



Press and Information

Court of Justice of the European Union

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Judgment in Case C-63/09
Axel Walz v Clickair SA

The Court confirms that the liability of air carriers for loss of baggage is limited to €1134.71

That limit is absolute and includes both material and non-material damage

Under European Union law¹, the liability of a Community air carrier in respect of passengers and their baggage is governed by the Montreal Convention². Thus, that convention provides that the liability of a carrier in the case of destruction, loss, damage or delay of baggage is limited to the sum of 1000 Special Drawing Rights (SDR) for each passenger (a sum equivalent to approximately €1134.71)³, unless a 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, as a rule a carrier is liable to pay a sum not exceeding the declared sum.

On 14 April 2008, Mr Walz brought an action against the airline Clickair claiming damages from it for the loss of checked baggage in the context of a flight from Barcelona (Spain) to Oporto (Portugal) operated by that company. In that action, Mr Walz claimed total damages of €3200: €2700 for the value of the lost baggage and €500 for non-material damage resulting from that loss.

The Juzgado de lo Mercantil nº 4 de Barcelona (Commercial Court No 4, Barcelona, Spain), before which the proceedings were brought, asks whether the limit of air carriers' liability set by the Montreal Convention in the case of loss of baggage includes both material and non-material damage or whether, on the contrary, material damage is subject to the limit of 1000 SDR, while, on the other hand, non-material damage is subject to a further limit of the same amount, so that the total combined limit for material and non-material damage is 2000 SDR.

In today's judgment, the Court finds, first of all, that the Montreal Convention does not contain any definition of the term 'damage'. Nevertheless, since the convention aims to unify the rules for international carriage by air, the Court considers that that term must be given a uniform and autonomous interpretation, notwithstanding the different meanings given to that concept in the domestic laws of the States Parties to that convention. Consequently, the Court then interprets the concept of damage at issue, basing its interpretation, first, on the ordinary meaning to be given to that concept under general international law.

Next, the Court analyses the objectives which governed the adoption of the Montreal Convention. The Court thus finds that the Montreal Convention establishes a system of strict liability for air carriers. With regard specifically to damage sustained in case of destruction or loss of, or damage to, checked baggage, a carrier is presumed liable for that damage, provided that 'the event which

¹ 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).

² 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. 39).

³ The Special Drawing Rights in the Montreal Convention are deemed to refer to the Special Drawing Right as defined by the International Monetary Fund (IMF). Therefore, those sums are to be converted into national currencies. The amount of €1134.71 corresponds to 1000 SDR as at 21 April 2010.

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’.

Therefore, the Court considers that a system of strict liability of that kind implies that an ‘equitable balance of interests’ be maintained, in particular as regards the interests of air carriers and of passengers. Thus, that ‘equitable balance of interests’ requires that, in the various situations in which a carrier is held liable pursuant to the Montreal Convention, there be clear limits on compensation relating to the total damage sustained by each passenger in each of those situations, regardless of the nature of the damage caused to that passenger. This limitation of compensation enables passengers to be compensated easily and swiftly, yet without imposing a very heavy burden of damages on air carriers, which would be difficult to determine and to calculate, and would be liable to undermine, and even paralyse, the economic activity of those carriers.

In addition, the Court observes that the Montreal Convention provides that a passenger may make a special declaration of interest at the time when the checked baggage is handed over to the carrier, paying a supplementary sum if the case so requires. That possibility confirms that the limit laid down for an air carrier’s liability for the damage resulting from the loss of baggage is, in the absence of any declaration, an absolute limit which includes both non-material and material damage.

Consequently, **the Court declares that, for the purposes of determining the limit of an air carrier’s liability for the damage resulting, inter alia, from the loss of baggage, the term ‘damage’ in the Montreal Convention must be interpreted as including both material and non-material damage.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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