously been applied by EU Member States in a provisional, or informal manner with effect from 18 June 2011. Accordingly, the condition ("*subject to …*") specified in Article 76 of the Maintenance Regulation (*supra*) was satisfied with the result that all of the provisions of the Regulation, with the exception of the five specified provisions in Article 76(2), entered into force on 18 June 2011. As a result Poland was, in the language of Article 16(2), "*a Member State bound by the 2007 Hague Protocol*". Thus Sections 1 and 3 of Chapter IV applied to decisions in Poland encompassed by Article 2(1). Such decisions include, in simple terms, the kind of court maintenance decisions against the Applicant which the relevant Northern Ireland agencies registered many years after the event.

[17] Developing this analysis:

(i) The Applicant's challenge does not invoke or rely upon any of the provisions of Section 1 or Section 3 of Chapter IV of the Maintenance Regulation.

(ii) The Applicant's challenge <u>does</u> rely upon one of the provisions of Section 2, namely Article 24 (*supra*). Specifically, the Applicant invokes Article 24(b) in support of his contention that none of the Polish Court decisions qualifies for registration in Northern Ireland as he did not have notice of the two Polish court hearings in question. Section 2 applies only to decisions given in a Member State "*not bound by the 2007 Hague Protocol*". Poland is not such a country. I hold, therefore, that this argument is misconceived.

<u>Domestic Legal Framework</u>

[18] The domestic law components of the legal framework are:

(a) The Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules (NI) 1986 (the "*1982 Rules*"); and

(b) The Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (the "*2011 Regulations*").

None of the provisions of these instruments featured in the presentation of either party's case and, therefore, I record them formally only.

The Wolf Decision

[19] The decision of the CJEU (Third Chamber) in Wolf GMBH v Sewarspolsro (Case C-514/10) belongs to the forefront of the Applicant's case. This concerned the provisions of the 2001 Regulation, noted in [9] above. The Court's determination of the questions referred for a preliminary ruling under Article 267 TFEU required it to construe Article 76 of the 2001 Regulation. The CJEU provided a simple answer: recourse to the 2001 Regulation was possible only if the measure was in force in both the Member States concerned on the date of delivery of the relevant judgment: see [33] and [34]. The rationale of the Court's conclusion is traceable firstly to [25]:

> "*The rules on jurisdiction and the rules on the recognition and enforcement of judgments in EC Regulation 44/2001 do not constitute distinct and autonomous systems but are closely linked. The court has also previously held that the simplified mechanism of recognition and enforcement set out in art.33(1) of that regulation, to the effect that a judgment given in a Member State is to be recognised in the other Member States without any special procedure being required, which leads in principle, pursuant to art.35(3) of that regulation, to the lack of review of the jurisdiction of courts of the Member State of origin, rests on mutual trust between the Member States and, in particular, by that placed in the court of the State of origin by the court of the State addressed, taking account in particular of the rules of direct jurisdiction set out in Ch.II of that regulation (Opinion 1/03 [2006] E.C.R. I-1145 at [163]).*"

The judgment continues, at [26]:

> "*As the court stressed with reference to the Brussels Convention , whose interpretation by the court also holds good in principle for EC Regulation 44/2001 (see, to that effect, Realchemie Nederland BV v Bayer CropScience AG (C-406/09) [2012] I.L.Pr. 1 at [38]), it is because of the guarantees given to the defendant in the original proceedings that that Convention, in Title III, is very liberal with regard to recognition (Denilauler v SNC Couchet Freres (125/79) [1980] E.C.R. 1553 at [13]). The*

> *report on that Convention submitted by Mr Jenard ([1979] OJ C59/1 at p.46) stated that:*
>
> > *"[T]he very strict rules of jurisdiction laid down in Title II, and the safeguards granted in Article 20 to defendants who do not enter an appearance make it possible to dispense with any review, by the court in which recognition or enforcement is sought, of the jurisdiction of the court in which the original judgment was given." (Opinion 1/03 at [163])."*

Followed by [27]:

> "*It follows that the application of the simplified rules of recognition and enforcement laid down by EC Regulation 44/2001 , which protect the claimant especially by enabling him to obtain the swift, certain and effective enforcement of the judgment delivered in his favour in the Member State of origin, is justified only to the extent that the judgment which is to be recognised or enforced was delivered in accordance with the rules of jurisdiction in that regulation, which protect the interests of the defendant, in particular by providing that in principle he may be sued in the courts of a Member State other than that in which he is domiciled only by virtue of the rules of special jurisdiction in arts 5–7 of the regulation.*"

And finally at [28]:

> "*By contrast, in a situation such as that at issue in the main proceedings, in which the defendant is domiciled in a State which was not yet a Member of the Union either at the date of bringing the action or at the date of delivery of the judgment, and is therefore regarded as domiciled in a third State for the purposes of the applicability of EC Regulation 44/2001 , the balance of interests between the parties laid down by that regulation, described in [27] above, is no longer ensured. Where* ****722*** *the defendant is not domiciled in a Member State, jurisdiction is determined, in accordance with art.4(1) of EC Regulation 44/2001 , by the law of the State of origin.*

Stated succinctly and perhaps over-simplifying, in order to render the judgment in question enforceable in another Member State the special rules of jurisdiction enshrined Articles 5 – 7 of the 2001 Regulation had to have applied to the

proceedings culminating in the judgment: this could not be the case (self-evidently) if the 2001 Regulation had not entered into force in the Member State of origin.

Consideration and Conclusions

[20] The central argument of Mr Lavery QC (with Mr Magowan, of Counsel) on behalf of the Applicant places very heavy reliance on the decision in Wolf. At its simplest and clearest, the kernel of this argument is that by virtue of the decision in Wolf, Article 75 of the Maintenance Regulation must be interpreted in a manner which permits this measure no retrospective operation.

[21] I consider that the first exercise which this requires of the court is one of juxtaposing Article 66 of the 2001 Regulation with Article 75 of the Maintenance Regulation. This yields the following analysis:

(a) Whereas Article 66 is an 'entry into force' provision, Article 75 is a "Transitional provisions" *mechanism.*

(b) The Maintenance Regulation contains, in Article 76, its own inbuilt, bespoke "entry into force" mechanism.

(c) However, Article 66, in addition to being an "entry into force" provision per paragraph (1), also contains in its remaining terms transitional provisions.

(d) The transitional provisions in Article 66 were insufficiently comprehensive to provide a clear answer to the question regarding temporal application which the referring Member State court felt constrained to transmit to the CJEU for a preliminary ruling.

(e) Article 75, in contrast, is considerably more comprehensive in its regulation of the instruments temporal application.

[22] Having conducted this comparative exercise, while I concur with Mr McGleenan QC (with Ms McMahon, of counsel) on behalf of the Respondents that neither of the two aforementioned provisions is a precise analogue of the other, this does not, for me, provide a bright shining route to adjudicating on Mr Lavery's principal submission.

[23] Thus the primary exercise in this case becomes one of textual analysis and interpretation of certain provisions of a measure of supreme EU law. The vital role of the national Judge was declared long ago by the ECJ in Van Gend En Loos (Case 26/62). The duty in play, in the context of interpreting and/or applying a measure of EU law, requires the national Judge to ascertain the "*spirit, the general scheme and the wording*" of the EU measure. Thus it is essential to identify the policy and aims of the measure, placing these in the context of the relevant objective of the TEU

which is engaged. Also engaged in every exercise of this kind is the principle of sincere, or loyal, co-operation, now enshrined in Article 4(3) TEU. This binds all the authorities of the Member States, including their courts: Von Colson (Case 14/83) at [26]. The national court must also be mindful of general principles of EU law, in particular proportionality, legal certainty, legitimate expectation and non-discrimination. Alertness to the Charter of Fundamental Rights is also essential.

[24] It is difficult to conceive of any exercise of interpretation of a measure of EU law which would not entail consideration of the recitals. The submissions of Mr McGleenan drew attention to certain of the recitals of Council Regulation (EC) Number 4/2009, including:

Recital (9):

> "*A maintenance creditor should be able to obtain easily, in a Member State, a decision which will be automatically enforceable in another Member State without further formalities.*"

Recital (17):

> "*(17) An additional rule of jurisdiction should provide that, except under specific conditions, proceedings to modify an existing maintenance decision or to have a new decision given can be brought by the debtor only in the State in which the creditor was habitually resident at the time the decision was given and in which he remains habitually resident. To ensure proper symmetry between the 2007 Hague Convention and this Regulation, this rule should also apply as regards decisions given in a third State which is party to the said Convention in so far as that Convention is in force between that State and the Community and covers the same maintenance obligations in that State and in the Community.*"

Recital (22):

> "*In order to ensure swift and efficient recovery of a maintenance obligation and to prevent delaying actions, decisions in matters relating to maintenance obligations given in a Member State should in principle be provisionally enforceable. This Regulation should therefore provide that the court of origin should be able to declare the decision provisionally enforceable even if the national law does not provide for enforceability by operation of law and even if an appeal has been or could still be lodged against the decision under national law.*"

Recital (24):

> "*The guarantees provided by the application of rules on conflict of laws should provide the justification for having decisions relating to maintenance obligations given in a Member State bound by the 2007 Hague Protocol recognised and regarded as enforceable in all the other Member States without any procedure being necessary and without any form of control on the substance in the Member State of enforcement.*"

Recital (30):

> "*In order to speed up the enforcement in another Member State of a decision given in a Member State bound by the 2007 Hague Protocol it is necessary to limit the grounds of refusal or of suspension of enforcement which may be invoked by the debtor on account of the cross-border nature of the maintenance claim. This limitation should not affect the grounds of refusal or of suspension laid down in national law which are not incompatible with those listed in this Regulation, such as the debtor's discharge of his debt at the time of enforcement or the unattachable nature of certain assets.*"

[25] There is a nexus between the 2001 Regulation and the Maintenance Regulation. This is noted in Recital (44):

> "*This Regulation should amend Regulation (EC) No 44/2001 by replacing the provisions of that Regulation applicable to maintenance obligations. Subject to the transitional provisions of this Regulation, Member States should, in matters relating to maintenance obligations, apply the provisions of this Regulation on jurisdiction, recognition, enforceability and enforcement of decisions and on legal aid instead of those of Regulation (EC) No 44/2001 as from the date on which this Regulation becomes applicable.*"

Within Recital (43) one finds a convenient and compact summary of the objectives of the Maintenance Regulation. These are –

> "*…….. the introduction of a series of measures to ensure the effective recovery of maintenance claims in cross-border situations and thus to facilitate the free movement of persons within the European Union ……..*"

The overarching Community aim engaged is, per Recital (1), "*the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured*".

[26] Thus the Maintenance Regulation promotes and protects the interests of maintenance creditors and seeks to render maintenance obligations effective throughout the territory of the EU. To this end there is a clear emphasis on clarity and expedition. None of these features, however, speaks directly to the fundamental issue of temporal application which this challenge raises.

[27] I consider that, ultimately, an intense focus on the language of Article 75 is required. This, in my judgement, gives rise to the following construction exercise:

(i) Article 75(2), addressing the issue of the temporal scope of the Maintenance Regulation, prescribes a general rule with some care and emphasis ("*only*"). This rule is that the Regulation does not apply to (*inter alia*) "*proceedings instituted*" prior to its "*date of application*". This, however, is but a general rule, having regard to the words "*subject to paragraphs 2 and 3*".

(ii) It is unnecessary to dwell on Article 75(2), for two reasons. First, Section 2 of Chapter IV of is no moment given that Poland is a Hague Protocol State. Second, nothing turns on Section 3 of Chapter IV. Ditto the last two provisions contained in Article 75(2).

(iii) Chapter VII does apply to the present context since the request, or application, received by the Northern Ireland Central Authority post-dated "*the date of application of this Regulation*": this date is, per Article 76, 18 June 2011. It is an undisputed fact that the date of receipt of the Polish authority's first request/application was 08 October 2013. Further, it is common case that this request was made by the Polish "Central Authority" to the Northern Ireland "Central Authority".

[28] The subject matter of Chapter VII of the Maintenance Regulation is "Co-operation between Central Authorities" and, within this discrete regime, Article 56(1) provides:

> "*A creditor seeking to recover maintenance under this Regulation may make application for the following:*
>
> *(a) recognition or recognition and declaration of enforceability of a decision ….*"

In passing, while Article 2(1)(i), noted above, defines "*decision*" as, *inter alia*, "*a decision in matters relating to maintenance obligations by a court of a Member State*", it

also encompasses, interestingly, "*a decision in matters relating to maintenance obligations given in a third State*".

[29] In short, the inexhaustive non-retroactivity rule enshrined in Article 75(1) is displaced by one of the rules to which it is expressly subject, namely the rule in Article 75(3). While the former rule formulates the temporal scope of the Maintenance Regulation by reference to the date of its "*application*", the latter rule does so by reference to specified events postdating the same date. In the present case an event embraced by the second of these rules occurred during the period postdating "*the date of application of this Regulation*" (namely 18 June 2011). This event took the form of the Polish Central Authority request/application to its Northern Ireland counterpart. While I have considered it essential to be alert to the possibility of some further provision of temporal application or restriction in the discrete regime in question, namely Chapter VII, I have identified none.

[30] The formulation of two specific conclusions consequent upon the foregoing analysis is appropriate:

(i) The Maintenance Regulation contains no provision restricting its temporal scope to court maintenance orders made in Poland only after the date of Polish accession to the EU.

(ii) Article 75, properly construed, defeats the Applicant's case on the simple ground that the Polish Central Authority request/application to the Northern Irish Central Authority was made after 18 June 2011.

[31] The only question which remains is whether there is anything in the Wolf decision which operates to confound the analysis and conclusions above. I can identify nothing. First, as I have already held, the analogue between the two EU legislative provisions in question is imprecise. Second, in contrast with the doubts and uncertainties thrown up by Article 66 of the 2001 Regulation, Article 75 of the Maintenance Regulation, in its more detailed and prescriptive way and in commendably clear terms, does not engender any comparable uncertainty or lack of clarity. Third, in Wolf the CJEU was clearly preoccupied with the "*very strict rules of jurisdiction*" enshrined in the 2001 Regulation and the safeguards which these entailed for defendants: there is nothing sufficiently comparable in the Maintenance Regulation and, I would add, no argument to this effect was developed.

[32] Fourth, there is no evidential basis or juridical factor warranting the conclusion that the construction of Article 75 which I have espoused is in some way undermined by the principle of mutual trust among EU Member States. This principle, when it falls to be considered, does not exist in a vacuum. Rather, it requires a concrete factual framework. In this respect the zenith of the Applicant's case is that while he was fully on notice of the Polish maintenance court proceedings spanning the period December 2002 to February 2003, he was not

notified of the hearing giving rise to the court order dated 14 February 2003 which, much later, stimulated the registration measure in this jurisdiction now challenged by him. While this is a contested fact, I am prepared to assume it in the Applicant's favour. Having done so, it does not seem to me to have the effect of breaching the principle of mutual trust. In brief compass: the Applicant had every opportunity to contest the proceedings in question (having been on notice at the stage of their inception) and to put forward his case; he did not attempt to engage with the proceedings in any way; his several affidavits contain no suggestion that he would have attended, or contested, any court hearing; his averments are, to my mind, suggestive of some indifference to the court proceedings – he was giving precedence to the demands of his business and he considered the proceedings "*unnecessary*"; and he made no attempt to make further enquiries subsequently.

[33] As regards the 1999 Polish court proceedings, I have studied the Applicant's averments with care. Having done so I find them wholly unimpressive. The Applicant makes no attempt to relate these averments to his marriage, family and life circumstances prevailing at that time. His account of events is strikingly bare. Fundamentally, his assertion that maintenance proceedings were brought against him by his wife at that time in a secretive manner, without notice to him and unbeknown to him cannot be reconciled with the evidence relating to his marriage, family and life circumstances then prevailing. I do not accept the Applicant's claims about this discrete matter and I consider that he has not been candid with the Court in his treatment and description of this issue.

[34] Finally, the evidence establishes that the Applicant had an entitlement under Polish law to challenge the decision of the court, which he failed to exercise. To the above assessment I would add only that sovereign countries do not become EU Member States overnight. Rather, the solemn event of accession materialises only when a lengthy and scrupulous apprenticeship has been successfully completed during a carefully overseen pre-accession stage. For this combination of reasons I can identify nothing in the Wolf decision sufficient to set aside, in whole or in part, the construction exercise carried out above.

Conclusion

[35] Reverting at this stage to the Applicant's three grounds of challenge, rehearsed in [8] above:

(i) The primary ground of challenge fails since the date upon which Poland acceded to the EU does not impose any temporal limitation on the operation of the Maintenance Regulation in that state.

(ii&iii) The two alternative grounds of challenge fail as they are founded on the misconception that Poland was not a Hague Protocol State.

[36] The application for judicial review is dismissed accordingly.