



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

12 May 2021 *

(Reference for a preliminary ruling – Air transport – Montreal Convention – Article 17(1) – Air carrier liability in the event of accidents – Concept of ‘accident’ – Hard landing made within the normal operating range of an aircraft – Bodily injury allegedly sustained by a passenger during such a landing – No accident)

In Case C-70/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 30 January 2020, received at the Court on 12 February 2020, in the proceedings

YL

v

Altenrhein Luftfahrt GmbH,

THE COURT (Fourth Chamber),

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

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Altenrhein Luftfahrt GmbH, by H. M. Schaflinger, Rechtsanwältin,
- the Finnish Government, by H. Leppo, acting as Agent,
- the European Commission, initially by W. Mölls and N. Yerrell, and subsequently by N. Yerrell, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: German.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 17(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 YL and Altenrhein Luftfahrt GmbH, an air carrier, concerning a claim for damages brought by YL for bodily injury allegedly sustained during the landing of a flight operated by that carrier.

Legal context

International law

- 3 The third and fifth paragraphs of the preamble to the Montreal Convention state:

‘[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;

...

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[.]’
- 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.’

EU law

Regulation (EC) No 2027/97

- 5 Following the signing of the Montreal Convention, Regulation (EC) No 2027/97 of the Council 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’).

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

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

7 Under Article 3(1) of that regulation:

‘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.’

Regulation (EC) No 216/2008

8 Article 4(1) of Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ 2008 L 79, p. 1), as amended by Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009 (OJ 2009 L 309, p. 51; ‘Regulation No 216/2008’), provides:

‘1. Aircraft, including any installed product, part and appliance, which are:

...

(b) registered in a Member State, unless their regulatory safety oversight has been delegated to a third country and they are not used by [an EU] operator; or

(c) registered in a third country and used by an operator for which any Member State ensures oversight of operations or used into, within or out of the [European Union] by an operator established or residing in the [European Union]; or

...

shall comply with this Regulation.’

9 Article 8 of that regulation, entitled ‘Air operations’, provides, in paragraph 1 thereof:

‘The operation of aircraft referred to in Article 4(1)(b) and (c) shall comply with the essential requirements set out in Annex IV ...’

10 Annex IV to that regulation, entitled ‘Essential requirements for air operations referred to in Article 8’, states, in point 1.b thereof:

‘A flight must be performed in such a way that the operating procedures specified in the Flight Manual or, where required the Operations Manual, for the preparation and execution of the flight are followed. ...’

- 11 Under the heading ‘Aircraft performance and operating limitations’, point 4 of Annex IV to that regulation provides:
- ‘4.a. An aircraft must be operated in accordance with its airworthiness documentation and all related operating procedures and limitations as expressed in its approved flight manual or equivalent documentation, as the case may be. The flight manual or equivalent documentation must be available to the crew and kept up to date for each aircraft.
- ...
- 4.c. A flight must not be commenced or continued unless the aircraft’s scheduled performance, considering all factors which significantly affect its performance level, allows all phases of flight to be executed within the applicable distances/areas and obstacle clearances at the planned operating mass. Performance factors which significantly affect take-off, en-route and approach/landing are, particularly:
- (i) operating procedures;
- ...
- (v) size, slope and condition of the take-off/landing area; ...
- ...
- 4.c.1. Such factors must be taken into account directly as operational parameters or indirectly by means of allowances or margins, which may be provided in the scheduling of performance data, as appropriate to the type of operation.’
- 12 Regulation No 216/2008 was repealed, with effect from 11 September 2018, by Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ 2018 L 212, p. 1). Regulation 2018/1139 is not, however, applicable *ratione temporis* to the dispute in the main proceedings.

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

- 13 On 20 March 2014, YL travelled from Vienna (Austria) to St. Gallen/Altenrhein (Switzerland) on a flight operated by Altenrhein Luftfahrt. She claims to have suffered a spinal disc injury as a result of the landing.
- 14 During that landing, the flight data recorder noted a vertical load of 1.8 g. The referring court states in that regard that, even though such a landing may be subjectively perceived as being hard, that value is still, from an aeronautical point of view and also taking into account the margin of error, within the normal operating range of the aircraft in question. According to the aircraft manufacturer’s specifications, the maximum load that can be borne by the landing gear and the structural parts of the aircraft in question is 2 g. That court adds that, due to the

mountainous nature of the environment in which St. Gallen/Altenrhein Airport is situated, hard landings there are safer than landings which are too soft and that, in the present case, no pilot error was found.

- 15 YL brought an action before the Handelsgericht Wien (Commercial Court, Vienna, Austria) against Altenrhein Luftfahrt seeking a declaration that the latter is liable for the damage she claims to have suffered, pursuant to Article 17(1) of the Montreal Convention, and seeking payment of the sum of EUR 68 858, together with interest and costs. In support of her action, YL submits that that landing must be classified as ‘hard’ and, consequently, as being an accident within the meaning of that provision.
- 16 By contrast, Altenrhein Luftfahrt contends that that landing was within the normal operating range of the aircraft and that, therefore, it was an event commonly occurring during a flight and not an accident, within the meaning of that provision.
- 17 By judgment of 23 January 2019, the Handelsgericht Wien (Commercial Court, Vienna) dismissed that action on the ground that a landing can be classified as an ‘accident’ and give rise to liability on the part of the air carrier under Article 17(1) of the Montreal Convention only if the landing is exceptionally hard, which was not the case here. That court held that events commonly occurring during a flight, such as a hard landing or hard braking, do not justify an air carrier’s incurring liability, since a reasonably well-informed passenger is aware of that type of event and expects that they may occur.
- 18 By judgment of 29 April 2019, the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria) upheld the judgment delivered at first instance. While not excluding the possibility that a hard landing may, exceptionally, constitute an accident within the meaning of Article 17(1) of the Montreal Convention, that court held that that assumes that the limit values specified by the aircraft manufacturer concerning the load that can be borne by the landing gear and structural parts of the aircraft are clearly exceeded. According to that same court, a landing that takes place normally, such as that at issue in the main proceedings, excludes the possibility of an accident.
- 19 Hearing an appeal on a point of law (*‘Revision’*) against that judgment brought by YL, the Oberster Gerichtshof (Supreme Court, Austria) considers that a hard landing is still within the normal operating range of an aircraft when the load borne by the landing gear and the structural parts of the aircraft remains below the limit values, specified by the aircraft manufacturer, above which a technical inspection of the aircraft is required. According to that court, a landing is hard where, unlike a soft landing, it is not largely absorbed by the aircraft’s landing gear and where it may clearly be perceived by passengers.
- 20 In that context, the referring court questions whether a hard landing which is still within the normal operating range of the relevant aircraft may be classified as an ‘unforeseen, harmful and involuntary event’ and, therefore, come under the concept of ‘accident’ within the meaning of Article 17(1) of the Montreal Convention, as interpreted by the Court in its judgment of 19 December 2019, *Niki Luftfahrt* (C-532/18, EU:C:2019:1127, paragraph 35).
- 21 Following a first approach, a hard landing such as that at issue in the main proceedings, which, while being within the normal operating range of the aircraft, occurs suddenly and unexpectedly for the passenger and causes, according to that passenger, bodily injuries, constitutes an ‘accident’ within the meaning of that provision. The referring court therefore asks whether the criteria referred to in the preceding paragraph of the present judgment must be assessed from the

perspective of the passenger concerned, in the sense that any event which occurred suddenly and which the passenger did not expect, was unforeseen. According to that court, the use, in the judgment of 19 December 2019, *Niki Luftfahrt* (C-532/18, EU:C:2019:1127, paragraph 35), of the word ‘unforeseen’, instead of the word ‘unforeseeable’, appears to indicate that it is necessary to determine whether the event in question was foreseen by the passenger concerned.

22 On the other hand, following a second approach, a hard landing can be classified as an ‘accident’ within the meaning of Article 17(1) of the Montreal Convention only if the limit values specified by the aircraft manufacturer concerning the load that can be borne by the landing gear and the structural parts of the relevant aircraft have clearly been exceeded. According to such an approach, the liability of the air carrier, under that provision, cannot be incurred in the case of events which are within the normal operating range of an aircraft, even if they occur suddenly and unexpectedly for the passenger concerned and cause bodily injury to him or to her. If, in such a case, a passenger sustains bodily injury, that injury will generally be explained by a particular predisposition of the passenger concerned, which means that the air carrier cannot be held liable.

23 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Does a hard landing, albeit still made within the normal operating range of an aircraft, which results in injury to a flight passenger constitute an “accident” within the meaning of Article 17(1) of the [Montreal Convention]?’

Consideration of the question referred for a preliminary ruling

Admissibility

24 Altenrhein Luftfahrt submits that the request for a preliminary ruling is inadmissible, since the national case-law cited by the referring court and the definition given by the Court of Justice in the judgment of 19 December 2019, *Niki Luftfahrt* (C-532/18, EU:C:2019:1127) seek, in essence, to adopt the same interpretation of the concept of ‘accident’, within the meaning of Article 17(1) of the Montreal Convention. In its view, there is therefore an *acte clair* for the purposes of the outcome of the dispute in the main proceedings, the referring court having correctly set out and applied that concept, as interpreted by the Court of Justice, to reach the conclusion that a landing within the normal operating range of an aircraft does not constitute an accident, within the meaning of that provision.

25 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, the Court is in principle required to give a ruling (judgment of 9 July 2020, *Vueling Airlines*, C-86/19, EU:C:2020:538, paragraph 20 and the case-law cited).

- 26 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 (judgment of 9 July 2020, *Vueling Airlines*, C-86/19, EU:C:2020:538, paragraph 21 and the case-law cited).
- 27 Moreover, 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 (judgments of 1 December 2011, *Painer*, C-145/10, EU:C:2011:798, paragraphs 64 and 65, and of 9 July 2020, *Vueling Airlines*, C-86/19, EU:C:2020:538, paragraph 22).
- 28 In the present case, since there is no doubt that the question referred by the national court is relevant to the outcome of the dispute before it, and since that court has stated that, in its view, there is no *acte clair* and that, consequently, as a court of last instance, it is required to make a reference to the Court of Justice for a preliminary ruling, the question referred must be declared admissible.

Substance

- 29 By its question, the referring court asks, in essence, whether Article 17(1) of the Montreal Convention must be interpreted as meaning that the concept of ‘accident’ provided for in that provision covers a hard landing perceived by the relevant passenger as an unforeseen event, even though it is within the normal operating range of the aircraft concerned.
- 30 As a preliminary point, it should be noted that, in accordance with 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.
- 31 Similarly, it is settled case-law that 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 19 December 2019, *Niki Luftfahrt*, C-532/18, EU:C:2019:1127, paragraph 31, and of 9 July 2020, *Vueling Airlines*, C-86/19, EU:C:2020:538, paragraph 27 and the case-law cited).
- 32 It is apparent from the wording of Article 17(1) of the Montreal Convention that, for an air carrier to incur liability, the event which caused the death or bodily injury of the passenger must be classified as an ‘accident’ and must have taken place on board the aircraft or in the course of any operations of boarding or disembarking.
- 33 In its judgment of 19 December 2019, *Niki Luftfahrt* (C-532/18, EU:C:2019:1127, paragraph 35), the Court stated that the ordinary meaning of the concept of ‘accident’ is that of an unforeseen, harmful and involuntary event.

- 34 It is apparent from the information provided by the referring court, as recalled in paragraphs 20 to 22 of the present judgment, that that court is uncertain, in particular, as to whether the classification of a harmful event as ‘unforeseen’ within the meaning of that case-law and, therefore, as an ‘accident’ within the meaning of Article 17(1) of the Montreal Convention, must be made taking into account the perspective of the passenger concerned or, rather, the normal operating range of the aircraft on board which that event occurred.
- 35 It is necessary to reject from the outset, however, an interpretation of the concepts referred to in the preceding paragraph based on the perspective of each passenger. In so far as perspectives and expectations may vary from one passenger to another, such an interpretation could lead to a paradoxical result if the same event were classified as ‘unforeseen’ and, therefore, as an ‘accident’ for certain passengers, but not for others.
- 36 Moreover, interpreting the concept of ‘accident’ provided for in Article 17(1) of the Montreal Convention as meaning that the assessment of the unforeseen nature of the event in question depends solely on the relevant passenger’s perception of that event could extend that concept in an unreasonable manner to the detriment of air carriers. While it is true that, according to the third paragraph of the preamble to the Montreal Convention, the States Parties thereto, recognising ‘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’, decided to lay down a system of strict liability for air carriers, a system of that kind implies, however, as is apparent from the fifth paragraph of that preamble, that an ‘equitable balance of interests’ be maintained, in particular the interests of air carriers and of passengers (see, to that effect, judgment of 19 December 2019, *Niki Luftfahrt*, C-532/18, EU:C:2019:1127, paragraph 36 and the case-law cited).
- 37 As regards, however, the essential requirements concerning the operation of the aircraft concerned, it must be recalled that, according to point 1.b of Annex IV to Regulation No 216/2008, a flight must be performed in such a way that the operating procedures specified in the Flight Manual or, where required the Operations Manual, for the preparation and execution of the flight are followed. In addition, point 4.a. of that annex provides that an aircraft must be operated in accordance with its airworthiness documentation and all related operating procedures and limitations as expressed in its approved flight manual or equivalent documentation, as the case may be.
- 38 Furthermore, it is apparent from point 4.c. of that annex that a flight must not be commenced or continued unless the aircraft’s scheduled performance, considering all factors which significantly affect its performance level, allows all phases of flight to be executed within the applicable distances/areas and obstacle clearances at the planned operating mass. Performance factors which significantly affect, inter alia, the aircraft’s take-off, include, in particular, operating procedures, size, slope and condition of the take-off/landing area. In accordance with point 4.c.1. of that annex, those performance factors must be taken into account directly, as operational parameters, or indirectly, by means of allowances or margins, which may be provided in the scheduling of the aircraft’s performance data.
- 39 Compliance with the provisions referred to in paragraphs 37 and 38 of the present judgment is aimed at ensuring a landing accomplished in accordance with the applicable procedures and limitations, set out in the flight manual of the aircraft in question, or any equivalent

airworthiness documentation relating to it, and taking into account the rules of the trade and best practice in aircraft operation, even if that landing is perceived by certain passengers as being harder than they were expecting.

- 40 Accordingly, a landing which does not exceed the limits laid down by the procedures applicable to the aircraft in question, including the expected tolerances and margins concerning the performance factors that have a significant effect on the landing, and which takes place in accordance with those procedures and taking into account the rules of the trade and best practice in aircraft operation, cannot be regarded as ‘unforeseen’ when assessing the condition laid down in Article 17(1) of the Montreal Convention relating to the occurrence of an ‘accident’.
- 41 In the present case, it should be noted that, according to the referring court, a hard landing at St. Gallen/Altenrhein Airport, such as that which gave rise to the dispute in the main proceedings, is safer due to the mountainous nature of the environment in which that airport is situated. Also according to that court, the landing at issue in the main proceedings took place without any demonstrable pilot error, the flight data recorder having noted a vertical load of 1.8 g, a value below the maximum limit of 2 g which, according to the aircraft manufacturer’s specifications, can be borne by the landing gear and the structural parts of the aircraft concerned.
- 42 Subject to verification of all the circumstances surrounding the occurrence of the landing which gave rise to the dispute in the main proceedings, which it is for the referring court to carry out, a landing which has taken place in the circumstances set out in the preceding paragraph cannot be regarded as an accident within the meaning of Article 17(1) of the Montreal Convention and cannot, therefore, on the basis of that provision, result in the air carrier incurring liability, irrespective of the subjective perception which a passenger may have of that landing.
- 43 In the light of the foregoing considerations, the answer to the question referred is that Article 17(1) of the Montreal Convention must be interpreted as meaning that the concept of ‘accident’ laid down in that provision does not cover a landing that has taken place in accordance with the operating procedures and limitations applicable to the aircraft in question, including the tolerances and margins stipulated in respect of the performance factors that have a significant impact on landing, and taking into account the rules of the trade and best practice in the field of aircraft operation, even if the passenger concerned perceives that landing as an unforeseen event.

Costs

- 44 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:

Article 17(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 must be interpreted as meaning that the concept of ‘accident’ laid down in that provision does not cover a landing that has taken place in accordance with the operating procedures and limitations applicable to the aircraft in question, including the tolerances and margins stipulated in respect of the performance factors that have a

significant impact on landing, and taking into account the rules of the trade and best practice in the field of aircraft operation, even if the passenger concerned perceives that landing as an unforeseen event.

[Signatures]