Reports of Cases

OPINION OF ADVOCATE GENERAL
SAUGMANDSGAARD ØE
delivered on 26 September 2019[1]

Case C-532/18

GN, represented for legal purposes by HM
v
ZU, acting as administrator in the insolvency of Niki Luftfahrt GmbH

(request for a preliminary ruling from the Oberster Gerichtshof (Supreme Court, Austria))

(Reference for a preliminary ruling — Air transport — Montreal Convention — Article 17(1) — Liability of air carriers to passengers — Concept of 'accident' — Bodily injury sustained by a passenger as a result of the spillage of a hot beverage on board an aircraft in flight)

I. Introduction

1. The request for a preliminary ruling submitted by Oberster Gerichtshof (Supreme Court, Austria) concerns the interpretation of Article 17(1) of the Convention for the Unification of Certain Rules for International Carriage by Air[2] ('the Montreal Convention'), a provision that determines the conditions in which a passenger who has sustained bodily injury during a flight may hold the air carrier that operated the flight liable.

2. That request was made in the context of a dispute between a minor passenger, represented by her father, and the administrator of an insolvent airline. The applicant in the main proceedings seeks compensation for scalding caused when a hot beverage tipped over, for reasons unknown, during a cross-border flight operated by that airline.

3. The Court is requested, for the very first time, to define the outlines of the concept of 'accident' within the meaning of Article 17(1) of the Montreal Convention, in particular in the light of the applicability criteria already identified by certain national courts. More specifically, it is asked, in essence, whether it is necessary that the event that occurred on board an aircraft was not only sudden or unusual and external to the passenger concerned, but was also attributable to a hazard typically associated with aviation or linked with aviation. For the reasons set out in this Opinion, I consider that only the first of those criteria, and not the second, must be satisfied.

1 Original language: French.

2 That convention, concluded at Montreal on 28 May 1999, was 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. 38). It entered into force, so far as the European Union is concerned, on 28 June 2004.

II. Legal framework

A. The Montreal Convention

4. The preamble to the Montreal Convention states, in particular, in the third paragraph, that the States Parties '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'. In addition, the fifth paragraph of the preamble states that 'collective State action for further harmonisation and codification of certain rules governing international transport by air through a new Convention is the most adequate means of achieving an equitable balance of interests'.

5. Article 17 of the Montreal Convention, entitled 'Death and injury of passengers — damage to baggage', provides in paragraph 1 that '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'.

6. Under Article 20 of that convention, entitled 'Exoneration', 'if the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 21'.

7. Article 21 of that convention, entitled 'Compensation in case of death or injury of passengers', is worded as follows:

'1. For damages arising under paragraph 1 of Article 17 not exceeding 100 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

2. The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100 000 Special Drawing Rights if the carrier proves that:

(a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or

(b) such damage was solely due to the negligence or other wrongful act or omission of a third party.'

8. Article 29 of that convention, entitled 'Basis of claims', provides that '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'.

B. European Union law

9. Recitals 5 to 7 and 10 of Regulation (EC) No 889/2002[3] amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents[4] are worded as follows:

'(5) The Community has signed the Montreal Convention indicating its intention to become a party to the agreement by ratifying it.

(6) It is necessary to amend Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents in order to align it with the provisions of the Montreal Convention, thereby creating a uniform system of liability for international air transport.

(7) This Regulation and the Montreal Convention reinforce the protection of passengers and their dependants and cannot be interpreted so as to weaken their protection in relation to the present legislation on the date of adoption of this Regulation.

…

(10) A system of unlimited liability in case of death or injury to passengers is appropriate in the context of a safe and modern air transport system.'

10. According to Article 1 of Regulation No 2027/97, as amended by Regulation No 889/2002 ('Regulation No 2027/97'), '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. It also extends the application of these provisions to carriage by air within a single Member State'.

11. Article 2(2) of Regulation No 2027/97 states that 'concepts contained in this Regulation which are not defined in paragraph 1 shall be equivalent to those used in the Montreal Convention'.

12. Article 3(1) of that regulation provides that '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'.

III. The dispute in the main proceedings, the question for a preliminary ruling and the procedure before the Court

13. In August 2015, the applicant in the main proceedings, who was then 6 years old, took a flight between Spain and Austria, operated by the airline Niki Luftfahrt GmbH, a company governed by Austrian law.

14. The child was sitting beside her father, who, during the flight, received from the cabin attendant a cup without a lid containing hot coffee and placed it on the folding tray table in front of him. That container subsequently slid and its contents were spilt onto the child, who suffered second-degree scalding on part of her body. It could not be established whether the cup tipped over because of a defect in the tray table or because of aircraft vibration.

15. The applicant in the main proceedings, represented for legal purposes by her father, brought an action against Niki Luftfahrt seeking compensation for the injury sustained during that flight, in the sum of EUR 8 500 plus interest and costs, on the basis of Article 17(1) of the Montreal Convention.

3 Regulation of the European Parliament and of the Council of 13 May 2002 (OJ 2002 L 140, p. 2).

4 Council Regulation of 9 October 1997 (OJ 1997 L 285, p. 1).

16. The court-appointed administrator of the airline, now insolvent, denied liability, claiming that there had been no accident within the meaning of that provision, since no 'sudden and unexplained event' had led to the cup of coffee being tipped over. In any event, no 'hazard typically associated with aviation' had occurred, whereas that condition also had to be satisfied.

17. By decision of 15 December 2015, the Landesgericht Korneuburg (Regional Court, Korneuburg, Austria) allowed the claim of the applicant in the main proceedings. It considered that an 'accident' within the meaning of Article 17(1) of the Montreal Convention had occurred in the circumstances of the case, since the spilling of the cup of coffee had been the result of an 'unusual event of an external origin'. In addition, it held that a 'hazard typically associated with aviation' had occurred, since an aircraft produces differing, operationally inherent inclinations which could result in objects placed on a horizontal surface in the aircraft starting to slide, without any special manoeuvres being necessary in order for that to occur. Lastly, it found that there was no fault on the part of the air carrier, on the ground that serving hot drinks without a cover is normal practice and socially appropriate.

18. By judgment of 30 August 2016, the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria) set aside the decision delivered at first instance, having considered that the air carrier's liability was excluded, since Article 17 of the Montreal Convention covered only accidents caused by a 'hazard typically associated with aviation' and that in this case the applicant in the main proceedings had been unable to adduce evidence of such a hazard.

19. On appeal on a point of law (*Revision*), the Oberster Gerichtshof (Supreme Court), by decision of 26 June 2018, received at the Court Registry on 14 August 2018, decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Where a cup of hot coffee, which is placed on the tray table attached to the seat in front of a person on an aircraft in flight, for unknown reasons slides and tips over, causing a passenger to suffer scalding, does this constitute an "accident" triggering a carrier's liability within the meaning of Article 17(1) of the [Montreal Convention]?'

20. Written observations were lodged before the Court by the defendant in the main proceedings, the Polish Government and the European Commission. At the hearing on 19 June 2019, the French Government and the Commission presented their oral observations.

IV. Analysis

A. Preliminary observations

21. First of all, I note that the referring court states that the Montreal Convention is applicable in the circumstances of the dispute in the main proceedings, since the flight during which the incident at issue occurred was an international flight, within the meaning of Article 1 of that convention, as the places of departure and destination of the flight were in the territory of two States Parties.[5] In that regard, it should be emphasised that in the matters covered by the Montreal Convention, the Member

5 Namely, respectively, the Kingdom of Spain and the Republic of Austria.

States of the European Union have transferred competence for liability for damage sustained in case of death or injury of a passenger [6] and that Article 3(1) of Regulation No 2027/97 provides that the liability to passengers of a 'Community air carrier', [7] as, it would appear, in the present case, is governed by all the provisions of that convention relating to such liability. [8]

22. Next, I observe [9] that the provisions of the Montreal Convention are an integral part of the legal order of the European Union, [10] so that the Court has jurisdiction to rule on its interpretation, in accordance with the rules of international law which are binding on the EU, and in particular Article 31 of the Vienna Convention, [11] which provides 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. [12] Furthermore, having regard to the purpose of the Montreal Convention, which is to unify the rules for international carriage by air, the Court has previously held that the concepts which appear in that convention without being defined by it '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'. [13]

23. Lastly, the Court has consistently held that, in preliminary ruling proceedings, it is for the national courts alone to define the factual and legal framework of the disputes which they are required to resolve. [14] In that respect, I note that in the present case it is common ground, as the question for a preliminary ruling expressly states, that it was impossible to establish the reason why the cup of coffee spilt onto the applicant in the main proceedings. In addition, it is apparent from the order for reference that the objection alleging contributory negligence on the part of the victim, which had initially been raised by the defendant in the main proceedings, is no longer an issue in the national proceedings. [15] The Court is therefore required to rule on the interpretation requested on the basis of the findings of the referring court.

6 See, to that effect, paragraph 4 of the declaration concerning the competence of the European Community with regard to matters governed by the Montreal Convention; that declaration appears in the instrument of approval of the Community lodged on 29 April 2004 and at the following internet address: https://www.icao.int/secretariat/legal/List%20of%20Parties/Mtl99_EN.pdf.

7 Defined in Article 2(1)(b) of that regulation as an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (OJ 1992 L 240, p. 1), which was repealed and replaced, with effect from 1 November 2008, by Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ 2008 L 293, p. 3).

8 See, in particular, judgments of 6 May 2010, *Walz* (C-63/09, EU:C:2010:251, paragraph 18); of 22 November 2012, *Espada Sánchez and Others* (C-410/11, EU:C:2012:747, paragraph 19); of 26 February 2015, *Wucher Helicopter and Euro-Aviation Versicherung* (C-6/14, EU:C:2015:122, paragraph 35); and of 9 September 2015, *Prüller-Frey* (C-240/14, EU:C:2015:567, paragraph 25 et seq.).

9 See also my Opinion in *Guaitoli and Others* (C-213/18, EU:C:2019:524, point 29).

10 From the date of entry into force stated in footnote 2 of this Opinion.

11 Convention on the Law of Treaties, done at Vienna on 23 May 1969 (*United Nations Treaty Collection*, vol. 1155, p. 331).

12 See, in particular, judgments of 22 November 2012, *Espada Sánchez and Others* (C-410/11, EU:C:2012:747, paragraphs 20 to 22); of 17 February 2016, *Air Baltic Corporation* (C-429/14, EU:C:2016:88, paragraphs 23 and 24); and of 12 April 2018, *Finnair* (C-258/16, EU:C:2018:252, paragraphs 19 to 22).

13 See, to that effect, judgment of 6 May 2010, *Walz* (C-63/09, EU:C:2010:251, paragraphs 21 and 22), concerning the concept of 'damage', which underlies Article 22(2) of that convention.

14 Under Article 267 TFEU, which is based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in a case is a matter for the national courts (see, in particular, judgments of 19 July 2012, *Garkalns*, C-470/11, EU:C:2012:505, paragraph 30, and of 7 August 2018, *Prenninger and Others*, C-329/17, EU:C:2018:640, paragraph 27).

15 The referring court does not make clear whether the discussion in the main proceedings related to possible negligence on the part of the injured minor and/or her father, who handled the cup of coffee and who is representing her in these proceedings.

B. The concept of 'accident' within the meaning of Article 17(1) of the Montreal Convention

1. The object of the question for a preliminary ruling and the arguments submitted

24. In the present case, the Court is requested, *in essence*, to determine whether the concept of 'accident' within the meaning of Article 17(1) of the Montreal Convention must be interpreted in such a way that it includes a situation in which a cop of hot coffee, placed on a folding tray table in an aircraft in flight, tips over for an undetermined reason and causes scalding to a passenger, who might then require, under that provision, that the air carrier pays him compensation in respect of that bodily injury.

25. Although the question submitted by the referring court is formulated in terms relating to the specific circumstances of the main proceedings, I nonetheless consider it preferable that the Court should not confine itself to giving an answer that applies only to that specific scenario, but should take the opportunity given to it here to give an interpretation of the concept in question that sets abstract, and therefore more general, assessment criteria.[16] It should be emphasised that the present case is the first in which the Court has been called upon to interpret that concept.

26. In that regard, I note, as does the referring court, that the Montreal Convention *contains no definition* of the concept of 'accident', although the occurrence of such an event is clearly a condition that determines whether an air carrier may be held liable on the basis of Article 17(1) of that convention in the case of physical injury (death or bodily injury) sustained by a passenger.[17] Likewise, that term appeared in the equivalent provision, namely Article 17 of the Warsaw Convention,[18] which was replaced by the Montreal Convention,[19] although it was not defined in that first instrument either.

27. However, some national courts have developed case-law, to which the referring court expressly refers, concerning the concept of 'accident' within the meaning of the Warsaw Convention and/or the Montreal Convention.[20] I would make clear that, in spite of the differences between Article 17 of the Warsaw Convention and Article 17(1) of the Montreal Convention, I am of the view that the Montreal Convention must nonetheless also be interpreted in the light of the decisions relating to the Warsaw Convention, given the essential equivalence between them.[21]

16 In the field of cooperation established by Article 267 TFEU between the national courts and the Court of Justice, which are required to make direct and complementary contributions to the uniform application of EU law in all the Member States, the Court may extract from the wording of the questions formulated by the national court, having regard to the particulars given by the referring court, the elements that concern the interpretation of EU law. Thus, it has been accepted that, when the question referred seems to seek a direct application of EU law to the dispute in the main proceedings, the court seeks, in reality, an interpretation of EU law for the purposes of that dispute (see, in particular, judgments of 18 January 1979, *van Wesemael and Others*, 110/78 and 111/78, EU:C:1979:8, paragraph 21; of 17 November 2011, *Jestel*, C-454/10, EU:C:2011:752, paragraph 21; of 8 November 2012, *Gülbahce*, C-268/11, EU:C:2012:695, paragraph 32; and of 13 February 2014, *Crono Service and Others*, C-419/12 and C-420/12, EU:C:2014:81, paragraphs 28 and 29).

17 Furthermore, Article 2(2) of Regulation No 2027/97 refers to the Montreal Convention in relation to concepts, such as the concept of 'accident', contained in that regulation but not defined therein.

18 Convention for the unification of certain rules for international carriage by air, signed at Warsaw on 12 October 1929. I note that the term 'accident' was also used, without further detail, in Article 30(2) of that convention, referring to the case, not relevant here, of air carriage provided by a number of successive carriers.

19 See the preamble to, and Article 55 of, the Montreal Convention.

20 In that respect, the referring court refers to Reuschle, F., *Montrealer Übereinkommen — Kommentar*, De Gruyter, Berlin, 2nd Ed., 2011, Commentary on Article 17 of the Montreal Convention, especially paragraph 13 et seq.

21 On those national decisions, see also point 43 et seq. of this Opinion.

28. The referring court states that Article 17(1) of the Montreal Convention is in its view applicable in the present case, since the bodily injury sustained by the applicant in the main proceedings is the result, in the terminology used by those national courts, of a 'sudden' event, originating in a factor 'external' to the victim and causing her to sustain 'unexpected damage'. It emphasises that the dispute in the main proceedings is focused on whether the concept of 'accident' within the meaning of that provision assumes that, in addition to the criteria thus referred to being satisfied, '*a hazard typically associated with aviation*'[22] has materialised.

29. The referring court explains that *a number of approaches* differ as to the need to satisfy the last criterion, in the light of certain decisions delivered by the courts of the States Parties to the Warsaw Convention and/or the Montreal Convention and of various opinions expressed in the literature.

30. According to a first approach, which in the referring court's view is accepted by the greatest part of German case-law and literature,[23] the concept of 'accident' in question should be restricted to situations in which a hazard typically resulting from the nature of the aircraft, its state or its operation occurred,[24] or from aircraft equipment during embarking or disembarking. That, it maintains, is justified by the fact that it was not the intention of the States Parties to the Montreal Convention that air carriers should assume the general hazards of everyday life. The injured person therefore bears the burden of proving that a hazard that could arise only in the field of air transport materialised. In the present case, since it is impossible to determine the cause of the event at issue, that interpretation would lead to the action brought by the applicant in the main proceedings being dismissed.

31. According to a second approach, on the other hand, there is no need to establish that a hazard typically associated with aviation materialised in order to be able to rely on Article 17(1) of the Montreal Convention, having regard to the wording of that provision, the regime of liability which it establishes and the need to preserve its efficiency. The referring court considers that the latter arguments are convincing. It points out that certain authors have inferred that the spilling of a hot beverage on a passenger's body, inter alia, constitutes an 'accident' liable to render the air carrier liable.[25] In the main proceedings, that interpretation would lead to recognition of the air carrier's liability.

32. Lastly, the referring court envisages a different approach, which is described as an 'intermediate solution', where the liability provided for in Article 17(1) would result from the mere fact that the event in question occurred on board the aircraft, or during embarking or disembarking, without any need for a hazard typically associated with aviation to have materialised, but with the possibility for the carrier to avoid liability by proving that there was no connection with the nature or the operation of the aircraft. In the present case, that interpretation would also lead to the defendant in the main proceedings being held liable, since the cause of the accident in question could not be identified.

22 The expression emphasised in the original, in German: 'ein für die Luftfahrt typisches Risiko'.

23 The referring court cites Schmid, R., 'Artikel 17', in *Frankfurter Kommentar zum Luftverkehrsrecht*, Luchterhand, Germany, 2016, paragraphs 16 and 17 (see also the English version, Schmid, R., 'Article 17', in *Montreal Convention*, Kluwer, the Netherlands Bas, 2006, paragraphs 16 and 17), and Ruhwedel, E., *Der Luftbeförderungsvertrag*, Luchterhand, Cologne, 3rd Ed., 1998, paragraph 331. In addition, it refers to a judgment of the Bundesgerichtshof (Federal Court of Justice, Germany), of 21 November 2017 (X ZR 30/15, NJW 2018, 861), but observes, however, that that court requires only a 'connection' with a hazard typically associated with aviation. Before that judgment, see decision of the Landgericht Frankfurt (Regional Court, Frankfurt, Germany), of 16 December 2005 (NJW-RR 2006, 704), in addition to the case-law cited by Führich, E., *Reiserecht — Handbuch und Kommentar*, C. H. Beck, Munich, 2015, p. 1059.

24 A hazard that may result, from example, from changes in the aircraft's altitude or speed.

25 To that effect, the order for reference mentions Reuschle, F., op. cit. in footnote 20, paragraph 15; Stefula, M., *Schadenersatz für Passagiere im Luftfahrtgesetz*, Verlag Österreich, Vienne, 2001, paragraphs 123 and 136 (see also account of the latter work by Müller-Rostin, W., *NZV*, 2002, p. 75), and also Kehrberger, H.-P., 'Overhead Bin-Unfälle an Bord von Luftfahrzeugen — Eine Fallstudie', *Festschrift für Werner Guldimann*, Luchterhand, Berlin, 1997, paragraphs 129 and 130, concerning Article 17 of the Warsaw Convention.

33. The *observations submitted to the Court* in the present case reflect those different approaches. The defendant in the main proceedings contends that the liability of air carriers can be incurred, on the basis of Article 17(1) of the Montreal Convention, only where the accident, the sudden and unexpected event resulting from external intervention, was caused by a hazard typically associated with aviation. However, the risk of bodily injury due to the spilling of a hot beverage can also materialise in the context of private life. [26]

34. On the other hand, the Polish Government rejects the requirement of a hazard typically associated with aviation, but nonetheless considers that a plausible causal link is necessary between the event concerned — which should be sudden or unexpected and have a source external to the passenger — and the movement or operation of the aircraft, a connection that exists in the present case. [27]

35. For their part, the French Government and the Commission [28] are of the view that the situation at issue in the main proceedings is indeed covered by the concept of 'accident' within the meaning of Article 17(1), since it involves a sudden event, that occurred during the flight, and was external to the person of the victim, without it being necessary to establish the occurrence of a hazard typically associated with aviation — the argument maintained by the defendant in the main proceedings — or even the existence of a causal link with aviation — the argument defended by the Polish Government. That is also my view, on the following grounds, which comply with the rules on interpretation mentioned above. [29]

2. The literal interpretation

36. First of all, as regards the *wording* of Article 17(1) of the Montreal Convention, I recall [30] that the only authoritative versions of that instrument are the six language versions of that instrument that are classified as 'authentic', which include three versions corresponding to official languages of the Union, namely English, Spanish and French. [31]

37. Article 17(1) states that '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'.

38. At the outset, I would point out, as does the referring court, that Article 17(1) of the Montreal Convention does not lay down any requirement according to which the liability of the air carrier could be incurred, on the basis of that provision, only where the event at issue was caused by a hazard typically associated with aviation, as the defendant in the main proceedings maintains, or

26 In order to illustrate what might constitute a hazard specifically connected to the operation of an aircraft, in contrast to a general hazard of everyday life, the defendant in the main proceedings mentions the spilling of a hot beverage caused by turbulence, a change in the altitude of the flight or the inclination of the aircraft, or a fault in the fold-down table, circumstances which are not established in the main proceedings.

27 According to the Polish Government, such a connection results from the fact that serving hot beverages during a flight is a normal practice of carriers, whether by air or by another means, which may form part of the transport service or constitute an additional service directly linked with it.

28 I note that at the hearing the Commission explained its position, confirming that it shared the point of view expressed by the French Government.

29 See point 22 of this Opinion.

30 See also my Opinion in *Guaitoli and Others* (C-213/18, EU:C:2019:524, point 58).

31 For situations in which the six language versions in which the Montreal Convention was drafted (namely English, Arabic, Chinese, Spanish, French and Russian) have been taken into account, see judgments of 6 May 2010, *Walz* (C-63/09, EU:C:2010:251, paragraph 24), and of 17 February 2016, *Air Baltic Corporation* (C-429/14, EU:C:2016:88, paragraphs 23 and 31 to 34).

indeed has a causal link with the nature or the operation of the aircraft, as the Polish Government proposes. I consider that if the authors of that convention had intended to make provision for such restrictive criteria, they would not have failed to say so in express terms,[32] which is not the case here. Nor do the *travaux préparatoires* give any indication of that intention.[33]

39. In the same vein, I would emphasise, as does the French Government, that a significant detail was added, in Article 17(1), by comparison with the corresponding provision of the Warsaw Convention,[34] which preceded the Montreal Convention, namely the expression 'upon condition only',[35] which shows that those authors intended not to make the air carrier's liability subject to conditions other than those of an 'accident' that occurred in the circumstances and produced the effects which are then set out in Article 17(1). It follows from that specific point, in my view, that the concept of 'accident' within the meaning of the latter provision must be given an interpretation that does not have the effect of reducing its material scope.

40. As regards that concept, I note that the terminology used in Article 17(1) of the Montreal Convention, in respect of the liability of the air carrier in case of death or bodily injury of passengers, contrasts with that used in Article 17(2) and Article 18 of that convention, in respect of the liability of the air carrier in case of destruction or loss of, or damage to, checked baggage and cargo, respectively. Unlike Article 17(1), the latter two provisions refer not to an 'accident' but only to the 'event' that caused the damage to checked baggage or cargo.[36] To my mind, it follows from that contrast that in order to apply Article 17(1) the event that caused the death or bodily injury of the passenger must not only have occurred on board or during embarking or disembarking,[37] but must also be capable of being classified as an 'accident', in accordance with criteria that remain to be determined by the Court.

41. Although the term 'accident' is used on several occasions in the Montreal Convention, it is not further explained by the other provisions in which it also appears.[38] At most, Article 28 of that convention, concerning advance payments in case of death or injury of passengers, states that such death or injury must be the result of 'aircraft accidents',[39] but without further detail.

42. I recall that, in accordance with Article 31 of the Vienna Convention, the concept of 'accident' referred to in Article 17(1) of the Montreal Convention must be interpreted in accordance with the 'ordinary meaning to be given to [the term concerned]'.

32 See, by way of comparison, the detailed definition of the word 'accident' in Article 2 of Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (OJ 2010 L 295, p. 35), which, pursuant to Article 1, however, does not govern the liability of air carriers, unlike the Montreal Convention.

33 The referring court states that restriction to cases in which a hazard typically associated with aviation arose was not intended when the Montreal Convention was being drafted, referring to the judgment of the Bundesgerichtshof (Federal Court of Justice) cited in footnote 23 above. It should be noted that paragraph 21 of that judgment states that, according to the terms of the report of the international conference that led to the adoption of that convention, it is not laid down as a condition, in order to characterise the existence of an accident, that a danger specific to aviation exists.

34 Article 17 of the Warsaw Convention provided that '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' (emphasis added).

35 Words present both in the French version of Article 17 of the Montreal Convention and in the English ('upon condition only') and Spanish ('por la sola razón') versions.

36 The same applies in the French version of the Montreal Convention, but also in the English version (which uses the words 'accident' and 'event') and the Spanish version (which uses the words 'accidente' and 'hecho').

37 I would emphasise that the period covered by Article 17(1) of the Montreal Convention is longer than the duration of the flight in the strict sense, which lasts from take off until landing.

38 Namely Article 28 (entitled 'Advance payments'), paragraphs 2 and 3 of Article 33 (entitled 'Jurisdiction') and paragraph 2 of Article 36 (entitled 'Successive carriage') of the Montreal Convention.

39 The same applies in the English version ('aircraft accidents') and the Spanish version ('accidentes de aviación'). According to Reuschle, F., op. cit. in footnote 20, paragraph 26, a distinction should be drawn between accidents involving the aircraft itself (for example, where the aircraft crashes), which are dealt with in Article 28 of the Montreal Convention, and accidents on board the aircraft, but the concept of 'accident' within the meaning of Article 17 includes both types of accident. I approve of the latter consideration, but I shall not express a view here on the subject matter of Article 28.

43. In that regard, I consider, as have both the referring court and all the parties which have submitted observations in the present case, that it is appropriate to take into consideration the interpretation of that concept employed by various *courts of States Parties* to the Warsaw Convention and/or the Montreal Convention,[40] in order to draw any inspiration from those judicial precedents, even though the Court is not bound by them.

44. In the first place, I observe that certain criteria have been widely accepted, notwithstanding some variations in the choice of words used by the national courts, as being relevant in connection with the concept of 'accident' in Article 17 of the Warsaw Convention and Article 17(1) of the Montreal Convention. According to those courts, in essence, the victim must demonstrate that the event that occurred during the period of carriage by air, whether on board the aircraft or during the operations of embarking or disembarking, and that caused the physical injury relied on, first, is 'sudden' or 'unusual' and, second, has an origin 'external' to the person of the passenger concerned.[41] In other words, a harmful event that is the result of the victim's own reactions to the usual, normal and foreseeable functioning of the aircraft, or which was caused by the victim's pre-existing state of health, cannot be classified as an 'accident'. The consensus found in favour of such factors of assessment comes, in particular,[42] from the United States case-law,[43] from the German case-law[44] and from the French case-law.[45] The observations lodged in the present case are also convergent in that respect.

45. I consider that those criteria, which are wholly consistent with the usual definition of the term in question,[46] might be usefully applied by the Court too in the present case, in order to determine which situations are capable of coming within the classification of 'accident' within the meaning of Article 17(1) of the Montreal Convention. On that point, I recall that the referring court considers, rightly in my view, that all of the abovementioned criteria are satisfied in circumstances such as those of the main proceedings.[47] Likewise, other national courts, in particular American courts,[48] have held that the spilling of a hot beverage on a passenger on board an aircraft constitutes an 'accident' within the meaning of Article 17 of the Warsaw Convention.

40 See point 27 et seq. of this Opinion.

41 I would emphasise that verification of the fact that the alleged injury is not attributable to a predisposition of the passenger concerned, which is carried out at the stage of possible classification of the event at issue as an 'accident' capable of rendering the air carrier liable — under Article 17(1) of the Montreal Convention — must not be confused with the subsequent question whether it is shown in defence of the action that the passenger contributed by act or omission to his own injury, so that the air carrier might be exonerated from liability — under Article 20 of that convention.

42 See also Mercadal, B., 'Transports aériens', *Répertoire de droit commercial*, Dalloz, Paris, 2000, paragraphs 110 et seq.; Grigorieff, C.-I., 'Le régime d'indemnisation de la convention de Montréal', *Revue européenne de droit de la consommation*, 2012, No 4, pp. 662 to 665; and Letacq, F., 'Fascicule 925', *Jurisclasseur Transport*, Lexis360, Paris, 2018, paragraph 70.

43 See, principally, judgment of the U.S. Supreme Court of 4 March 1985, *Air France v. Saks* (470 U.S. 392 (1985), available at the following internet address: https://supreme.justia.com/cases/federal/us/470/392/). That leading judgment states that the concept of 'accident' within the meaning of Article 17 of the Warsaw Convention, which was 'drafted in French by continental jurists', covers 'an *unexpected or unusual* event or happening that is *external* to the passenger', and not the case where 'the injury indisputably results from the passenger's own internal reaction to the usual, normal, and expected operation of the aircraft', and that 'any injury is the product of a chain of causes, and we require only that the passenger be able to prove that some link in the chain was an *unusual or unexpected event external* to the passenger' (emphasis added).

44 See, in particular, the German decisions cited by Reuschle, F., op. cit. in footnote 20, paragraph 13.

45 Apart from the French decisions referred to by the authors op. cit. in footnote 42, see judgment of the Cour de cassation (Court of Cassation) (France), 1st Civil Chamber, of 15 January 2014 (ECLI:FR:CCASS:2014:C100011, and the judicial precedents mentioned at the following internet address: https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000028482732&fastReqId= 1262213182&fastPos= 2).

46 The word 'accident' coming from the Latin word '*accidens*: which happens fortuitously' and being defined as an 'unforeseen harmful involuntary event or fact', according to Cornu, G. and Others, *Vocabulaire juridique*, 12th Ed., PUF, Paris, 2018, p. 11, or '[an] unexpected event, typically sudden in nature and associated with injury, loss, or harm', according to the Encyclopædia Britannica (https://academic.eb.com/levels/collegiate/article/accident/605405).

47 See point 28 of this Opinion.

48 See, among other authorities, judgments of the U.S. District Court of Puerto Rico of 17 June 1988, *Diaz Lugo v. American Airlines, Inc.* (686 F. Supp. 373 (D.P.R 1988), available at the following internet address: https://law.justia.com/cases/federal/district-courts/FSupp/686/373/1362396/), and of the U.S. District Court of California of 15 May 2007, *Wipranik v. Air Canada, and Others* (2007 WL 2441066, available at the following internet address: https://www.aviationlawmonitor.com/wp-content/uploads/sites/579/2013/06/Wipranik.pdf).

46. In the second place, I note that, as the order for reference states, there is, on the other hand, a controversy as to whether it would be appropriate to require, under those provisions, verification of an additional criterion, connected with the existence of a 'hazard typically associated with aviation'. The defendant in the main proceedings claims that that criterion has been adopted in the Austrian case-law,[49] but the referring court doubts the correctness of such a position, in particular in the light of the development which the German case-law seems to have followed towards a moderation of the place afforded to that criterion.[50] Furthermore, in the United States case-law, although some courts have applied a criterion of that type,[51] the Supreme Court and other courts have not chosen to take such a restrictive approach.[52] Lastly, I observe that in the French case-law a hazard specific to air carriage has sometimes been sought for the purposes of Article 17 of the Warsaw Convention, but not directly from the aspect of the concept of 'accident', nor is the practice still current.[53]

47. For my part, as I stated at the outset,[54] I consider that the requirement of such a hazard, which the case-law seems to have adopted to only a limited degree, is not in any way reflected in the terminology used in Article 17(1) of the Montreal Convention. My position is reinforced in the light of the purposes of that provision.

3. The teleological interpretation

48. Like the referring court and the French Government,[55] I consider that it would not be consistent with the purposes of the Montreal Convention, and in particular with the purposes of Article 17(1), to require the person claiming compensation for bodily injury on the basis of that provision to prove the existence of a 'hazard typically associated with aviation' or of a plausible causal link with aviation, conditions which, according to the defendant in the main proceedings and the Polish Government respectively, should be verified in order for an event to be capable of being classified as an 'accident' within the meaning of that provision.

49. First of all, I note that the purpose of the Montreal Convention is to render *uniform* the rules that were applicable in the fields falling within its scope, and more specifically here the rules relating to the liability of air carriers. The fifth paragraph of the preamble states that the States Parties to that convention intended to bring about 'further harmonisation and codification of certain rules governing international carriage by air', and therefore to reinforce the uniform system previously established by

49 In that sense, the defendant in the main proceedings cites a judgment of the Oberster Gerichtshof (Supreme Court) of 2 July 2015 (2 Ob 58/15s, available at the following internet address: https://www.ris.bka.gv.at/Dokumente/Justiz/JJT_20150702_OGH0002_0020OB00058_15S0000_000/JJT_20150702_OGH0002_0020OB00058_15S0000_000.pdf).

50 See the reasoning of that court set out in footnotes 23 and 33 of this Opinion.

51 See, in particular, judgment of the U.S. District Court of New York of 10 January 2017, *Lee v. Air Canada* (228 F. Supp. 3d 302 (2017), available at the following internet address: https://www.leagle.com/decision/infdco20170210967), and the case-law cited by Naveau, J., Godfroid, M., and Frühling, P., *Précis de droit aérien*, Bruylant, Brussels, 2nd Ed., 2006, paragraph 214.

52 See the judgment cited in footnote 43 above and also the case-law cited by Tompkins, G. N., *Liability Rules Applicable to International Air Transportation As Developed by the Courts in the United States — From Warsaw 1929 to Montreal 1999*, Kluwer, Pays-Bas, 2010, paragraphs 8.5.5 and 8.9.1 to 8.9.17, and also by Diederiks-Verschoor, I. H., *An Introduction to Air Law*, Kluwer, the Netherlands, 2012, pp. 153 to 160.

53 Mercadal, B., op. cit. in footnote 42, paragraphs 117 to 124, and also Letacq, F., op. cit. in footnote 42, paragraph 57, explain that risks inherent in navigation and in airline operations were previously required in France in order to characterise the operations of embarkation and disembarkation within the meaning of Article 17, but that that criterion was abandoned, as in the common law jurisdictions.

54 See point 38 of this Opinion.

55 See also, to that effect, the authors op. cit. in footnote 25.

the Warsaw Convention.[56] In addition, Article 29 of the Montreal Convention states that actions for damages, including those based on Article 17(1), can only be brought subject to the conditions and such limits of liability as are set out in that convention, which excludes the role of national rules of law in governing the liability of air carriers coming within the scope of that convention.[57]

50. I therefore consider it appropriate not to adopt an interpretation of the concept of 'accident', within the meaning of Article 17(1) of the Montreal Convention, that would have the effect of making actions based on that provision subject to restrictive conditions that were not intended by the authors of that convention, even implicitly, such as the requirement of a 'hazard typically associated with aviation' or a causal link with aviation. In my view, that approach is borne out by the statements in the preamble to Regulation No 889/2002, and in particular in recital 7 of that regulation, which suggests that the provisions of the Montreal Convention with a protective aim be interpreted in a manner that takes a favourable approach to passengers and their dependants.[58]

51. In that regard, I recall that the Court has repeatedly held that it follows from the preamble to the Montreal Convention[59] that the States Parties to that convention had the aims, *in substantive terms*, of 'ensuring protection of the interests of consumers in international carriage by air and …equitable compensation based on the principle of restitution' and also of 'achieving an equitable balance of interests'. Those States therefore adopted a system of strict liability of air carriers,[60] while ensuring that a balance between the interests of the air carriers and those of passengers was maintained.[61]

52. If it were accepted that the event at the origin of an injury covered by Article 17(1) of the Montreal Convention must have features specific to aviation, that would lead to the passenger's rights being limited, or even to his being deprived of his rights, owing to the consequences which that criterion would have not only on the burden of proof but also on the effectiveness of that provision.

53. First, as the injured person does not have access to all the technical data relating to the navigation of the aircraft or its operation, which only the carrier has, it would be excessively difficult for that person to prove the existence of a hazard typically associated with aviation or even of a causal link with aviation, in order to be able to claim compensation on the basis of Article 17(1).

54. Secondly, the rule laid down in Article 17(1) would be largely rendered devoid of substance by such requirements, since numerous harmful events would have to be excluded from the classification as 'accident', within the meaning of that provision, as being capable of occurring in a similar manner in circumstances other than those of aviation, that is to say, in everyday life. That exclusion would entail a significant reduction in cases in which the liability of an air carrier may be incurred on the basis of that provision, by limiting them to the most serious incidents of aviation, such as severe turbulence or an aircraft crash.

55. The foregoing considerations, relating to the wording of Article 17(1) of the Montreal Convention and its purposes, are borne out by an analysis of the context of which that provision forms part.

56 On the strengthening of the protection of passengers, see point 59 of this Opinion.

57 Article 29 sets out an exception to the principle of the exclusivity of the regime established by that Convention, referring to the rules of national law applicable to the dispute questions as to 'who are the persons who have the right to bring suit and what are their respective rights'.

58 See the extracts from that preamble cited in point 9 of this Opinion.

59 More specifically, in the light of the third and fifth paragraphs of the preamble.

60 I shall refer to the content of that system in point 56 et seq. of this Opinion.

61 See judgments of 6 May 2010, *Walz* (C-63/09, EU:C:2010:251, paragraph 30 et seq.); of 22 November 2012, *Espada Sánchez and Others* (C-410/11, EU:C:2012:747, paragraphs 29 and 30); of 17 February 2016, *Air Baltic Corporation* (C-429/14, EU:C:2016:88, paragraphs 38 and 48); and of 12 April 2018, *Finnair* (C-258/16, EU:C:2018:252, paragraphs 34 and 43).

4. The contextual interpretation

56. In order to arrive at the requested interpretation of Article 17(1) of the Montreal Convention, and more particularly of the concept of 'accident' in that provision, it is appropriate in my view, as stated in the order for reference and all the observations lodged before the Court, to take account of the *system of liability* of air carriers that follows from that provision read with other provisions of that convention.

57. Under Article 17(1) of the Montreal Convention, in case of death or bodily injury sustained by a passenger, the air carrier has strict liability, for the sole reason that the accident occurred on board the aircraft, or in the course of embarking or disembarking.[62] In addition, Article 21 of that convention provides, in paragraph 1, that where the injury does not exceed a certain threshold of compensation,[63] as is the case here,[64] the carrier cannot avoid that objective liability and, in paragraph 2, that above that threshold the carrier may be exonerated from liability for presumed fault if it shows that the damage is either not due to the carrier, its servants or its agents, or is attributable solely to a third party. Lastly, in accordance with Article 20 of that convention, in both situations referred to in Article 21, the carrier may limit, or even exclude, its liability if it proves negligence on the part of the injured person, negligence which was ruled out in the main proceedings.[65]

58. It follows from all of those provisions that the authors of the Montreal Convention established a system of liability that is favourable to the injured passenger, since he is required to adduce not proof of a fault on the part of the air carrier, its servants or its agents, but only proof of his own injury and of the causal link between that injury and the triggering event that can be classified as an 'accident'. There is no mention in the abovementioned provisions of the need for the passenger to prove that a hazard typically associated with aviation materialised or that the harmful event is directly connected with aviation, as pertaining to the nature or the operation of the aircraft. Only at a later stage, when the classification as an 'accident' within the meaning of Article 17(1) of the Montreal Convention has been accepted, can the air carrier seek, as a means of defence, to mitigate its liability, or even to avoid liability altogether, by adducing to the requisite legal standard the proof required, in particular, in Article 20 of that convention.

59. In addition, a *comparison* between the system of liability that now results from the Montreal Convention in case of an accident causing death or bodily injury and the system established in the Warsaw Convention is particularly revelatory of the intention to reinforce the protection of passengers that prevailed in the adoption of the more recent instrument.[66] In the context of the Warsaw Convention, there was, in these situations, merely liability for presumed fault on the part of the air carrier,[67] which became liability conceived more strictly under the Montreal Convention. Furthermore, the Warsaw Convention set a ceiling for the amount of compensation payable by air

62 Concerning the expression 'upon condition only' used in that provision, see point 39 of this Opinion.

63 Namely 100 000 Special Drawing Rights (SDR) for each passenger, increased to SDR 112 100 with effect from 30 December 2009 (as regards this two-level system and the revision of the relevant threshold, see the guide available at the following internet address: https://www.icao.int/secretariat/legal/Administrative%20Packages/mtl99_en.pdf). It should be noted that Article 23 of that Convention provides that, in the case of court action, the conversion of the currency of a State which, like the Republic of Austria, is a member of the International Monetary Fund (IMF) is to be made according to the value in SDR calculated on the date of the judgment, by the method applied daily by the IMF and published on its website (see https://www.imf.org/fr/About/Factsheets/Sheets/2016/08/01/14/51/Special-Drawing-Right-SDR).

64 Having regard to the amount of compensation claimed (see point 15 of this Opinion).

65 See point 23 of this Opinion.

66 To that effect, see also paragraph 21 of the judgment of the Bundesgerichtshof (Federal Court of Justice) cited in footnote 23 above.

67 See Article 17 of the Warsaw Convention, read with Article 20, which provided that the presumption of the air carrier's liability was rebuttable.

carriers,[68] which disappeared in the Montreal Convention. That desire to tighten up the system applicable to the liability of air carriers, in order to improve the compensation for physical harm (death of bodily injury) sustained by passengers, is also referred to, in particular, in the preamble to Regulation No 889/2002.[69]

60. The taking into account of that development lends support to my view that the concept of 'accident' in Article 17(1) cannot be interpreted as requiring the existence of a hazard typically associated with aviation or a direct connection with aviation, criteria that would not be consistent with either the normal meaning of that concept, or the objectives of the Montreal Convention, or the content of the system of liability which it has established. Thus, circumstances such as those of the main proceedings are in my view capable of falling within that concept, as the referring court seems inclined to consider.

61. To conclude, I consider that Article 17(1) of the Montreal Convention must be interpreted as meaning that any event that has caused the death or bodily injury of a passenger and that occurred on board the aircraft, or in the course of the operations of embarking or disembarking, which is sudden or unusual and has an origin external to the person of the passenger concerned, is an 'accident' capable of rendering the air carrier liable, without it being necessary to examine whether the event is attributable to a hazard typically associated with aviation or is directly connected with aviation.

V. Conclusion

62. In the light of the foregoing considerations, I propose that the Court answer the question referred for a preliminary ruling by the Oberster Gerichtshof (Supreme Court, Austria) as follows:

Article 17(1) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded at Montreal on 28 May 1999 and approved on behalf of the European Community by Council Decision 2001/539/EC of 5 April 2001, must be interpreted as meaning that any event that has caused the death or bodily injury of a passenger and that occurred on board the aircraft, or in the course of the operations of embarking or disembarking, which is sudden or unusual and has an origin external to the person of the passenger concerned, is an 'accident' capable of rendering the air carrier liable, without it being necessary to examine whether the event is attributable to a hazard typically associated with aviation or is directly connected with aviation.

68 In accordance with Article 22(1) of the Warsaw Convention. On the revision of the thresholds initially set in that Convention, see Grigorieff, C.-I., op. cit. in footnote 42, pp. 653 to 656.

69 Recitals 7 and 10 of that regulation stated that '[that regulation] and the Montreal Convention reinforce the protection of passengers and their dependants' and that 'a system of unlimited liability in case of death or injury to passengers is appropriate in the context of a safe and modern air transport system'. The considerable improvement of the system for the compensation of passengers who are victims of air accidents, especially as regards the burden of proof, has also been emphasised in official reports published in France and Switzerland, available, respectively, at the following internet addresses: http://www.assemblee-nationale.fr/12/pdf/rapports/r0675.pdf and https://www.admin.ch/opc/fr/federal-gazette/2004/2701.pdf.