

# Anonymised version

Translation

C-292/24 – 1

Case C-292/24

## Request for a preliminary ruling

**Date lodged:**

25 April 2024

**Referring court:**

Landgericht Frankfurt am Main (Germany)

**Date of the decision to refer:**

2 January 2024

**Applicant and appellant:**

AD

**Defendant and respondent:**

Iberia LAE SA

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**Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main,  
Germany)  
24th Civil Chamber**

[...]

[...] [Case reference]

### Order

In the case of

AD, [...] Albersweiler

– Applicant and appellant –

[...]

v

Iberia LAE SA [...] Madrid [...], Spain

– Defendant and respondent –

[...]

the 24th Civil Chamber of the Regional Court, Frankfurt am Main, issued the following order on 2 January 2024:

**The proceedings are stayed.**

**The following question on the interpretation of EU law is referred to the Court of Justice of the European Union pursuant to Article 267 TFEU:**

**Does the second sentence of Article 31(2) of the Montreal Convention constitute an absolute time limit and must it be interpreted as meaning that the complaint must be made within 21 days from the date on which the baggage is returned, or can the complaint also be made before the baggage is returned?**

#### **Grounds**

The appellant is seeking compensation for damage caused by delay under the Montreal Convention in connection with a flight.

The appellant booked a flight with the respondent for himself, his partner and their child from Frankfurt am Main to Panama City via Madrid for 15 December 2021. As a consequence of a flight delay, the travellers' baggage did not arrive in Panama. On 15 December 2021, the appellant reported the baggage missing and contacted the baggage service centre by telephone. The baggage contained high-quality outdoor clothing, camera equipment, as-new travel tents, sleeping bags, and so on. The appellant first postponed his journey and waited two days. He replaced the missing baggage in order to continue the journey. Previously, the appellant had indicated in the contact form [...] that he wished to have contact in person with the respondent by 18 December 2021, failing which he would purchase everything again and continue his journey. No contact took place. It was only on 20 December 2021 – after the appellant had purchased replacements in accordance with his announcement – that the baggage was delivered to Panama City. The appellant is claiming from the respondent, on the basis of his own rights and the assigned rights of his travelling partner and child, essentially the costs of purchasing the replacements, as well as travel costs and the costs of a replacement flight ticket.

The Amtsgericht Frankfurt am Main (Local Court, Frankfurt am Main, Germany) dismissed the action by judgment of 30 January 2023. In its reasoning, the Local Court, Frankfurt am Main, stated that the time limit laid down in the second

sentence of Article 31(2) of the Montreal Convention had not been complied with and that there was also no case under Article 31(4) of the Montreal Convention.

The appellant brought an appeal against the judgment of the Local Court in the manner and within the period prescribed and gave reasons for that appeal in the manner and within the period prescribed. The appellant continues to pursue his claim for reimbursement of the costs of purchasing the replacements, the travel costs and the costs of the replacement flight ticket in accordance with Article 19 of the Montreal Convention. The appellant submits that the notification setting a time limit of 18 December 2021 was an (anticipatory) complaint, which sufficiently informed the respondent of the imminent occurrence of damage. The appellant claims that, in such a case, the anticipatory complaint already complies sufficiently with the time limit laid down in the second sentence of Article 31(2) of the Montreal Convention. In particular, the respondent referred the appellant to the 'World Tracer System'. It was sufficiently clear to the respondent that the appellant would purchase replacements after the time limit of 18 December 2021 and that damage would occur. Since the respondent had positive knowledge of the fact that no personal contact had been made with the appellant and the baggage had not been handed over within that time limit, the respondent was already aware of the occurrence of damage for the purposes of the second sentence of Article 31(2) of the Montreal Convention at that time. In that situation, it was not necessary to set a new time limit after the baggage had been handed over.

The respondent contends that the appeal should be dismissed, arguing that, as regards the time limit laid down in the second sentence of Article 31(2) of the Montreal Convention, the wording of the provision must be observed. Only after the baggage has been handed over can the airline genuinely assess the occurrence of damage.

The success of the appeal in this case depends on whether, by way of derogation from the wording of the second sentence of Article 31(2) of the Montreal Convention, anticipatory complaints are possible, taking into account the meaning and purpose of the provision.

In the Chamber's view, the present issue has not yet been decided by the higher courts. The legal literature also does not deal with the question of a possible anticipatory complaint. It is merely discussed therein that the meaning and purpose of the obligation to make a complaint under the second sentence of Article 31(2) of the Montreal Convention in the event of a delay is to inform the air carrier as soon as possible of any claims made against it, since the possibility of exemption from liability is open to that carrier if it can prove that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures (second sentence of Article 19 of the Montreal Convention). In order to be able to provide that evidence, the air carrier will want to collect the necessary documents and so on as soon as possible, which becomes increasingly difficult the further back the event that caused the damage occurred and would hardly be possible if the air

carrier learns of its possible liability for the first time only when the action is filed (Förster, M., in beck-online.GROSSKOMMENTAR, 15 July 2023, MÜ Art. 31, paragraph 21). However, the situation at issue in the present case departs from those considerations in so far as the respondent was not at risk of losing evidence on account of the anticipatory information that replacements would be purchased after the time limit had expired, given that it had already been informed in advance.

It is necessary to refer to the Court of Justice of the European Union, which has jurisdiction to hear and determine questions of interpretation, the question whether an anticipatory complaint is permissible in the light of the meaning and purpose of the second sentence of Article 31(2) of the Montreal Convention and whether it was therefore made within the time limit.

[...]

[signatures]