

Case C-356/19

Request for a preliminary ruling

Date lodged:

3 May 2019

Referring court:

Sąd Rejonowy dla m.st. Warszawy w Warszawie (Poland)

Date of issue of the decision to refer:

16 April 2019

Applicant:

Delfly sp. z o.o.

Defendant:

Travel Service Polska sp. z o.o.

[...]

ORDER

Warsaw, 16 April 2019

The Sąd Rejonowy dla m.st. Warszawy w Warszawie (District Court for the Capital City of Warsaw in Warsaw), 15th Commercial Division [...]

[...] [composition of the division]

having examined

[...] on 16 April 2019 [non-germane procedural reference]

the case brought by Delfly sp. z o.o., having its seat in Warsaw,

against Travel Service sp. z o.o., having its seat in Warsaw,

concerning payment

[stay of proceedings]

decides:

1. to refer to the Court of Justice of the European Union the following questions for a preliminary ruling: (*first question*)

Should Article 7(1) of 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, p. 1) be interpreted as governing not only the scope of the obligation to pay compensation but also the manner in which that obligation is to be discharged?

(*second question*)

If the answer to the first question is in the affirmative, can a passenger or his legal successor effectively demand the payment of the equivalent of EUR 400 in another currency, including, in particular, the national currency of the place of residence of the passenger whose flight was cancelled or delayed?

(*third question*)

If the answer to the second question is in the affirmative, what criteria should be used to determine the currency in which the passenger or his legal successor may demand payment, and what exchange rate should be applied?

(*fourth question*)

Do Article 7(1) or other provisions of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 preclude the application of provisions of national law concerning the performance of obligations which result in the dismissal of an action brought by a passenger or his legal successor on the sole ground that the claim incorrectly indicated the national currency of the passenger's place of residence rather than the Euro in accordance with Article 7(1) of the Regulation?

2. The proceedings are stayed [...]

[Or. 2]

GROUND

[...] [arguments relating to the national procedural framework of the request for a preliminary ruling]

[Or. 3]

[...] [replication of the content of the first page (OR. 1)]

[Or. 4]

3. Subject matter of the proceedings and relevant facts

- 3.1. The need to obtain answers to the above questions referred for a preliminary ruling has arisen in connection with a civil dispute pending before the Sąd Rejonowy dla m.st. Warszawy w Warszawie (District Court for the Capital City of Warsaw). The applicant, Delfly spółka z ograniczoną odpowiedzialnością (Delfly, a limited liability company), having its seat in Warsaw, has applied for an order that it be awarded by the defendant, Travel Service Polska spółka z ograniczoną odpowiedzialnością (Travel Service Polska, a limited liability company), having its seat in Warsaw, the amount of PLN 1 698.64, which is the equivalent of EUR 400 at the exchange rate of the Narodowy Bank Polski (National Bank of Poland) in force on the date on which the action was brought. The applicant has explained that, under an assignment of claims, it had acquired from Passenger X a claim for payment of EUR 400 pursuant to Article 7(1) of Regulation (EC) No 261/2004 [...] following a delayed flight from A to B. The defendant contends that the action should be dismissed, claiming, inter alia, that the currency of the claim was incorrectly indicated, which results in the claim being dismissed under national law.
- 3.2. The facts of the case are not in dispute. On 23 July 2017, X travelled from A in a third country to B in the Republic of Poland on a flight operated by the defendant airline. She had a valid reservation and arrived on time at the check-in. The flight was delayed by more than three hours. It has not been established whether the passenger received any benefits or compensation or was provided with assistance in the third country within the meaning of Article 3(1)(b) of Regulation (EC) No 261/2004 [...]. On 27 July 2017, X assigned the claim for payment of compensation for the delayed flight to the applicant.

4. Provisions of national law and case-law cited

- 4.1. Pursuant to Article 321(1) of the Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego (Code of Civil Procedure of 17 November 1964, *Journal of Laws* [Dz. U.] of 2018, item 1360, as amended), a court may not adjudicate on a matter which is not covered by a claim or award more than has been claimed.
- 4.2. Pursuant to Article 505¹(1) of the Code of Civil Procedure, provisions on the simplified procedure apply to [...] cases coming within the jurisdiction of district courts concerning contractual claims if the value of the matter at issue does not exceed PLN 20 000 [...].

[Or. 5]

- 4.3. Pursuant to the first sentence of Article 505⁴(1) of the Code of Civil Procedure, which concerns the simplified procedure, modification of a complaint is not permitted.
- 4.4. Pursuant to Article 358 of the Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny (Civil Code of 23 April 1964, *Journal of Laws* [Dz. U.] of 2018, item 1025, as amended): (Paragraph 1) Where the subject matter of an obligation being performed in the territory of the Republic of Poland is a pecuniary sum expressed in a foreign currency, the debtor may render performance in Polish currency, unless legislation, a court ruling constituting the basis of the obligation or a juridical act reserves the performance of the obligation exclusively in a foreign currency. (Paragraph 2) The value of the foreign currency is to be calculated in accordance with the average exchange rate announced by the National Bank of Poland on the day of the obligation's maturity, unless legislation, a court ruling or a juridical act provides otherwise. (Paragraph 3) Where the debtor delays in the performance, the creditor may demand performance of the obligation in Polish currency in accordance with the average exchange rate announced by the National Bank of Poland on the day on which the payment is made.
- 4.5. The provision cited above was interpreted by the Sąd Najwyższy (Supreme Court, Poland) in its judgment of 16 May 2012 [...] [more detailed reference to the judgment in question]. The Sąd Najwyższy held that the debtor has the sole right to choose the currency both in a situation where the debtor fulfils his obligation on time and where the fulfilment of his obligation is delayed. In the event of the debtor being in arrears with the performance of his obligation concerning a pecuniary sum expressed in a foreign currency, the creditor has the right to choose the exchange rate at which the value of the foreign currency is determined, but only if the debtor chooses Polish currency. The judgment of 16 May 2012 laid the foundation for a body of well-established case-law of the ordinary courts. As a result, the ordinary courts have repeatedly dismissed actions in which the applicant indicated Polish currency in his claim while he was entitled to a claim in a foreign currency. In this case, the claim cannot be awarded as the court may not adjudicate on a matter which is not covered by a claim.
- 4.6. The Republic of Poland is a member of the Economic and Monetary Union. Due to the derogation within the meaning of Article 139 of the Treaty on the Functioning of the European Union [Or. 6], it has maintained an autonomous currency and monetary policy. The Euro is for that reason regarded as a foreign currency in the Republic of Poland.
- 4.7. Article 358 of the Civil Code was amended in 2016. The amendment sought to clarify the notion of delay the occurrence of which entitles the creditor to choose the exchange rate. The amendment does not appear to have

undermined the well-established interpretation of the provision with respect to the party which has the right to modify the currency.

- 4.8. The case-law of the Polish courts demonstrates inconsistencies in regard to the resolution of disputes where an applicant seeks compensation for the consequences of a delayed flight which is expressed in the Polish national currency (i.e. the Polish złoty). In its judgments of 29 November 2016 [...] [more detailed reference to the judgment in question] and of 1 March 2017 [...] [more detailed reference to the judgment in question], the Sąd Okręgowy w Gliwicach (Regional Court, Gliwice, Poland) dismissed actions brought by passengers whose flights had been delayed if the claims indicated Polish currency, holding that the creditor did not have the right to convert the claim for compensation expressed in a foreign currency (the Euro) into Polish currency. On the other hand, in its judgments of 28 March 2017 [...] [more detailed reference to the judgment in question] and of 13 December 2018 [...] [more detailed reference to the judgment in question], the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland) adopted the opposite position, holding, inter alia, that a correct and purposeful interpretation of Article 358 of the Civil Code and of Article 7(1) of Regulation No 261/2004 [...] cannot result in adverse consequences for creditors who are Polish citizens and who can undoubtedly seek compensation in Polish currency.

5. Doubts concerning interpretation and relationship with national provisions

- 5.1. Despite the fact that the provisions of Regulation (EC) No 261/2004 [...] have been in force for a long time, they are still not being interpreted in a uniform manner by national courts. The aforementioned case-law of the Polish courts is inconsistent, resulting in diametrically opposite rulings in similar cases. This is why the issues raised in the questions referred for a preliminary ruling need to be clarified. As regards the case pending before the District Court for the Capital City of Warsaw, the answers to the questions posed will significantly influence the decision **[Or. 7]** as to the correct interpretation of Article 7(1) of the Regulation, and consequently also the ruling.
- 5.2. The first question seeks clarification of the scope of Article 7(1) of Regulation (EC) No 261/2004. It appears that this provision does not determine the manner in which the compensation obligation is to be performed, for instance the time limit, the place of performance and the possibility of payment in another currency. It may therefore be argued that the national law governing the contract of carriage concluded must clarify the passenger's rights and the air carrier's corresponding obligations. On the other hand, the objective of the European legislature, which is stated clearly in recital 4 of the Regulation, was to strengthen the rights of passengers and

to ensure that air carriers operate under harmonised conditions in a liberalised market. In the light of this recital, it should be considered whether this concise provision should be supplemented with general legal principles applicable in Member States of the European Union, irrespective of national law. Under this approach, the provision would specify not only the amount of compensation due, but also the basic rules governing its payment.

- 5.3. The second question will be relevant only if the answer to the first question is in the affirmative. If the provision also governs the manner in which the obligation is to be performed, the norm stipulated in the provision in this respect should be determined. In order to resolve the case pending before this court, it is necessary to determine whether a passenger or his successor can effectively demand payment in a currency other than the Euro, including, in particular, in the national currency of his place of residence. Such a solution would be favourable to passengers, as they would be able to learn the final amount of a potential claim before buying a plane ticket. On the other hand, it would be contrary to the principle established in the Polish legal order, according to which the creditor has no right to convert the currency of a claim and only the debtor is entitled to pay in the national currency.
- 5.4. The third question will be relevant only if the answer to the second question is in the affirmative. The need to fix the criteria for determining the currency or exchange rate would be an obvious consequence of finding that the passenger or his legal successor has the right to demand payment in a currency other than the Euro.

[Or. 8]

- 5.5. The fourth question seeks to remove the following doubt. Strict national legislation may make it significantly more difficult for passengers who have been affected by cancelled or delayed flights to pursue legitimate claims. In some cases, the action is dismissed on the sole ground that the claim incorrectly indicates the passenger's national currency, whereas Article 7(1) of Regulation (EC) No 261/2004 [...] provides for compensation in Euros. It should be added that in such cases the applicant may not modify the claim even if he has noticed his mistake, since the provisions on the simplified procedure preclude this. On the other hand, the court cannot award the compensation due in Euros, since this would amount to adjudicating on a matter which is not covered by a claim, which is prohibited.
- 5.6. The requirement that claims be precisely formulated is justified by the need for a clear definition of the subject matter of the dispute. Civil procedure is codified and thus, by nature, highly formalised. The prohibition on modifying claims under the simplified procedure is intended to speed up rulings in cases of lesser importance. On the other hand, certain procedural arrangements lead to consequences which may appear disproportionate in

relation to the gravity of the defect. In these circumstances, it is necessary to consider whether Article 7(1) or other provisions of the Regulation, which seeks to strengthen the protection of passengers on a harmonised basis, do not preclude rules as strict as those described above.

[signature]

WORKING DOCUMENT