

Anonymised version

Translation

C-86/19 — 1

Case C-86/19

Request for a preliminary ruling

Date lodged:

6 February 2019

Referring court:

Juzgado de lo Mercantil n.º 9 de Barcelona (Spain)

Date of the decision to refer:

3 December 2018

Applicant/appellant:

SL

Defendant/respondent:

Vueling Airlines SA

Juzgado de lo Mercantil n.º 9 de Barcelona (Commercial Court No 9, Barcelona, Spain)

[...]

[...] [information about the court]

Subject matter: Other actions in matters relating to transport

[...]

[...] [identification of the proceedings]

**ORDER REFERRING A QUESTION TO THE COURT OF JUSTICE OF
THE EUROPEAN UNION FOR A PRELIMINARY RULING**

[...]

Place: Barcelona

Date: 3 December 2018

FACTS

FIRST. On 11 December 2017, this court was allocated the action [...] involving SL's claim for payment against the airline VUELING AIRLINES, from which she seeks payment of SDR [Special Drawing Rights] 1 131 (equivalent to EUR 1 400) for the material and non-material damage resulting from the loss of her suitcase on a flight with the defendant on 18 September 2017 from Ibiza to Fuerteventura with a stopover in Barcelona; so far, SL has not recovered the suitcase.

SECOND. Although the defendant acknowledges the loss of the suitcase, it contests payment of the sum claimed and offers only the sum of EUR 250 in respect of material and non-material damage because the applicant has not described the contents of the suitcase, has not submitted supporting invoices attesting to their value or the value of the items and effects which she had to buy to replace them, or specified the weight she was carrying in the suitcase, details which, in the defendant's submission, are necessary for the purpose of awarding the maximum compensation limit laid down in Article 22(2) of the Montreal Convention.

THIRD. Since neither party requested a hearing, the case was reserved for judgment. [Or. 2]

FOURTH. [...] [I]n the light of the inconsistent decisions which have been handed down on this issue, [...] this court is uncertain whether the maximum compensation limit of SDR 1 131, laid down in Articles 17(2) and 22(2) of the Montreal Convention, should be awarded in each and every case merely on the ground that it has been established that baggage has been lost, since that is the most serious of the situations referred to in those provisions, without the need for the passenger to put forward or substantiate any other additional information, or whether, on the contrary, the maximum compensation limit concerned may be awarded only if the passenger provides evidence, by whatever mode of proof permitted in law, of the contents of the suitcase, their value (for example, by providing invoices for the purchase of those items and personal effects and for the products the passenger had to buy to replace them), how many kilos he was carrying, and, for the purposes of assessing the non-material damage, whether the loss of baggage occurred on the outbound or return flight, criteria which the court must take into account when adjusting the quantum of damages.

FIFTH. Accordingly, by interim decision of 24 October 2018, it was ordered that the proceedings and judgment be stayed [...].

Whilst the applicant stated that she was in favour of referring a question to the Court of Justice for a preliminary ruling in the light of the legal uncertainties raised by the interpretation of Articles 17(2) and 22(2) of the Montreal

Convention — the reason for the divergent and contradictory judgments which have been given on the subject — the defendant company is opposed to such a reference. It submits that the wording of the Community provision is clear and is not open to any doubt and that the sum of SDR 1 131 is a maximum compensation limit which, as such, can be adjusted by the court in the light of the circumstances, including in the case of lost baggage.

LAW

FIRST. Article 234 of the consolidated version (Amsterdam, 2 October 1997) of the Treaty establishing the European Economic Community provides: ‘The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of this Treaty;
- (b) the validity and interpretation of acts of the institutions of the Community and of the ECB;
- (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.’ [Or. 3]

SECOND. In accordance with the information note published by the Court of Justice on references from national courts for a preliminary ruling (OJ 2005 C 143 p.1, published in the *Official Journal of the European Union* on 11 June 2005), such references should be made:

- (1) When the proceedings have been reserved for judgment.
- (2) When the question referred to the Court of Justice of the European Union concerns the interpretation of a rule of Community law.

THIRD. In this case, the uncertainties which have arisen concern the interpretation of Articles 17(2) and 22 of the Montreal Convention of 28 May 1999 for the Unification of Certain Rules for International Carriage by Air [...].

Article 17(2) lays down a system of quasi-strict civil liability for damage sustained in case of destruction or loss of, or of damage to, checked baggage, stating that:

‘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. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage.’

In exchange for the carrier’s quasi-strict liability, Article 22(2) of the Montreal Convention lays down a maximum compensation limit for checked and unchecked baggage, which is set at SDR 1 131 per passenger, stating that:

‘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 (updated to SDR 1 131) 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.’

That limit will not apply either ‘[if] 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’ (Article 22(2) of the Montreal Convention) or in the case of intent or indirect intent on the part of the carrier, its servants or agents (Article 22(5) of the Montreal Convention).

FOURTH. The facts giving rise to the present proceedings are as follows:

SL [...] purchased a flight with the airline VUELING AIRLINES to travel from Ibiza to Fuerteventura, with a stopover in Barcelona, on 18 September 2017. [Or. 4]

[...]

After SL checked in her baggage, the flight proceeded as normal. However, on arrival at the destination airport, the applicant found that her suitcase had not arrived, and [...] therefore she submitted the appropriate baggage claim form (PIR).

After a reasonable period had elapsed without the defendant airline having located the suitcase, the applicant brought an action against VUELING on 11 December 2017, claiming from it the maximum compensation of SDR 1 131 for the loss of her baggage, since the situation is the most serious of those provided for in Article 22(2) of the Montreal Convention.

The defendant airline has contested that action. Although the airline acknowledges that the applicant's baggage has not yet been located, it objects to payment of the maximum compensation limit and has offered only the sum of EUR 250 for material and non-material damage arising as a result of loss of the suitcase. The grounds for objecting to payment of [...] SDR 1 131, put forward by the airline in its defence, are that the applicant did not state the contents of her suitcase or their value, she did not provide documentary proof of the payments she incurred to replace those items, and she did not specify the weight she was carrying in the suitcase, all that information being required, in the airline's submission, for entitlement to the maximum compensation limit.

FIFTH. The arguments put forward by both parties in these proceedings simply reproduce the judicial disagreement which exists with regard to the interpretation of Articles 17(2) and 22(2) of the Montreal Convention. Some courts are in favour of awarding the maximum compensation limit of SDR 1 131 if the objective criterion of loss of baggage is established, without requiring the passenger to submit any additional information, because that would be a *probatio diabolica* [...]; others take the view, however, that the loss of a suitcase is insufficient for the purposes of awarding SDR 1 131 because, since that is a maximum compensation limit, it must be adjusted by the court in the light of certain criteria and the onus is on the passenger to provide arguments and evidence confirming that the value of the items he was carrying in his suitcase, or of the items he had to purchase to replace them, exceeded that limit, or confirming the weight of the baggage or whether the baggage was lost on the outbound or return journey.

SIXTH. On the basis of those considerations, the question referred to the Court of Justice of the European Union in Luxembourg is:

6.1. Whether the interpretation given by Spanish courts of Articles 17(2) and 22(2) of the Montreal Convention of 28 May 1999 is compatible with EU law, and, more specifically, whether it is correct, where the loss of a suitcase has been established, for Spanish courts not to award the maximum compensation limit of SDR 1 131, requiring for that purpose that the passenger provide a list of the items and personal effects carried in the suitcase, invoices attesting to their value and the value of the items the passenger had to purchase to replace them, which show that their value actually exceeds that maximum compensation limit, or, failing that, for courts to take into account, for [Or. 5] example, other criteria, such as how much the suitcase weighed and whether the loss occurred on the outbound or return journey?

[...]

OPERATIVE PART

THE COURT DECIDES: to refer the following question to the Court of Justice of the European Union:

1.- 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 SDR 1 131, since that is the most serious of the situations provided for in Articles 17(2) and 22(2) of the Montreal Convention of 28 May 1999, 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 SDR 1 131 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 was carrying in the checked baggage, and of those which he 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?

[...]

[...] procedural considerations and considerations relating to the processing of personal data]

Barcelona, 11 January 2019.

[...] **[Or. 6]**

[...]

[...] **[Or. 7]** [considerations relating to the processing of personal data]

[...]

[...] **[Or. 8]** [...]

[...]

[...] **[Or. 9]** [correction of errors in connection with service of the decision]