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Advocate General's Opinion in Case C-876/24 | Vueling Airlines (Court having jurisdiction in the event of an online contract for national carriage by air)

Jurisdiction: according to Advocate General Spielmann, in the case of the online purchase of an airline ticket, the passenger's place of residence cannot determine the courts having jurisdiction for the place where the carrier has a place of business through which the air transport contract has been made

In view of the changes in the aviation sector, it is proposed that that court – before which the passenger may bring an action for damages against an air carrier – is that of the place where is located the airport at which that carrier, directly or through another carrier, checks in passengers and their baggage

A passenger purchased a ticket for a flight from Madrid (Spain) to Barcelona (Spain) from the airline Vueling Airlines (Barcelona). The ticket was purchased from the passenger's home in Fuenlabrada (Madrid) through an independent online sales platform. At Madrid airport, the passenger added the check-in of baggage as an additional service to the flight. The baggage was lost.

The passenger filed a claim with a court in Fuenlabrada for compensation for the damage resulting from the loss of her baggage. The Spanish court expressed several doubts concerning the interpretation of the Montreal Convention, ¹ which comprises, inter alia, rules on jurisdiction in cases of actions for damages against a carrier in the context of international carriage by air. ² It therefore decided to refer the matter to the Court of Justice.

The Spanish court first asks whether it has jurisdiction to hear the case, as the loss of baggage occurred during air transport between two airports located in the same Member State.

In his Opinion delivered today, Advocate General Spielmann considers that it follows from EU law that **the rules of the Montreal Convention are applicable to air transport within a Member State of the European Union**. The Convention pursues an **objective of uniformity** which is reflected in **European policy in that sector**, aimed at harmonising certain areas of carrier liability and passenger rights.

Next, the Spanish court wishes to know whether it has jurisdiction as the court of the place where the carrier has a place of business through which the air transport contract has been made. ³ That would require interpreting that place as including the principal and permanent residence of the passenger where the contract has been entered into online. **The Advocate General rejects that possibility.** ⁴

Last, the Spanish court asks whether, in order to determine that place, a distinction must be made between the principal obligation of carriage by air and the ancillary service of carriage of baggage, in particular where the damage caused relates specifically to the latter. According to the Advocate General, **an ancillary service or contract cannot be considered to be decisive in identifying where the carrier has a place of business through which the contract has been made.** ⁵ **That criterion therefore refers to the place where the contract relating to the principal obligation of carriage by air was entered into.**

Mr Spielmann considers that a broader examination of the possible interpretation of that place, in particular when the contract of carriage is concluded online, is useful. The Advocate General considers that that interpretation must be broad and flexible, and must take into account both the enhanced protection afforded to passengers by the Convention and the transformation of the sector as a result of technological advances. He therefore proposes to interpret that place as referring, **in the case of a contract concluded online, to the airport where the air carrier, either directly or through a commercial agreement with another carrier, checks in passengers and their baggage.**⁶

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 EU law or the validity of an EU 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 Opinion is published on the CURIA website on the day of delivery.

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¹ [Convention for the Unification of Certain Rules for International Carriage by Air](#), concluded at Montreal on 28 May 1999, signed on 9 December 1999 by the European Community, and approved on its behalf by [Council Decision 2001/539/EC](#) of 5 April 2001.

² According to Article 33 of the Montreal Convention, an action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination. The Convention lays down specific rules in the event of damage resulting from the death or injury of a passenger.

³ The Advocate General points out that this is the first time that the Court has been asked to interpret that criterion of jurisdiction, which has been interpreted very differently by the courts of the States Parties to the Convention.

⁴ He puts forward several reasons for doing so, in particular the opposition expressed by many delegations during the *travaux préparatoires* for the Convention to the addition of a criterion for the attribution of jurisdiction corresponding to the domicile or principal and permanent residence of the passenger. Furthermore, an interpretation whereby the mere accessibility of an online sales platform would justify the jurisdiction of the courts of the principal and permanent residence of each passenger would be contrary to the objectives of predictability and legal certainty in the designation of courts with territorial jurisdiction.

⁵ According to the Advocate General, that interpretation is consistent with the objectives of the Convention, as it contributes to the balancing of the interests of consumers and air carriers, by ensuring greater predictability and legal certainty.

⁶ The Advocate General considers that that interpretation fulfils the intention of the Convention to allow the bringing of an action before the courts of the country in which the ticket was purchased when the carrier has a commercial presence there, and meets the objectives it pursues. It would make it possible to prevent, in many scenarios, the exercise of the passenger's right of action from being limited to the courts of a foreign country with which he or she has no connection. It also meets the objective of striking a balance between the possibility for individuals to bring proceedings before their national courts and the protection of airlines against the obligation to defend themselves in countries in which they have no commercial presence. Moreover, it has the advantage of being consistent with the objectives of foreseeability and legal certainty.