

## JUDGMENT OF THE COURT (Third Chamber)

17 February 2016 (\*)

(Reference for a preliminary ruling — Air transport — Montreal Convention — Articles 19, 22 and 29 — Liability of air carrier in the event of delay in the international carriage of passengers — Contract of carriage concluded by the passengers' employer — Damage caused by delay — Damage suffered by the employer)

In Case C-429/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), made by decision of 16 September 2014, received at the Court on 18 September 2014, in the proceedings

**Air Baltic Corporation AS**

v

**Lietuvos Respublikos specialiųjų tyrimų tarnyba,**

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, D. Šváby, J. Malenovský (Rapporteur), M. Safjan and M. Vilaras, Judges,

Advocate General: Y. Bot,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 15 October 2015,

after considering the observations submitted on behalf of:

- Air Baltic Corporation AS, by I. Jansons, Legal Adviser, M. Freimane, Jurist, and E. Matulionytė, avokatė,
- the Lithuanian Government, by D. Kriaučiūnas and A. Svinkūnaitė, acting as Agents,
- the German Government, by T. Henze and J. Möller and by J. Kemper, acting as Agents,
- the French Government, by D. Colas and M.-L. Kitamura, acting as Agents,
- the Latvian Government, by L. Skolmeistere and I. Kalniņš, acting as Agents,
- the European Commission, by A. Steiblytė, N. Yerrell and J. Jokubauskaitė, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

**Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Articles 19, 22 and 29 of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded at Montreal on 28 May 1999 ('the Montreal Convention').
- 2 The request has been made in proceedings between Air Baltic Corporation AS ('Air Baltic') and Lietuvos Respublikos specialiuju tyrimu tarnyba (Special Investigation Service of the Republic of Lithuania) ('the Investigation Service') concerning compensation for damage caused to the latter by the delay of flights carrying two of its agents under a contract for the international carriage of passengers concluded with Air Baltic.

### **Legal context**

- 3 In the third recital in the preamble to the Montreal Convention it is stated inter alia that the States Parties thereto 'recognis[e] the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution'. It is further stated in the fifth recital that they are 'convinced that collective State action for further harmonisation and codification of certain rules governing international carriage by air ... is the most adequate means of achieving an equitable balance of interests'.
- 4 Chapter I of that convention, entitled 'General provisions', includes Article 1, headed 'Scope of application', which provides inter alia:
  1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.
  2. For the purposes of this Convention, the expression international carriage means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. ...
  3. Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State....'
- 5 Chapter II of that convention, entitled 'Documentation and duties of the Parties relating to the carriage of passengers, baggage and cargo', includes Article 3, headed 'Passengers and baggage', paragraph 5 of which provides:

'Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.'
- 6 Chapter III of the Montreal Convention, entitled 'Liability of the carrier and extent of compensation for damage', includes Articles 17 to 37 thereof.
- 7 Article 19 of the Montreal Convention, headed 'Delay', provides:

‘The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.’

- 8 Article 22 of the Montreal Convention lays down the ‘Limits of liability in relation to delay, baggage and cargo’ and provides as follows in paragraph 1:

‘In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights.’

- 9 Article 25 of that convention, entitled ‘Stipulation on limits’, provides:

‘A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.’

- 10 Article 29 of that convention, entitled ‘Basis of claims’, provides:

‘In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.’

- 11 Article 33 of the Montreal Convention, headed ‘Jurisdiction’, provides in paragraph 1:

‘An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.’

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 12 The Investigation Service, acting through a travel agency, purchased flight tickets in order for two of its agents to travel on official business between Vilnius (Lithuania) and Baku (Azerbaijan), via Riga (Latvia) and Moscow (Russia). According to the schedule, the agents concerned would leave Vilnius at 9.55 on 16 January 2011 and would arrive in Baku at 22.40 the same day, and the carrier on the flights between Vilnius, Riga and Moscow would be Air Baltic.

- 13 The Investigation Service’s agents left Vilnius and arrived in Riga on schedule. However, the following flight left Riga and landed in Moscow behind schedule. Consequently, they were unable to connect on to the flight they were scheduled to take from Moscow to Baku. Air Baltic put them on another flight, which left Moscow and arrived in Baku one day later than originally scheduled.

- 14 Since the delay before the agents arrived at their final destination extended the time of their official business travel by over 14 hours, the Investigation Service paid them LTL 1 168.35 (approximately EUR 338) in travel expenses and State social security contributions, as it was required to do under Lithuanian legislation. The Investigation Service then sought to be compensated for that amount by Air Baltic, who did not agree to do so.

- 15 In those circumstances, the Investigation Service brought proceedings before the Vilniaus miesto 1-asis apylinkės teismas (First District Court of the City of Vilnius) seeking to have Air Baltic

ordered to pay it compensation in the amount of LTL 1168.35 (approximately EUR 338) by way of damages. By judgment of 30 November 2012, that court upheld its action.

16 Air Baltic appealed against that judgment before the Vilniaus apygardos teismas (Regional Court, Vilnius), which dismissed the appeal and upheld that judgment by a judgment of 7 November 2013.

17 Air Baltic then lodged an appeal in cassation before the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania).

18 In its appeal, Air Baltic argues that a legal person, such as the Investigation Service, may not invoke the liability of an air carrier as provided for in Article 19 of the Montreal Convention. It states, in essence, that it may be held liable only in respect of the passengers themselves and not other persons, a fortiori when they are not natural persons and cannot therefore be considered consumers.

19 The Investigation Service argues, in essence, that the liability of an air carrier provided for in Article 19 may be relied on by a person who, like it, (i) is party to a contract for the international carriage of passengers concluded with an air carrier and (ii) sustained damage occasioned by a delay.

20 In those circumstances, the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Are Articles 19, 22 and 29 of the Montreal Convention to be understood and interpreted as meaning that an air carrier is liable to third parties, inter alia to the passengers’ employer, a legal person with which a transaction for the international carriage of passengers was entered into, for damage occasioned by a flight’s delay, on account of which the applicant (the employer) incurred additional expenditure connected with the delay (for example, the payment of travel expenses)?

(2) If the first question is answered in the negative, is Article 29 of the Montreal Convention to be understood and interpreted as meaning that those third parties have the right to bring claims against the air carrier on other bases, for example, in reliance upon national law?’

### **The questions referred for a preliminary ruling**

#### *Consideration of the first question*

21 By its first question, the referring court asks, in essence, whether the Montreal Convention, in particular Articles 19, 22 and 29 thereof, must be interpreted as meaning that an air carrier which has concluded a contract of international carriage with an employer of persons carried as passengers, such as the employer at issue in the main proceedings, is liable to that employer for damage occasioned by a delay in flights on which its employees were passengers pursuant to that contract, on account of which the employer incurred additional expenditure.

22 It should be noted as a preliminary point that the Montreal Convention was signed by the European Community on 9 December 1999 and approved on its behalf by the Council on 5 April 2001 in its Decision 2001/539/EC (OJ 2001 L 194, p. 38). That convention entered into force, so far as the European Union is concerned, on 28 June 2004.

23 It follows that the provisions of the Montreal Convention have been an integral part of the European Union legal order from the date on which it entered into force and that, consequently, the

Court has jurisdiction to give a preliminary ruling concerning its interpretation (see, to that effect, judgments in *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraph 36, and *Walz*, C-63/09, EU:C:2010:251, paragraph 20), it being understood that that convention was drawn up in French, English, Arabic, Chinese, Spanish and Russian, with all six language versions being authentic.

- 24 It is to be noted with regard to such an interpretation that, in accordance with settled case-law, an international treaty must be interpreted by reference to the terms in which it is worded and in the light of its objectives. Article 31 of the Vienna Convention of 23 May 1969 on the Law of Treaties, which codifies general international law and is binding on the European Union, states that a treaty is to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose (see, to that effect, judgments in *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraph 40, and *Walz*, C-63/09, EU:C:2010:251, paragraph 23).
- 25 As to the merits, it should be noted that under Article 29 of the Montreal Convention, in the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under that convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out therein, without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. It further provides that in any such action, punitive, exemplary or any other non-compensatory damages are not to be recoverable.
- 26 It follows that, in order to determine whether it is possible to bring an action for damages on the basis of an air carrier's liability under the Montreal Convention, it must first be ascertained whether damage such as that at issue in the main proceedings and relied on in support of the action in liability comes within the scope of that convention.
- 27 In that regard, under Article 19 of the Montreal Convention carriers are bound by a general obligation to compensate for any 'damage occasioned by delay in the carriage by air of passengers, baggage or cargo'.
- 28 Although that article defines which damage is compensable according to the event that caused it, it does not specify in any manner whatsoever who may have suffered that damage.
- 29 In those circumstances, Article 19 of the Montreal Convention, although not providing explicitly for an air carrier to be liable to an employer such as the one at issue in the main proceedings in the event of damage occasioned by delay of flights carried out pursuant to a contract of international carriage binding that employer and carrier, lends itself to being interpreted as applying not only to damage caused to passengers themselves but also to damage suffered by an employer.
- 30 In the light of the case-law referred to in paragraph 24 of this judgment, it must be determined whether that interpretation, drawn from the wording of Article 19 of the Montreal Convention, is supported by the context of which that article forms a part and by the objectives pursued by that convention.
- 31 It should be observed, firstly, that Article 22(1) of the Montreal Convention, in its French-language version, restricts the concept of damage occasioned by delay to damage 'for each passenger' in order to limit the liability of the air carrier.
- 32 However, that provision also refers expressly to Article 19 of the Montreal Convention, so that it cannot be regarded as defining the concept of damage any differently than Article 19.
- 33 The English, Spanish and Russian versions of Article 22(1) of the Montreal Convention differ from

the French version in that they refer to damage arising from delay (damage caused by delay, daño causado por retraso and вред, причиненный при перевозке лиц в результате задержки), without restricting the damage to that suffered by passengers.

34 A reading of the various language versions of Article 22(1) of the Montreal Convention thus tends to support the interpretation set out in paragraph 29 above.

35 Secondly, it follows from Article 1(1) of the Montreal Convention, which defines its scope of application, that that convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward.

36 That provision therefore covers generally persons in their capacity as carried passengers, in the same manner as baggage and cargo in international carriage.

37 It does not, however, define the persons who retain the services of an international air carrier for the purpose of carriage of baggage, cargo or persons and who might, in that capacity, suffer damage.

38 Nevertheless, Article 1(1) of the Montreal Convention should be interpreted in the light of the third recital in the preamble to that convention, which emphasises the importance of ensuring protection of the interests of consumers in international carriage by air, it being understood that the concept of ‘consumer’ for the purposes of that convention should not be confused with the concept of ‘passenger’, but may include persons who are not themselves carried and are therefore not passengers.

39 Given that objective, the lack of reference in the wording of Article 1(1) of the Montreal Convention to persons who retain the services of an international air carrier for the purpose of carriage of their employees as passengers cannot be construed as excluding those persons from the scope of application of that convention and, consequently, any damage they may suffer in association therewith.

40 It thus follows from the analysis of Article 1(1) of the Montreal Convention that damage suffered by such persons are liable to come within the scope of application of the Montreal Convention.

41 Thirdly and lastly, it is apparent from a number of converging provisions of the Montreal Convention that it establishes a link between the air carrier’s liability, on the one hand, and the presence of a contract of international carriage concluded by that air carrier and another party, on the other; whether or not that other party itself is a passenger or not is of no particular relevance for the purposes of the carrier’s liability potentially being engaged in connection with that contract.

42 Thus, Article 1(2) of the Montreal Convention, in defining the concept of international carriage, refers to the ‘agreement between the parties’ concerning the place of departure and the place of destination for the carriage, which indicates that it is envisaged as taking place within a contractual framework.

43 Moreover, as observed in paragraph 25 of this judgment, under Article 29 of the Montreal Convention any action for damages, however founded, whether under that convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out therein, unless the carrier stipulates higher limits of liability in the contract or the contract provides for no limits of liability whatsoever, as allowed under Article 25 thereof.

44 Moreover, Article 33(1) of the Montreal Convention states that such an action may be brought, among other options open to the plaintiff, before the court of the domicile of the carrier with whom

the contract has been made.

- 45 Lastly, Article 3(5) of the Montreal Convention provides that non-compliance with the air carrier's specific obligations to provide information and issue documents in international carriage of persons does not affect the existence or the validity of the contract of carriage, which nonetheless remains subject to the rules of that convention, including those relating to limitation of liability.
- 46 It follows from all the foregoing that, given its wording and the context of which it forms a part and the consumer protection objective pursued by the Montreal Convention, Article 19 thereof must be interpreted as being applicable not only to the damage suffered by a passenger but also to the damage suffered by a person in its capacity as an employer having concluded a contract of international carriage with an air carrier for the purpose of carriage of passengers who are its employees.
- 47 However, as is apparent from paragraph 12 of this judgment, in the main proceedings, the person in question has sought compensation for damage resulting for it from the delay of a flight performed under a contract of international carriage the purpose of which is carriage of not one but two if its employees. In such a situation, the possibility cannot be ruled out that the amount of damages claimed by that person might be higher than what each of the passengers in question might have sought had they brought proceedings as individuals.
- 48 Given the limitation on the air carrier's liability 'for each passenger' in laid down in Article 22(1) of the Montreal Convention, it must therefore be ascertained whether the interpretation of Article 19 thereof as set out in paragraph 46 of this judgment is not called into question by the fact that, in concluding the convention, the parties thereto also intended to achieve an equitable balance between the various interests present, as evidenced by the fifth recital in the preamble thereto.
- 49 Under the requirement that liability be limited 'for each passenger', the amount of damages which may be awarded to the person, such as the one at issue in the main proceedings, who has brought proceedings for compensatory damages resulting from a delay in the international carriage of passengers cannot, in any event, exceed the amount obtained by multiplying the limit laid down in Article 22(1) of the Montreal Convention by the number of passengers carried under the contract concluded by that person and the air carrier or carriers concerned.
- 50 A compensation arrangement such as this is liable to strike an equitable balance between the various interests present. Under the limitation provided for in Article 22(1) of the Montreal Convention, persons such as the one at issue in the main proceedings are placed in a position which is neither more nor less favourable than that of passengers who themselves suffered damage as a result of a delay.
- 51 Air carriers, for their part, are guaranteed that their liability may not be engaged above the limit 'for each passenger' fixed by that provision, since, as set out in paragraph 49 above, the compensation awarded to such persons cannot in any case exceed the cumulative amount of compensation that could be awarded to all of the passengers concerned if they were to bring proceedings individually.
- 52 It follows that the answer to the first question is that the Montreal Convention, in particular Articles 19, 22 and 29 thereof, must be interpreted as meaning that an air carrier which has concluded a contract of international carriage with an employer of persons carried as passengers, such as the employer at issue in the main proceedings, is liable to that employer for damage occasioned by a delay in flights on which its employees were passengers pursuant to that contract, on account of which the employer incurred additional expenditure.

*Consideration of the second question*

- 53 By its second question, which was asked in the event of the first question being answered in the negative, the referring court asks, in essence, whether Article 29 of the Montreal Convention must be interpreted as meaning that an employer such as that at issue in the main proceedings has the right to bring claims against an air carrier on bases other than that convention, for example, in reliance upon national law.
- 54 Given the answer to the first question, there is no need to answer the second question.

**Costs**

- 55 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

**The Convention for the Unification of Certain Rules for International Carriage by Air, concluded at Montreal on 28 May 1999, in particular Articles 19, 22 and 29 thereof, must be interpreted as meaning that an air carrier which has concluded a contract of international carriage with an employer of persons carried as passengers, such as the employer at issue in the main proceedings, is liable to that employer for damage occasioned by a delay in flights on which its employees were passengers pursuant to that contract, on account of which the employer incurred additional expenditure.**

[Signatures]

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\* Language of the case: Lithuanian.