



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

20 October 2022*

(Reference for a preliminary ruling – Air transport – Montreal Convention – Article 17(1) – Liability of air carriers for death or bodily injuries sustained by passengers – Concept of ‘bodily injury’ – Post-traumatic stress disorder suffered by a passenger during the emergency evacuation of an aircraft)

In Case C-111/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 28 January 2021, received at the Court on 25 February 2021, in the proceedings

BT

v

Laudamotion GmbH,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, M. Safjan, N. Piçarra (Rapporteur), N. Jääskinen and M. Gavalec, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- BT, by D. Heine, Rechtsanwalt,
- Laudamotion GmbH, by C. Peitsch, Rechtsanwalt,
- the German Government, by J. Möller, J. Heitz and M. Hellmann, acting as Agents,
- the European Commission, by G. Braun, K. Simonsson and G. Wilms, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 24 March 2022,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 17(1) and Article 29 of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded at 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 BT and Laudamotion GmbH, an air carrier, concerning a claim for compensation brought by BT as a result of post-traumatic stress disorder suffered as a result of an emergency evacuation of the aircraft which was to carry her.

Legal context

International law

- 3 Recitals 2, 3 and 5 of the Montreal Convention state:

‘[The States Parties recognise] the need to modernise and consolidate the [Convention for the Unification of Certain Rules for International Carriage by Air, signed in Warsaw on 12 October 1929 (“the Warsaw Convention”)] and related instruments;

[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;

...

... that collective State action for further harmonization 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’.

- 4 Article 17 of the Montreal Convention, entitled ‘Death and Injury of Passengers – Damage to Baggage’, provides, in paragraph 1 thereof:

‘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.’

- 5 Under Article 29 of that convention, entitled ‘Basis of Claims’:

‘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 ...’

European Union law

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

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

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

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

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 8 On 1 March 2019, BT embarked on a flight operated by Laudamotion between London (United Kingdom) and Vienna (Austria).
- 9 The left engine of the aircraft of that flight exploded during take-off, causing an evacuation of passengers. BT disembarked that aircraft via the emergency exit and was hurled several metres through the air by the jet blast from the right engine which had not yet been shut down. The applicant has since been diagnosed with post-traumatic stress disorder for which she is receiving medical treatment.
- 10 BT brought an action before the Bezirksgericht Schwechat (District Court, Schwechat, Austria) against Laudamotion for a declaration that it was liable under Article 17(1) of the Montreal Convention and for payment of the sums of EUR 4 353.60 in respect of treatment costs incurred and EUR 2 500 for pain and suffering, plus costs and expenses. She stated that, in any event, Laudamotion was liable under Austrian law, which was additionally applicable.
- 11 In its defence, Laudamotion argued that Article 17(1) of the Montreal Convention only covers bodily injuries in the strict sense, but not purely psychological impairments, and added that Austrian law does not apply to the dispute in the main proceedings, under Article 29 of that convention.
- 12 By judgment of 12 November 2019, the Bezirksgericht Schwechat (District Court, Schwechat) upheld the action. That court held that the dispute in the main proceedings did not fall within the scope of Article 17(1) of the Montreal Convention, since that provision provides that the air carrier is liable only for bodily injuries. It held, however, that Laudamotion was liable under Austrian law, which provides for compensation for purely psychological damage where it has clinical significance.
- 13 On appeal by Laudamotion, the Landesgericht Korneuburg (Regional Court, Korneuburg, Austria), by judgment of 7 April 2020, set aside the judgment at first instance and dismissed the action for damages. That court held, as did the Bezirksgericht Schwechat (District Court, Schwechat), that not only does Article 17(1) of the Montreal Convention not apply in the case of non-bodily injuries, but also that Article 29 of that convention excludes the application of Austrian law.

- 14 BT then brought an appeal on a point of law (*Revision*) against that judgment before the Oberster Gerichtshof (Supreme Court, Austria), the referring court.
- 15 That court harbours doubts as to whether the concept of ‘bodily injury’, within the meaning of Article 17(1) of the Montreal Convention, also covers purely psychological impairments and whether, if the answer is in the negative, an action for damages based on national law is excluded under Article 29 of that convention.
- 16 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Does the psychological impairment of a passenger, which is caused by an accident and has clinical significance, constitute a “bodily injury” within the meaning of Article 17(1) of the [Montreal Convention]?’
- (2) If Question 1 is answered in the negative, does Article 29 of that convention preclude a claim for compensation which would exist under the applicable national law?’

Consideration of the questions referred

The first question

- 17 That question must be understood as seeking, in essence, to establish whether Article 17(1) of the Montreal Convention must be interpreted as meaning that a psychological injury, if it has clinical significance caused to a passenger by an ‘accident’ within the meaning of that provision, must be compensated in accordance with that provision.
- 18 It must first be recalled that, under Article 3(1) of Regulation No 2027/97, the liability of EU air carriers in respect of passengers and their baggage is to be governed by all provisions of the Montreal Convention relevant to such liability.
- 19 Pursuant to Article 17(1) of that convention, the air 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.
- 20 The concept of ‘bodily injury’ referred to in that provision is however not defined, either in the Montreal Convention or in Regulation No 2027/97, Article 2(2) of which provides that concepts contained in that regulation which are not defined in paragraph 1 of that article are equivalent to those used in that convention.
- 21 That concept must be given, having regard to the aim of that convention, which is to unify the rules for international carriage by air, a uniform and autonomous interpretation, for the European Union and its Member States (see, to that effect, judgment of 6 May 2010, *Walz*, C-63/09, EU:C:2010:251, paragraph 21). Thus, account must be taken not of the various meanings that may be given to the concept in the internal laws of the Member States, but of the rules of interpretation of general international law which are binding on the European Union (see, by analogy, judgment of 19 December 2019, *Niki Luftfahrt*, C-532/18, EU:C:2019:1127, paragraph 32 and the case-law cited).

- 22 In that respect, Article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969 (*United Nations Treaty Series*, Vol. 1155, p. 331), which reflects customary international law and whose provisions are part of the EU legal order (see, to that effect, judgment of 27 February 2018, *Western Sahara Campaign UK*, C-266/16, EU:C:2018:118, paragraph 58 and the case-law cited), states that a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose (see, to that effect, judgment of 19 December 2019, *Niki Luftfahrt*, C-532/18, EU:C:2019:1127, paragraph 31 and the case-law cited). Moreover, Article 32 of that convention provides that recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty at issue and the circumstances of its conclusion.
- 23 As regards the ordinary meaning of the concept of ‘bodily injury’ provided for in Article 17(1) of the Montreal Convention, it must be pointed out that, as the Advocate General did in point 25 of his Opinion, that the term ‘injury’ refers to an impairment of an organ, tissue or cell due to an illness or accident, whereas the term ‘bodily’ refers to the physical part of a living entity, namely the human body.
- 24 Although the ordinary meaning of the concept of ‘bodily injury’ cannot be interpreted as excluding psychological injury linked to such bodily injury, the same is not true, as in the present case, as is apparent from the documents before the Court, of medically proven psychological injury, which has no link to bodily injury, in the ordinary meaning of that concept. Such an interpretation would amount to blurring the distinction between bodily injury and psychological injury.
- 25 However, the fact that the concept of ‘bodily injury’ was used in the wording of Article 17(1) of the Montreal Convention does not necessarily presuppose that the authors of that convention intended to exclude, in the event of an ‘accident’ within the meaning of that provision, the liability of air carriers where that accident has caused psychological injury to a passenger which is not linked to any bodily injury having the same cause.
- 26 As regards the preparatory works which led to the adoption of that convention, it is true that none of the proposals aimed at expressly including the concept of ‘psychological injury’ in the text of the Montreal Convention was successful. However, as the Advocate General observed in point 41 of his Opinion, it is also apparent from the preparatory works that the concept of ‘bodily injury’ was adopted ‘on the basis that, in certain States, damages for psychological injuries can be recovered under certain conditions, that case-law develops in this area, and that it is not envisaged that there will be interferences with that development, which depends on case-law in areas other than international carriage by air’ (minutes of the 6th meeting of the Plenary Commission of 27 May 1999, *International Conference on Air Law*, Montreal, 10 to 28 May 1999, Vol. I, minutes, p. 243).
- 27 Moreover, as regards the objectives of the Montreal Convention, it should be borne in mind that amongst them, according to recitals 2 and 3 of that convention, apart from the modernisation and consolidation of the Warsaw Convention, it is 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 particular in the event of an accident, by means of a system of strict liability for air carriers. The need for fair compensation, which also requires equal treatment for passengers who have suffered injuries, whether bodily or psychological, of the same severity as a result of the same

accident, would be called into question if Article 17(1) of the Montreal Convention were to be interpreted as precluding compensation for psychological injuries caused by such an accident, where they are not linked to any bodily injury.

- 28 The situation of a passenger who has suffered a psychological injury as a result of an accident may, depending on the seriousness of the harm resulting from it, be comparable to that of a passenger who has suffered bodily injury.
- 29 Consequently, it must be held that Article 17(1) of the Montreal Convention allows compensation for psychological injury caused by an ‘accident’, within the meaning of that provision, which is not linked to ‘bodily injury’, within the meaning of that provision.
- 30 However, the need for equitable compensation must be reconciled, as follows from the fifth recital of the Montreal Convention, with the need to preserve an ‘equitable balance of interests’ of air carriers and of passengers (see, to that effect, judgments of 19 December 2019, *Niki Luftfahrt*, C-532/18, EU:C:2019:1127, paragraph 36, and of 12 May 2021, *Altenrhein Luftfahrt*, C-70/20, EU:C:2021:379, paragraph 36).
- 31 Thus, the liability of the air carrier can be incurred, on the basis of Article 17(1) of the Montreal Convention, only if the aggrieved passenger demonstrates, to the requisite legal standard, by means in particular of a medical report and proof of medical treatment, the existence of an adverse effect on his or her psychological integrity suffered as a result of an ‘accident’, within the meaning of that provision, of such gravity or intensity such that it affects his or her general state of health, particularly in view of its psychosomatic effects, and that it cannot be resolved without medical treatment.
- 32 That interpretation enables both aggrieved passengers to be compensated fairly, in accordance with the principle of compensation, and air carriers to protect themselves against fraudulent claims for damages imposing on them a very heavy compensation burden, which would be difficult to determine and to calculate, and would be liable to undermine, and even paralyse, their economic activity (see, by analogy, judgment of 19 December 2019, *Niki Luftfahrt*, C-532/18, EU:C:2019:1127, paragraph 40).
- 33 In the light of the foregoing, the answer to the first question is that Article 17(1) of the Montreal Convention must be interpreted as meaning that a psychological injury caused to a passenger by an ‘accident’, within the meaning of that provision, which is not linked to ‘bodily injury’, within the meaning of that provision, must be compensated in the same way as such a bodily injury, provided that the aggrieved passenger demonstrates the existence of an adverse effect on his or her psychological integrity of such gravity or intensity that it affects his or her general state of health and that it cannot be resolved without medical treatment.

The second question

- 34 In view of the fact that the second question was raised by the referring court only in the event that the first question was answered in the negative and that the first question has been answered in the affirmative, there is no need to answer the second question.

Costs

- 35 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 (Third Chamber) hereby rules:

Article 17(1) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded at 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,

must be interpreted as meaning that a psychological injury caused to a passenger by an ‘accident’, within the meaning of that provision, which is not linked to ‘bodily injury’, within the meaning of that provision, must be compensated in the same way as such a bodily injury, provided that the aggrieved passenger demonstrates the existence of an adverse effect on his or her psychological integrity of such gravity or intensity that it affects his or her general state of health and that it cannot be resolved without medical treatment.

[Signatures]