



EUROPEAN SMALL CLAIMS PROCEDURE

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

Today, Tuesday 11 February 2025

Claim number: 9/2024 IS

AURELIAN ALIN MAROCICO (PERSONAL IDENTIFICATION NUMBER 1810913020117)

VERSUS

WIZZ AIR MALTA LIMITED (MALTESE REGISTRATION NUMBER MT29298624)

THE TRIBUNAL,

Having seen the Notice of Claim filed by the plaintiff, who is the claimant in these proceedings both in his name and in the name of his minor son, in virtue of Regulation (EC) 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure, filed on 12 April 2024, whereby the claimant claimed that he used the defendant company's services to travel to Istanbul, Turkey but his son was denied boarding because of the son's passport expiry date. In view of this delay, the plaintiff is seeking the compensation payment of one thousand eight hundred Euros (EUR 1,800.00) 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 15 July 2024 and did not file a reply (page 74);

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 plaintiff, and his minor son, with services for Turkey travel since the plaintiff provided copies of the flight tickets, which can be found on pages 13 and 25 to 32, and also a copy of the email correspondence with the defendant company found on page 15.

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 plaintiff and his son are domiciled in Romania and the defendant company is registered in Malta, 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 denial of boarding. 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."*¹

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 and commercial matters (recast), also known as the Brussels I bis Regulation determines

¹ Air Passenger Rights, European Case Law, March 2022, <bd0d2156-97d8-4c77-976b-c5c4e7381802_en (europa.eu)> (accessed 18 August 2024)

the jurisdiction and in which case the plaintiff had every right to choose either to file the action in Romania, as the port of departure, or Malta, as the place of domicile of the defendant company. Based on the above-given reasons, it is acceptable that the plaintiff filed the 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 plaintiff's action can succeed.

Applicable law

It is now necessary to identify which law applies in this case. Since both the plaintiff's 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 person is denied boarding on a flight, as in this case. Consequently, the Tribunal must consider other legislation.

The Tribunal notes that 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 passengers who are denied boarding against their will, and it mandates compensation in this case, 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 plaintiff, if any.

In his complaint, the plaintiff provided copies of the flight tickets, which can be found on pages 23 to 32. According to the flight tickets, the plaintiff, together with his son, was due to use the defendant company's services on 28 December 2023 and filed this lawsuit on 12 April 2024.

He alleged that his minor son, Alexandru Marocico, was denied boarding against his will by the defendant company because the defendant company and its airport representative, Menzies Aviation, claimed that Alexandru Marocico had less than 150 days left from his expiry date from the date he had to enter Turkey. Nevertheless, the plaintiff also alleged that the information on Turkey's official website differs, and that the plaintiff's son was a

Romanian citizen and thus had an automatic 90-day stay, and also provided a link to Turkey's official website to prove it (page 6 and page 62 and 63 and 70 and 71).

From the above evidence, this Tribunal rules in favour of the plaintiff as it can clearly see that the defendant company had no legal right to deny boarding to the plaintiff's son.

This Tribunal must now calculate the compensation due to the plaintiff once it has determined that the defendant company must pay compensation for the denied boarding of the plaintiff's son. According to the plaintiff's affidavit and documentation, the plaintiff's son was denied boarding on the 28 December 2023. The distance between Iasi and Istanbul is 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 plaintiff has a right to compensation of two hundred and fifty Euros (EUR250) per passenger.

The Tribunal considers that the plaintiff alleged that his minor son was denied boarding, and the plaintiff also presented a copy of the minor son's passport, which is found at page 17. Accordingly, the Tribunal considers this claim to be valid when it was filed by the father. However, the claim does not mention the mother anywhere. Therefore, this Tribunal will only rule in favour of the plaintiff and his minor child for a total of five hundred Euros (EUR 500) in total for both.

As well, the Tribunal, in line with Article 8 of the above-mentioned Regulation, considers the cost of the flight ticket between Romania and Turkey. The Tribunal could see that the total flight cost was of 431.29 Eur (page 12 and 28 to 30) for six people. Therefore, the cost of each flight ticket is seventy-one Euro and eighty eight Euro cent (Eur 71.88) which

amounts to one hundred and forty three Euros and seventy six Euro cent (EUR 143.76) for the plaintiff and his son.

The Tribunal notes that Article 9 of the above-mentioned Regulation does not apply in this case.

Therefore, the Tribunal concludes that the total amount of compensation that the defendant company must pay the plaintiff amounts to six hundred and forty-three Euros and seventy-six Euro cent (EUR 643.76).

Decide

For the aforementioned reasons, the Tribunal partially accepts the plaintiff's claim for the total amount of six hundred and forty-three Euros and seventy-six Euro cent (EUR 643.76). in line with the rationale provided above and orders the defendant company to pay the plaintiff the said amount.

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

Avv. Ilona Schembri

Adjudicator