

Case studies – Family law

Workshop no.1

First Instance Court

2 Vitosha Blvd.,

Sofia 1000, Bulgaria

11 July 2014

MR. PRESIDENT OF THE COURT,

I, the undersigned, **Hristo Petrov**, Bulgarian citizen, domiciled in Sofia, Ulitsa "Knyaz Boris I" 7, 1463, Bulgaria, I hereby petition the court against the defendants:

1. **Iordan Petrov**, Romanian and Bulgarian citizen, domiciled in Romania, Bucharest, sector 5, Calea 13 Septembrie no. 97, Bl. 93, ap. 7, zip code 050715
2. **Elena Ionescu**, Romania citizen, domiciled in Romania, Bucharest, Bulevard Bd. Regina Elisabeta, nr. 53, sector 5, zip code 050014, and respectfully ask the court to establish the following:

1. **that I am not the father of the first defendant, Iordan Petrov (as I am contesting the paternity of this defendant)**
2. **to state that I am entitled to receive maintenance from the second defendant, Elena Ionescu, (maintenance between former spouses)**

Facts:

After the chute of the communist regime in Bulgaria, I was looking to a better life and I decided to take advantage of my skills as a specialized engineer and to work abroad. In 1990, I started working for a local firm in Giurgiu, Romania.

On that occasion, I met Elena Ionescu, a Romanian citizen. As our relationship was very good and we both shared the wish to found a family we moved together. After a while, on 10 of April 1991, my partner gave birth to a boy. As I was convinced that he was my son, I recognized Iordan as my child. In this respect, I was registered in the birth certificate issued by the Romanian competent authorities as being the father of that child.

After two years, I was transferred by my company in Sofia at a local branch of the company. Our family moved and established in Sofia and Elena and I got married in Sofia – Bulgaria in 1993.

Nevertheless, as I was travelling a lot for my job, our relationship began to deteriorate. After some time, the misunderstanding between us reached a point where living together became impossible and we decided to separate for a while.

As all our attempts for reconciliation failed, on 23 November 2013 we divorced and the Bulgarian Court dissolved the marriage due to the common fault of the spouses.

In all this time, I had a very closed relationship with Iordan Petrov, my son who moved with his mother in Romania, in Bucharest where they are living. I regularly transferred him money, around 500 Euros per month as maintenance, until some months ago.

In spring 2014, I found out that one of my friends, Aleksandar Manolov had for many years a close relationship with my former wife, Elena Ionescu. Based on the testimony of Aleksandar Manolov and some letters written by Elena Ionescu Petrov, in which she explicitly acknowledges that she lied to me when she told me that I am the father of Iordan, I have strong reasons to believe that he is not my son.

For all these reasons, I respectfully ask the Court to grant my first claim that I am not the father of Iordan Petrov.

Secondly, I ask the court to state that all the relevant national provisions for awarding maintenance from my former wife, Elena Ionescu, are fulfilled in this case.

Law

Based on the provisions of Bulgarian Civil Code, Code of Civil Procedure, Regulation no. 4/2009.

Evidence

Evidence – documents, witnesses, interrogation of the defendants, DNA expert opinion.

I hereby respectfully ask the court to award my application as mentioned before.

Respectfully yours,

Hristo Petrov

Romania

Strada Splaiul Independentei, nr. 5, sector 4 Bucuresti

MR. PRESIDENT OF THE COURT,

I, the undersigned, **Iordan Petrov**, Romanian and Bulgarian citizen, domiciled in Romania, Bucharest, sector 5, Calea 13 Septembrie no. 97, Bl. 93, ap. 7, zip code 050715 I hereby petition the court against the defendant **Hristo Petrov**, Bulgarian citizen, domiciled in Sofia, Ulitsa "Knyaz Boris I" 7, 1463, Bulgaria and respectfully ask the court to establish a

MAINTENANCE OBLIGATION

Facts:

I was born on 10 of April 1991 in Giurgiu, Romania, where my mother, Elena Ionescu, a Romanian citizen, lived at that time. My father, Hristo Petrov – a Bulgarian citizen, worked at that time as an engineer in Romania. He recognized me as his child and he was registered as my father in my birth certificate issued by the Romanian competent authorities.

After two years, my parents got married in Sofia – Bulgaria, where my father was transferred by his company. Nevertheless, as my father travelled a lot, my parents separated few years after their marriage.

In 2011, I lived in London for 4 months, where I studied in order to pass the entrance exams at Queen Mary University. Pursuant a settlement sanctioned by court, my father was under the obligation to pay 500 euro/month maintenance until my 21st birthday.

My parents finally divorced in 2013 and the Bulgarian Court which decided my parents' divorce did not establish any maintenance obligation to be paid for myself as I was 22 years old at the time.

Recently, I was accepted as a student at the Law Faculty of this prestigious University. Nevertheless, the living and tuitions costs in this country are consistent. My father promised me that he will continue to support me as I was in need. He regularly transferred me money after my 21st birthday, around 500 Euros per month.

Nevertheless, four months ago he suddenly stopped any payments and refused to talk to me, rejected my phone calls and did not answer my e-mails. I must underline the fact that we used to have a very close relationship; we were in touch using modern means of communication, he visited me in spring and we were planning to spend Christmas holidays together in Romania.

My situation is very critical today as I do not have financial means to support myself and to pay my university fees, not even for the second term, which will begin in January 2015. My mother, who continues to work and live in Romania, contributes financially as well, but it is not enough by far.

Law

Based on the provisions of Regulation no. 4/2009 and of the Romanian Civil Code – Article 499 paragraph 3, and based on other relevant legislation, I kindly ask the Court to order the defendant to pay a monthly amount up to $\frac{1}{4}$ of my father income as maintenance obligation.

Evidence

Evidence – documents (among which a request of information from the Bulgarian company where my father works) witnesses, interrogation of the defendant.

I hereby respectfully ask the court to award my application as mentioned before.

Respectfully yours,

Jordan Petrov

Workshop no.1

TRIBUNALE DI ROMA

Ricorso ex artt. 337 quinquies c.c. e 4, 2° comma, l. 54/2006

On behalf of

ANTONIO CAMPESE, born on 4 June 1974, in Rome, Italy, domiciled for the purposes of this case at the offices of Avv. Mario Rossi, corso Garibaldi, n. 1, Roma, who is also instructed to represent him on the terms of the special power of attorney hereby attached;

Claimant

versus

ADRIANNA Lima born on 2 September 1980, in Madrid, Spain, Spanish citizen, domiciled in Rua da Bouza , 4 , 3, 27002- LUGO, Spain

Defendant

Whereas

Ms. Adrianna Lima married Mr. Antonio Campese on 31 of December 2003.

The spouses lived in Rome, Italy and two children were born there:

- Roberto, in 2007, the 28th of February
- Sandrine, in 2009, the 8th of August

By the time their second child was born, their misunderstandings reached a point where living together became impossible so the spouses legally separated in January 2010.

By judgment delivered on 21 April 2013, the Tribunale di Roma dissolved the marriage upon mutual agreement of the two spouses, who also agreed before the court on the measures concerning the children:

- Joined parental responsibility for both children;
- Residence of the children with the mother, in Rome, in the family apartment;
- Rights of access for the father, once every two weekends, and an equal division of the time spent during the parents' holidays;
- No spousal support;
- Child maintenance to be paid monthly by the father.

During their legal separation and after the divorce, Ms. Lima continued to live with the children in their family home in Rome. Occasionally, she spent periods of time at her parents' home in Lugo, taking the children with her, with the consent of the defendant. In the meantime, Ms. Lima communicated to the plaintiff that she started actively to look for employment in Lugo, with good prospects, and that she considers moving permanently to Spain, together with the children.

The longest period of time that she spent in Spain together with the children is since the end of June 2013 to the present time. Thus, at the end of June 2013 she collected all her belongings and the children's from the apartment in Rome where she had lived so far.

Since that time (June 2013), access of the plaintiff to his children has been significantly reduced. Despite his repeated pleadings, the defendant has not allowed the children to visit their father and their family in Italy, to whom they are very close. At first she agreed to their travelling to Italy, but kept postponing the trip for various reasons and in the end, she refused to send them over claiming that they would not like to be separated from her at such a great distance. In addition, each of the four times that the plaintiff travelled to Lugo to visit his children, she refused to allow them to spend time alone with him and was present every time.

Taken into account that in all this time she has not yet secured employment in Spain and still lives in her parents' house together with the children, and that from her conversations with the plaintiff it is not clear yet whether she will remain or not in Spain, Mr. Antonio Campese requests you to decide a modification of the measures taken in the dissolution of marriage judgment, which do not fit any longer the present situation or the best interests of his two children.

Requests

That the Tribunale di Roma orders a change in the rights of access over the children Roberto and Sandrine so that both children will visit their father without supervision one weekend per month, the whole Christmas and Easter holidays, alternating yearly, and half of the summer holidays.

The following documents are produced in evidence:

- copy of the marriage certificate
- copy of birth certificates of children Roberto and Sandrine
- decision for the dissolution of marriage

Roma, 1 November 2013

Signature: Antonio Campese

REQUEST FOR A CHANGE REGARDING A CHANGE IN THE RESIDENCE OF A CHILD and CHILD MAINTENANCE

TO MR OR MRS FAMILY LAW JUDGE IN THE COURT OF KRAKOW

Ms. Adrianna Lima, born in 1980, 2 September, in Madrid Spain, Spanish national, business assistant, domiciled at Rua da Bouza , 4 , 3, 27002- LUGO

IS HONOURED TO PRESENT THE FOLLOWING

Facts:

Ms. Adrianna Lima got married with Mr. Antonio Campese, an Italian citizen, in 2003, the 31 December.

The spouses lived in Rome, Italy and two children were born there:

- Roberto, in 2007, the 28th of February
- Sandrine, in 2009, the 8th of August

By the time their second child was born, their misunderstandings reached a point where living together became impossible so the spouses legally separated in January 2010.

By judgment delivered on 21 April 2013, the Tribunale di Roma dissolved the marriage upon mutual agreement of the two spouses, who also agreed before the court on the measures concerning the children:

- Joined parental responsibility for both children;
- Residence of the children with the mother, in Rome, in the family apartment;
- Rights of access for the father, once every two weekends, and an equal division of the time spent during the parents' holidays;
- No spousal support;
- Child maintenance to be paid monthly by the father.

During their legal separation and after the divorce, Ms. Lima continued to live with the children in their family home. Occasionally, she spent periods of time at her parents' home in Lugo - Spain, taking the children with her, with the consent of the defendant. In the meantime, Ms. Lima started actively to look for employment in Lugo with good prospects and, having decided to leave Italy permanently, finalised her moving out of the family home to her parents' house in Lugo at the end of June 2013, together with the children, with the consent of the defendant.

Despite Ms. Lima's repeated pleas, the defendant refused to increase his contribution for the children's needs at a time when the move to a new country and their age demands increased expenses. The children have now reached ages where various development opportunities are open to them.

Considering this set of new elements, Ms. Adrianna Lima requests you to decide a change in the measures taken in the divorce's judgment, which do not correspond anymore to the present needs of her two children.

FOR THESE REASONS

The applicant asks the family law judge to

Be so kind as

- To call Mr Antonio Campese at the following address

-----Salita di Castel Giubileo, 00138, Rome, Italy -----

In order that he appears in court, to be heard on the current request for the court:

- To order a change in the residence of the children to Rua da Bouza , 4 , 3
- 27002- LUGO, Spain
- To order an increase of the monthly amount paid by the defendant as child support;
- To decide that the fees and expenses of the current procedure will be taken in charge by the defendant Mr. Antonio Campese.

Lugo, 25 November 2013

Signature: Adrianna Lima

Tasks for the courts

“BULGARIAN COURT”

The Honourable members of the court are:

Judges:

Tasks for Workshop 1:

Day 1, afternoon session (workshop):

1. Please serve the necessary documents to respondents Elena Ionescu and Iordan Petrov according to Regulation 1393/2007.
2. Determine whether your court has jurisdiction to hear the case. Make a decision regarding the relevance of the civil complaint of *Iordan Petrov vs Hristo Petrov* filed before the Romanian Court.
3. Write the procedural act whereby you decide whether you establish your jurisdiction (Bulgarian participant kindly asked to provide national specificities)
4. If you establish jurisdiction, what are the rules by which you decide which is the applicable law to the case?

Day 2, morning session (workshop results):

1. Please choose a spokesperson to summarise *in plenum* the facts of the case for the benefit of the others and to walk the audience through the process of serving documents according to Regulation 1393/2007.
2. Choose another member of your court to describe the process of establishing or not jurisdiction on the matter.
3. The Bulgarian participant is kindly asked to present, if any, the particularities of the Bulgarian procedural act whereby the decision on jurisdiction was made.
4. Please choose another member of the court to explain your reasoning concerning the applicable law.

Please save your work on the laptop that is provided for your group.

“ROMANIAN COURT”

The Honourable members of the court are:

Judges:

Tasks for Workshop 1:

Day 1, afternoon session (workshop):

1. Please serve the necessary documents to respondent Hristo Petrov according to Regulation 1393/2007.
2. Determine whether your court has jurisdiction to hear the case.
3. Write the procedural act whereby you decide whether you establish or not jurisdiction (Romanian participant kindly asked to provide national specificities).
4. If Iordan Petrov produces a certificate from the Bulgarian court whereby the latter dismissed his father’s contesting paternity, please decide over jurisdiction and applicable law.

Day 2, morning session (workshop results):

1. Please present the annex filled in at point 1 above.
2. Please choose a spokesperson to summarise *in plenum* the facts of the case for the benefit of the others and to walk the audience through the process of serving documents according to Regulation 1393/2007.
3. Choose another member of your court to describe the process of establishing or not jurisdiction on the matter.
4. A Romanian participant is kindly asked to present, if any, the particularities of the Romanian procedural act whereby the decision on jurisdiction was made.
5. Please choose another member of the court to explain your reasoning regarding jurisdiction and applicable law in the event described at point 5 above.

Please save your work on the laptop that is provided for your group.

“Spanish COURT”

The Honourable members of the court are:

Judges:

Clerk:

Tasks for Workshop 1:

Day 1, afternoon sessions (workshop):

1. Please serve the necessary documents to respondent Antonio Campese according to Regulation 1393/2007.
2. Determine whether your court is competent to hear the case.
3. Write the procedural act whereby you decide whether you establish your competence (Spanish participant kindly asked to provide national specificities)

4. If you establish jurisdiction, what are the rules by which you decide which is the applicable law to the case?

Day 2, morning sessions (workshop results):

1. Please choose a spokesperson to summarise *in plenum* the facts of the case for the benefit of the others and to walk the audience through the process of serving documents according to Regulation 1393/2007.
2. Choose another member of your court to present the reasoning of the decision to establish or not jurisdiction on the matter, including possible relevant judgments of the CJEU.
3. The Spanish participant is kindly asked to present the procedural act whereby a decision on jurisdiction was made and explain the particularities of Spanish procedure.
4. Please choose another member of the court to explain your reasoning concerning the applicable law.

Please save your work on the laptop that is provided for your group.

“ITALIAN COURT”

The Honourable members of the court are:

Judges:

Tasks for Workshop 1:

Day 1, afternoon session (workshop):

1. Please serve the necessary documents to respondent Adrianna Lima according to Regulation 1393/2007.
2. Determine whether your court has jurisdiction to hear the case.
3. Write the procedural act whereby you decide whether you establish your competence (Italian participant kindly asked to provide national specificities)
4. If you establish jurisdiction, what are the rules by which you decide which is the applicable law to the case?
5. If you establish jurisdiction, issue a certificate concerning the plaintiff's rights of access.

Day 2, morning session (workshop results):

1. Please choose a spokesperson to summarise *in plenum* the facts of the case for the benefit of the others and to walk the audience through the process of serving documents according to Regulation 1393/2007.
2. Choose another member of the Italian court to describe the process of establishing or not jurisdiction on the matter.
3. The Italian participant is kindly asked to present, if any, the particularities of the Italian procedural act whereby the decision on competence was made.

4. Please choose another member of the court to explain your reasoning concerning the applicable law.
5. Please present the certificate concerning the plaintiff's rights of access.

Please save your work on the laptop that is provided for your group.

Workshop 2 – Preliminary ruling

CASE STUDY 1

You are a court legally seized by RN, Bulgarian citizen, 15.03.2013, with a request to give the plaintiff rights of sole custody over CN, a minor, and to order a visitation schedule for the defendant AN only in the presence of the plaintiff.

In her petition, the plaintiff showed in essence that the minor was born on 4.12.2012 in Oxford, England, pursuant her relationship with the defendant, a British citizen. During the pregnancy, it became clear that the relationship had irreparably deteriorated, so much so that as soon as she recovered after childbirth, she left their common residence together with their newborn and went to live with a female friend. When the little girl was able to travel, the plaintiff left England and returned home in Bulgaria with her.

Absent an understanding with the minor's father, the plaintiff seeks an order of the court to determine parental rights, including a visitation schedule.

In his counterclaim filed on 10.06.2013, the defendant indicates in essence that after their daughter's birth, the plaintiff's behaviour changed, culminating with an attitude of absolute rejection of him and of the baby. Not being able to reach an understanding with the plaintiff, the defendant asks for the court to make a determination over parental rights in his favour, and to set a visitation schedule for the plaintiff in the presence of a social worker. In the end of his counterclaim, the defendant states that he actually would like to present his request before a British court, as he does not wish to argue them before the present court, which he considers lacks jurisdiction, because his daughter is a British citizen and was born in the UK.

You are the court legally seized with the above case and you need to decide whether you have jurisdiction.

The plaintiff asks you to send a preliminary reference to the CJEU with the following question:

“Which are the criteria to determine the habitual residence of the child under Article 8 paragraph (1) of Regulation (EC) 2201/2003, especially in the case of a very small child?”

Tasks:

- 1. Please decide whether you will send the reference to the CJEU. If you agree with its substance, you may reformulate it if you deem appropriate.**
- 2. Please draft the plan of your procedural act whereby you grant or refuse this request.**

Workshop 2

CASE STUDY 2

Jorge and Maria, Spanish citizens, a married couple, have one child, Nicholas, born on 27 November 2006 in Madrid, Spain.

From March 2010, Jorge found a very good job in Constanța, Romania, and left his family behind, with the understanding that as soon as he made the appropriate arrangements he would bring them over. However, the difficulties of this situation put a heavy burden on an already strained relationship and, after two months, only Nicholas visited his father in Romania. Maria continued to live and work in Madrid and, for a while, she got along with her partner about a visitation schedule with respect to their son, whereby Nicholas would spend every other month with his father. It happens quite often that the child spends more than one month continuously with his father, with the consent of his mother. While he is with him, Jorge enrolls him on different activities for small children. In the spring of 2013, he enjoys so much his time in day care that his mother agrees to let him stay until the beginning of summer.

During the summer of 2013, Maria joins her partner and her son for a vacation at the Black Sea. The parents have intense discussions about the future of the child who, for the time being, stayed with his father in Romania.

On 24 September 2013, Maria seized the competent court in Madrid, Spain, asking for divorce, full custody of the child and maintenance. She argued that Nicholas should be raised in his home country, has difficulties learning Romanian and agreed to stay in Romania only to please his father.

Finding out from a friend that his wife instituted proceedings against him, on 29 September 2013, Jorge made a separate application to the same court in Madrid, asking for divorce and full custody of the child. At the same time, he made a similar application to the competent court in Constanța. He declared that he had registered Nicholas for school in Constanța in that autumn, had brought his mother over to live with them and help with the care of his son, and made other arrangements for his social integration.

You are the Spanish court.

Jorge argues in court that he recognizes the jurisdiction of the Spanish court on divorce, but he opposes its jurisdiction regarding parental responsibility on the grounds that he actually did not accept expressly “or otherwise in an unequivocal manner” its jurisdiction. He filed his counterclaim with the Spanish court only to make sure that he will not miss out on procedural delays, but he thinks it is in the best interest of the child that the Romanian court has jurisdiction regarding parental responsibility, which is proven by his filing his application with the Romanian courts in the same day.

Tasks:

- 1. Please decide whether you think a reference to the CJEU is necessary for you to decide over the matter.**
- 2. Please draft the plan of your procedural act whereby you explain why you made your decision.**

Potential question: the interpretation of “otherwise in an unequivocal manner” in art. 12 (1) (b) R2201/2003.

Necessity for the case: the Spanish court has jurisdiction over divorce (both Spanish nationals, art. 3 (1) (b)). The Spanish court’s jurisdiction over custody is dependent upon the fulfilment of two conditions in article 12 (1) (a) and (b). While (a) is fulfilled, (b) is

dependent upon the meaning of what is an „unequivocal acceptance of jurisdiction” (and then if it is in the superior interests of the child).

Particularity of the case: same day he files in both countries (of course he had no choice, as she had filed first, so no matter what, this is his only chance to bring the suit in Romania)

Can it be interpreted that he actually did not accept jurisdiction because of that, so (b) is not fulfilled?

Previous jurisprudence C-656/13, L/M, question 2:

56. It follows from the foregoing that the answer to Question 2 is that Article 12(3)(b) of Regulation No 2201/2003 must be interpreted as meaning that it cannot be considered that the jurisdiction of the court seised by one party of proceedings in matters of parental responsibility has been ‘accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings’ within the meaning of that provision where the defendant in those first proceedings subsequently brings a second set of proceedings before the same court and, on taking the first step required of him in the first proceedings, pleads the lack of jurisdiction of that court.