



## EUROPEAN SMALL CLAIMS PROCEDURE

ADJUDICATOR  
**AVV. DR. ILONA SCHEMBRI**  
LL.B., LL.D., LL.M. (Lond.), Ph.D. (Birm.)

**Today, Monday 7 October 2024**

**Claim number: 21/2020 IS**

**CRISTIAN NICOLAE CAPOTA (HOLDER OF ROMANIAN PASSPORT NUMBER 057145968)  
AND ANCA GRIGORE (HOLDER OF ROMANIAN PASSPORT NUMBER 057046679)**

*VERSUS*

**WIZZ AIR HUNGARY LTD. (HUNGARIAN REGISTRATION NUMBER 01-09-964332)**

**THE TRIBUNAL,**

Having seen the Notice of Claim filed by the plaintiffs, who are the claimants in these proceedings, in virtue of Regulation (EC) 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure, filed on 16 November 2020 whereby the claimants claimed that they used the defendant company's services to travel to Malta, but their flight was delayed by more than three hours and when asked for information, the defendant company informed them that the delay was the result of a bird strike. In view of this delay, the plaintiffs are seeking the compensation payment of five hundred Euros (EUR 500) in total per Regulation (EU) No. 261/2004;

Having also seen that the defendant company was duly served with the acts of the case on 9 October 2021 and did not file a reply (page 26);

Having considered all evidence brought forward by the respective parties;

Having also considered that the Tribunal can adjudicate this case on the basis of the evidence produced and that therefore no oral hearing needs to be fixed.

### Considers

It is uncontested that the defendant company provided the plaintiffs with services for Malta travel since the plaintiffs provided copies of their flight tickets, which can be found on pages 13 to 15, and also a copy of their email correspondence with the defendant company found on page 17.

In this case, four factors must be considered: the applicable jurisdiction, the defendant's contumaciousness, the applicable law and the facts of the case.

### Applicable jurisdiction

First, the Tribunal must clarify its jurisdiction in this case to justify the fact that this Tribunal can render judgment. Because the plaintiffs are domiciled in Romania and the defendant company is registered in Hungary, European Union (EU) law will determine the jurisdiction.

This Tribunal observes that the relationship between the parties can be classified as a consumer-trader relationship. It should be noted, however, that this relationship is not governed by the Consumer Rights Directive, as amended in recent years, as Recital 27 of the Directive explicitly excludes infringement of contracts based on flight delays. In fact, it states: "*Transport services cover passenger transport and transport of goods. Passenger transport should be excluded from the scope of this Directive as it is already subject to other Union legislation or, in the case of public transport and taxis, to regulation at national level. However, the provisions of this Directive protecting consumers against excessive fees for the use of means of payment or*

*against hidden costs should apply also to passenger transport contracts. In relation to transport of goods and car rental which are services, consumers should benefit from the protection afforded by this Directive, with the exception of the right of withdrawal."*

Accordingly, this Tribunal must look at other legislation and it concludes that it must apply the Brussels I regulation to determine jurisdiction. In response to passenger claims, as is this case, the EU clarified that *"For flights from one Member State to another Member State, carried out on the basis of a contract with a single operating air carrier, a claim for compensation under the Regulation can be brought, at the applicant's choice, to the national court which has territorial jurisdiction either over the place of departure or place of arrival, as stated in the contract of carriage (in application of Council Regulation (EC) No 44/2001 ('Brussels I'), now recast under Regulation (EU) No 1215/2012 ('Brussels I bis')). Under Article 2(1) of Brussels I, passengers also retain the option of bringing the matter before the courts of the defendant's (air carrier's) domicile."*<sup>1</sup>

The Brussels court also confirmed Article 5 of the Brussels I Regulation (44/2001) as the mandatory legal framework for passenger compensation claims. The Brussels court ruled on 11 February 2015 that claims for compensation under the EU Flight Delay Compensation Regulation (261/2004) should follow the jurisdictional rules set out in Article 5 of the Brussels I Regulation. This regulation, which establishes standard rules on compensation and assistance to passengers in the event of denied boarding and cancellation or long delay of flights, provides a clear and transparent legal process.

As a result, Regulation (EU) No. 1215/2012 of the European Parliament and Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil

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<sup>1</sup> Air Passenger Rights, European Case Law, March 2022, <bd0d2156-97d8-4c77-976b-c5c4e7381802\_en (europa.eu)> (accessed 18 August 2024)

and commercial matters (recast), also known as the Brussels I bis Regulation determines the jurisdiction and in which case the plaintiffs had every right to choose either to file their action in Bucharest, as the port of departure, or Malta, as the port of arrival, or Hungary as the place of domicile of the defendant company. Based on the above-given reasons, it is acceptable that the plaintiffs filed their action in Malta.

It follows, therefore, that this Tribunal has jurisdiction to resolve this dispute.

#### The defendant company's contumaciousness

This Tribunal notes that the defendant company is contumacious in these proceedings. However, the Tribunal acknowledges that it is an undisputed principle that being contumacious does not mean the person will be automatically found guilty. Despite the defendant company's contumacious behaviour, the Tribunal must still examine all the evidence to determine whether the plaintiffs' action can succeed.

#### Applicable law

It is now necessary to identify which law applies in this case. Since both the plaintiffs' domicile and the defendant company's registered place are within the EU, the question may arise as to whether EU legislation or the Montreal Convention applies. In an Italian judgment dated 2 November 2020 (ordinanza 24632/20), the Italian Supreme Court ruled that actions brought by passengers against air carriers are allowed, and after reviewing all EU legislation, the Montreal Convention, and judgments from the Court of Justice of the European Union, it was ruled that the Montreal Convention would be the *lex specialis* for this matter. The Montreal Convention is also known as the Convention for the Unification of Certain Rules for International Carriage by Air. Several countries, including Malta, have ratified this Convention, a universal treaty that, according to Article 1 (1), "*applies to all international carriage of persons, baggage or cargo performed by aircraft for reward.*" In Article 1

(2) of the Montreal Convention, international carriage is defined, clearly indicating that the air carriage falls under its scope. However, the Montreal Convention only covers deaths or injuries of passengers or delayed, damaged, or lost baggage and cargo. Therefore, the Montreal Convention does not apply when a flight is delayed, as in this case. Consequently, the Tribunal must consider other legislation.

As correctly pointed out by the defendant company in its email dated 20 December 2019, a copy of which is found on page 17, the applicable legislation in this case between the parties is Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing standard rules on compensation and assistance to passengers in the event of denied boarding and cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91. In fact, Article 1 of this Regulation specifies that it applies to delays in passenger flights and it mandates compensation for flight delays unless there are exceptional circumstances.

### The facts of the case

In this case, the Tribunal must consider the amount of compensation the defendant company must pay the plaintiffs, if any.

In their complaint, the plaintiffs provided copies of the flight tickets, which can be found on pages 13 to 15. According to the flight tickets, the plaintiffs used the defendant company's services on 8 December 2019 and filed this lawsuit on 16 November 2020.

Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing standard rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 which specifically deals with cases when passengers' flights

are delayed, as provided in Article 1 of the said Regulation, shall apply for any compensations. An email from the defendant company to the plaintiff alleging flight delays were due to bird strike damages appears on page 17. Consequently, the defendant company accepted that there had been a delay but attributed it to bird strike damage and concluded that it shall not pay any compensation to the plaintiffs and without specifying the time delay. This Tribunal agrees with the contents of the email to the extent that bird strike damage would be considered an extraordinary circumstance under Regulation 261/2004, and compensation would not be allowed. However, this Tribunal recognises that the Regulation does not define extraordinary circumstances and refers to the European Commission Interpretative Guidelines on Air Passenger Rights. In spite of the Tribunal's understanding that these are simply guidelines and do not constitute an enforceable provision, the European Commission has published guidelines, including an updated version in recent months, with an intent to *"facilitate compliance with regulations and harmonise enforcement by national bodies. Since 2016, the Commission has been providing guidelines to address common concerns raised by national enforcement bodies, passengers and their associations, and industry representatives. Today's revision notably takes into account rulings by the Court of Justice since 2016 that clarify certain provisions, allowing for more effective and consistent enforcement of the rules. A new section on massive travel disruptions has also been added."*<sup>2</sup> Despite the fact that the Tribunal notes that these guidelines were updated in 2024, after the filing of this case, it is imperative to note that the principle has not changed since when this case was filed until today, as the European Commission referred to a 2015 case in its guidelines on bird strike damages.

These guidelines emphasise the need to prove such an extraordinary circumstance. According to these guidelines, *"If an air carrier refers to such proof in its reply to a passenger's*

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<sup>2</sup> European Commission, Commission publishes new guidelines for more clarity on air passenger rights, July 2024, < New guidelines for more clarity on air passenger rights (europa.eu)> (accessed 4 September 2024)

*claim or to the national enforcement body, it should include this proof in its reply. If the air carrier seeks to rely on the defence of extraordinary circumstances, such proof should be provided free of charge by the air carrier to the national enforcement body and the passengers in line with national provisions on access to documents.”*<sup>3</sup> Maltese law, which is applicable in the absence of EU legislation, also embraces the same principle. Article 562 of the Code of Organisation and Civil Procedure states that: *"Saving any other provision of the law, the burden of proving a fact shall, in all cases, rest on the party alleging it."*

The defendant company failed to substantiate its claim. This Tribunal notes that the defendant company had two crucial opportunities to substantiate the alleged fact in this case. The first was when it responded to the email requesting compensation on 20 December 2019, a copy of which is on page 17. The second was when it was informed about this case being filed.

Due to the defendant company's lack of evidence, this Tribunal cannot accept the defendant company's reply as justified and, therefore, rules in favour of the plaintiff.

This Tribunal must now calculate the compensation due to the plaintiffs once it has determined that the defendant company must pay compensation for the delay. According to the plaintiffs' Form A, the flight was delayed by more than three hours. A copy of the defendant's email dated 20 December 2019, which can be found on page 17, confirms the plaintiff's claim in this regard, though it does not confirm the exact time of the delay, but at the same time, does not discredit the plaintiffs' objection that the flight was delayed by

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<sup>3</sup> ANNEX to the Communication to the Commission Approval of the content of a draft Commission Notice on the Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents, 22 July 2024, <e16380cb-b096-4c7a-88d5-a4962655744b\_en (europa.eu)> (accessed 4 September 2024)

more than three hours. Therefore, this Tribunal considers that on the basis of probabilities, the plaintiff's version in this respect is true. The distance between Bucharest and Malta is also less than 1,500 km, therefore fulfilling the requirements of Article 6 (1) (a) of Regulation 261/2004. The workings for compensation claims are set out in Article 7 of Regulation 261/2004, and in this case, Article 7 (1) (a) shall apply. Accordingly, the plaintiffs correctly stated they had a right to compensation of two hundred and fifty Euros (EUR250) per passenger.

Therefore, this Tribunal concludes that the defendant company is obligated to pay the plaintiffs five hundred Euros (EUR 500) for the delayed flight.

### **Decide**

For the aforementioned reasons, the Tribunal accepts the plaintiffs' claim for the total amount of five hundred Euros (EUR 500) in line with the rationale provided above and orders the defendant company to pay the plaintiffs the said amount.

The judicial costs associated with these proceedings shall be borne by the defendant company.

**Avv. Ilona Schembri**

Adjudicator