

Case C-218/24

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

21 March 2024

Referring court:

Juzgado de lo Mercantil No 4 de Madrid (Spain)

Date of the decision to refer:

8 March 2024

Applicant:

Felicísima

Defendant:

Iberia Líneas Aéreas de España, Sociedad Anónima Operadora,
Sociedad Unipersonal

Subject matter of the main proceedings

‘Montreal Convention – Baggage – Pets’

Subject matter and legal basis of the request

‘Request for a preliminary ruling on interpretation – Article 267 TFEU – Carrier liability for loss of checked baggage – Definition of the concept of “baggage” – Setting the compensation limit’

Question referred for a preliminary ruling

Must Article 17(2) of the 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 adopted on its behalf by Council Decision 2001/539/EC of 5 April 2001, read in conjunction with

Article 22(2) of that convention, be interpreted as meaning that the term ‘baggage’, either checked or unchecked, does not apply to pets?

Provisions of European Union law and case-law relied on

TFEU: Arts. 13 and 267

Council Decision 2001/539 of 5 April 2001 on the conclusion by the European Community of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention)

Rules of Procedure of the Court of Justice

Judgements of the CJEU: C-344/04 (paragraph 36), C-549/07 (paragraph 28), C-63/09 (paragraph 17), C-532/18 (paragraph 29) and C-86/19 (operative part)

Provisions of national law relied on

Código Civil (Civil Code): Art. 333 *bis*.1

Ley 17/2021, de 15 de diciembre, de modificación del Código Civil, la Ley Hipotecaria y la Ley de Enjuiciamiento Civil, sobre el régimen jurídico de los animales (Law 17/2021 of 15 December 2021 amending the Civil Code, the Law on Mortgages and the Code of Civil Procedure concerning regulations for animals)

Ley 7/2023, de 28 de marzo, de protección de los derechos y el bienestar de los animales (Law 7/2023 of 28 March 2023 on the protection of animal rights and welfare)

Succinct presentation of the facts and procedure in the main proceedings

- 1 The applicant and her mother jointly own a dog.
- 2 The applicant bought tickets for flights from Buenos Aires (Argentina) to Barcelona (Spain) (flights IB6856 and IB800) on 22 October 2019 arriving in Barcelona on 23 October 2019.
- 3 The dog was to travel in the hold, in special, standardised pet carriers or containers, due to its size and weight. The applicant checked in the pet carrier containing the dog so that it could be taken to the hold of the aeroplane, but did not make a special declaration of interest.
- 4 The dog left the carrier and ran around in the vicinity of the aircraft, and has not been recovered by the airline.

- 5 On 22 October 2021, a claim was submitted to the Juzgado Decano de Madrid (the judicial administration office for Madrid dealing with the allocation of cases) and was declared admissible on 5 September 2022.

The essential arguments of the parties in the main proceedings

- 6 The applicant claims compensation of EUR 5 000 for non-material damage due to the loss of a dog, owned by her, at Ezeiza-Buenos-Aires airport (Argentina) on 22 October 2019, during her journey by air from Buenos Aires to Barcelona.
- 7 The defendant admits the loss of the dog and the right of the applicant to be compensated, but within the limit laid down in Article 22(2) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999 ('the Montreal Convention').
- 8 The judge questions whether the expression 'checked baggage' excludes pets travelling with passengers, and, in connection with this, whether the compensation limit laid down in Article 22(2) in the case of destruction, loss, damage or delay applies to animals.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 9 The question is raised as to whether Article 17(2) of the Montreal Convention, read in conjunction with Article 22(2) of that convention, should be interpreted as meaning that the term 'baggage', either checked or unchecked, does not apply to pets.
- 10 The Montreal Convention does not define the concept of 'baggage'. The dictionary of the *Real Academia Española* defines the Spanish term '*equipaje*' as 'a collection of things that are taken on journeys'.
- 11 The judgements of the Court of Justice of the European Union that have interpreted Article 17(2) of the Montreal Convention, in conjunction with Article 22(2) of that convention, have done so in cases in which the baggage was merely a 'collection of things'. Examples of this are the judgements of the Court of Justice of 9 July 2020 in Case C-86/19, and of 6 May 2010, in Case C-63/09.
- 12 Animals, however, are living beings. Article 13 TFEU describes them as 'sentient beings'.
- 13 Article 333 *bis* 1 of the Spanish Civil Code defines animals as 'sentient living beings', to whom the regulations on assets and things are to only apply in so far as they are compatible with the nature of the animals or with the rules laid down to protect them.
- 14 Paragraph II of the preamble to Law 17/2021 establishes that 'alongside the statement in the current Article 333 that "all things that are or can be appropriated

are considered to be movable or immovable assets”, it is specified that animals are sentient living beings, which does not prevent the legislation on assets or things also being applied to certain aspects of them. This means that animals are only partially subject to the regulations on assets or things, in so far as there are no rules particularly aimed at regulating the legal relationships in which animals may be involved, provided that the regulations on assets are compatible with their nature as sentient living beings and with all the rules laid down to protect them. In our society, animals can, in general, be appropriated and traded. Without prejudice to the above, the relationship between a person and an animal (whether it be a pet, a domestic animal, or wildlife) must be tempered by the fact that they are sentient, which means that rights and powers over animals must be exercised in such a way that takes care of the welfare and protection of the animal, avoiding ill treatment, abandonment or causing a cruel or unnecessary death’.

- 15 Paragraph I of the preamble to Law 7/2023 on the protection of the rights and welfare of animals states the following: ‘the concept of “animal welfare” which is defined by the World Organisation for Animal Health as “the physical and mental state of an animal in relation to the conditions in which it lives and dies”, is being included in a wide range of legislation, at both national and international level. The aforementioned Article 13 of the Treaty on the Functioning of the European Union states that it must be taken into account that animals are sentient beings “in formulating and implementing the Union’s agriculture, fisheries, transport, internal market, research and technological development and space policies ...”, while the Civil Code states that anyone who owns, is in possession of or holds any other right over an animal has an obligation to exercise their rights over it and their duty of care to it in such a way that respects its nature as a sentient being and its welfare, in accordance with the characteristics of each species and the limitations laid down in this and other current legislation’.
- 16 In addition, in view of the nature of animals as sentient beings, the European Union has adopted a variety of legislation to protect them. In the context of the European Convention for the protection of animals kept for farming purposes, Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes was adopted. In the context of the European Convention on the protection of animals at the time of slaughter, Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing was adopted. In the context of the European Convention for the protection of vertebrate animals used for experimental and other scientific purposes, Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010 on the protection of animals used for scientific purposes was adopted.
- 17 At international level, the Universal Declaration of Animal Rights was adopted by the International League of Animal Rights and by the affiliated national leagues after the third meeting on animal rights in London from 21 to 23 September 1977. The declaration, which was proclaimed on 15 October 1978 by the International League, the national leagues and the natural persons associated with them, was

adopted by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and, subsequently, by the United Nations (UN).

- 18 The fact that animals are sentient living beings means that they have an emotional connection to their owners, which explains why their loss causes a psychological impact that is not comparable, in general terms, to the psychological impact caused by the loss of a mere collection of things, therefore, in the view of the referring judge, the compensation limit should also not be comparable.
- 19 The psychological impact of that loss cannot be prevented by means of a ‘special declaration of interest’, because the declaration refers to the material interest in the item. The Montreal Convention does not describe the concept of ‘special declaration of interest’, but it can be deduced that it is limited to the material interest in the content of the baggage based on the fact that the carrier can prove that the amount declared ‘is greater than the passenger’s actual interest in delivery at destination’ (second sentence of Article 22(2) of the Montreal Convention). The ‘actual interest’ appears to be referring to the material interest in the item, irrespective of whether the material interest is the market value or another value. In addition, the special declaration of interest is subject to compensation limits, and the airlines conduct the relevant checks of the contents of the baggage at the time of the declaration.
- 20 In the third paragraph of the preamble to the Montreal Convention, the States Parties recognise ‘the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution’, as well as the objective of ‘achieving an equitable balance of interests’. In the view of the referring judge, it might not be equitable to base compensation on legislation that equates the loss of a sentient living being to the loss of a collection of things.

For all the reasons set out, the judge has doubts regarding the inclusion of pets under the term ‘baggage’, either checked or unchecked, laid down in Article 17(2) of the Montreal Convention, and in relation to that article, regarding the application of the compensation limit laid down in Article 22(2) of that convention to the main proceedings.