

Anna Barańska

ORCID: 0000-0001-7312-3587

Jagiellonian University in Kraków

<https://doi.org/10.19195/1733-5779.34.6>

Different concepts of “accident” in the meaning of the Montreal Convention and air carrier liability in EU law

JEL Classification: K 33

Keywords: liability of air carriers, Article 17 of the Montreal Convention of 1999, case C 532/18, accident

Słowa kluczowe: odpowiedzialność przewoźnika lotniczego, artykuł 17 konwencji montreal-skiej z 1999 roku, sprawa C 532/18, wypadek

Abstract: The subject of the article is the liability of air carriers for personal injury resulting from an “accident” within the meaning of paragraph 1 of Article 17 of the Montreal Convention of 1999. Although this concept has been the subject of numerous controversies under the Warsaw Convention, its legal definition has still not been introduced in the new legal act. In an unprecedented Judgment of 19 December 2019 (case C 532/18), the Court of Justice of the European Union had to deal with the interpretation of this concept and specify the circumstances qualifying a given event as an “accident”. In reply to the question referred, the Court took the view that there is no need to determine whether an incident classified as an “accident” relates to a risk characteristic of air transport.

Pojęcie „wypadku” w rozumieniu konwencji montreal-skiej a odpowiedzialność przewoźnika lotniczego w prawie unijnym

Abstrakt: Tematem artykułu jest odpowiedzialność przewoźników lotniczych za szkody osobowe będące wynikiem zaistnienia „wypadku” w rozumieniu art. 17 ust. 1 konwencji montreal-skiej z 1999 roku. Choć pojęcie to było przedmiotem licznych kontrowersji jeszcze na gruncie konwencji warszawskiej, w nowym akcie prawnym nadal nie zdecydowano się na wprowadzenie jego legalnej definicji. W bezprecedensowym wyroku z dnia 19 grudnia 2019 roku (sygn. akt C 532/18) Trybunał Sprawiedliwości Unii Europejskiej musiał się więc zmierzyć z wykładnią tego pojęcia oraz określić przesłanki kwalifikujące dane zdarzenie jako „wypadek”. W odpowiedzi na zadane mu pytanie pre-judycjalne Trybunał zajął stanowisko, że nie ma konieczności ustalania, czy zdarzenie kwalifikowane jako „wypadek” wykazuje związek z ryzykiem charakterystycznym dla przewozu lotniczego.

Introduction

The scope of liability for air carriers has been more than once the subject of consideration of the Court of Justice, which, basically does not hide that the courts should stand on the side of passengers, aiming at providing them with a high level of protection. Another ruling “promoting” this trend is the recent Judgment of the Court of 19 December 2019 determining the liability of air carriers for drinks served during flights.¹ It has been once again reminded that the overriding goal of the Montreal Convention and other acts of EU law is to ensure the protection of passengers and consumers whose rights should be strictly respected by airlines.

This ruling is also interesting because the Court has interpreted for the first time an “accident” which had not been legally defined under the Montreal Convention. Therefore, the judgment might be a valuable interpretative guide for national courts, which will certainly face similar problems in the future.

Due to the content of Art. 208 sec. 1 of aviation law,² the judgment will undoubtedly also facilitate adjudication by Polish courts in cases related to the liability of an air carrier for the injury or death of a passenger resulting from an accident. According to the content of the above-mentioned provision, in cases related to the transport of passengers, goods, and luggage, the provisions of international conventions, and more specifically the provisions of the Warsaw Convention and the Montreal Convention, apply.

1. Legal status

Initially, the civil liability of air carriers was regulated separately in each country, pursuant to the provisions on tort or contract liability. Over time, the need to create separate regulations that would only regulate the issue of air transport began to be recognized. However, the international nature of aviation quite quickly forced the creation of supranational regulations, allowing harmonized application of the law by national courts. The free movement of people has also forced the dynamic development of this area of law at the European level.

In the EU legal order, apart from regulations issued directly by the Union bodies, there are numerous acts of international law. One of them is the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999³ (hereinafter: the Montreal Convention), which was implemented in the Union by Council Regulation (EC) No 2027/97 of 9 October

¹ Judgment of the Court of Justice of 19 December 2019, C-532/18, EU:C:2019:1127.

² Act of July 3, 2002, Aviation Law, Journal of Laws 2019 item 1580.

³ Convention for the unification of certain rules for international carriage by air, Official Journal of the European Communities of 28 May 1999, Journal of Laws 2007 No. 37, item 235.

1997 on air carrier liability in the event of accidents,⁴ subsequently amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002.⁵ Article 3(1) of Regulation 889/2002 stipulates that the liability of EU air carriers in relation to passengers and their luggage is governed by the provisions of the Montreal Convention specifying this liability. From that moment on, the provisions of the Montreal Convention are an integral part of the legal order in the European Union.

It was emphasized in the recitals of the Act No 889/2002 that, under the common transport policy, it is important to ensure an appropriate level of compensation for passengers involved in air accidents (recital 1). It was also pointed out that the purpose of the Convention and Regulation is to strengthen the protection of passengers and their dependents (recital 7). Finally, it has been clarified that "a system of unlimited liability in the event of the death or injury of passengers is appropriate in the context of a safe and modern air transport system" (recital 10).

Article 1 of Regulation 889/2002 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. It also extends the application of these provisions to the domestic air services of each Member State. In Art. 2(2) of the Regulation it was established that the terms used in the Regulation which were not defined in paragraph 1 of this provision are synonymous with the terms used in the Montreal Convention. Whereas in Art. 3(1) it explicitly states that the liability of a Union air carrier connected with passengers and their baggage is subject to the Montreal Convention that determines that liability. Moreover, the last two provisions remain key in the context of the case investigated by the Court.

Among the provisions of the Montreal Convention, first of all, Art. 17(1) should be noticed, according to which the air carrier is liable for damage sustained in the case of death or bodily injury or health disorder 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. However based on Art. 20 of the Convention, the carrier shall be wholly or partly exonerated from its liability if the air carrier proves that the damage was caused by or contributed to by the negligence or other wrongful act or omissions of the passenger. In addition, from Art. 21(1) results that an air carrier cannot exclude or limit its liability for damages arising in the circumstances referred to in Art. 17(1) if they do not exceed the quota limit set.

⁴ Council Regulation (EC) no 2027/97 of 9 October 1997 on air carrier liability in the event of accidents, Official Journal of the European Communities 17.10.1997, L 285/1.

⁵ Regulation (EC) no 889/2002 of The European Parliament and of The Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents, Official Journal of the European Communities 30.05.2002, L 140/2.

2. The concept of “accident” in the Montreal Convention

The concept of “accident”, which is crucial from the point of view of determining the existence of injury to a person, has not been defined neither in the Warsaw Convention nor in the Montreal Convention. It is worth clarifying that, with the exception of editorial changes, the wording of Art. 17 in both conventions remained the same. For this reason, when analyzing the concept of “accident”, the judgments and references of literature that have been expressed regarding the Warsaw Convention also remain fully valid.

The lack of a legal definition resulted in the creation of two extremely different views on how to understand the distinction introduced by the authors of the convention between Art. 17(1) and 17(2). According to some authors, the terms “incident” and “accident” have the same meaning and no difference should be made in determining the carrier’s liability for damages caused to passengers, luggage or goods.⁶ According to others, however, the term “accident” has a narrower meaning than the word “incident”.⁷

The richest in this topic is American jurisdiction, which now seems also to be a model for the courts of other states. A landmark ruling was made in 1985 in the case of *Saks v. Air France*,⁸ in which it was established that the event giving rise to the damage must be extraordinary, unusual, unexpected and external to the passenger. While creating this definition, the court rejected the adjectives “accidental” and “unintentional” and excluded events in which the damage occurred as the result of passengers’ internal reactions to ordinary and expected operations of the aircraft. At the same time, it was pointed out that the term “accident” should be referred to the reason causing damage, not to the damage itself.⁹

Another interesting issue is whether the “accident” may occur as a result of the carrier’s negligence. An American court faced this type of problem in the *Olympic Airways v. Husain* case, in which an asthmatic passenger was not allowed to change seats, away from the smoking area.¹⁰ Despite his numerous requests, the flight attendant did not allow him to change his seat. In the event, he suffered an asthma attack and died. The court investigating the case came to the conclusion that the omission could not be regarded as an “accident” within the meaning of the Convention. The decision also emphasized that the death was the result of the passenger’s internal reaction to a normal and expected event, which was cigarette smoke onboard the aircraft. Despite this, the court awarded damages, pointing out

⁶ Cf. K. Koffka-Bodenstein, *Luftverkehrsrecht und Warschauer Abkommen*, Berlin 1937, p. 319; N. Mateesco-Matte, *Droit aérien-aéronautique*, Paris 1954, p. 404.

⁷ J. Rajski, *Odpowiedzialność cywilna przewoźnika lotniczego w prawie międzynarodowym i krajowym*, Warszawa 1968, p. 35.

⁸ *Saks v. Air France*, 470 U.S. 392, 1985.

⁹ *Sakaria v. TWA*, 8 F. 3d 167, 170, 1993.

¹⁰ *Olympic Airways v. Husain*, 316 F. 2d 829, 9th Cir. 2002.

that an unusual and unexpected event in this situation was the refusal of the flight attendant.

In the case of omission, it is not so easy to give an unambiguous answer whether it should be based on Art. 17 (1) of the Convention considered the same as action. It seems that such cases should be approached much more carefully and investigated, taking into account the specific circumstances of the case. Sometimes the omission of the carrier will not be the cause of the damage, but rather an event that occurs in connection with the omission (e.g. no warning to the passenger(s) regarding the possibility of a specific effect or allowing dangerous people on board).¹¹

The phenomenon of turbulence, very common in air traffic, should be treated equally. Its occurrence is not always be considered an "accident" within the meaning of the Convention, since in a number of cases the occurrence of turbulence can easily be predicted. Therefore in each case it should be investigated as to what kind of turbulence we were dealing with, and whether the pilot had a chance to predict it when exercising all due care. Thus, they might be considered "accidents" only after having had them carefully examined and their unexpected and unusual nature confirmed.¹²

Over the years, events such as spilling hot water¹³ or coffee¹⁴ on a passenger; choking on a plastic object found in food;¹⁵ assault by a carrier employee;¹⁶ injury with a needle in the seat¹⁷ or injury due to luggage falling¹⁸ were recognized as an "accident" within the meaning of the Warsaw and Montreal Conventions. Of course, these are only examples of situations in which occurrences during the flight were considered accidents.

Despite the differences indicated above, some common criteria can be identified regarding the definition of an "accident" under both conventions (Warsaw and Montreal). An event causing personal injury must occur onboard an aircraft or when embarking or disembarking. It is also up to the injured party to prove that it was sudden (atypical) and external to himself. The resulting damage cannot be

¹¹ A. Konert, *Odpowiedzialność cywilna przewoźnika lotniczego*, Warszawa 2010, p. 108 and following.

¹² A. Konert, "Odpowiedzialność przewoźnika lotniczego w przypadku turbulencji na gruncie orzecznictwa amerykańskiego", *Ius Novum* 2010, no. 1, p. 39 and following; eadem, *Odpowiedzialność cywilna przewoźnika...*, p. 108 and following; cf. *Magan v. Lufthansa*, 339 F. 3d 158, 2d Cir 2003; *Cudney v. Braniff Airways*, 300 S.W. 2d 412 (Mo. 1957); *Ness v. West Coast Airlines Inc.*, 410 P. 2d 965 (Idaho 1965).

¹³ *Fishman v. Delta Air Lines*, 132 F. 3rd 138, 3rd Cir. 1998.

¹⁴ *Diaz Lugo v. AA*, 686 F. Supp. 373, D.P.R.1988.

¹⁵ *Gonzales v. TACA International Airlines*, 1992 WL 142399, E.D. La. 1992.

¹⁶ *Marotte v. AA*, 296 F.3rd 1255, 11th Cir. 2002.

¹⁷ *Rothschilds v. Tower Air*, 24 Avi. Cas. 18,340, 1995.

¹⁸ *Hodges v. Delta Air Lines*, 24 Avi. Cas. 18,360, 1995.

the consequence of the passenger's own disproportionate reactions to an ordinary, normal and predictable event related to the operation of the aircraft.¹⁹

3. Judgment of the Court of Justice of 19 December 2019 in Case C 532/18

a. The facts of the dispute in the main proceedings

In the present case, a six-year-old passenger Niki Luftfahrt was scalded with coffee, which was given to her accompanying father in a container without a lid. A mug of hot liquid slid from the table on the back of the seat in front of her father's seat chair, and its contents spilled over the girl's right thigh and chest. As a result of the incident, second degree burns were sustained. In the course of the investigation, it was not been determined whether the coffee container overturned due to the defective table design or due to aircraft vibration.

The passenger, represented for legal purposes by her father, filed a claim on the basis of Art. 17(1) of the Montreal Convention seeking that the carrier will be ordered to pay compensation in the amount of 8,500 Euros. The defendant refused to recognize the claim due to the inability to classify this event as an accident within the meaning of the above provision. The fluid spill was not caused by any sudden and unexpected event that would be associated with the typical risk involved in air transport.

The Austrian court of first instance granted the claimant's request, considering that an accident within the meaning of Art. 17(1) of the Montreal Convention had occurred in the established facts. This position was not shared by the court of appeal, which overturned the judgment at first instance. In his opinion, the claimant failed to prove that the risk typical for air transport had materialized in this case.

Eventually, the case was brought before the Austrian Supreme Court (Oberster Gerichtshof), which decided to request for a preliminary ruling, whether Art. 17(1) of the Montreal Convention should be interpreted as meaning that the term "accident" within the meaning of this provision covers a situation in which an object used for the use of an on-board service caused injury to a passenger, without it being necessary to determine whether that accident is the result of a risk typical for air transport. According to the referring court, it raises doubts whether within the meaning of that provision, the concept of 'accident' is limited to situations in which a risk typical for air transport is materialized. The literature presents

¹⁹ Cf. *Saks v. Air France*, 470 U.S. 392, 1985; Judgment of Cour de Cassation of 15 January 2014, reference number 11-27.962, <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000028482732&fastReqId=1262213182&fastPos=2> (accessed: 1.09.2020); also C.I. Grigorieff, "Le régime d'indemnisation de la convention de Montréal", *Revue européenne de droit de la consommation* 2012, no. 4, pp. 662–665; F. Letacq, "Fascicule 925", *Jurisclasseur Transport* 2018, paragraph 70.

extremely different concepts in this respect, leading to completely different solutions. According to the first of these, the concept of "accident" covers only cases in which there is a risk typical for air transport, i.e., resulting from the characteristics, condition or operation of the aircraft or the devices used during any activity related to embarking or disembarking from it. However, according to the opposite view, the liability of the carrier arises regardless of whether the risk typical for air transport has materialized. In the dispute under consideration, only the adoption of the second of the presented positions would allow the air carrier to be considered responsible for the incident.

The referring court has also proposed an intermediate solution, whereby the carrier's liability under the Convention would be independent of the materialization of a risk typical for air transport if the accident occurred on board or while embarking or disembarking from the aircraft. The carrier would be able to discharge itself from liability by proving that the event causing the damage was not related to the operation or characteristics of the aircraft.

b. Legal status

Before answering the question asked, the Court noted that in the Montreal Convention a legal definition of an "accident" cannot be found. For this reason, it has become necessary to interpret this concept autonomously, taking into account the subject matter and purpose of the Convention. The Court also referred to the colloquial understanding of the expression "accident" as an unforeseen and unintentional event that causes damage. He also stressed that in order to maintain the balance of interests of both parties, the convention also provides for a clause allowing the carrier to be released from liability or to limit his obligation to repair the damage.

The Court also pointed out that according to Art. 31 of the Vienna Convention on the Law of Treaties of 23 May 1969,²⁰ an international agreement should be interpreted in good faith, taking into account the ordinary meaning to be attached to the words used in it in the light of the subject and purpose of the agreement.²¹ At the same time, the concepts contained in the Montreal Convention should be interpreted in a uniform and autonomous manner, consistent with the principles of interpretation of general international law.²²

Turning to the merits, the Court took the position that the carrier's liability cannot be limited to situations in which damage arises as a result of materialization of the risk typical of air transport. This understanding of the concept of "accident" does not correspond to the objectives of the convention or the common understanding of this expression. It is also clear from the recitals to the Montreal Convention

²⁰ Vienna Convention on the Law of Treaties adopted in Vienna on 23 May 1969, Journal of Laws 1990 No. 74, item 439.

²¹ See Judgment of the Court of Justice of 12 April 2018, C-258/16, EU:C:2018:252.

²² See Judgment of the Court of Justice of 7 November 2019, C-213/18, EU:C:2019:927.

that the will of the Member States was to introduce unlimited liability of air carriers in order to protect the interests of consumers and fair compensation.

What is more, the carrier's liability is not unlimited, as there is always a possibility of appealing to the general clause of release from liability regulated in Art. 20 of the Convention. On the basis of this provision, the carrier is always able to prove that the damage was the result of the passenger's sole action or was caused by his negligence or other unlawful act or omission. Making carriers' liability dependent on the occurrence of risks typical for air transport is therefore not necessary in order to protect them against a too extensive obligation to compensate for damage.

The Court answered the question referred that Art. 17(1) of the Montreal Convention must be interpreted as meaning that the concept of "accident" within the meaning of that provision covers all situations occurring on board an aircraft 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.

Practically the same position was also presented in the opinion of the Advocate General prepared for this case, according to which an "accident" within the meaning of Art. 17(1) of the Montreal Convention should be any sudden or unusual event causing the death or injury of passengers and having an external source to them, assuming it occurred on board the aircraft or during activities related to embarking or disembarking. It is not necessary to examine whether the event arises from a risk typical of air transport or is directly related to it.²³

Summary

The position of the Court of Justice deserves full support. Its interpretation of the concept is in line with the usual meaning of the expression "accident" and takes into account the overarching purpose of the Convention, which is to protect the interests of consumers in international air transport and the need for fair compensation based on the principle of compensation for damage. This approach is also confirmed by recital 7 in the preamble to Regulation No 889/2002, which explicitly states that the provisions of the Convention may not be interpreted in such a way as to undermine passenger protection. It was also reasonably noted that the use in Art. 17(1) of the Convention of the expression "accident" instead of "event" leads to a narrower designation of this concept and there is no need of further limitation of its meaning. The Court's assessment also coincides with the decisions of US courts, which have already had to deal with the definition of the concept of "ac-

²³ Opinion of Advocate General Saugmandsgaard ØE delivered on 26 September 2019 in case C-532/18, ECLI:EU:C:2019:788.

cident", including the problem of the liability of air carriers in relation to drinks distributed on board.²⁴

Controversial Art. 17(1) of the Convention explicitly defines only one condition that must be met in order to have the possibility to use the term "accident" within the meaning of this provision.²⁵ This is a limitation on the location of the event. An accident that has caused death or injury must take place on board the aircraft or during any of the operations of embarking and disembarking. The ability to hold the carrier liable is therefore not conditioned by the link between the accident and the risk typical of air transport. The introduction of such a requirement would be a broad interpretation and would result in an unjustified deterioration of the passengers' situation. It would also be incompatible with the protective purpose of both the Convention and the Regulation.

The liability of air carriers is not absolute. A balance is therefore kept between the protection of the interests of both parties. The clause provided in Art. 20 of the Convention creates a mechanism that effectively allows air carriers to be released from liability or to limit it. Moreover, Art. 21(2) shows that above a certain threshold the carrier may exclude its liability by proving that the damage was not caused by its negligence or that it was caused solely by the negligence of a third party. Therefore, there is no need to create additional breaches, from the principle of making carriers liable for events occurring during the journey or during operations of embarking and disembarking. Although the accepted system of liability is strict, it does not upset the balance between the interests of air carriers and their passengers.²⁶

The current regulation gives passengers the chance to obtain compensation relatively quickly and easily. The necessity of showing this additional premise would make this process much more complicated. A consumer who does not have access to specialized data would very rarely be able to demonstrate that the damage caused is associated with the typical risk involved in air transport. Shifting the burden of proof back to the passenger would thus create a risk that the carrier could avoid liability solely because it would be impossible to clearly establish the cause of the accident.

Accepting the additional requirement would also make the system of liability for "accidents" within the meaning of the Montreal Convention dead in practice. Almost any damage that could also occur in an everyday life situation would be

²⁴ See *Diaz Lugo v. AA*, 686 F. Supp. 373, D.P.R. 1988; *Fishman v. Delta Air Lines*, 132 F.3d 138, 3rd Cir.1998; *Wipranik v. Air Canada*, 2007 WL 2441066, CD Cal, 2007; also I.H. Diederiks-Verschoor, *An Introduction to Air Law*, The Hague 2012, pp. 153–160.

²⁵ Opinion of Advocate General Saugmandsgaard ØE...

²⁶ Judgment of the Court of Justice of 6 May 2010, C-63/09, EU:C:2010:251; Judgment of the Court of Justice of 22 November 2012, C-410/11, EU:C:2012:747; Judgment of the Court of Justice of 17 February 2016, C-429/14, EU:C:2016:88; Judgment of the Court of Justice of 12 April 2018, C-258/16, EU:C:2018:252.

excluded from this system. As a flagship example, harmful events related to the distribution of food and drink during a flight could be mentioned here. Proving that distribution of food and drink can also occur in other circumstances, essentially leads to the conclusion that the carrier cannot be held liable under art. 17(1) of the Convention. The application of this provision would therefore be limited only to the narrow category of very serious accidents that can only occur in air transport. With this category of events, however, the carrier could more frequently rely on Art. 21(2) of the Convention, which would again allow it to shirk its responsibilities.

As A. Konert points out, adding the disputed criterion would also result in the need to eliminate from the concept of “accident” cases such as terrorism or bomb explosions. Both of these are found not only onboard an aircraft, but also in places unrelated to aviation. As an “accident” within the meaning of the Convention, the US courts also found sexual harassment, which also contradicts the thesis of the necessity of linking the event causing the damage to the typical risk occurring in air transport. In a ruling by *Barratt v. Trinidad & Tobago Airways*, the American court stated explicitly that the accident does not have to result from aviation-specific risk.²⁷

To sum up, the position of the Court of Justice should be assessed as correct and its definition of the abstract criteria for assessing the concept of “accident” under Art. 17 clause 1 Montreal Convention should be accepted. A different interpretation and approval of an additional condition in the form of the need to demonstrate the realization of a risk typical of transport would lead to a significant deterioration of the passengers’ position, which would be contrary to the overarching purpose of the Convention and the Regulation, from which it is clear that the provisions of this act are to be interpreted in a manner favorable to passengers and their dependents.

This was not the intention of the authors of the Montreal Convention, who increased the liability of air carriers, compared to the Warsaw Convention, by introducing the principle of objective liability for damages not exceeding 100,000 SDRs. Only after this threshold is exceeded is the liability based on presumption of guilt, although the burden of rebutting this presumption is still borne by the carrier²⁸. It is also worth noting that during the Montreal conference, adding a sentence to Art. 17(1) was considered, namely: “the carrier is liable provided that the damage was not caused by the health of the passenger”. However, the idea was eventually abandoned, so as not to restrict the scope of this provision.

²⁷ *Barratt v. Trinidad & Tobago Airways*, 1990 WL 127590, E.D.N.Y. 1990; *Craig v. Air France*, 45 F. 3d 435, 9th Cir. 1994; *Gezzi v. British Airways*, 991 F. 2nd 603, 605, 9th Cir. 1993; *Rullman v. Pan Am*, 991 F. 2nd 603, 605, 9th Cir. 1993.

²⁸ A. Konert, commentary to art. 208 of Aviation Law, [in:] *Prawo lotnicze. Komentarz*, ed. M. Żylicz, Warszawa 2016, LEX; A. Niewęglowski, [in:] *Pozakodeksowe umowy handlowe*, ed. A. Kidyba, Warszawa 2018, pp. 996–1003.

The injured passenger can therefore only be required to provide evidence of damage as a result of a sudden and unusual event that occurred during the journey or during activities related to embarking or disembarking. In addition, he must show that the source of the event was an external phenomenon toward him.

Finally, it is worth noting that although the judgment of the Tribunal in this case will undoubtedly be of great importance for building the definition of "accident" in EU law, it will certainly not be the last controversy regarding the interpretation of Art. 17(1) of the Montreal Convention, especially in the light of the differences visible in the jurisprudence of courts of common law states and other countries. The lack of a legal definition of this concept and the multitude of occurrences in practice will certainly pose new challenges to the courts of the Member States in cases related to the liability of an air carrier for the injury or death of a passenger resulting from an accident.

References

Literature

- Diederiks-Verschoor I.H., *An Introduction to Air Law*, The Hague 2012.
 Grigorieff C.I., "Le régime d'indemnisation de la convention de Montréal", *Revue européenne de droit de la consommation* 2012, no. 4.
 Koffka-Bodenstein K., *Luftverkehrsgesetz und Warshauer Abkommen*, Berlin 1937.
 Konert A., *Odpowiedzialność cywilna przewoźnika lotniczego*, Warszawa 2010.
 Konert A., "Odpowiedzialność przewoźnika lotniczego w przypadku turbulencji na gruncie orzecznictwa amerykańskiego", *Ius Novum* 2010, no 1.
 Letacq F., "Fascicule 925", *Jurisclasseur Transport* 2018.
 Mateesco-Matte N., *Droit aérien-aéronautique*, Paris 1954.
Pozakodeksowe umowy handlowe, ed. A. Kidyba, Warszawa 2018.
Prawo lotnicze. Komentarz, ed. M. Żylicz, Warszawa 2016.
 Rajski J., *Odpowiedzialność cywilna przewoźnika lotniczego w prawie międzynarodowym i krajowym*, Warszawa 1968.

Legal acts

- Act of July 3, 2002, Aviation Law, *Journal of Laws* 2019 item 1580.
 Convention for the unification of certain rules for international carriage by air adopted in Montreal on 28 May 1999 (*Journal of Laws* 2007 No. 37, item 235).
 Council Regulation (EC) no 2027/97 on air carrier liability in the event of accidents of 9 October 1997 (*Official Journal of the European Communities* 17.10.1997, L 285/1).
 Regulation (EC) no 889/2002 of The European Parliament and of The Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents (*Official Journal of the European Communities* 30.05.2002, L 140/2).
 Vienna Convention on the Law of Treaties adopted in Vienna on 23 May 1969 (*Journal of Laws* 1990 No. 74, item 439).

Judicature

- Barratt v. Trinidad & Tobago Airways*, 1990 WL 127590, E.D.N.Y. 1990.
- Craig v. Air France*, 45 F. 3d 435, 9th Cir. 1994.
- Cudney v. Braniff Airways*, 300 S.W. 2d 412 (Mo. 1957).
- Diaz Lugo v. AA*, 686 F. Supp. 373, D.P.R. 1988.
- Fishman v. Delta Air Lines*, 132 F. 3rd 138, 3rd Cir. 1998.
- Gezzi v. British Airways*, 991 F. 2nd 603, 9th Cir. 1993.
- Gonzales v. TACA International Airlines*, 1992 WL 142399, E.D. La. 1992.
- Hodges v. Delta Air Lines*, 24 Avi. Cas. 18.360, 1995.
- Judgment of Cour de Cassation of 15 January 2014, reference number 11-27.962.
- Judgment of the Court of Justice of 6 May 2010, C-63/09, EU:C:2010:251.
- Judgment of the Court of Justice of 22 November 2012, C-410/11, EU:C:2012:747.
- Judgment of the Court of Justice of 17 February 2016, C-429/14, EU:C:2016:88.
- Judgment of the Court of Justice of 12 April 2018, C-258/16, EU:C:2018:252.
- Judgment of the Court of Justice of 7 November 2019, C-213/18, EU:C:2019:927.
- Judgment of the Court of Justice of 19 December 2019, C-532/18, EU:C:2019:1127.
- Magan v. Lufthansa*, 339 F. 3d 158, 2d Cir. 2003.
- Marotte v. AA*, 296 F. 3rd 1255, 11th Cir. 2002.
- Ness v. West Coast Airlines Inc.*, 410 P. 2d 965 (Idaho 1965).
- Olympic Airways v. Husain*, 316 F. 2d 829, 9th Cir. 2002.
- Opinion of Advocate General Saugmandsgaard ØE delivered on 26 September 2019 in case C-532/18, ECLI:EU:C:2019:788.
- Rothschilds v. Tower Air*, 24 Avi. Cas. 18.340, 1995.
- Rullman v. Pan Am*, 991 F. 2nd 603, 9th Cir. 1993.
- Sakaria v. TWA*, 8 F. 3d 167, 170, 1993.
- Saks v. Air France*, 470 U.S. 392, 1985.
- Wipranik v. Air Canada*, 2007 WL 2441066, CD Cal, 2007.