Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

2 June 2022 *

(Reference for a preliminary ruling – Air transport – Montreal Convention – Article 17(1) – Liability of air carriers for death or injury sustained by passengers – Concept of 'accident' causing death or injury – Bodily injury suffered during disembarkation – Article 20 – Exoneration of air carrier from liability – Concept of 'damage suffered caused or contributed to by the negligence or other wrongful act or omission of that injured passenger' – Fall of passenger not holding on to the handrail of a mobile disembarkation stairway)

In Case C-589/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesgericht Korneuburg (Regional Court, Korneubourg, Austria), made by decision of 15 September 2020, received at the Court on 10 November 2020, in the proceedings

JR

v

Austrian Airlines AG,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, N. Jääskinen, M. Safjan, N. Piçarra (Rapporteur) and M. Gavalec, Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– JR, by F. Raffaseder, Rechtsanwalt,

– Austrian Airlines AG, by C. Krones, Rechtsanwalt,

– the German Government, by J. Möller, M. Hellmann and U. Kühne, acting as Agents,

* Language of the case: German.

– the European Commission, by G. Braun, K. Simonsson and G. Wilms, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 January 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 17(1) and Article 20 of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001 (OJ 2001 L 194, p. 38; 'the Montreal Convention'), which entered into force for the European Union on 28 June 2004.

2 The request has been made in proceedings between JR and Austrian Airlines AG, an air carrier, concerning a claim for damages brought by JR for bodily injuries caused by her fall during the disembarkation of a flight operated by that carrier.

Legal context

International law

3 The third and fifth paragraphs of the preamble to the Montreal Convention state:

'[The States Parties recognise] the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution,

…

… collective State action for further harmonisation and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests.'

4 Article 17 of the Montreal Convention, entitled 'Death and injury of passengers – damage to baggage', provides, in paragraph 1 thereof:

'The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.'

5 Under Article 20 of that convention, entitled 'Exoneration':

'If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage …'

European Union law

6 Recital 9 of Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air (OJ 1997 L 285, p. 1) as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 (OJ 2002 L 140, p. 2) ('Regulation No 2027/97') is worded as follows:

'… [European Union] air carriers may be exonerated from their liability in cases of contributory negligence of the passenger concerned.'

7 Article 2(2) of that regulation provides:

'Concepts contained in this Regulation which are not defined in paragraph 1 shall be equivalent to those used in the Montreal Convention.'

8 Recitals 10 and 18 of Regulation No 889/2002 state:

'(10) A system of unlimited liability in case of death or injury to passengers is appropriate in the context of a safe and modern air transport system.

…

(18) To the extent that further rules are required in order to implement the Montreal Convention on points that are not covered by [Regulation No 2027/97], it is the responsibility of the Member States to make such provisions.'

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

9 On 30 May 2019, JR, accompanied by her husband and their two-year-old son, travelled from Thessaloniki (Greece) to Vienna-Schwechat (Austria) on a flight operated by Austrian Airlines.

10 At Vienna-Schwechat airport, while disembarking the aircraft via a mobile stairway with a handrail on each side, JR's husband, who had gone before her holding a piece of wheeled hand luggage in each hand, almost fell on the lower third of the stairway. JR, who was holding her handbag in her right hand and carrying her son in her left arm, fell in the same place her husband had almost fallen. As a result of that fall, JR suffered, inter alia, a fracture of her left forearm.

11 JR brought an action for damages against Austrian Airlines in the Bezirksgericht Schwechat (District Court, Schwechat, Austria) in the amount of EUR 4 675 plus costs and interest. She claimed that the stairway in question did not fulfil Austrian Airlines' contractual obligation to protect and ensure the safety of its passengers, since she fell despite taking particular care when walking down the stairway in question after seeing her husband's near fall. She nevertheless fell because that stairway, which was uncovered, had become too slippery as a result of the wet weather with drizzly rain. JR added that the step on which she had slipped was also oily and dirty.

12 Austrian Airlines contended that the treads of the stairway in question were perforated/corrugated which allowed any water to run off quickly in such way that that stairway would not have been slippery. It therefore had not failed to fulfil its contractual obligations of protection and diligence, nor acted culpably or unlawfully. JR's fall was due to her own conduct since she did not use either of the handrails on that stairway, even after seeing her husband's near

fall. Furthermore, despite medical advice, JR, in breach of her duty to minimise the damage suffered, chose not to receive immediate treatment in a hospital near the airport and did not seek treatment until late into the evening of 30 May 2019, which could have aggravated her injuries.

13 By judgment of 15 March 2020, the Bezirksgericht Schwechat (District Court, Schwechat) found that some of the passengers on the aircraft in question had, before JR, taken the same mobile stairway as JR and that none of them had complained of a slippery area on that stairway or had fallen. That court found, in particular, that the stairway in question was made of metal and was not covered, as no covered stairways were available at Vienna-Schwechat, that its steps were wide enough for two people to walk down the stairs alongside each other, that the corrugated surface of those steps ensured a particular non-slip quality and that that stairway was a certified piece of equipment tested by the Technischer Überwachungsverein (Technical inspection association, Austria). That court found that the stairway in question showed no signs of defects or damage and that, although those steps were wet, they were not slippery, oily, greasy or covered by dirt, with some dot-shaped pieces of dirt of unknown consistency on the last three steps only. It concluded that it was not possible to determine the reasons why JR had fallen.

14 That court, on the basis of Article 1295(1) of the Allgemeines Bürgerliches Gesetzbuch (General Civil Code), dismissed the action brought by JR, holding in essence that Austrian Airlines had not infringed its ancillary obligation to ensure the safety of its passengers and that JR had not taken any precautions to prevent her fall.

15 The Landesgericht Korneuburg (Regional Court, Korneuburg, Austria) before which JR appealed against that judgment, has doubts, first, as to whether JR's fall is covered by the concept of 'accident' within the meaning of Article 17(1) of the Montreal Convention, as interpreted by the Court in the judgment of 19 December 2019, *Niki Luftfahrt* (C-532/18, EU:C:2019:1127). According to the referring court it follows from that judgment that that concept covers all situations occurring on board an aircraft, or in the course of any of the operations of embarking or disembarking in which an object used when serving passengers has caused bodily injury to a passenger, without it being necessary to examine whether those situations stem from a hazard typically associated with aviation. The situation at issue in the main proceedings can be distinguished from that at issue in the case which gave rise to that judgment since JR's fall was not caused by such an object.

16 Second, the referring court considers that JR at the very least contributed to her fall since she did not hold on to one of the handrails of the mobile stairway set up for the disembarkation of passengers, even after seeing her spouse almost fall just before her. The referring court thus asks whether, under Article 20 of the Montreal Convention, that contributory negligence 'outweighs any liability … in such a way that [Austrian Airlines'] liability ceases to exist' under Article 17(1) of that convention.

17 In those circumstances, the Landesgericht Korneuburg (Regional Court, Korneuburg) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 17(1) of the [Montreal] Convention to be interpreted as meaning that the concept of "accident" within the meaning of that provision covers a situation in which a passenger falls on the last third of a mobile boarding stairway when disembarking from an aircraft – for no ascertainable reason – and sustains an injury, which was not caused by an object used when

serving passengers within the meaning of [the judgment of 19 December 2019, *Niki Luftfahrt* (C-532/18, EU:C:2019:1127)], and there was no defect in the quality of the stairway, which, in particular, also was not slippery?

(2) Is Article 20 of the [Montreal] Convention to be interpreted as meaning that any liability on the part of the air carrier ceases to exist in its entirety if circumstances such as those described [in the first question] exist and the passenger was not holding on to the handrail of the stairway at the time of the fall?'

Consideration of the questions referred

The first question

18 By its first question the referring court asks in essence whether Article 17(1) of the Montreal Convention must be interpreted as meaning that a situation in which, for no ascertainable reason, a passenger falls on a mobile stairway set up for the disembarkation of the passengers of an aircraft and injures himself or herself constitutes an 'accident', within the meaning of that provision, including where the air carrier concerned has not failed to fulfil its diligence and safety obligations in that regard.

19 Under that provision the air carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

20 The Court has already held that the concept of 'accident', in its ordinary meaning and in the context of which it forms part, is that of an unforeseen, harmful and involuntary event and that that concept does not require that the damage is due to the materialisation of a hazard typically associated with aviation or that there be a connection between the 'accident' and the operation or movement of the aircraft (see, to that effect, judgment of 19 December 2019, *Niki Luftfahrt*, C-532/18, EU:C:2019:1127, paragraphs 34, 35 and 41).

21 That interpretation of Article 17(1) of the Montreal Convention is consistent with its objectives, which, as is apparent from the third and fifth paragraphs of the preamble of that convention, consist in 'ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution', by means of a system of strict liability for air carriers, while maintaining an 'equitable balance of interests' of air carriers and passengers (see, to that effect, judgment of 19 December 2019, *Niki Luftfahrt*, C-532/18, EU:C:2019:1127, paragraph 36).

22 Accordingly, where, for no ascertainable reason, a passenger falls on a mobile stairway set up for the disembarkation of the passengers of an aircraft and injures himself or herself, that fall constitutes an 'accident', within the meaning of Article 17(1) of the Montreal Convention. The fact that the air carrier concerned has not failed to fulfil its diligence and safety obligations in that regard is not capable of calling into question that classification.

23 As the Advocate General observed in point 40 of his Opinion, it is sufficient, in order for that carrier to incur liability under that provision, that the accident which caused the death or bodily injury of a passenger took place on board the aircraft or in the course of any of the operations of embarking or disembarking. That liability cannot therefore depend on fault or negligence on the part of that carrier.

24 Accordingly, the answer to the first question is that Article 17(1) of the Montreal Convention must be interpreted as meaning that a situation in which, for no ascertainable reason, a passenger falls on a mobile stairway set up for the disembarkation of passengers of an aircraft and injures himself or herself constitutes an 'accident', within the meaning of that provision, including where the air carrier concerned has not failed to fulfil its diligence and safety obligations in that regard.

The second question

25 By its second question, the referring court asks in essence whether Article 20 of the Montreal Convention must be interpreted as meaning that where an accident which caused damage to a passenger consists of that passenger's fall, for no ascertainable reason, on a mobile stairway set up for the disembarkation of the passengers of an aircraft, the fact that that passenger was not holding the handrail of that stairway at the time of his or her fall may constitute proof of negligence or another wrongful act or omission by that passenger which caused or contributed to the damage suffered by him or her, within the meaning of that provision, and, to that extent, exonerate the air carrier concerned from its liability to that passenger.

26 Pursuant to the first sentence of Article 20 of the Montreal Convention, where the air carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation or the person from whom he or she derives his or her rights, that carrier is to be wholly or partly exonerated from its liability to that person, to the extent that that negligence or wrongful act or omission caused or contributed to that damage.

27 The principle that EU air carriers may be exonerated from their liability in cases of contributory negligence of the passenger concerned is also set out in recital 9 of Regulation No 2027/97.

28 As the Court has already held, the possibility provided for in Article 20 of the Montreal Convention of exonerating the air carrier from its liability or of limiting its obligation to pay compensation to a passenger who has suffered damage as a result of an 'accident', within the meaning of Article 17(1) of that convention, aims to preserve the 'equitable balance of interests' of air carriers and passengers, referred to in paragraph 21 of the present judgment (see, to that effect, judgment of 19 December 2019, *Niki Luftfahrt*, C-532/18, EU:C:2019:1127, paragraph 39).

29 Given that the Montreal Convention and Regulation No 2027/97 do not lay down specific provisions regarding the proof that must be adduced by the air carrier of negligence or another wrongful act or omission by the person claiming compensation or by the person from whom he or she derives his or her rights, for the purposes of the application of the first sentence of Article 20 of that convention, the referring court must, in accordance with the principle of procedural autonomy, to which recital 18 of Regulation No 889/2002 refers in particular, apply the relevant rules of national law, provided however that those rules comply with the principles of equivalence and effectiveness, as defined by the settled case-law of the Court (see, by analogy, judgment of 9 July 2020, *Vueling Airlines*, C-86/19, EU:C:2020:538, paragraphs 38 to 40 and the case-law cited).

30 In that context, it is for the referring court to determine whether the air carrier concerned has proved negligence or a wrongful act or omission by the passenger concerned and if so to assess the extent to which that negligence, act or omission caused or contributed to the damage suffered by that passenger in order to exonerate, to that extent, that carrier from liability towards that passenger, taking account of all the circumstances in which that damage occurred.

31 In particular, the fact, mentioned by the referring court, that the passenger concerned was not holding one of the handrails of the mobile stairway set up for the disembarkation of passengers is indeed capable of causing or contributing to the bodily injuries suffered by that passenger. However, in making that assessment, the national court cannot ignore the fact that a passenger travelling with a minor child must also ensure the safety of that child, which may lead that passenger not to hold that handrail, or to stop doing so, in order to take the necessary measures to prevent the safety of that child from being compromised.

32 As regards the assessment – as evidence of negligence or another wrongful act or omission of the passenger concerned, for the purposes of the application of the first sentence of Article 20 of the Montreal Convention – of the fact, also mentioned by the referring court, that that passenger saw that, just before her, her husband almost fell on the mobile stairway in question, it should not be overlooked that that passenger asserts that the sight of such a near fall led her to be particularly cautious while walking down the stairway. However, it is for that court to verify the significance of such an assertion in the light of the applicable rules of national law, in accordance with the case-law referred to in paragraph 29 of the present judgment.

33 Similarly, it cannot be ruled out that the fact that the injured passenger chose not to seek treatment immediately after the accident occurred may have contributed to aggravating the bodily injuries which she suffered. However, as the Advocate General observed in point 76 of his Opinion, it is also necessary, in that context, to take into account the degree of seriousness that those injuries appeared to have immediately after the occurrence of that accident and the information given to that passenger *in situ* by the medical staff as regards the delaying of medical care and the possibility of receiving such treatment nearby.

34 In the light of the foregoing considerations the answer to the second question is that the first sentence of Article 20 of the Montreal Convention must be interpreted as meaning that, where an accident which caused damage to a passenger consists of a fall of that passenger, for no ascertainable reason, on a mobile stairway set up for the disembarkation of the passengers of an aircraft, the air carrier concerned may be exonerated from its liability towards that passenger only to the extent that, taking account of all the circumstances in which that damage occurred, that carrier proves, in accordance with the applicable national rules and subject to the observance of the principles of equivalence and effectiveness, that the damage suffered by that passenger was caused or contributed to by the negligence or other wrongful act or omission of that passenger, within the meaning of that provision.

Costs

35 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

1. **Article 17(1) of the Convention for the unification of certain rules for international carriage by air concluded on 28 May 1999 in Montreal, signed on 9 December 1999 by the European Community and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001, must be interpreted as meaning that a situation in which, for no ascertainable reason, a passenger falls on a mobile stairway set up for the disembarkation of passengers of an aircraft and injures himself or herself constitutes an 'accident', within the meaning of that provision, including where the air carrier concerned has not failed to fulfil its diligence and safety obligations in that regard.**

2. **The first sentence of Article 20 of the Convention for the unification of certain rules for international carriage by air concluded on 28 May 1999 in Montreal must be interpreted as meaning that, where an accident which caused damage to a passenger consists of a fall of that passenger, for no ascertainable reason, on a mobile stairway set up for the disembarkation of the passengers of an aircraft, the air carrier concerned may be exonerated from its liability towards that passenger only to the extent that, taking account of all the circumstances in which that damage occurred, that carrier proves, in accordance with the applicable national rules and subject to the observance of the principles of equivalence and effectiveness, that the damage suffered by that passenger was caused or contributed to by the negligence or other wrongful act or omission of that passenger, within the meaning of that provision.**

[Signatures]