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OPINION OF ADVOCATE GENERAL
MAZÁK
delivered on 25 June 2009 (1)

Case C-301/08

Irène Bogiatzi, married name Ventouras
v
Deutscher Luftpool
Luxair SA
European Communities
State of the Grand Duchy of Luxembourg
Le Foyer Assurances SA

(Reference for a preliminary ruling from the Cour de cassation (Luxembourg))

(Regulation (EC) No 2027/97 – Article 29 of the Warsaw Convention – Liability of a Community air carrier for damage sustained by a passenger in the event of an accident – Time-limits for bringing an action for damages – International agreement concluded by the Member States – Jurisdiction of the Court under Article 234 EC to interpret Article 29 of the Warsaw Convention – Effect of a Community regulation on an international agreement – Article 307 EC)

I – Introduction

1. By decision of 26 June 2008, received at the Court on 7 July 2008, the Cour de cassation (Court of Cassation), Luxembourg, referred a number of questions to the Court of Justice under Article 234 EC for a preliminary ruling on the interpretation of Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents (2) ('Regulation No 2027/97'), in connection with the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929 ('the Warsaw Convention').

2. The questions referred were raised in proceedings brought by Ms Irène Bogiatzi against Luxair SA and Deutscher Luftpool, an association under German law, for damages in respect of an accident she had suffered while boarding a Luxair aeroplane on 21 December 1998 ('the material time').

3. With a view to ascertaining whether Ms Bogiatzi's right to bring an action for damages has been extinguished, the referring court essentially wishes to know whether Article 29 of the Warsaw Convention, which lays down a limitation period of two years in respect of such claims, is applicable in the circumstances of the case before it, even though Regulation No 2027/97 makes no express provision to that effect, and, if so, whether that period can be interrupted, suspended or waived.

4. In that regard, however, the first question referred raises a preliminary issue, concerning the extent, if any, of the Court's jurisdiction under Article 234 EC to interpret the Warsaw Convention.

II – Legal framework

A – *The Warsaw Convention*

5. The Warsaw Convention contains, among other things, rules on the liability of air carriers in the event of accidents. It has been amended several times, in particular by the protocol of The Hague of 28 September 1955, the Convention of Guadalajara of 18 September 1961 and the four additional protocols of Montreal of 25 September 1975.

6. Although the Community is not itself a party to the Warsaw Convention, at the material time all 15 Member States had acceded to it.

7. Article 29 of the Warsaw Convention, in the version in force at the material time, provides in respect of actions for damages:

'1. The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.'

8. The Convention for the Unification of Certain Rules for International Carriage by Air ('the Montreal Convention'), (3) which was intended to modernise and consolidate the Warsaw Convention and the related instruments, was signed in Montreal on 28 May 1999. It was also signed by the Community on 9 December 1999 and approved on behalf of the Community by Council Decision 2001/539/EC of 5 April 2001 on the conclusion of the Montreal Convention. (4)

9. The Montreal Convention, to which both the Community and the 27 Member States are parties, entered into force on 4 November 2003, that is to say, after the material time. It should be noted, however, that Article 35 of that convention, entitled 'Limitation of actions', is identical to Article 29 of the Warsaw Convention.

B – *Regulation No 2027/97*

10. The preamble to Regulation No 2027/97, in the version in force at the material time, states, so far as is relevant for present purposes:

'(1) ... in the framework of the common transport policy, it is necessary to improve the level of protection of passengers involved in air accidents;

(2) ... the rules on liability in the event of accidents are governed by the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, or that Convention as amended at The Hague on 28 September 1955 and the Convention done at Guadalajara on 18 September 1961, whichever may be applicable each being hereinafter referred to, as applicable, as the "Warsaw Convention"; ... the Warsaw Convention is applied worldwide for the benefit of both passengers and air carriers;

(3) ... the limit set on liability by the Warsaw Convention is too low by today's economic and social standards and often leads to lengthy legal actions which damage the image of air transport; ... as a result Member States have variously increased the liability limit, thereby leading to different terms and conditions of carriage in the internal aviation market;

(4) ... in addition the Warsaw Convention applies only to international transport; ... in the internal aviation market, the distinction between national and international transport has been eliminated; ... it is therefore appropriate to have the same level and nature of liability in both national and international transport;

- (5) ... a full review and revision of the Warsaw Convention is long overdue and would represent, in the long term, a more uniform and applicable response, at an international level, to the issue of air carrier liability in the event of accidents; ... efforts to increase the limits of liability imposed in the Warsaw Convention should continue through negotiation at multilateral level;

...

- (7) ... it is appropriate to remove all monetary limits of liability within the meaning of Article 22(1) of the Warsaw Convention or any other legal or contractual limits, in accordance with present trends at international level;

...'

11. Article 2(2) of Regulation No 2027/97 provides:

'Concepts contained in this Regulation which are not defined in paragraph 1 shall be equivalent to those used in the Warsaw Convention.'

12. Article 5(1) and (3) provide:

'1. The Community air carrier shall without delay, and in any event not later than 15 days after the identity of the natural person entitled to compensation has been established, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the hardship suffered.

...

3. An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of Community air carrier liability, but is not returnable, except in the cases prescribed in Article 3(3) or in circumstances where it is subsequently proved that the person who received the advance payment caused, or contributed to, the damage by negligence or was not the person entitled to compensation.'

13. After the material time, Regulation No 2027/97 was amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 ('Regulation No 889/2002'). (5)

III – Facts, procedure and the questions referred

14. As emerges from the order for reference, Ms Bogiatzi suffered a fall on the tarmac at Luxembourg airport while boarding a Luxair aeroplane on 21 December 1998.

15. On 22 December 2003, Ms Bogiatzi brought proceedings against Deutscher Luftpool and Luxair before the tribunal d'arrondissement de Luxembourg (Luxembourg District Court), claiming on the basis of Regulation No 2027/97 and the Warsaw Convention that those companies should be ordered jointly and severally to pay compensation in respect of the damage which she had suffered.

16. After noting that the application had been lodged five years after the accident, the tribunal d'arrondissement de Luxembourg declared that the action was time-barred, since it had been brought after the expiry of the two-year limitation period laid down in Article 29 of the Warsaw Convention for the bringing of actions for damages. In that regard, the tribunal took the view that that limitation period is predetermined and may not be suspended or interrupted.

17. On appeal by Ms Bogiatzi, the cour d'appel (Court of Appeal), Luxembourg, ruled by judgment of 28 March 2007 that the appeal was inadmissible in so far as it had been brought against the insurance company, Le Foyer Assurances SA, and the State of Luxembourg, but essentially upheld the decision of the tribunal as to the remainder.

18. In the main proceedings, it falls to the Cour de cassation to decide on the appeal which Ms Bogiatzi lodged against that judgment in so far as it rules that her right of action against the air carrier Luxair and its insurer Deutscher Luftpool has been extinguished. The appeal is based on a number of pleas in law

alleging, *inter alia*, infringement of Regulation No 2027/97. In particular, Ms Bogiatzi appeals against the application, in a situation governed by that regulation, of the two-year limitation period laid down in Article 29 of the Warsaw Convention.

19. Against that background, the Cour de cassation decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Does the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as amended at The Hague on 28 September 1955, to which Regulation (EC) No 2027/97 refers, form part of the rules of the Community legal order which the Court of Justice has jurisdiction to interpret under Article 234 EC?

2. Must Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents, in the version applicable at the time of the accident, namely 21 December 1998, be interpreted as meaning that, with regard to issues for which no express provision is made, the provisions of the Warsaw Convention, in this case Article 29, continue to apply to a flight between Member States of the Community?

3. If the answer to the first and second questions is in the affirmative, is Article 29 of the Warsaw Convention, in conjunction with Regulation (EC) No 2027/97, to be interpreted as meaning that the period of two years laid down in that article can be suspended or interrupted or that the carrier or its insurer can waive that time-limit, by an act deemed by the national court to constitute recognition of liability?'

IV – Legal analysis

A – Main arguments of the parties

20. In the present proceedings, observations have been submitted by Ms Bogiatzi, Luxair, the French Government and the Commission. All of those parties were also represented at the hearing on 19 March 2009.

21. As regards the first question, Ms Bogiatzi maintains that the Court has jurisdiction under Article 234 EC to interpret the Warsaw Convention. Since Regulation No 2027/97 refers to that convention, the latter must be regarded as akin to an act of an institution of the Community and as forming part of the Community legal order. Moreover, an interpretation by the Court is required in the interests of uniformity, given that the objective of Regulation No 2027/97 is to achieve harmonisation in the field of air carrier liability.

22. The Commission and the French Government, by contrast, contend that the first question should be answered in the negative. As the Community is not a party to the Warsaw Convention, the latter cannot be regarded as akin to an act of an institution of the Community within the meaning of Article 234 EC, which the Court would have jurisdiction to interpret.

23. In addition, the French Government notes, specifically, that the Community has not assumed powers previously exercised by the Member States in the field to which the Warsaw Convention applies, which means that it cannot be argued that its provisions have the effect of binding the Community within the meaning of the line of authority flowing from *International Fruit Company and Others*. (6)

24. The French Government and the Commission concede, however, that the fact that Regulation No 2027/97 makes reference to the Warsaw Convention is not without implications for the jurisdiction of the Court under Article 234 EC.

25. In that regard, the Commission maintains that the Court has jurisdiction to interpret only those provisions of the Warsaw Convention to which Regulation No 2027/97 refers. Similarly, the French Government argues that, on account of those references in Regulation No 2027/97, the Court may interpret the Warsaw Convention in order to interpret the provisions of the regulation in the light of that convention. (7)

26. According to Luxair, the Court is not required in the present case to interpret the Warsaw Convention, but to apply Article 307 EC, under which agreements concluded before the EC Treaty are not to

affect provisions of Community law.

27. As regards the second question, Ms Bogiatzi submits, essentially, that the Warsaw Convention – and, specifically, Article 29 thereof – applies only where express provision to that effect is made in Regulation No 2027/97. Failing an express reference to the relevant provisions of the Warsaw Convention, that regulation must be given an autonomous interpretation. As is apparent from the legislative history of Regulation No 2027/97 and from recital 7, the Community legislature intended air carrier liability to be governed solely by that regulation and to remove the limits placed on liability by the Warsaw Convention. If Article 29 of the Warsaw Convention continued to apply, the objective pursued by the regulation – namely to harmonise the conditions of liability – would be compromised.

28. Finally, according to Ms Bogiatzi, the time-limits for bringing an action for damages cannot be left to the procedural autonomy of the Member States. In any event, the two-year limitation period laid down in the Warsaw Convention does not meet the requirements of equivalence and effectiveness.

29. By contrast, Luxair, the French Government and the Commission essentially contend that the time-limits within which claims for damages must be brought is a matter which continues to be governed by Article 29 of the Warsaw Convention.

30. Luxair observes in this context that Regulation No 2027/97 is silent as regards those time-limits. There is thus no conflict between that regulation and the Warsaw Convention. As the Warsaw Convention has also been ratified by States which are not Member States of the European Union and which remain bound by the provisions of the convention, including Article 29 thereof, the Court must recognise the primacy of that convention in the present case.

31. According to the French Government, it does not appear that Regulation No 2027/97 was intended to replace the Warsaw Convention in its entirety; nor, in view of the principle of legal certainty, can such a role be attributed to the regulation by implication. Rather, as is clear from its preamble, Regulation No 2027/97 is intended to improve the level of protection of passengers who fall victim to accidents, but only in certain respects and not including, for instance, the issue of procedural time-limits, which the regulation does not address.

32. The Commission points out, in addition, that according to settled case-law, in the absence of Community rules in the field, it is in principle for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law. (8) In so far as the Member States are parties to the Warsaw Convention, the procedural rules laid down therein can be applied in the domestic legal order in a case such as that before the referring court. The Commission doubts, finally, whether it is reasonable to suppose that Regulation No 2027/97 would preclude the application of the procedural rule at issue without providing an alternative.

33. As regards the third question, Ms Bogiatzi suggests that it should be answered in the affirmative. In support of her position, she refers, in particular, to the interpretation of Article 29 of the Warsaw Convention by the French Cour de cassation (Court of Cassation) and the subject-matter and purpose both of the Warsaw Convention and of Regulation No 2027/97, which would in her view be compromised if that provision were to be construed narrowly. Thus, whereas those instruments seek to encourage rapid and out-of-court compensation for the victims of accidents, the attempt to reach an amicable settlement entails considerable risks for the victim concerned if the limitation period laid down in Article 29 of the Warsaw Convention genuinely cannot be suspended, interrupted or waived.

34. Luxair, the French Government and the Commission essentially contend that, as the Court has no jurisdiction to interpret the Warsaw Convention, it is for the national courts to determine whether – and, if so, under which conditions – the time-limits laid down in Article 29 can be suspended, interrupted or waived.

35. The Commission emphasises that, pursuant to the principle of procedural autonomy, the national courts must in any event ensure that the time-limits meet the requirements of equivalence and effectiveness.

B – *Appraisal*

1. Preliminary remarks

36. By the first question, the preliminary issue is raised as to whether the Court has jurisdiction under Article 234 EC to interpret the Warsaw Convention and, specifically, in view of the subject-matter of the case before the referring court, Article 29 thereof. Plainly, a negative answer to that question entails the inadmissibility of the third question, which concerns the interpretation of that provision. The second question, by contrast, is presented as a question on the interpretation of Regulation No 2027/97 and thus clearly relates to a matter of Community law on which the Court may in principle rule. By that question, it is essentially sought to determine whether Regulation No 2027/97 must be understood as precluding the application of Article 29 of the Warsaw Convention in the circumstances of the case before the referring court.

37. Thus, what is at issue here is, more generally speaking, the relationship between the possible obligations of a Member State under an act of secondary Community law and those imposed by an international agreement which it has entered into with various other Member States and third countries.

38. In that regard, it should be noted that the interplay between obligations possibly arising under Community law (in particular, under Regulation No 2027/97) and those arising under Article 29 of the Warsaw Convention as regards the relevant time-limits may in fact be more nuanced than the questions referred appear to suggest. Thus, first, even supposing that Regulation No 2027/97 does not preclude the national courts from applying Article 29 of the Warsaw Convention in the framework of actions for damages governed – albeit not specifically as regards the aspect of procedural time-limits – by Regulation No 2027/97, there may be certain requirements under Community law, such as those developed with regard to the concept of ‘procedural autonomy’, which must be observed in that context. Secondly, even if it should be found that the Court has no jurisdiction under Article 234 EC to interpret the Warsaw Convention, that does not mean that the Court may not take account of that convention for the purposes of interpreting Regulation No 2027/97.

2. Jurisdiction of the Court to interpret Article 29 of the Warsaw Convention

39. It should be recalled at the outset that, under Article 300(7) EC, agreements concluded under the conditions set out in that article are to be binding on the institutions of the Community and on Member States.

40. Furthermore, it appears from settled case-law of the Court in this context that an agreement concluded by the Council under Article 300 EC is to be regarded, so far as the Community is concerned, as akin to an act of an institution within the meaning of point (b) of the first paragraph of Article 234 EC and that as soon as such an agreement enters into force, its provisions form an integral part of the Community legal system. Consequently, within the framework of that system, the Court has jurisdiction to give preliminary rulings concerning the interpretation of such an agreement. (9)

41. This would suggest that, since the Community is not a party to the Warsaw Convention, that convention cannot, in principle, have become an integral part of the Community legal order which the Court has jurisdiction to interpret under Article 234 EC.

42. Admittedly, in *International Fruit Company and Others*, the Court equated, subject to certain conditions, the situation where the Community has formally concluded, under Article 300 EC, an international agreement with the situation where the provisions of an international agreement have become binding on the Community because, under the EC Treaty, it has assumed the powers previously exercised by the Member States in the field to which the agreement concerned applies. (10)

43. However, as regards the field of international carriage by air, the field to which the Warsaw Convention applies, there does not appear to have been a full transfer of the powers previously exercised by the Member States, as envisaged by that case-law, which would have made the Convention’s provisions binding upon the Community. (11)

44. Nor, next, can it reasonably be argued – and the parties to the proceedings before the referring court have not attempted to do so – that the provisions of the Warsaw Convention, in particular Article 29 thereof, would be legally binding on the Community on the grounds that they constitute an expression of customary rules of international law. (12)

45. Finally, the fact that, in its preamble and in Article 2(2), Regulation No 2027/97 refers to the Warsaw Convention is not sufficient to enable Article 29 thereof to be regarded as forming an integral part of the Community legal order which the Court has jurisdiction to interpret under Article 234 EC.

46. Admittedly, when interpreting Community law, the Court is not prevented from taking account in various contexts also of relevant rules of international law, in particular international agreements, which are not as such formally binding on the Community.

47. This is most evidently the case where – and to the extent that – a provision of Community law expressly refers to a rule of international law and ‘incorporates’ it into the Community rule concerned. (13) Article 2(2) of Regulation No 2027/97 provides an example: under the terms of that provision, the Court must, when confronted with a concept which is not defined in Article 2(1) of that regulation, give that concept the same meaning as that used in the Warsaw Convention and to that extent ‘interpret’ that convention.

48. Moreover, in order to interpret Community law, the Court considers relevant provisions of international law even in the absence of such a reference. This reflects the fact that the Community endeavours, in general, to exercise its powers in conformity with international law and, more specifically, as is required under the principle of cooperation in good faith enshrined in Article 10 EC, with due regard to the international obligations binding on its Member States. (14)

49. In the present case, however, it is common ground that Regulation No 2027/97 is silent on the issue of time-limits for actions for damages; nor does that regulation make specific reference to Article 29 of the Warsaw Convention. To my mind, therefore, an interpretation of that provision cannot be presented as ‘incidental’ to the interpretation of Regulation No 2027/97. Accordingly, the present issue of the jurisdiction of the Court to interpret, within the framework of a preliminary ruling, Article 29 of the Warsaw Convention must, in my view, be distinguished from the aforementioned situations in which the Court uses international agreements as an aid to construction.

50. In the light of the foregoing, the first question referred should be answered to the effect that Article 29 of the Warsaw Convention does not form part of the rules of Community law which the Court of Justice has jurisdiction to interpret under Article 234 EC.

51. It follows that it is not incumbent upon the Court to reply to the third question referred.

3. The time-limits for bringing actions for damages

52. In order to assess how far, in view of Regulation No 2027/97, the application of Article 29 of the Warsaw Convention may be precluded in national proceedings, it may be useful first to recall some aspects of the relationship between the legal orders and instruments involved.

53. In that regard, it follows from Article 300(7) EC and the settled case-law of the Court that international agreements to which the Community is a party take precedence over provisions of secondary Community legislation and – since they form an integral part of the Community legal order – over conflicting national law. (15)

54. However, since, as was stated above, the provisions of the Warsaw Convention at issue in the present case are not binding on the Community, they cannot, in the event of a conflict of laws, prevail over the provisions of Regulation No 2027/97.

55. Rather, it is plain that, pursuant to the principle of primacy of Community law, the national courts are under a duty to give full effect to the provisions of a Community regulation and to refuse to apply any conflicting provision of domestic law, including, in principle, rules resulting from international agreements by which the Member State concerned is bound. (16) Accordingly, in cases where the provisions of Regulation No 2027/97 conflict with those of the Warsaw Convention, the former would, in principle, take precedence over the latter and thereby exclude, in proceedings before the national courts, application of the conflicting relevant rule under the convention.

56. That statement of primacy must, of course, be qualified in the light of the first paragraph of Article 307 EC, which provides that the rights and obligations arising from agreements concluded before the entry

into force of the Treaty between one or more Member States on the one hand, and one or more third countries on the other, are not to be affected by the provisions of the Treaty. Under that provision, which is in principle applicable to the Warsaw Convention since the latter constitutes a pre-existing agreement concluded between the Member States and third States, a conflicting Community rule may be deprived of effect by an earlier international agreement concluded by a Member State. Thus, a Member State may under that provision depart from obligations arising under Community law, albeit, according to the rather narrow interpretation given to that provision by the Court, only to the extent strictly necessary in order to comply with its international obligations vis-à-vis third States. (17)

57. In the present case, it must be noted, however, that there does not appear in fact to be any direct conflict to be resolved along those lines between Regulation No 2027/97 and the Warsaw Convention so far as the time-limit laid down in Article 29 of that convention is concerned, because, in my view, that matter is not as such disposed of by the regulation.

58. In that regard, apart from the fact that there is clearly no express provision in Regulation No 2027/97 dealing with the issue of time-limits for actions for damages, it also does not appear from the subject-matter and purpose of that regulation that it was indeed intended to address time-limits or, more specifically, to affect the time-limit laid down in Article 29 of the Warsaw Convention.

59. While it is true that – as is clear from its preamble, in particular the recitals 1 and 2 thereof – Regulation No 2027/97 is intended to improve the level of protection guaranteed under the Warsaw Convention for passengers involved in air accidents, as regards, more specifically, the rules on the liability of air carriers in the event of accidents, it should be noted that reference is made in the recitals in the preamble to the regulation to certain material aspects of the liability of Community air carriers, such as its financial limits and the possibility for the air carrier to rely on the defences available under Article 20(1) of the Warsaw Convention. (18) What is more, those matters are each reflected in the enacting terms of the regulation. By contrast, no reference is made in the preamble to the regulation – let alone in its enacting terms – to the procedural aspects of bringing an action for damages, such as the time-limit laid down in Article 29 of the Warsaw Convention.

60. In those circumstances, there is nothing in the regulation which would enable it to be interpreted as governing, at least implicitly, the time-limits for bringing actions for damages and, in consequence, as precluding the application of the time-limit laid down in Article 29 of the Warsaw Convention. Indeed, as the Commission has rightly remarked, it can hardly be assumed that Regulation No 2027/97 seeks to exclude the application of that procedural rule if, at the same time, it does not provide for any alternative.

61. To the extent, therefore, that Regulation No 2027/97 does not regulate the question of the time-limits within which actions for damages must be brought in the event of damage sustained in relation to Community air carriers, it must be concluded, in accordance with settled case-law of the Court concerning the procedural autonomy of the Member States, that, in principle, it is for the domestic legal system of each Member State to lay down the procedural rules governing that matter. (19)

62. It follows that, in principle, there is nothing to prevent a Member State from applying, in domestic proceedings in that field, rules such as that laid down in Article 29 of the Warsaw Convention, which flow from international agreements by which it is bound.

63. However, in so far as actions for damages fall within the ambit of the liability regime established by Regulation No 2027/97 and, accordingly, constitute actions for safeguarding rights which individuals derive from Community law, Member States are under a Community law obligation to ensure that the applicable procedural rules are no less favourable than those governing similar domestic actions (principle of equivalence) and that they are not framed in such a way as to make it excessively difficult or impossible in practice to exercise the rights conferred by Community law (principle of effectiveness). (20)

64. In that regard, it is in principle not for the Court but for the national court to determine exactly which obligations are imposed on the Member State concerned by Article 29 of the Warsaw Convention in relation to the time-limits governing actions for damages and to ascertain the extent to which the application of those time-limits may thwart compliance with the above principles. (21) Suffice it, nevertheless, to observe that the Court has recognised on a number of occasions that it is compatible with Community law to lay down, in the interests of legal certainty, reasonable time-limits for bringing proceedings and that a time-limit of two years, as laid down in Article 29 of the Warsaw Convention, does

not to my mind appear liable to render excessively difficult or impossible in practice the exercise of the right to claim damages under Regulation No 2027/97. (22)

65. In the light of the foregoing, the second question referred should be answered to the effect that Regulation No 2027/97 is not to be interpreted, so far as regards the time-limits for bringing actions for damages in respect of injury sustained in the context of a flight between Member States governed by that regulation, as precluding national courts from applying Article 29 of the Warsaw Convention in so far as that time-limit is consistent with the Community principles of effectiveness and equivalence.

V – Conclusion

66. I therefore propose that the Court answer the questions referred as follows:

- Article 29 of the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, does not form part of the rules of Community law which the Court of Justice has jurisdiction to interpret under Article 234 EC.
- Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents is not to be interpreted, so far as regards the time-limits for bringing actions for damages in respect of injury sustained in the context of a flight between Member States governed by that regulation, as precluding national courts from applying Article 29 of the Warsaw Convention in so far as that time-limit is consistent with the Community principles of effectiveness and equivalence.

1 – Original language: English.

2 – OJ 1997 L 285, p. 1.

3 – OJ 2001 L 194, p. 39.

4 – OJ 2001 L 194, p. 38.

5 – OJ 2002 L 140, p. 2.

6 – Joined Cases 21/72 to 24/72 [1972] ECR 1219, paragraph 16, and Case C-308/06 *Intertanko and Others* [2008] ECR I-4057, paragraphs 48 and 49.

7 – See, inter alia, Case C-154/02 *Nilsson* [2003] ECR I-12733, paragraph 39.

8 – The Commission refers, inter alia, to Case C-2/06 *Kempter* [2008] ECR I-411, paragraph 57.

9 – See to that effect, inter alia, Case 181/73 *Haegeman* [1974] ECR 449, paragraph 5; Case C-321/97 *Andersson* [1999] ECR I-3551, paragraph 26; and Case C-431/05 *Merck Genéricos* [2007] ECR I-7001, paragraph 31.

10 – See, to that effect, *International Fruit Company and Others*, cited in footnote 6, paragraphs 10 to 18; Case 38/75 *Nederlandse Spoorwegen* [1975] ECR 1439, paragraph 21; Case C-379/92 *Peralta* [1994] ECR I-3453, paragraph 16; and *Intertanko and Others*, cited in footnote 6, paragraph 49.

11 – It should be noted in this respect, first, that the adoption of Regulation No 2027/97 does not in itself constitute sufficient evidence that such a transfer of the relevant powers has taken place, since the scope of that regulation is clearly narrower than that of the Warsaw Convention. Thus, as is clear from its preamble and from the enacting terms, Regulation No 2027/97 seeks to enhance the protection of passengers vis-à-vis Community air carriers as

regards liability for damage sustained in the event of death or injury, whereas the Warsaw Convention governs also carriage of baggage or cargo. Secondly, it should be observed that the Montreal Convention, which has replaced the Warsaw Convention, was concluded by mixed agreement of the Community and its Member States on the assumption that there was still shared competence in the matter of international carriage by air covered by the Montreal Convention (see recital 4 in the preamble to Decision 2001/539, cited in footnote 4). There is, finally, no indication that the Community has indeed acted as the successor to the Member States in connection with the Warsaw Convention or that the other parties to that convention have recognised the Community in that role.

12 – See, in this context, Case C-162/96 *Racke* [1998] ECR I-3655, paragraph 45, and *Intertanko and Others*, cited in footnote 6, paragraph 51.

13 – See to that effect, for example, *Nilsson*, cited in footnote 7, paragraph 39, and Case C-510/99 *Tridon* [2001] ECR I-7777, paragraph 25.

14 – See, to that effect, Case C-286/90 *Poulsen and Diva Navigation* [1992] ECR I-6019, paragraphs 9 and 10, and *Intertanko and Others*, cited in footnote 6, paragraph 52.

15 – See, to that effect, Case C-61/94 *Commission v Germany* [1996] ECR I-3989, paragraph 52; Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 35; and Joined Cases 194/85 and 241/85 *Commission v Greece* [1988] ECR 1037, paragraphs 28 to 32.

16 – See to that effect, inter alia, Case 106/77 *Simmenthal* [1978] ECR 629, paragraph 21.

17 – See to that effect, inter alia, Case C-124/95 *Centro-Com* [1997] ECR I-81, paragraphs 55 to 57; Case C-158/91 *Levy* [1993] ECR I-4287, paragraphs 11 to 13; Case 812/79 *Burgoa* [1980] ECR 2787, paragraph 6; and Case 10/61 *Commission v Italy* [1962] ECR 1. According to that case-law, the purpose of Article 307 EC is to ensure that a Member State is able to respect, in accordance with the principles of international law, the rights of third countries under a prior agreement and to perform its obligations thereunder.

18 – See recitals 3, 7 and 8, respectively, in the preamble to Regulation No 2027/97.

19 – See to that effect, in particular, Joined Cases 205/82 to 215/82 *Deutsche Milchkontor and Others* [1983] ECR 2633, paragraph 17; Case 33/76 *Rewe-Zentralfinanz and Rewe-Zentral* [1976] ECR 1989, paragraph 5; and Case C-312/93 *Peterbroeck* [1995] ECR I-4599, paragraph 12.

20 – See to that effect, inter alia, *Kempter*, cited in footnote 8, paragraph 57; Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 43; and Case C-78/98 *Preston and Others* [2000] ECR I-3201, paragraph 31.

21 – See *Centro-Com*, cited in footnote 17, paragraph 58, and Case C-324/93 *Evans Medical and Macfarlan Smith* [1995] ECR I-563, paragraph 29.

22 – See, in this context, *Kempter*, cited in footnote 8, paragraph 58 and the case-law cited therein. No particular problem appears to arise in the circumstances of the present case with regard to the principle of equivalence, in so far as the same time-limit – laid down in Article 29 of the Warsaw Convention – would be applicable, both within and outside a Community law context, to an action seeking compensation for damage sustained in the context of a flight between Member States, that is to say, even if liability for the damage sustained were not governed by Regulation No 2027/97.