



C/2024/3288

3.6.2024

Judgment of the Court (Third Chamber) of 11 April 2024 (request for a preliminary ruling from the Juzgado de lo Mercantil n.o 1 de Palma de Mallorca – Spain) – Eventmedia Soluciones SL v Air Europa Líneas Aéreas SAU

(Case C-173/23, ⁽¹⁾ Air Europa Líneas Aéreas)

(Reference for a preliminary ruling – Air transport – Montreal Convention – Article 19 – Compensation for damage occasioned by delay in the carriage of baggage – Assignment to a commercial company of the passenger's claim against the air carrier – Contractual clause prohibiting such an assignment – Directive 93/13/EC – Unfair terms in consumer contracts – Article 6(1) and Article 7(1) – Review of its own motion of the unfairness of the clause prohibiting the assignment of passenger rights – Detailed rules for that review in the context of a dispute between the assignee company and the air carrier – Principles of equivalence and effectiveness – Principle of audi alterem partem)

(C/2024/3288)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil n.o 1 de Palma de Mallorca

Parties to the main proceedings

Applicant: Eventmedia Soluciones SL

Defendant: Air Europa Líneas Aéreas SAU

Operative part of the judgment

1. Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read in conjunction with the principle of effectiveness, must be interpreted as meaning that the national court is not required to examine of its own motion the possible unfairness of a clause which, in the contract of carriage concluded between an air passenger and an air carrier, prohibits the assignment of rights enjoyed by that passenger with regard to that carrier, where that court has an action for compensation brought before it, against that carrier, by a commercial company which is the assignee of that passenger's claim for damages, provided that that company has or has had a genuine opportunity to rely, before that court, on the possible unfairness of the clause in question;

the principle of equivalence must be interpreted as meaning that if, under rules of national law, that same court has discretion or the obligation to assess of its own motion whether such a clause is contrary to national rules of public policy, it must also have discretion or the obligation to assess of its own motion whether such a clause is contrary to Article 6 of Directive 93/13, where it has the legal and factual information necessary to that effect.
2. The principle of *audi alterem partem* must be interpreted as meaning that, where the national court finds of its own motion that a clause in a contract of carriage concluded between an air passenger and an air carrier in an action for compensation brought, against that carrier, by a commercial company which is the assignee of that passenger's claim for damages against that carrier, is unfair, that court is not required to inform that passenger of that fact or to ask him or her whether he or she intends to rely on the unfair nature of that clause or whether that passenger agrees to the application of that clause. In contrast, that court must inform the parties to the dispute pending before it of that finding that the clause is unfair, in order to give them the opportunity to put forward their respective arguments in the context of an *inter partes* procedure, and satisfy itself of the fact that the commercial company which is the assignee seeks that that clause be declared inapplicable.

⁽¹⁾ OJ C 223, 26.6.2023.