



The Court of Justice rules on jurisdiction over dual claims for standard and further compensation to passengers for flight cancellation or delay

📅 21/11/2019

📌 TRANSPORT, INSURANCE AND LOGISTICS, LITIGATION, MOBILITY

Roberto A. Jacchia
Marco Stillo

On 7 November 2019, the European Court of Justice published its judgement in Case C-213/18, *A. Guitoli, C. C. Rodriguez, A. C. Tomassoni, A. Cirilli, L. Cortini, M. Giuli and P. Padroni v easyJet*

Airline Co. Ltd, on the interpretation of Article 33 of the Montreal Convention¹, of Regulation 261/2004² and of Regulation 1215/2012³. The request for preliminary interpretation had been made by an Italian Court in proceedings between a

¹ 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, OJ 2001 L 194, of 18.07.2001.

² Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, OJ 2004 L 46 of 17.02.2004.

³ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ 2012 L 351 of 20.12.2012.



number of natural persons and easyJet Airline Co. Ltd (“easyJet”) concerning claims for compensation for damage resulting from the cancellation of a flight and the delay of another flight.

In 2015, the plaintiffs had concluded air transport contracts with easyJet, an airline headquartered in the United Kingdom, for a one-way flight from Rome (Italy) to Corfu (Greece), and a return flight from Corfu to Rome. The outward flight had been delayed and eventually cancelled and postponed to the next day. Despite a formal request to easyJet, the

plaintiffs were not offered any form of assistance (boarding another flight of another airline, offering of a meal or snack), compensation or reimbursement. The return flight had, in turn, been delayed by more than 2 hours (and less than 3). The plaintiffs then brought an action before the Tribunale Ordinario di Roma (Rome Ordinary Court; the “referring court”) seeking an order that easyJet pay the compensation referred to in Articles 5⁴, 7⁵ and

⁴ Article 5 of that Regulation 261/2004, headed “Cancellation”, provides as follows: “... *In case of cancellation of a flight, the passengers concerned shall:*

- (a) be offered assistance by the operating air carrier in accordance with Article 8; and*
- (b) be offered assistance by the operating air carrier in accordance with Article 9(1)(a) and 9(2), as well as, in event of re-routing when the reasonably expected time of departure of the new flight is at least the day after the departure as it was planned for the cancelled flight, the assistance specified in Article 9(1)(b) and 9(1)(c); and*
- (c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:*
 - (i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or*
 - (ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or*
 - (iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.*

When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport.

An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

The burden of proof concerning the questions as to whether and when the passenger has been informed of the cancellation of the flight shall rest with the operating air carrier...”.

⁵ Article 7 of Regulation 261/2004, headed “Right to compensation”, provides as follows: “... *Where reference is made to this Article, passengers shall receive compensation amounting to:*

- (a) EUR 250 for all flights of 1,500 kilometres or less;*
- (b) EUR 400 for all intra-Community flights of more than 1,500 kilometres, and for all other flights between 1,500 and 3,500 kilometres;*
- (c) EUR 600 for all flights not falling under (a) or (b).*

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger’s arrival after the scheduled time.

When passengers are offered re-routing to their final destination on an alternative flight pursuant to Article 8, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked

- (a) by two hours, in respect of all flights of 1,500 kilometres or less; or*
 - (b) by three hours, in respect of all intra-Community flights of more than 1,500 kilometres and for all other flights between 1,500 and 3,500 kilometres; or*
 - (c) by four hours, in respect of all flights not falling under (a) or (b),*
- the operating air carrier may reduce the compensation provided for in paragraph 1 by 50%.*

The compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.

The distances given in paragraphs 1 and 2 shall be measured by the great circle route method...”.

9⁶ of Regulation 261/2004 and compensation for further material and non-material damage resulting from easyJet's failure to fulfil its contractual obligations. The referring court, in light of the need to interpret European legislation and the Montreal Convention, stayed the proceedings and referred two questions to the Court of Justice for a preliminary ruling.

By its first question, the referring court asked whether Article 33 of the Montreal Convention⁷ on jurisdiction applies if a party, whose flight has been delayed or cancelled, jointly claims not only the standardized lump-sum compensation provided for by Articles 5, 7 and 9 of Regulation 261/2004, but also the further

compensation referred to in Article 12 of the Regulation⁸, or jurisdiction is governed by Article 5 of Regulation 44/2001⁹ instead.

The Court of Justice held that the rules on international jurisdiction provided for in the Montreal Convention do not apply to claims made on the basis of Regulation 261/2004 alone, since the rights based on the provisions of the latter and of the Convention respectively fall within distinct regulatory frameworks. The rules on international jurisdiction of the Montreal Convention must therefore be examined in the light of Regulation 44/2001.¹⁰

Furthermore, Article 67¹¹ and Article 71(1)¹² of Regulation 1215/2012 allow for

⁶ Article 9 of Regulation 261/2004, headed "Right to care", provides as follows: "... Where reference is made to this Article, passengers shall be offered free of charge:

(a) meals and refreshments in a reasonable relation to the waiting time;
(b) hotel accommodation in cases

– where a stay of one or more nights becomes necessary, or
– where a stay additional to that intended by the passenger becomes necessary;

(c) transport between the airport and place of accommodation (hotel or other).

In addition, passengers shall be offered free of charge two telephone calls, telex or fax messages, or e-mails.

In applying this Article, the operating air carrier shall pay particular attention to the needs of persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied children...".

⁷ Article 33 of the Montreal Convention, headed "Jurisdiction", at paragraph 1 provides as follows: "... An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination...".

⁸ Article 12 of Regulation 261/2004, headed "Further compensation", in paragraph 1 provides as follows: "... This Regulation shall apply without prejudice to a passenger's rights to further compensation. The compensation granted under this Regulation may be deducted from such compensation...".

⁹ Article 5 of Regulation 44/2001 provides as follows: "... A person domiciled in a Member State may, in another Member State, be sued:

(a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be

– in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

– in the case of the provision of services, the place in a Member State where under the contract the services were provided or should have been provided;

(c) if subparagraph (b) does not apply then subparagraph (a) applies...".

¹⁰ CJEU 10.03.2016, Case C-94/14, *Flight Refund*, paragraph 46.

¹¹ Article 67 of Regulation 1215/2012 provides as follows: "... This Regulation shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgments in specific matters which are contained in instruments of the Union or in national legislation harmonised pursuant to such instruments...".

¹² Article 71 of Regulation 1215/2012 at paragraph 1 provides as follows: "... This Regulation shall not affect any conventions to which the Member States are parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments...".

the application of specific rules of jurisdiction contained in international acts or conventions to which the Member States are parties, such as those related to air transport provided for by the Montreal Convention. Therefore, the national court must determine its own jurisdiction in accordance with Regulation 1215/2012 in case of claims based on Articles 5, 7 and 9 of Regulation 261/2004. More particularly, the rules of jurisdiction set out in Regulation 1215/2012 rest on the idea that jurisdiction should be based on the defendant's domicile¹³, with the possibility¹⁴ of the defendant to sue in the court competent for the place of performance of the obligation, which is presumed to have a close link to the contract¹⁵.

Based on its previous case-law, the Court concluded that the rule of special jurisdiction relative to the supply of

services laid down in the second indent of Article 7(1)(b) of Regulation 1215/2012 designates as the court having jurisdiction, at the claimant's choice, that having territorial jurisdiction over the place of departure or place of arrival of the aircraft, as those places are clearly identified in the transport contract¹⁶. Moreover, the court must determine its jurisdiction in light of Article 33 of the Montreal Convention to rule on claims related to further compensation for damage caused by flight delay.

By its second question, the referring court asked whether Article 33 of the Montreal Convention must be interpreted to the effect that it governs only the allocation of jurisdiction among the States that are parties thereto, or it also governs the local distribution of jurisdiction within the individual State.

¹³ CJEU 03.05.2007, Case C-386/05, *Color Drack*, paragraph 20 and 21.

¹⁴ Article 7 of the Regulation 1215/2012 provides as follows: "... A person domiciled in a Member State may be sued in another Member State:

(1)(a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

- in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

- in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

(c) if point (b) does not apply then point (a) applies;

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

(3) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seized of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;

(4) as regards a civil claim for the recovery, based on ownership, of a cultural object as defined in point 1 of Article 1 of Directive 93/7/EEC initiated by the person claiming the right to recover such an object, in the courts for the place where the cultural object is situated at the time when the court is seized;

(5) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated;

(6) as regards a dispute brought against a settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled;

(7) as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:

(a) has been arrested to secure such payment; or

(b) could have been so arrested, but bail or other security has been given;

provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage...".

¹⁵ CJEU 03.05.2007, Case C-386/05, *Color Drack*, paragraph 23.

¹⁶ CJEU 09.07.2009, Case C-204/08, *Rehder*, paragraphs 43 and 47; CJEU 11.07.2018, Case C-88/17, *Zurich Insurance and Metso Minerals*, paragraph 18.

In the first place, the Court emphasized that the provisions of the Montreal Convention must be interpreted uniformly and autonomously in accordance with the rules of interpretation of general international law set forth in Article 31 of the Vienna Convention¹⁷, which are binding and apply to the European Union as well¹⁸. In particular, by analyzing the wording of Article 33 in light of international law, the Court held that the claimant should be allowed to bring an action either before the court of the domicile of the carrier (or of its principal place of business, or where it has a place of business through which the contract was made) or before the court of the place of destination. Therefore, Article 33(1) of the Montreal Convention must be regarded as also governing the allocation of territorial jurisdiction between the courts of each of the States party to it.

On the above grounds, the Court ruled that:

“Article 7(1), Article 67 and Article 71(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and Article 33 of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded

in 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 the court of a Member State hearing an action to obtain both compliance with the flat-rate and standardised rights provided for in Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, and compensation for further damage falling within the scope of that convention, must assess its jurisdiction, for the first head of claim, in the light of Article 7(1) of Regulation No 1215/2012, and, for the second head of claim, in the light of Article 33 of that convention.

Article 33(1) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded at Montreal on 28 May 1999, must be interpreted, as regards actions for damages falling within the scope of that convention, as governing not only the allocation of jurisdiction as between the States Parties to the convention, but also the allocation of territorial jurisdiction as between the courts of each of those States”.

¹⁷ Article 31 of the Vienna Convention on the law of the treaties, concluded at Vienna on 23.05.1969 (Vienna Convention), headed “General rule of interpretation”, provides as follows: “... A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) Any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) Any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

There shall be taken into account, together with the context:

(a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) Any relevant rules of international law applicable in the relations between the parties.

A special meaning shall be given to a term if it is established that the parties so intended ...”.

¹⁸ CJEU, 06.05.2010, Case C-63/09, *Walz*, paragraphs 20-23.



Roberto A. Jacchia

PARTNER

 r.jacchia@dejalex.com

 +39 02 72554.1


 Via San Paolo 7
20121 - Milano




Marco Stillo

ASSOCIATE

 m.stillo@dejalex.com

 +32 (0)26455670

 Chaussée de La Hulpe 187
1170 - Bruxelles

MILANO

Via San Paolo, 7 · 20121 Milano, Italia
T. +39 02 72554.1 · F. +39 02 72554.400
milan@dejalex.com

ROMA

Via Vincenzo Bellini, 24 · 00198 Roma, Italia
T. +39 06 809154.1 · F. +39 06 809154.44
rome@dejalex.com

BRUXELLES

Chaussée de La Hulpe 187 · 1170 Bruxelles, Belgique
T. +32 (0)26455670 · F. +32 (0)27420138
brussels@dejalex.com

MOSCOW

Ulitsa Bolshaya Ordynka 37/4 · 119017, Moscow, Russia
T. +7 495 792 54 92 · F. +7 495 792 54 93
moscow@dejalex.com