



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

12 April 2018*

(Reference for a preliminary ruling — Air transport — Montreal Convention — Article 31 — Liability of air carriers for checked baggage — Requirements as to the form and content of the written complaint sent to the air carrier — Complaint made electronically and recorded in the air carrier's information system — Complaint made on behalf of the person entitled to delivery of checked baggage or cargo by an agent of the air carrier)

In Case C-258/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein oikeus (Supreme Court, Finland), made by decision of 2 May 2016, received at the Court on 9 May 2016, in the proceedings

Finnair Oyj

v

Keskinäinen Vakuutusyhtiö Fennia,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský (Rapporteur), M. Safjan, D. Šváby and M. Vilaras, Judges,

Advocate General: E. Sharpston,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 23 March 2017,

after considering the observations submitted on behalf of:

- Finnair Oyj, by T. Väätäinen, asianajaja,
- Keskinäinen Vakuutusyhtiö Fennia, by V. Teiramaa, asianajaja,
- the Italian Government, by G. Palmieri, acting as Agent, and by M. Capolupo, avvocato dello Stato,
- the European Commission, by I. Koskinen and K. Simonsson, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 December 2017,

gives the following

* Language of the case: Finnish.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 31 of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded at Montreal on 28 May 1999 and approved on behalf of the European Community by Council Decision 2001/539/EC of 5 April 2001 (OJ 2001 L 194, p. 38) ('the Montreal Convention').
- 2 The request has been made in the context of a dispute between Finnair Oyj, an airline company, and Keskinäinen Vakuutusyhtiö Fennia ('Fennia'), an insurance company, concerning the liability of that air carrier for damage resulting from the loss of items from baggage.

Legal context

The Montreal Convention

- 3 In the third paragraph of the preamble to the Montreal Convention it is stated inter alia that the States Parties thereto 'recognis[e] 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'.
- 4 The fifth paragraph of that preamble states:

'... [c]ollective 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'.
- 5 Article 17 of the Montreal Convention, entitled 'Death and injury of passengers — damage to baggage', lays down, in paragraph 2, that:

'The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.'
- 6 Article 31 of the Montreal Convention, entitled 'Timely notice of complaints', provides:
 1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is prima facie evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.
 2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and 14 days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within 21 days from the date on which the baggage or cargo have been placed at his or her disposal.
 3. Every complaint must be made in writing and given or dispatched within the times aforesaid.

4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.’

EU law

7 Article 1 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’) provides:

‘This Regulation implements the relevant provisions of the Montreal Convention in respect of the carriage of passengers and their baggage by air and lays down certain supplementary provisions. ...’

8 Article 3(1) of Regulation No 2027/97 is worded as follows:

‘The liability of a Community air carrier in respect of passengers and their baggage shall be governed by all provisions of the Montreal Convention relevant to such liability.’

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

9 Ms Kristiina Mäkelä-Dermedesiotis was a passenger on a Finnair flight from Málaga (Spain) to Helsinki (Finland). On arrival in Helsinki on 1 November 2010, she found that several items were missing from the baggage that she had checked in.

10 Ms Mäkelä-Dermedesiotis notified a Finnair customer service representative by telephone that same day. She identified the lost items and informed that representative of their value. The representative entered the information provided by Ms Mäkelä-Dermedesiotis into the Finnair electronic information system. On 3 November 2010, Ms Mäkelä-Dermedesiotis again telephoned the Finnair customer service with a view to obtaining a certificate for her insurance company, Fennia. Following this request, Finnair issued her with a certificate of the lodging of a declaration of loss.

11 Fennia thereupon compensated Ms Mäkelä-Dermedesiotis for the loss suffered and — having been subrogated to its insured party’s claim — brought an action on 2 September 2011 before the Helsingin käräjäoikeus (District Court, Helsinki, Finland) seeking repayment from Finnair.

12 Finnair contested the admissibility of that action, arguing in essence that Ms Mäkelä-Dermedesiotis had not filed a written complaint within the period of seven days following receipt of the baggage, as laid down in Article 31(2) of the Montreal Convention.

13 By a judgment of 4 September 2012, the Helsingin käräjäoikeus (District Court, Helsinki) found in favour of Finnair and dismissed the action.

14 Fennia appealed against that judgment to the Helsingin hovioikeus (Court of Appeal, Helsinki, Finland).

15 That court examined, inter alia, the instructions to passengers published on Finnair’s website, which contained a variety of information on the procedure for submitting a notice of complaint and on actually making a written complaint. The court found that a declaration of loss could be made by telephone, whereas a written complaint had to be made using a particular form to be submitted within seven days after receipt of the baggage. The Helsingin hovioikeus (Court of Appeal, Helsinki) took the view that the instructions on Finnair’s website were ‘not sufficiently clear and unambiguous for a passenger as a consumer’. According to that court, since the instructions did not mention for

what purpose the declaration of loss had to be made, the passenger, as a consumer, could legitimately believe that a complaint made over the telephone and registered by an employee of the company would also satisfy the requirements of a formal written complaint. In the present case, it was found that Ms Mäkelä-Dermedesiotis had given notice to Finnair setting out the loss in precise terms and a written certificate of the lodging of a declaration of loss issued by Finnair proved that her complaint had been recorded timeously in Finnair's information system. In addition, having received that declaration of loss, Finnair did not inform Ms Mäkelä-Dermedesiotis that it considered such a declaration insufficient for the bringing of an action seeking to have it held liable as an air carrier and it did not specify that she also needed to submit a written complaint.

- 16 By a judgment of 28 February 2014, the Helsingin hovioikeus (Court of Appeal, Helsinki) set aside the judgment of the Helsingin käräjäoikeus (District Court, Helsinki) and ordered Finnair to compensate Fennia.
- 17 Finnair brought an appeal on a point of law against that judgment before the referring court, the Korkein oikeus (Supreme Court, Finland). In support of its appeal, that air carrier claims in particular that, in contrast to the Helsingin käräjäoikeus (District Court, Helsinki), the Helsingin hovioikeus (Court of Appeal, Helsinki) misinterpreted Article 31 of the Montreal Convention.
- 18 In those circumstances, the Korkein oikeus (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
 - (1) Is Article 31(4) of the Montreal Convention to be interpreted as meaning that, to preserve a right of action, it is necessary, in addition to giving notice of a complaint in due time, that the complaint be made in writing within the times specified, in accordance with Article 31(3)?
 - (2) If, to preserve a right of action, a complaint must be made in writing in due time, is Article 31(3) of the Montreal Convention to be interpreted as meaning that the requirement of writing may be fulfilled by means of an electronic procedure and also by the registration of the damage in the information system of the carrier?
 - (3) May the Montreal Convention be interpreted as meaning that the requirement of writing is regarded as fulfilled where, with the knowledge of the passenger, a representative of the carrier records in writing the notice of complaint/the complaint either on paper or electronically in the carrier's system?
 - (4) Does Article 31 of the Montreal Convention subject a complaint to further substantive requirements than that of giving notice to the carrier of the damage sustained?

Consideration of the questions referred

Preliminary observations

- 19 It should be noted that the Montreal Convention was signed by the European Community on 9 December 1999 and approved on its behalf by the Council of the European Union on 5 April 2001. That convention entered into force, so far as the European Union is concerned, on 28 June 2004.
- 20 As from that date, the Montreal Convention has been an integral part of the European Union legal order and, accordingly, the Court has jurisdiction to give a preliminary ruling concerning its interpretation (see, to that effect, judgments of 10 January 2006, *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraph 36, and of 6 May 2010, *Walz*, C-63/09, EU:C:2010:251, paragraph 20).

- 21 In that regard, Article 31 of the Vienna Convention of 23 May 1969 on the Law of Treaties, which codifies general international law binding on the European Union, states that a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose (judgment of 17 February 2016, *Air Baltic Corporation*, C-429/14, EU:C:2016:88, paragraph 24).
- 22 It is in the light of those considerations that the relevant provisions of the Montreal Convention must be interpreted in the present case.

The first question

- 23 By its first question, the referring court asks, in essence, whether Article 31(4) of the Montreal Convention must be interpreted as meaning that, within the periods referred to in Article 31(2) thereof, the complaint must be made in writing, in accordance with Article 31(3) thereof, failing which no action may be brought against the carrier.
- 24 In that regard, first, it is clear from Article 31(2) of the Montreal Convention, inter alia, that, in the case of damage, the person entitled to delivery must complain to the air carrier forthwith after discovering the damage, and, at the latest, within the periods laid down in that provision for baggage and cargo respectively.
- 25 In addition, under Article 31(3) of the Montreal Convention, every complaint must be made in writing and given or dispatched within the time stipulated for that purpose.
- 26 Paragraphs 2 and 3 of Article 31 of the Montreal Convention are complementary in nature. While Article 31(2) of that convention merely lays down the periods within which different types of complaint must be sent to the air carrier, Article 31(3) thereof states, first, how such complaints must be addressed to the carrier and, second, in what form those complaints must be made, it being clear that that clarification cannot affect the requirement to comply with the periods set out in Article 31(2).
- 27 It follows that paragraphs 2 and 3 of Article 31 of the Montreal Convention, read in conjunction, must be interpreted as requiring that a complaint be made in writing and sent to the air carrier within the periods set out in Article 31(2) thereof.
- 28 Next, under Article 31(4) of the Montreal Convention, if no complaint is made within the specified periods, no action may lie against the air carrier, save in the case of fraud on its part.
- 29 It follows that a person who takes the view that he has incurred loss caused by damage to baggage or cargo must complain to the air carrier within the periods set out in Article 31(2) of the Montreal Convention, failing which no action may be brought against the carrier.
- 30 Moreover, given the particular relationship between paragraphs 2 and 3 of Article 31 of the Montreal Convention, as set out in paragraph 26 above, a complaint cannot be considered to have been validly sent to the air carrier within the periods stipulated in Article 31(4) thereof if it has not been sent in writing, as required under Article 31(3).
- 31 It follows from all of the foregoing considerations that the answer to the first question is that Article 31(4) of the Montreal Convention must be interpreted as meaning that, within the periods referred to in Article 31(2) of that convention, the complaint must be made in writing, in accordance with Article 31(3) thereof, failing which no action may be brought against the carrier.

The second question

- 32 By its second question, the referring court asks, in essence, whether a complaint, such as that at issue in the main proceedings, recorded in the information system of the air carrier meets the requirement of being in a written form under Article 31(3) of the Montreal Convention.
- 33 In that regard, the ordinary meaning of the term ‘in writing’ involves a set of meaningful graphic signs.
- 34 In addition, in the light both of the third paragraph of the preamble to the Montreal Convention, which emphasises the importance of ensuring protection of the interests of consumers in international carriage by air, and of the principle of ‘an equitable balance of interests’ referred to in the fifth paragraph of the preamble of that convention, the requirement of being in a written form cannot have the effect of excessively limiting the specific way in which a passenger may choose to complain, provided that that passenger remains identifiable as the person who made the complaint.
- 35 Consequently, the term ‘in writing’, in the context of Article 31 of the Montreal Convention, must be interpreted as referring to any set of meaningful graphic signs, irrespective of whether they are handwritten, printed on paper, or recorded in electronic form.
- 36 Accordingly, a complaint, such as that in the main proceedings, recorded in the information system of the air carrier must be regarded as meeting the requirement of being in a written form under Article 31(3) of the Montreal Convention.
- 37 In the light of the foregoing considerations, the answer to the second question is that a complaint, such as that at issue in the main proceedings, recorded in the information system of the air carrier meets the requirement of being in a written form under Article 31(3) of the Montreal Convention.

The third question

- 38 By its third question, the referring court asks, in essence, whether Article 31(2) and (3) of the Montreal Convention must be interpreted as not precluding the requirement of being in a written form from being regarded as fulfilled in the case where, with the knowledge of the passenger, a representative of the air carrier records in writing the declaration of loss either on paper or electronically in the carrier’s information system.
- 39 As is apparent from paragraphs 24 and 25 above, it is clear, in particular, from Article 31(2) of the Montreal Convention that, in the case of damage, the person entitled to delivery of the baggage or cargo must complain to the air carrier within the stipulated periods. In addition, under Article 31(3) of the Montreal Convention, every complaint must be made in writing and given or dispatched within the stipulated periods.
- 40 It follows from the clear wording of those provisions, read together, that it is for a person entitled to delivery, such as the person at issue in the main proceedings, in his or her capacity as a passenger whose checked baggage has been damaged, to make a complaint and to send it to the relevant air carrier.
- 41 The passenger in question is likely to notice the damage, has the necessary information for proving the nature and value of the specific objects damaged and, ultimately, the amount of that damage.
- 42 Although the responsibility for making a complaint lies exclusively with the passenger, it cannot in any way be inferred from the wording of Article 31 of the Montreal Convention that the passenger is nevertheless deprived of the liberty to benefit from the assistance of other persons for the purposes of making his complaint.

- 43 Any interpretation to the contrary would, moreover, run counter to the objective of protecting the interests of the consumer in respect of carriage by air, as stated in the third paragraph of the preamble to the Montreal Convention, which must be taken into account in accordance with the Court's case-law cited in paragraph 21 above.
- 44 The option open to a passenger to have recourse to the assistance of other persons also enables him, as in the case in the main proceedings, to secure the assistance of a representative of the air carrier for the purposes of committing his oral statement to writing and having it entered in the information system of the carrier intended for such purposes.
- 45 It cannot be denied that the respective interests of the passenger and the air carrier, of which the representative is an employee, are different, if not conflicting. The former claims that there has been damage to his baggage, the liability for which is deemed to lie with the latter.
- 46 However, the objective of protecting the interests of consumers in international carriage by air, and the need to ensure that the representative transcribes the passenger's oral statement accurately and fairly, can be sufficiently guaranteed by ensuring that the passenger concerned is able to check the accuracy of the text of the complaint, as taken down in writing and entered in the information system by the air carrier's representative and, where appropriate, amend or supplement or even replace it before expiry of the period provided for in Article 31(2) of the Montreal Convention.
- 47 It follows from the foregoing that Article 31(2) and (3) of the Montreal Convention must be interpreted as not precluding the requirement of being in a written form from being regarded as fulfilled in the case where, with the knowledge of the passenger, a representative of the air carrier records in writing the declaration of loss either on paper or electronically in the carrier's information system, provided that that passenger can check the accuracy of the text of the complaint, as taken down in writing and entered in that system and can, where appropriate, amend or supplement it, or even replace it, before expiry of the period provided for in Article 31(2) of that convention.

The fourth question

- 48 By its fourth question, the referring court asks, in essence, whether Article 31 of the Montreal Convention makes a complaint subject to further substantive requirements in addition to that of giving notice to the air carrier of the damage sustained.
- 49 In that regard, it is clear from the wording of Article 31(1) of the Montreal Convention, in particular, that receipt by the person entitled to delivery of checked baggage without complaint is prima facie evidence that that baggage has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in Article 3(2) of that convention.
- 50 It follows from that wording that the purpose of a complaint, such as that at issue in the main proceedings, sent to the air carrier, is to inform the carrier that checked baggage has not been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in Article 3(2) of the Montreal Convention.
- 51 Next, as regards the set of rules of which Article 31(1) of the Montreal Convention forms a part, it should be noted that, according to the first part of the first sentence of Article 17(2) of that convention, the carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage.

- 52 It follows that Article 31(1) of the Montreal Convention, read in the light of the first part of the first sentence of Article 17(2) thereof, must be interpreted as meaning that a complaint made by the passenger concerned, such as that made in the main proceedings, is intended to inform the air carrier that damage has occurred.
- 53 Inasmuch as Article 31(2) to (4) of the Montreal Convention merely specifies, as is apparent from the answers to the first and second questions, first of all, the periods within which the various types of complaint must be sent to the carrier, next, how and in what form every complaint must be sent to the carrier and, lastly, the consequences of failure to comply with all of those requirements, that article does not lay down any substantive condition in respect of such complaints.
- 54 It follows from the foregoing that Article 31 of the Montreal Convention must be interpreted as not making a complaint subject to further substantive requirements in addition to that of giving notice to the air carrier of the damage sustained.

Costs

- 55 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 31(4) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded at Montreal on 28 May 1999 and approved on behalf of the European Community by Council Decision 2001/539/EC of 5 April 2001, must be interpreted as meaning that, within the periods referred to in Article 31(2) of that convention, the complaint must be made in writing, in accordance with Article 31(3) thereof, failing which no action may be brought against the carrier.**
- 2. A complaint, such as that at issue in the main proceedings, recorded in the information system of the air carrier, fulfils the requirement of being in a written form under Article 31(3) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded at Montreal on 28 May 1999.**
- 3. Article 31(2) and (3) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded at Montreal on 28 May 1999, must be interpreted as not precluding the requirement of being in a written form from being regarded as fulfilled in the case where, with the knowledge of the passenger, a representative of the air carrier records in writing the declaration of loss either on paper or electronically in the carrier's information system, provided that that passenger can check the accuracy of the text of the complaint, as taken down in writing and entered in that system, and can, where appropriate, amend or supplement it, or even replace it, before expiry of the period laid down in Article 31(2) of that convention.**
- 4. Article 31 of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded at Montreal on 28 May 1999, must be interpreted as not making a complaint subject to further substantive requirements in addition to that of giving notice to the air carrier of the damage sustained.**

[Signatures]