Reports of Cases

ORDER OF THE COURT (Sixth Chamber)

13 February 2020*

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Area of freedom, security and justice — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Regulation (EU) No 1215/2012 — Second indent of Article 7(1)(b) — Special jurisdiction in matters relating to a contract — Concept of 'place of performance' — Contract for the provision of services — Air transport — Regulation (EC) No 261/2004 — Right to compensation for flight passengers in the event of cancellation or long delay of flights — Flight under a confirmed single booking with several connecting flights operated by two separate air carriers — Cancellation of the final leg of the journey — Claim for compensation brought against the air carrier in charge of the final leg of the journey before the court or tribunal which has territorial jurisdiction over the place of departure of the first leg of the journey)

In Case C-606/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Amtsgericht Hamburg (Local Court, Hamburg, Germany), made by decision of 31 July 2019, received at the Court on 12 August 2019, in the proceedings

flightright GmbH

v

Iberia LAE SA Operadora Unipersonal,

THE COURT (Sixth Chamber),

composed of M. Safjan (Rapporteur), President of the Chamber, L. Bay Larsen and N. Jääskinen, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to rule by reasoned order, in accordance with Article 99 of the Rules of Procedure of the Court,

makes the following

* Language of the case: German.

Order

1 This request for a preliminary ruling concerns the interpretation 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 (OJ 2012 L 351, p. 1).

2 The request has been made in proceedings between flightright GmbH, a company established in Potsdam (Germany), and Iberia LAE SA Operadora Unipersonal ('Iberia'), an airline established in Madrid (Spain), concerning a claim for compensation brought on the basis of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common 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 (OJ 2004 L 46, p. 1).

Legal context

Regulation No 1215/2012

3 Section 2 of Chapter II of Regulation No 1215/2012, entitled 'Special jurisdiction', contains Article 7(1) thereof, which provides:

'A person domiciled in a Member State may be sued in another Member State:

(1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

— in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

— in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;
(c) if point (b) does not apply then point (a) applies.'

Regulation No 261/2004

4 Article 2 of Regulation No 261/2004, entitled 'Definitions', provides:

'…

(b) "operating air carrier" means an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger;

…'

5 Article 3(5) of that regulation, entitled 'Scope', states:

'This regulation shall apply to any operating air carrier providing transport to passengers covered by paragraphs 1 and 2. Where an operating air carrier which has no contract with the passenger performs obligations under this regulation, it shall be regarded as doing so on behalf of the person having a contract with that passenger.'

6 Under Article 5(1)(c) of the regulation, entitled 'Cancellation':

'In case of cancellation of a flight, the passengers concerned shall:

…

(c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:
   (i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or
   (ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or
   (iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.'

7 Article 7(1)(a) of the regulation, entitled 'Right to compensation', provides:

'Where reference is made to this article, passengers shall receive compensation amounting to:

(a) EUR 250 for all flights of 1 500 kilometres or less'.

The dispute in the main proceedings and the questions referred for a preliminary ruling

8 The dispute in the main proceedings concerns a journey with connecting flights scheduled for 25 August 2018, under a confirmed single booking for two passengers ('the passengers at issue').

9 The journey from Hamburg (Germany) to San Sebastian (Spain) comprised three connecting flights. The first leg of the journey, from Hamburg to London (United Kingdom), was operated by British Airways, while Iberia was in charge of the other two legs of the journey, from London to Madrid (Spain) and from Madrid to San Sebastian.

10 Whilst there were no incidents on the first two legs of the journey, the third leg of the journey was cancelled without the passengers at issue being informed in due time.

11 Because of that cancellation, flightright, to which the passengers at issue had assigned any right to compensation, lodged before the referring court, the Amtsgericht Hamburg (Local Court, Hamburg, Germany), a claim for compensation in the amount of EUR 500, that is to say EUR 250 per passenger, against Iberia under Article 5(1)(c) and Article 7(1)(a) of Regulation No 261/2004, the distance between Hamburg and San Sebastian being approximately 1 433 km.

12 The referring court has doubts as to (i) whether it has international jurisdiction over the dispute in the main proceedings and (ii) whether the passengers at issue may sue both air carriers involved in the operation of the journey with connecting flights that gave rise to the dispute in the main proceedings.

13 In particular, the referring court questions whether it has jurisdiction over the dispute in the main proceedings in respect of the leg of the journey that was cancelled, despite the fact that the place of departure and the place of arrival of that leg of the journey, namely, respectively, Madrid and San Sebastian, are outside its territorial jurisdiction.

14 In addition, the referring court notes that the Court, in its judgment of 11 July 2019, *České aerolinie* (C-502/18, EU:C:2019:604), held that, in the context of a journey with connecting flights made under a single booking, the air carrier that operated the first connecting flight, which had its place of departure within the territorial jurisdiction of the court or tribunal hearing the case, could be sued for all connecting flights in that journey for the purpose of a claim for compensation brought on the basis of Regulation No 261/2004.

15 In the light of that judgment, the referring court is unsure whether the air carrier in charge of the final leg of such a journey also can be sued in the context of a claim for compensation on that basis.

16 In those circumstances, the Amtsgericht Hamburg (Local Court, Hamburg) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does the referring court have international jurisdiction, where connecting flights constitute a whole, two different … air carriers performed the individual connecting flights and the referring court only has international jurisdiction for the connecting flight not affected by a cancellation?

(2) Do both air carriers performing the connecting flights constituting a whole have the capacity to be sued where two Community air carriers performed the connecting flights?’

Consideration of the questions referred

17 Under Article 99 of its Rules of Procedure, where, inter alia, the reply to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law or where the answer to the question referred admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

18 It is appropriate to apply that provision in the present case.

19 It should be noted as a preliminary point that, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. The Court may also find it necessary to consider provisions of EU law which the national court has not referred to in its questions (judgment of 5 December 2019, *Centraal Justitieel Incassobureau (Reconnaissance et exécution des sanctions pécuniaires)*, C-671/18, EU:C:2019:1054, paragraph 26 and the case-law cited).

20 In the present case, the referring court makes no mention of any provision in its questions referred. However, it is clear from the order for reference that the referring court has doubts as to whether it has jurisdiction over the claim for compensation brought against the air carrier in charge of the final leg of the journey and pending before it.

21 Therefore, it is appropriate to examine those questions in the light of the provisions on jurisdiction of Regulation No 1215/2012.

22 In those circumstances, the questions referred, which are to be examined together, must be understood to the effect that the referring court is asking the Court of Justice, in essence, whether the second indent of Article 7(1)(b) of Regulation No 1215/2012 must 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 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 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.

23 In that regard, it should be recalled that the second indent of Article 7(1)(b) of Regulation No 1215/2012 provides that in matters relating to a contract, for the purpose of suing a person domiciled in a Member State in another Member State, the place of performance of the obligation in question is, for the purpose of that provision and unless otherwise agreed, in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided.

24 In that respect, it should also be noted that in so far as Regulation No 1215/2012 repeals and replaces Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1), the Court's interpretation of the provisions of the latter regulation also applies to Regulation No 1215/2012, whenever the provisions of the two instruments of EU law may be regarded as equivalent (judgment of 8 May 2019, *Kerr*, C-25/18, EU:C:2019:376, paragraph 19 and the case-law cited).

25 Consequently, the Court's interpretation of Article 5(1) of Regulation No 44/2001 also applies to Article 7(1) of Regulation No 1215/2012, since those provisions may be regarded as equivalent (judgment of 8 May 2019, *Kerr*, C-25/18, EU:C:2019:376, paragraph 20 and the case-law cited).

26 With regard to Article 5(1) of Regulation No 44/2001, the Court held, for direct flights, that both the place of departure and that of arrival must be considered, in the same respect, as the principal places of provision of the services which are the subject of a contract for carriage by air, thus giving the person bringing a claim for compensation on the basis of Regulation No 261/2004 the choice of bringing that claim before the court or tribunal which has territorial jurisdiction over either the place of departure or the place of arrival of the aircraft, as those places are agreed in that contract (see, to that effect, judgment of 9 July 2009, *Rehder*, C-204/08, EU:C:2009:439, paragraphs 43 and 47).

27 In that respect, the Court has clarified that although the concept of 'place of performance' as interpreted in its judgment of 9 July 2009, *Rehder* (C-204/08, EU:C:2009:439), refers to a direct flight, it also applies, *mutatis mutandis*, with respect to situations in which the journey with connecting flights consisting of a confirmed single booking for the entire journey comprises two legs (see, to that effect, judgment of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraphs 69 and 71).

28 It follows that, where a flight consists of a confirmed single booking for the entire journey and comprises two legs, the person bringing a claim for compensation on the basis of Regulation No 261/2004, can also choose to bring the claim either before the court or tribunal which has territorial jurisdiction over the place of departure of the first leg of the journey or before the court or tribunal which has territorial jurisdiction over the place of arrival of the second leg of the journey.

29 As is apparent from the order for reference, in the case in the main proceedings, the flight at issue comprised three legs. However, in so far as a contract for carriage by air consists of a confirmed single booking for the entire journey, that contract establishes the obligation for an air carrier to carry a passenger from a point A to a point D. Such a carriage operation constitutes a service for which one of the principal places of provision is at point A (see, by analogy, judgment of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraph 71).

30 In those circumstances, it must be found that in situations in which a journey with connecting flights consists of a confirmed single booking for the entire journey and comprises several legs, the place of performance, within the meaning of the second indent of Article 7(1)(b) of Regulation No 1215/2012, can be the place of departure of the first leg of the journey, as one of the principal places of provision of the services which are the subject of a contract for carriage by air.

31 Given that that place has a sufficiently close link with the material elements of the dispute and, therefore, ensures the close connection required by the rules of special jurisdiction set out in Article 7(1) of Regulation No 1215/2012 between the contract for carriage by air and the competent court or tribunal, it satisfies the objective of proximity underlying those rules (see, to that effect, judgment of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraphs 74 and the case-law cited).

32 That solution also fulfils the principle of predictability pursued by those rules in so far as it allows both the applicant and the defendant to identify the court or tribunal for the place of departure of the first leg of the journey, as it is set out in that contract for carriage by air, as the court or tribunal before which actions may be brought (see, to that effect, judgment of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraphs 75 and 77 and the case-law cited).

33 With regard to the possibility, in a case such as that in the main proceedings, to sue the air carrier in charge of the final leg of the journey before the court or tribunal which has territorial jurisdiction over the place of departure of the first leg of the journey, it must be observed that while it does not transpire from the order for reference that Iberia was the contracting partner of the passengers at issue, the rule of special jurisdiction for matters relating to a contract set out in Article 7(1) of Regulation No 1215/2012 does not require the conclusion of a contract between two persons, but the existence of a legal obligation freely consented to by one person in respect of another and on which the claimant's action is based (see, to that effect, judgment of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraph 60 and the case-law cited).

34 In that regard, the second sentence of Article 3(5) of Regulation No 261/2004 states that where an operating air carrier, within the meaning of Article 2(b) thereof, which has no contract with the passenger performs obligations under that regulation, it is to be regarded as doing so on behalf of the person having a contract with that passenger.

35 Therefore, that carrier must be regarded as fulfilling the freely consented obligations vis-à-vis the contracting partner of the passenger concerned. Those obligations arise under the contract for carriage by air (judgment of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraph 63).

36 In the light of all the foregoing, the answer to the questions referred is that the second indent of Article 7(1)(b) of Regulation No 1215/2012 must 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 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 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.

Costs

37 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds, the Court (Sixth Chamber) hereby rules:

The second indent of 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 must 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 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 of the European Parliament and of the Council of 11 February 2004 establishing common 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, arises from the cancellation of the final leg of the journey and is brought against the air carrier in charge of that last leg.

[Signatures]