

## EUROPEAN COURT OF JUSTICE

22 November 2012

CUADRENCH MORÉ

v

KONINKLIJKE LUCHTVAART  
MAATSCHAPPIJ NV (KLM)

Case C-139/11

Before R SILVA DE LAPUERTA, acting as  
President of the Third Chamber,  
K LENAERTS, E JUHÁSZ, T VON DANWITZ  
and D ŠVÁBY (Rapporteur), Judges

**Carriage by air (passengers) — Limitation period — Regulation (EC) No 261/2004 conferring rights of compensation to passengers in the event of cancellation of flight — Whether time limits for bringing actions for compensation under Regulation determined by article 35 of Montreal Convention or in accordance with each member state's rules for limitation of actions.**

Regulation (EC) No 261/2004 conferred rights to compensation on passengers whose flight had been cancelled. The issue in the present case was whether the time limit for bringing actions for compensation under articles 5 and 7 of that Regulation was determined by article 35 of the Montreal Convention (which provided for a two-year limitation period) or in accordance with the rules of each member state on the limitation of actions.

—Held by ECJ, that the time limits for bringing actions for compensation under articles 5 and 7 of Regulation (EC) No 261/2004 were determined in accordance with the rules of each member state on the limitation of actions (*see* para 33).

The following cases were referred to in the judgment:

*Bogiatzi v Deutscher Luftpool* (ECJ) Case C-301/08 [2009] ECR I-10185;

*Fuß v Stadt Halle* Case C-429/09 (ECJ) [2010] ECR I-12167;

*Nelson v Deutsche Lufthansa AG* Joined Cases C-581/10 and C-629/10 (ECJ) [2013] 1 Lloyd's Rep 49;

*R (International Air Transport Association (IATA) and European Low Fares Airlines Association*

(ELFAA)) v *Department of Transport* Case C-344/04 (ECJ) [2006] ECR I-403;

*Wallentin-Hermann v Alitalia-Linee Aeree Italiane SpA* Case C-549/07 (ECJ) [2009] 1 Lloyd's Rep 406; [2008] ECR I-11061.

This was a reference from the Provincial Court, Barcelona for a preliminary ruling on the interpretation of Regulation (EC) No 261/2004 establishing common rules on compensation to passengers in the event of a flight cancellation. The reference was made in proceedings between Mr Cuadrench Moré and Koninklijke Luchtvaart Maatschappij NV (KLM) concerning KLM's refusal to compensate him following the cancellation of a flight.

The further facts are stated in the judgment of the European Court of Justice.

Thursday, 22 November 2012

## JUDGMENT

## EUROPEAN COURT OF JUSTICE:

1. This reference for a preliminary ruling concerns the interpretation 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 Council Regulation (EEC) No 295/91 (OJ 2004 L 46, p 1).

2. The reference has been made in proceedings between Mr Cuadrench Moré and Koninklijke Luchtvaart Maatschappij NV ("KLM") concerning KLM's refusal to compensate him following the cancellation of a flight.

*Legal context*International lawThe Warsaw Convention

3. Article 17(1) of the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as amended and supplemented by the Hague Protocol of 28 September 1955, the Guadalajara Convention of 18 September 1961, the Guatemala Protocol of 8 March 1971, and the four additional Montreal Protocols of 25 September 1975 ("the Warsaw Convention") provides: "[t]he carrier is liable for damage sustained in case of death or personal injury of a passenger upon condition only that the event 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 . . .”.

4. Article 19 of the Warsaw Convention provides:

“The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.”

5. Article 29 of the Warsaw Convention states:

“1. The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.”

#### The Montreal Convention

6. The Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, was 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”). That convention entered into force, so far as the European Union is concerned, on 28 June 2004. As from that date and, in particular, as between the member states, the Montreal Convention prevails over the Warsaw Convention, pursuant to article 55 of the Montreal Convention.

7. Article 19 of the Montreal Convention provides:

“The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo . . .”

8. Article 35 of the Montreal Convention, entitled “Limitation of actions”, reproduces verbatim the wording of article 29 of the Warsaw Convention.

#### European Union law

##### Regulation (EC) No 2027/97

9. By Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents (OJ 1997 L 285, p 1), the EU legislature sought to improve the level of protection of passengers involved in air accidents by the introduction of provisions intended to replace, as regards air transport between the member states, certain provisions of the Warsaw Convention, pending a full review and revision of that convention.

10. Article 1 of Regulation (EC) No 2027/97 provides:

“This Regulation lays down the obligations of Community air carriers in relation to liability in the event of accidents to passengers for damage sustained in the event of death or wounding of

a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board an aircraft or in the course of any of the operations of embarking or disembarking.

...”

##### Regulation (EC) No 261/2004

11. Article 5(1) of Regulation (EC) No 261/2004 provides:

“1. 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 . . .”

12. Article 6 of that Regulation lays down the obligations on air carriers concerning assistance to passengers when a flight is delayed.

13. Article 7(1) of Regulation (EC) No 261/2004 is worded as follows:

“Where reference is made to this Article, passengers shall receive compensation amounting to:

(a) EUR250 for all flights of 1,500 kilometres or less;

(b) EUR400 for all intra-Community flights of more than 1,500 kilometres, and for all other flights between 1,500 and 3,500 kilometres;

(c) EUR600 for all flights not falling under (a) or (b).

...”

14. Regulation (EC) No 261/2004 contains no provision fixing a time limit for bringing actions to enforce the rights guaranteed by that Regulation.

#### Spanish law

15. The applicable national rules set a period of 10 years for claims for which no other period is stipulated.

#### *The dispute in the main proceedings and the question referred for a preliminary ruling*

16. Mr Cuadrench Moré reserved a seat with KLM on a flight from Shanghai (China) to Barcelona (Spain) scheduled for 20 December 2005. Flight KL0896, which was to carry out that journey, was cancelled, which forced Mr Cuadrench Moré to travel the following day with another company, via Munich (Germany).

17. On 27 February 2009 Mr Cuadrench Moré brought an action against KLM before the Juzgado Mercantil No 7 de Barcelona (Commercial Court 7, Barcelona), claiming, on the basis of Regulation (EC) No 261/2004, €2,990 together with interest and costs,

by way of compensation for the damage sustained as a result of the cancellation of flight in question.

18. In that regard, KLM contended that the action was time-barred, on the ground that the two-year period specified in article 29 of the Warsaw Convention within which actions for damages against air carriers must be brought had expired.

19. By judgment of 26 May 2009, the Juzgado Mercantil No 7 de Barcelona ordered KLM to pay the amount of €600 together with statutory interest, on the basis of Regulation (EC) No 261/2004. In its judgment, that court rejected the ground of defence raised by KLM, taking the view that neither the limitation period in article 29 of the Warsaw Convention nor that in article 35 of the Montreal Convention was applicable in the present case, since it was Regulation (EC) No 261/2004 that was at issue. In the absence of express provision in that Regulation for a time limit for bringing actions thereunder, that court took the view that the Spanish rules were applicable.

20. On appeal, the Audiencia Provincial de Barcelona (Provincial Court, Barcelona) considers that, in the absence of express provision on the matter in Regulation (EC) No 261/2004, the judgments in *R (International Air Transport Association (IATA) and European Low Fares Airlines Association (ELFAA)) v Department of Transport* Case C-344/04 [2006] ECR I-403, and *Wallentin-Hermann v Alitalia-Linee Aeree Italiane SpA* Case C-549/07 [2009] 1 Lloyd's Rep 406; [2008] ECR I-11061, read in conjunction with the judgment in *Bogiatzi v Deutscher Luftpool* Case C-301/08 [2009] ECR I-10185, do not enable the relevant time limits for bringing proceedings to be identified with the required degree of certainty.

21. In those circumstances the Audiencia Provincial de Barcelona decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

“Is [Regulation (EC) No 261/2004] to be interpreted as meaning that, as regards time limits for bringing proceedings, Article 35 of the Montreal Convention, establishing a two-year period, is applicable, or must some other [European Union] provision or domestic law be regarded as applicable?”

*The question referred for a preliminary ruling*

22. By its question, the referring court asks, in essence, whether Regulation (EC) No 261/2004 must be interpreted as meaning that the time limits for bringing actions for compensation under articles 5 and 7 of that Regulation are determined by article 35 of the Montreal Convention or in accordance with some other provision, in particular the rules of each member state on the limitation of actions.

23. First of all it must be recalled that, when a flight is cancelled and provided that the cancellation is not caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, articles 5 and 7 of Regulation (EC) No 261/2004 afford passengers a right to compensation according to the distance and destination of the flight concerned, a right which those passengers may rely on, if necessary, before the national courts.

24. To that effect, it is not disputed that Regulation (EC) No 261/2004 contains no provision on the time limits for bringing actions before the national courts for compensation under articles 5 and 7 of that Regulation.

25. It is settled case law that, in the absence of provisions of EU law on the matter, it is for the domestic legal system of each member state to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, provided that those rules observe the principles of equivalence and effectiveness (see, to that effect, *Fuß v Stadt Halle* Case C-429/09 [2010] ECR I-12167, para 72).

26. It follows that the time limits for bringing actions for compensation under articles 5 and 7 of Regulation (EC) No 261/2004 are determined by the national law of each member state, provided that those rules observe the principles of equivalence and effectiveness.

27. That finding cannot be called into question, contrary to what KLM maintains, by the fact that article 29 of the Warsaw Convention and article 35 of the Montreal Convention provide that the right to damages is to be extinguished if an action in respect of the rights granted by those conventions is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

28. The compensation measure laid down in articles 5 and 7 of Regulation (EC) No 261/2004 falls outside the scope of the Warsaw and Montreal Conventions (see, to that effect, *Nelson v Deutsche Lufthansa AG* Joined Cases C-581/10 and C-629/10 [2013] 1 Lloyd's Rep 49, para 55).

29. Consequently, the two-year limitation period laid down in article 29 of the Warsaw Convention and in article 35 of the Montreal Convention cannot be considered to apply to actions brought, inter alia, under articles 5 and 7 of Regulation (EC) No 261/2004.

30. That finding cannot be disproved either by the judgment in *Bogiatzi*, in which the court held that Regulation (EC) No 2027/97 must be interpreted as not precluding the application of article 29 of the Warsaw Convention to a situation

in which a passenger seeks to establish the liability of the air carrier on account of harm suffered by him when flying between member states.

31. It must be pointed out in that connection that, as is apparent from article 1 of Regulation (EC) No 2027/97, in the version in force at the time of the facts giving rise to the judgment in *Bogiatzi*, that Regulation concerns the liability of air carriers in the event of an accident, which is also the subject of article 17 of the Warsaw Convention.

32. The sole purpose of Regulation (EC) No 2027/97 was to substitute, as regards air transport between the member states, certain provisions affording greater protection to passengers involved in air accidents than the provisions laid down by the Warsaw Convention, without, however, precluding the application of the remaining provisions, which included, in particular, the procedural rules for bringing an action for damages laid down in article 29 of that convention (see, to that effect, *Bogiatzi*, paras 41 to 44). By contrast, Regulation (EC) No 261/2004 establishes a system to redress, in a standardised and immediate manner, the damage that is constituted by the inconvenience that delay and cancellations to flights cause, which operates at an earlier stage than the Montreal Convention and, consequently, is independent of the system stemming from that convention (see, to that effect, *Nelson*, paras 46, 55 and 57 and the case law cited).

33. In the light of the foregoing, the answer to the question referred is that Regulation (EC) No 261/2004 must be interpreted as meaning that the time limits for bringing actions for compensation under articles 5 and 7 of that Regulation are determined in accordance with the rules of each member state on the limitation of actions.

#### *Costs*

34. 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:

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 must be interpreted as meaning that the time limits for bringing actions for compensation under articles 5 and 7 of that Regulation are determined in accordance with the rules of each member state on the limitation of actions.