

Anonymised version

Translation

C-20/21 – 1

Case C-20/21

Request for a preliminary ruling

Date lodged:

13 January 2021

Referring court:

Landgericht Frankfurt am Main (Germany)

Date of the decision to refer:

26 November 2020

Applicants:

JW

HD

XS

Defendant:

LOT Polish Airlines

Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main,
Germany) [...] 26 November 2020

[...]

[...]

Order

In the [...]

1. JW, [...]

2. HD, [...]

3. XS, represented by JW and HD, Berlin,

applicants and appellants,

[...]

v

LOT Polish Airlines [...],

defendant and respondent

[...] **[Or. 2]**

[...]

the 24th Civil Chamber of the Regional Court, Frankfurt am Main [...] ordered as follows on 26 November 2020:

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

Must Article 7(1)(b) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters be interpreted as meaning that the place of performance, within the meaning of that provision, in respect of a flight consisting of a confirmed single booking for the entire journey and divided into two or more legs, can also be the place of arrival of the first leg of the journey where transport on those legs of the journey is performed by two separate air carriers and the claim for compensation brought on the basis of Regulation (EC) No 261/2004 arises from the delay of the first leg of the journey and is brought against the operating air carrier of that first leg?

II. The appeal proceedings are stayed. **[Or. 3]**

Grounds

The applicants seek compensation under Regulation (EC) No 261/2004 on account of a flight delay.

The applicants had a confirmed single booking with the defendant for a flight from Warsaw to Frankfurt (flight number LO 379) on 27 April 2019, with a directly connecting flight with Lufthansa AG from Frankfurt to Malé/Maldives (flight number LH 704). Flight LO 379 was scheduled to depart at 5:05 p.m. local time and land in Frankfurt at 7:00 p.m. local time. The departure was delayed, however, as a result of which flight LO 379 did not arrive in Frankfurt until 8:07 p.m. local time and the applicants missed their connecting flight to Malé, which departed at 8:05 p.m. local time. The applicants only reached their final

destination of Malé after a delay of more than four hours. The distance between Warsaw and Malé is more than 3 500 kilometres.

At first instance, the applicants sought compensation of EUR 600.00 as well as indemnification of pre-litigation legal costs. The defendant contested the local and international jurisdiction of the Amtsgericht Frankfurt (District Court, Frankfurt, Germany).

The District Court, Frankfurt dismissed the action as inadmissible by judgment of 29 April 2020. In its reasoning, it stated that the place of jurisdiction cannot be Frankfurt, since neither the place of departure nor the place of arrival is located in the judicial district of Frankfurt. Nor does such jurisdiction follow from the Brussels I Regulation. In the case of the carriage of passengers by air, both the contractual place of departure and the contractual place of arrival are to be regarded as the main places of provision of the service. Neither the place of departure nor the place of arrival is located in the judicial district of Frankfurt, however.

On appeal, the applicants further argue that the action is admissible. They submit that the local jurisdiction of the Local Court, Frankfurt results from Article 7(1)(b) of Regulation (EU) No 1215/2012. The fact that Warsaw and Malé are places of performance in the present case does not preclude the existence of other places of performance.

The success of the appeal depends crucially on whether the place of performance, within the meaning of Article 7(1)(b) of Regulation (EU) No 1215/2012, in respect of a flight consisting of a confirmed single booking for the entire journey and divided into two or more legs, can also be the place of arrival of the first leg of the journey where [Or. 4] transport on those legs of the journey is performed by two separate air carriers and the claim for compensation brought on the basis of Regulation (EC) No 261/2004 arises from the delay of the first leg of the journey and is brought against the operating air carrier of that first leg.

The Court of Justice has not yet ruled on that question.

It is true that, in its decision of 9 July 2009 (case number C-204/08), the Court of Justice held that the only places which have a direct link to those services, provided in performance of obligations linked to the subject matter of the contract, are those of the departure and arrival of the aircraft, since the words ‘places of departure and arrival’ must be understood as agreed in the contract of carriage in question, made with one sole airline which is the operating carrier. However, that case is not comparable to the present one. The present case – unlike the situation on which the Court of Justice ruled in that decision – does not concern a direct flight, but rather a single booking for a journey consisting of two legs, only the first of which was operated by the defendant.

In the judgment of 7 March 2018 (case reference C-274/16, C-447/16, C-448/16), the Court of Justice held that, in the case of a connecting flight, the place of arrival

of the second leg can also be regarded as the place of performance of that flight, for the purposes of Article 7(1)(b) of Regulation (EU) No 1215/2012, where the carriage on both flights was operated by two different air carriers and the action is based on an irregularity which took place on the first of those flights, operated by the air carrier with which the passengers concerned do not have contractual relations. The reason for this, according to that judgment, is that the place of arrival of the second leg of the journey is one of the main places of provision of services under a contract for carriage by air and that place has a sufficiently close link with the material elements of the dispute. However, the Court of Justice therefore did not answer the question to be ruled on in the present dispute, as to whether the place of arrival of the first leg also has such a sufficiently close link. The fact that, in the present case, the most important aspect for the parties will have been the transport to the final destination – that is to say, the transfer is only a means to an end, and the circumstance of Frankfurt being the place of transfer ultimately came about arbitrarily – militates against such an assumption. This Chamber takes the view that there is no obligation to proceed on the basis of such an **[Or. 5]** assumption, however. Against that background, it cannot be ruled out that the place of arrival of the first leg of the journey, that is to say, Frankfurt, also constitutes a further place of performance.

The order of the Court of Justice of 13 February 2020 (case reference C-606/19) does not provide an answer to the present question either. This is because, in that order, the Court of Justice held that the place of performance, in respect of a flight consisting of a confirmed single booking for the entire journey and divided into several legs, can be the place of departure of the first leg of the journey where transport on those legs of the journey is performed by two separate air carriers and the claim for compensation brought on the basis of Regulation (EC) No 261/2004 arises from the cancellation of the final leg of the journey and is brought against the air carrier in charge of that last leg. However, the decision does not explicitly state whether this also applies to the place of arrival of the first leg of the journey.

[...]