

JUDGMENT OF THE COURT (Third Chamber)

6 May 2010 (\*)

(Air transport – Montreal Convention – Liability of carriers in respect of checked baggage – Article 22(2) – Limits of liability in case of destruction, loss, damage or delay of baggage – Concept of ‘damage’ – Material and non-material damage)

In Case C-63/09,

REFERENCE for a preliminary ruling under Article 234 EC, from the Juzgado de lo Mercantil nº 4 de Barcelona (Spain), made by decision of 20 January 2009, received at the Court on 13 February 2009, in the proceedings

**Axel Walz**

v

**Clickair SA,**

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, R. Silva de Lapuerta, E. Juhász, J. Malenovský (Rapporteur) and D. Šváby, Judges,

Advocate General: J. Mazák,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 10 December 2009,

after considering the observations submitted on behalf of:

- Mr Walz, by J.-P. Mascaray Martí, abogado,
- Clickair SA, by E. Rodés Casas, procuradora, and I. Soca Torres, abogado,
- the European Commission, by L. Lozano Palacios and K. Simonsson, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 January 2010,

gives the following

**Judgment**

- 1 This reference for a preliminary ruling concerns the interpretation of Article 22(2) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001 (OJ 2001 L 194, p. 39; ‘the Montreal Convention’).
- 2 The reference was made in proceedings between Mr Walz, a passenger of the air carrier Clickair SA (‘Clickair’), and Clickair, concerning compensation for the damage resulting from the loss of checked baggage in the context of a flight operated by that company.

## Legal framework

### *European Union legislation*

3 Article 1 of Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air (OJ 1997 L 285, p. 1), as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 (OJ 2002 L 140, p. 2, 'Regulation No 2027/97'), provides:

'This Regulation implements the relevant provisions of the Montreal Convention in respect of the carriage of passengers and their baggage by air and lays down certain supplementary provisions. ...'

4 Article 3(1) of Regulation No 2027/97 states:

'The liability of a Community air carrier in respect of passengers and their baggage shall be governed by all provisions of the Montreal Convention relevant to such liability.'

### *The Montreal Convention*

5 In the third recital in the preamble to the Montreal Convention, the States Parties to that convention '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'.

6 As provided in the fifth recital in that preamble:

'... collective State action for further harmonisation and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests ...'.

7 Chapter III of the Montreal Convention is headed 'Liability of the carrier and extent of compensation for damage'.

8 Article 17 of that convention, headed 'Death and injury of passengers – damage to baggage', provides:

'1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

2. The carrier is liable for damage sustained in case of destruction or loss of, or damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

...'

9 Article 22 of the Montreal Convention lays down the 'Limits of liability in relation to delay, baggage and cargo' as follows:

'...

'2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights [SDR] for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.

...'

## **The main proceedings and the question referred for a preliminary ruling**

- 10 On 14 April 2008, Mr Walz brought an action against Clickair claiming damages from it for the loss of checked baggage in the context of a flight from Barcelona (Spain) to Oporto (Portugal) operated by that company.
- 11 Mr Walz claims total damages of EUR 3 200: EUR 2 700 for the value of the lost baggage and EUR 500 for non-material damage resulting from that loss.
- 12 Clickair opposed Mr Walz's claim, maintaining, inter alia, that the damages claimed exceed the limit of liability for loss of baggage of 1 000 SDR laid down by Article 22(2) of the Montreal Convention.
- 13 Since the dispute arose in relation to the manner in which air transport was provided by a European Union carrier between two cities in different Member States, the Juzgado de lo Mercantil nº 4 de Barcelona (Commercial Court No 4, Barcelona), before which the proceedings were brought, applied Regulation No 2027/97.
- 14 Thus, the referring court observed that, as regards the liability of European Union carriers for the carriage of passengers and their baggage by air in the territory of the Union, Regulation No 2027/97 merely implements the relevant provisions of the Montreal Convention. It therefore considered the interpretation which should be given to certain of those provisions, inter alia Article 22(2) of that convention, which sets the limit of air carriers' liability in the case of loss of baggage.
- 15 In that connection, the referring court refers to the case-law of the Audiencia Provincial (Provincial Court) de Barcelona. In a judgment of 2 July 2008, that court held that the limit referred to did not include both material and non-material damage, but that, on the one hand, material damage was subject to the limit of 1 000 SDR, while on the other, non-material damage was subject to a further limit of another 1 000 SDR, so that the total combined limit for material and non-material damage is 2 000 SDR.
- 16 However, the Juzgado de lo Mercantil nº 4 de Barcelona did not concur with that interpretation and decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:
- 'Does the limit of liability referred to in Article 22(2) of the [Montreal] Convention ... include both non-material damage and material damage resulting from the loss of baggage?'

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

- 17 By its question, the referring court asks, in essence, whether the term 'damage', which underpins Article 22(2) of the Montreal Convention that sets the limit of an air carrier's liability for the damage resulting, inter alia, from the loss of baggage, must be interpreted as including both material and non-material damage.
- 18 First of all, it should be recalled that, as regards the liability of European Union carriers for the carriage of passengers and their baggage by air in the territory of the Union, Regulation No 2027/97, applicable in this case, implements the relevant provisions of the Montreal Convention. It is apparent, in particular, from Article 3(1) of that regulation that the liability of European Union air carriers in respect of passengers and their baggage is to be governed by all provisions of the Montreal Convention relevant to such liability. The referring court therefore seeks an interpretation of the relevant provisions of that convention.
- 19 The Montreal Convention, signed by the Community on 9 December 1999 on the basis of Article 300(2) EC, was approved on its behalf by Decision 2001/539, and entered into force, so far as the Community is concerned, on 28 June 2004.
- 20 Since the provisions of that convention have been an integral part of the European Union legal order from the date on which the convention entered into force, the Court has jurisdiction to give a preliminary ruling concerning its interpretation (see, by analogy, Case 181/73 *Haegeman* [1974] ECR 449, paragraphs 2, 4 and 5, and, in relation to the Montreal Convention, Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 36, and Case C-549/07 *Wallentin-Hermann* [2008] ECR I-11061, paragraph 28).
- 21 Since the Montreal Convention does not contain any definition of the term 'damage', it must be emphasised at the outset that, in the light of the aim of that convention, which is to unify the rules for international carriage by air, that term must be given a uniform and autonomous interpretation, notwithstanding the different meanings given to that concept in the domestic laws of the States Parties to that convention.

- 22 In those circumstances, the term 'damage', contained in an international agreement, must be interpreted in accordance with the rules of interpretation of general international law, which are binding on the European Union.
- 23 In that connection, Article 31 of the Convention on the Law of Treaties, signed in Vienna on 23 May 1969, which codifies rules of general international law, states that a treaty must 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, in particular, Opinion 1/91 [1991] ECR I-6079, paragraph 14; Case C-312/91 *Metalsa* [1993] ECR I-3751, paragraph 12; Case C-416/96 *Eddline El-Yassini* [1999] ECR I-1209, paragraph 47, and Case C-268/99 *Jany and Others* [2001] ECR I-8615, paragraph 35).
- 24 First of all, it must be stated that, for the purposes of interpreting the Montreal Convention, the 'préjudice' referred to in both the heading of Chapter III and Article 17(1) of the French-language version of that convention must be regarded as synonymous with the 'dommage' referred to in the heading of Article 17 and in Article 17(2) of the convention. Indeed, it is apparent from other authentic language versions of the Montreal Convention that an identical term ('daño' in the Spanish-language version; 'damage' in the English-language version) is used without distinction to designate both the 'préjudice' and the 'dommage' of the French-language version. In addition, although like the French-language version the Russian-language version of the convention uses two terms, namely 'вред' (damage) and 'повреждение' (damaging), those two terms, derived from a common stem and used without distinction, must also be regarded as synonymous for the purposes of interpreting the convention.
- 25 Next, as regards the context in which the term 'damage' is referred to in Article 17 of the Montreal Convention, it must be emphasised that, as has been noted in the previous paragraph of this judgment, that term is also found in the very heading of Chapter III of which Article 17 forms part. Consequently, in the absence of any indication to the contrary in that convention, the term 'damage' must bear an identical meaning throughout that chapter.
- 26 In addition, Article 22 of the Montreal Convention, which itself forms part of Chapter III and thus the relevant context, limits a carrier's liability in the case of destruction, loss, damage or delay, which implies that the nature of the damage sustained by a passenger is irrelevant in that regard.
- 27 Lastly, in order to determine the ordinary meaning to be given to the term 'damage' in accordance with the rule of interpretation referred to at paragraph 23 above, it should be recalled that there is a concept of damage which does not originate in an international agreement and is common to all the international law sub-systems. Thus, Article 31(2) of the Articles on Responsibility of States for Internationally Wrongful Acts, drawn up by the International Law Commission of the United Nations, and of which the General Assembly of that organisation took note in its Resolution 56/83 of 12 December 2001, provides that '[i]njury includes any damage, whether material or moral ...'.
- 28 The two aspects of the concept of damage apparent from that Article 31(2), which aims precisely to codify the current state of general international law, may thus be regarded as jointly expressing the ordinary meaning to be given to the concept of damage in international law. In addition, it must be noted that there is nothing in the Montreal Convention to indicate that the contracting States intended to attribute a special meaning to the concept of damage, in the context of a harmonised system of liability in private international air law, and to derogate from its ordinary meaning. Therefore, the concept of damage, as arising under general international law, remains applicable in the relations between the parties to the Montreal Convention, in accordance with Article 31(3)(c) of the Convention on the Law of Treaties, cited above.
- 29 It follows that the term 'damage', referred to in Chapter III of the Montreal Convention, must be construed as including both material and non-material damage.
- 30 That conclusion is supported by the objectives which governed the adoption of the Montreal Convention.
- 31 In that connection, it should be noted that, in accordance with the third recital in the preamble to the Montreal Convention, the States Parties to that convention, recognising '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', decided to lay down a system of strict liability for air carriers.
- 32 Thus, with regard, more specifically, to damage sustained in case of destruction or loss of, or damage to, checked baggage, under Article 17(2) of the Montreal Convention a carrier is presumed liable for that damage, 'upon condition only that the event which caused the destruction, loss or damage took place on

board the aircraft or during any period within which the checked baggage was in the charge of the carrier’.

- 33 A system of strict liability of that kind implies, however, as is apparent, moreover, from the fifth recital in the preamble to the Montreal Convention, that an ‘equitable balance of interests’ be maintained, in particular as regards the interests of air carriers and of passengers.
- 34 In order to maintain such a balance, the contracting States agreed, in certain situations – in particular, in accordance with Article 22(2) of the Montreal Convention, in the case of destruction, loss, damage or delay of baggage – to limit the liability of air carriers. The resulting limitation of compensation must be applied ‘per passenger’.
- 35 It follows that, in the various situations in which a carrier is held liable pursuant to Chapter III of the Montreal Convention, the ‘equitable balance of interests’ referred to requires that there be clear limits on compensation relating to the total damage sustained by each passenger in each of those situations, regardless of the nature of the damage caused to that passenger.
- 36 Indeed, a limitation of the compensation so designed enables passengers to be compensated easily and swiftly, yet without imposing a very heavy burden of damages on air carriers, which would be difficult to determine and to calculate, and would be liable to undermine, and even paralyse, the economic activity of those carriers.
- 37 It follows that the various limitations of compensation referred to in Chapter III of the Montreal Convention, including that set in Article 22(2) of that convention, must be applied to the total damage caused, regardless of whether that damage is material or non-material.
- 38 In addition, Article 22(2) of the Montreal Convention provides that a passenger may make a special declaration of interest at the time when the checked baggage is handed over to the carrier. That possibility confirms that the limit of an air carrier’s liability for the damage resulting from the loss of baggage, laid down in that article, is, in the absence of any declaration, an absolute limit which includes both non-material and material damage.
- 39 In the light of the foregoing considerations, the answer to the question referred is that the term ‘damage’, which underpins Article 22(2) of the Montreal Convention that sets the limit of an air carrier’s liability for the damage resulting, inter alia, from the loss of baggage, must be interpreted as including both material and non-material damage.

### **Costs**

- 40 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 term ‘damage’, which underpins Article 22(2) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, that sets the limit of an air carrier’s liability for the damage resulting, inter alia, from the loss of baggage, must be interpreted as including both material and non-material damage.**

[Signatures]