



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

9 July 2020*

(Reference for a preliminary ruling — Air transport — Montreal Convention — Article 17(2) — Liability of air carriers in respect of checked baggage — Fact of loss of checked baggage established — Right to compensation — Article 22(2) — Limits of liability in the event of destruction, loss and delay of, or of damage to, baggage — Absence of information regarding the lost baggage — Burden of proof — Procedural autonomy of the Member States — Principles of equivalence and effectiveness)

In Case C-86/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Mercantil No 9 de Barcelona (Commercial Court No 9, Barcelona, Spain), made by decision of 3 December 2018, received at the Court on 6 February 2019, in the proceedings

SL

v

Vueling Airlines SA,

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, S. Rodin, D. Šváby, K. Jürimäe and N. Piçarra (Rapporteur), Judges,

Advocate General: G. Pitruzzella,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 15 January 2020,

after considering the observations submitted on behalf of:

- SL, by A. Azcárraga Gonzalo, A. Velázquez Cobos and J.C. Siqueira Viana, abogados,
- Vueling Airlines SA, by J. Fillat Boneta, abogado,
- the German Government, by J. Möller, M. Hellmann, U. Bartl and A. Berg, acting as Agents,
- the Netherlands Government, by M.K. Bulterman and M.A.M. de Ree, acting as Agents,
- the European Commission, by J. Rius and N. Yerrell, acting as Agents,

* Language of the case: Spanish

after hearing the Opinion of the Advocate General at the sitting on 11 March 2020,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 17(2) and Article 22(1) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001 (OJ 2001 L 194, p. 38) ('the Montreal Convention'), which entered into force, so far as the European Union is concerned, on 28 June 2004.
- 2 The request has been made in proceedings between SL and Vueling Airlines SA, an air carrier, concerning a claim for compensation for material and non-material damage resulting from the loss of baggage registered by SL during a flight operated by that carrier.

Legal context

International law

- 3 In the third paragraph of the preamble to the Montreal Convention, the States Parties '[recognise] 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'.
- 4 The fifth paragraph of that preamble states that 'collective State action for further harmonisation and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests'.
- 5 Article 3(3) of the Montreal Convention provides:

'The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.'
- 6 Article 17 of that convention, entitled 'Death and injury of passengers — damage to baggage', provides:

'...

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. ...

3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of 21 days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.'

- 7 Article 22 of that convention, entitled ‘Limits of liability in relation to delay, baggage and cargo’, provides, in paragraph 2:

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

- 8 In accordance with the procedure laid down in Article 24 of the Montreal Convention, the limit of liability laid down in Article 22(2) thereof was increased to 1 131 Special Drawing Rights (‘SDRs’) per passenger for damage to baggage as from 30 December 2009. That amount was increased to 1 288 SDRs with effect from 28 December 2019.

European Union law

- 9 Following the signing of the Montreal Convention, Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air (OJ 1997 L 285, p. 1) was amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 (OJ 2002 L 140, p. 2) (‘Regulation No 2027/97’).

- 10 Recitals 12 and 18 of Regulation No 889/2002 state:

‘(12) Uniform liability limits for loss of, damage to, or destruction of, baggage and for damage occasioned by delay, which apply to all travel on [European Union] carriers, will ensure simple and clear rules for both passengers and airlines and enable passengers to recognise when additional insurance is necessary.

...

(18) To the extent that further rules are required in order to implement the Montreal Convention on points that are not covered by Regulation (EC) No 2027/97, it is the responsibility of the Member States to make such provisions.’

- 11 Article 1 of Regulation No 2027/97 provides:

‘This Regulation implements the relevant provisions of the Montreal Convention in respect of the carriage of passengers and their baggage by air and lays down certain supplementary provisions. It also extends the application of these provisions to carriage by air within a single Member State.’

- 12 Article 3(1) of that regulation provides:

‘The liability of a [European Union] air carrier in respect of passengers and their baggage shall be governed by all provisions of the Montreal Convention relevant to such liability.’

The main proceedings and the question referred for a preliminary ruling

- 13 On 18 September 2017, SL travelled from Ibiza (Spain) to Fuerteventura (Spain), transferring in Barcelona (Spain) on a flight operated by Vueling Airlines. She checked in baggage with that air carrier.

- 14 On arrival, after a flight which proceeded as normal, SL found that her baggage had not arrived at its destination. Accordingly, she lodged a complaint with that air carrier.
- 15 On 11 December 2017, SL brought an action against Vueling Airlines before the referring court, the Juzgado de lo Mercantil No 9 de Barcelona (Commercial Court No 9, Barcelona, Spain), seeking compensation corresponding to the maximum limit of 1 131 SDRs laid down in Article 22(2) of the Montreal Convention for compensation for the material and non-material damage caused to her by the loss of her baggage. In support of her claim, SL submits that loss is the most serious case of damage to baggage under that provision.
- 16 Vueling Airlines acknowledges that that baggage was not found again. It nevertheless objects to the payment of the maximum limit for compensation laid down in Article 22(2) of the Montreal Convention and offers only EUR 250 as compensation for the material and non-material damage caused by the loss of that baggage. It argues that SL has neither indicated the contents of that baggage, its value and weight nor provided supporting documents of the purchases made to replace the items which were in that baggage. Vueling Airlines takes the view that that evidence is necessary in order for a passenger to be able to prove that he or she should be awarded compensation corresponding to the maximum limit laid down in Article 22(2) of the Montreal Convention.
- 17 The referring court notes divergences at national level concerning the interpretation of Article 17(2) and Article 22(2) of the Montreal Convention. Where loss of baggage is established, certain courts grant the maximum limit for compensation laid down in the latter provision, since that is the most serious case of damage to baggage among those provided for in Article 22(2) of the Montreal Convention, without requiring the passenger to put forward or adduce additional evidence. By contrast, other courts hold that the amount of compensation to be awarded to the passenger in the event of loss of baggage must be determined by the court on the basis of the evidence submitted, the injured party being required to prove, by whatever means are permitted in law, the harm suffered.
- 18 In those circumstances, the Juzgado de lo Mercantil No 9 de Barcelona (Commercial Court No 9, Barcelona) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Where the loss of a suitcase has been established, must the airline compensate the passenger in each and every case with the maximum compensation limit of 1 131 SDRs, since that is the most serious of the situations provided for in Articles 17(2) and 22(2) of the Montreal Convention, or is that maximum compensation limit one which can be adjusted by the court, including in the event of loss of a suitcase, in the light of the circumstances, so that the amount of 1 131 SDRs will be awarded only if the passenger establishes, by whatever means are permitted in law, that the value of the items and personal effects he or she was carrying in the checked baggage, and of those which he or she had to purchase to replace them, came to that limit, or, failing that, may other criteria be taken into account, such as, for example, the weight of the suitcase or whether the baggage was lost on the outbound or return journey, for the purposes of assessing the non-material damage caused by the inconvenience arising from the loss of the passenger’s baggage?’

Consideration of the question referred

Admissibility

- 19 Vueling Airlines maintains that the request for a preliminary ruling is inadmissible, since the answer to the question relating to the interpretation of Article 17(2) and Article 22(2) of the Montreal Convention may be clearly deduced from the Court’s case-law, in particular from the judgment of 6 May 2010, *Walz* (C-63/09, EU:C:2010:251), and thus does not give rise to any reasonable doubt.

- 20 According to the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case in the main proceedings, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, of which the Montreal Convention forms an integral part (see, to that effect, judgments of 6 May 2010, *Walz*, C-63/09, EU:C:2010:251, paragraphs 19 and 20, and of 12 April 2018, *Finnair*, C-258/16, EU:C:2018:252, paragraphs 19 and 20), the Court is in principle required to give a ruling (see, inter alia, judgments of 19 November 2019, *A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 97, and of 19 December 2019, *Junqueras Vies*, C-502/19, EU:C:2019:1115, paragraph 55 and the case-law cited).
- 21 It follows that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, judgments of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraph 46, and of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 16 and the case-law cited).
- 22 However, those circumstances in no way prevent a national court from referring a question for a preliminary ruling to this Court, the answer to which, in the submission of one of the parties in the main proceedings, leaves no scope for any reasonable doubt. Thus, even if that were the case, that question does not thereby become inadmissible (judgment of 1 December 2011, *Painer*, C-145/10, EU:C:2011:798, paragraphs 64 and 65).
- 23 It follows that the line of argument of Vueling Airlines by which it seeks to demonstrate that the request for a preliminary ruling is inadmissible must be rejected and that it is necessary to answer the question put by the referring court.

Substance

Preliminary observations

- 24 As a preliminary point, it should be noted that the question put by the referring court essentially covers two questions. The first concerns whether or not the compensation due under Article 17(2) of the Montreal Convention, read in conjunction with Article 22(2) thereof, to a passenger whose checked baggage which was not the subject of a special declaration of interest in delivery has been lost during any period within which the checked baggage was in the charge of an air carrier, is payable on a fixed-sum basis. The second question concerns the manner in which the amount of that compensation is to be determined, in the event that the amount referred to in Article 22(2) of the Montreal Convention is not a sum payable automatically and as a fixed sum.
- 25 It is therefore appropriate to examine each of those two questions in turn.

- 26 To that end, it should be noted at the outset that, in accordance with Article 3(1) of Regulation No 2027/97, the liability of European Union air carriers in respect of passengers and their baggage is to be governed by all provisions of the Montreal Convention relevant to such liability (judgments of 6 May 2010, *Walz*, C-63/09, EU:C:2010:251, paragraph 18, and of 19 December 2019, *Niki Luftfahrt*, C-532/18, EU:C:2019:1127, paragraph 29).
- 27 Similarly, it is settled case-law that the provisions of an international treaty, such as the Montreal Convention, must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose, in keeping with general international law, which is binding on the European Union, as codified by Article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969 (*United Nations Treaty Series*, Vol. 1155, p. 331) (see, to that effect, judgments of 6 May 2010, *Walz*, C-63/09, EU:C:2010:251, paragraph 23; of 22 November 2012, *Espada Sánchez and Others*, C-410/11, EU:C:2012:747, paragraphs 20 to 22; and of 19 December 2019, *Niki Luftfahrt*, C-532/18, EU:C:2019:1127, paragraph 31).

The first question

- 28 By the first question, the referring court asks, in essence, whether Article 17(2) of the Montreal Convention, read in conjunction with Article 22(2) thereof, must be interpreted as meaning that the sum provided for in the latter provision as a limit on the liability of an air carrier in the event of destruction, loss, damage or delay of checked baggage which has not been the subject of a special declaration of interest in delivery constitutes a maximum amount of compensation or, on the contrary, a fixed sum payable automatically to the passenger.
- 29 Pursuant to Article 17(2) of the Montreal Convention, the air carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage ‘upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier’ (see, to that effect, judgments of 6 May 2010, *Walz*, C-63/09, EU:C:2010:251, paragraph 32, and of 22 November 2012, *Espada Sánchez and Others*, C-410/11, EU:C:2012:747, paragraphs 25 and 26). Consequently, that provision merely establishes the conditions under which air passengers are granted the right to compensation in the event of the destruction, loss or damage of checked baggage.
- 30 As regards Article 22(2) of the Montreal Convention, the Court has held not only that, in the carriage of baggage, the liability of an air carrier in the case of destruction, loss, damage or delay ‘is limited’, from 30 December 2009 until 28 December 2019, to the sum of 1 131 SDRs per passenger, but also that the limit laid down in that provision constitutes a maximum limit for compensation which cannot accrue automatically and in full to any passenger, even in the event of loss of his or her baggage (see, to that effect, judgment of 22 November 2012, *Espada Sánchez and Others*, C-410/11, EU:C:2012:747, paragraph 34).
- 31 The Court has also held that the limitation of compensation laid down in Article 22(2) of the Montreal Convention must be applied to the total damage caused, regardless of whether that damage is material or non-material. In that regard, it has stated that the possibility for the passenger to make a special declaration of interest at the time when the checked baggage is handed over to the carrier, under the second part of that provision, confirms that the limit of an air carrier’s liability for the damage resulting from the loss of baggage is, in the absence of any special declaration of interest in delivery, an absolute limit which includes both non-material and material damage (see, to that effect, judgment of 6 May 2010, *Walz*, C-63/09, EU:C:2010:251, paragraphs 37 and 38).
- 32 Furthermore, it is apparent from the *travaux préparatoires* relating to the Montreal Convention that the amounts in the provision of the draft text which subsequently became Article 22 of that convention were intended to be maximum amounts and not fixed sums to be awarded automatically

to injured parties. Although that interpretation could be more precisely reflected by using an expression such as ‘cannot exceed’, it was decided to use the expression ‘is limited’, in so far as that expression is commonly used in the case-law developed in relation to the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed in Warsaw on 12 October 1929 (League of Nations — *Treaty Series*, Vol. CXXXVII, p. 12), which was replaced by the Montreal Convention (minutes of the 12th meeting of the Plenary Commission of 25 May 1999, *International Conference on Air Law*, Montreal, 10 to 28 May 1999, Volume I, minutes).

- 33 In that context, it should also be noted that it does not follow from either Article 17(2) or Article 22(2) of the Montreal Convention that loss of baggage must be regarded as the most serious case of damage to baggage, so that compensation corresponding to the sum laid down in the latter provision would be automatically payable to the passenger harmed merely because such a loss has been established. Those provisions merely list the various cases which may give rise to liability on the part of the air carrier for damage occurring in the carriage of baggage, within the limit laid down in the latter provision, without however establishing a hierarchy among those cases according to their gravity.
- 34 It follows that the amount of compensation payable by an air carrier to a passenger whose checked baggage which has not been the subject of a special declaration of interest in delivery has been destroyed, lost, damaged or delayed must be determined, within the limit laid down in Article 22(2) of the Montreal Convention, in the light of the circumstances of the case.
- 35 In the light of the foregoing considerations, the answer to the first question is that Article 17(2) of the Montreal Convention, read in conjunction with Article 22(2) of that convention, must be interpreted as meaning that the sum provided for in that latter provision as the limit of the air carrier’s liability in the event of destruction, loss and delay of, or of damage to, checked baggage which has not been the subject of a special declaration of interest in delivery constitutes a maximum amount of compensation which the passenger concerned does not enjoy automatically and at a fixed rate. Consequently, it is for the national court to determine, within that limit, the amount of compensation payable to that passenger in the light of the circumstances of the case.

The second question

- 36 By the second question, the referring court asks, in essence, whether Article 17(2) of the Montreal Convention, read in conjunction with Article 22(2) thereof, must be interpreted as determining the detailed rules for setting the amount of compensation payable by an air carrier to a passenger whose checked baggage which has not been the subject of a special declaration of interest in delivery has been destroyed, lost, damaged or delayed.
- 37 It should be recalled that the Court has held that, for the purposes of the compensation provided for under Article 22(2) of the Montreal Convention, it is for the passengers concerned, subject to review by the national court, to establish to the requisite legal standard the contents of the lost baggage (see, to that effect, judgment of 22 November 2012, *Espada Sánchez and Others*, C-410/11, EU:C:2012:747, paragraph 35).
- 38 However, to the extent that, as the Advocate General observed in point 32 of his Opinion, neither the Montreal Convention nor Regulation No 2027/97, which implements the relevant provisions of that convention relating to the carriage of passengers and their baggage by air, lays down specific provisions concerning evidence of the damage referred to in that convention, it is necessary, in accordance with the principle of procedural autonomy, to apply the relevant rules of national law, as indeed is shown by recital 18 of Regulation No 889/2002, according to which to the extent that further rules are required in order to implement the Montreal Convention on points that are not covered by Regulation No 2027/97, it is the responsibility of the Member States to make such provisions.

- 39 It is settled case-law that, in the absence of EU rules in the field, it is for the national legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law. Those rules must not, however, be any less favourable than those governing similar domestic actions (principle of equivalence) and must not be framed in such a way as to render impossible in practice or excessively difficult the exercise of rights conferred by the legal order of the European Union (principle of effectiveness) (see, to that effect, inter alia, judgments of 16 December 1976, *Rewe-Zentralfinanz and Rewe-Zentral*, 33/76, EU:C:1976:188, paragraph 5; of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraphs 38, 39 and 43; and of 11 September 2019, *Călin*, C-676/17, EU:C:2019:700, paragraph 30).
- 40 The observance of those two principles must be examined by reference to the role of the rules concerned in the procedure viewed as a whole, to the conduct of that procedure and to the special features of those rules before the various national courts (see, to that effect, judgment of 11 September 2019, *Călin*, C-676/17, EU:C:2019:700, paragraph 31 and the case-law cited).
- 41 It follows from the foregoing considerations that, as the Advocate General observed, in essence, in points 35 and 36 of his Opinion, in the context of actions brought on the basis of Article 17(2) and Article 22(2) of the Montreal Convention, it is for the passengers concerned to establish to the requisite legal standard, in particular by documentary evidence of expenditure incurred in order to replace the contents of their baggage, the harm suffered in the event of destruction, loss and delay of, or of damage to, that baggage, and for the competent national courts to ascertain, pursuant to the case-law mentioned in paragraphs 39 and 40 of this judgment, that the applicable rules of national law, in particular in relation to evidence, do not render impossible in practice or excessively difficult the exercise of the right to compensation that passengers derive from those provisions.
- 42 In particular, in a situation where the aggrieved passenger has not adduced any proof of the harm caused by the destruction, loss and delay of, or of damage to, baggage, the factors mentioned by the referring court, such as the weight of the lost baggage and the circumstance whether the loss occurred during an outbound or return journey, may be taken into consideration by the national court in order to assess the harm suffered and to set the amount of compensation to be paid to the aggrieved passenger. However, those factors must not be taken into account in isolation, but must be assessed as a whole.
- 43 As regards, in particular, the weight of the lost baggage, in so far as, in principle, only the carrier is in a position to provide such evidence, after checking that baggage, it should be borne in mind that, in order to ensure compliance with the principle of effectiveness, if the national court finds that the fact of requiring a party to bear the burden of proof is likely to make it impossible or excessively difficult for such evidence to be adduced, since inter alia that evidence relates to information which that party will not have, the national court is required to use all procedures available to it under national law, including that of ordering the necessary measures of inquiry, in particular the production by one of the parties or a third party of a particular document (see, to that effect, judgment of 7 September 2006, *Laboratoires Boiron*, C-526/04, EU:C:2006:528, paragraph 55).
- 44 In the light of the foregoing considerations, the answer to the second question is that Article 17(2) of the Montreal Convention, read in conjunction with Article 22(2) thereof, must be interpreted as meaning that the amount of compensation due to a passenger, whose checked baggage which has not been the subject of a special declaration of interest in delivery has been destroyed, lost, damaged or delayed, must be determined by the national court in accordance with the applicable rules of national law, in particular in relation to evidence. Those rules must not, however, be any less favourable than those governing similar domestic actions and must not be framed in such a way as to render impossible in practice or excessively difficult the exercise of rights conferred by the Montreal Convention.

Costs

⁴⁵ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

1. **Article 17(2) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001, read in conjunction with Article 22(2) of that convention, must be interpreted as meaning that the sum provided for in that latter provision as the limit of the air carrier's liability in the event of destruction, loss and delay of, or of damage to, checked baggage which has not been the subject of a special declaration of interest in delivery constitutes a maximum amount of compensation which the passenger concerned does not enjoy automatically and at a fixed rate. Consequently, it is for the national court to determine, within that limit, the amount of compensation payable to that passenger in the light of the circumstances of the case.**
2. **Article 17(2) of the Montreal Convention, read in conjunction with Article 22(2) thereof, must be interpreted as meaning that the amount of compensation due to a passenger, whose checked baggage which has not been the subject of a special declaration of interest in delivery has been destroyed, lost, damaged or delayed, must be determined by the national court in accordance with the applicable rules of national law, in particular in relation to evidence. Those rules must not, however, be any less favourable than those governing similar domestic actions and must not be framed in such a way as to render impossible in practice or excessively difficult the exercise of rights conferred by the Montreal Convention.**

[Signatures]