

# **„Matters relating to a contract“ without contract (with the claimant) - ECJ, Judgment of 26 March 2020, Case C-215/18, Libuše Králová v Primera Air Scandinavia A/S, on Article 5 no. 1 Brussels I Regulation**

In this case, a Czech passenger entered into a package travel contract with a Czech travel agency on a flight from Prague to Keflavik in Iceland and on accommodation there. The flight was operated by the Danish air carrier Primera Air Scandinavia. The flight was delayed by four hours. This is why the passenger brought an action for compensation of EUR 400 against the airline under the 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. The proceedings were instituted before a District Court in Prague.

In the case of the provision of services, Art. 5 no. 1 lit. b second indent Brussels I Regulation provides for jurisdiction at the place in a Member State where, under the contract, the services were provided or should have been provided. In respect of air carriage, these include, at the passenger's choice, the courts of the place of departure (as well as the place of arrival) of the flight, see ECJ, judgment of 9 July 2009, Case C-204/08 – *Peter Rehder v Air Baltic Corporation*.

Nevertheless, the Court held that, first, that the concept of an operating air carrier subject to the Passenger Rights Regulation includes not only the air carrier which operates or has the intention of operating a flight under a contract with a passenger but also the carrier which operates or intends to operate a flight on behalf of a third party which has concluded a contract with that passenger. Therefore, the passenger may rely on the regulation on the rights of air

passengers against the carrier, even in the absence of a contract between the passenger and the carrier.

The Court further observed that even though the conclusion of a contract is not a requirement for the application of the special provisions on matters relating to a contract of the Article 5 no. 1 Brussels I Regulation, reliance on those provisions presupposes the existence of a voluntary commitment by one party to another, not necessarily vis-à-vis the claimant, as opposed to Articles 15 et seq. (see para. 58).

Thus, the Court concludes, an operating air carrier that did not enter into a contract with the passenger but is liable to that passenger on behalf of a travel agency in respect of the obligations arising from the Passenger Rights Regulation must be regarded as fulfilling the freely assumed obligations vis-à-vis that agency. Therefore, the passenger may bring an action for compensation against the carrier before the courts of the place of departure of the flight.

The Court had already decided similarly before: Those previous (joined) cases involved compensation for long delays in flights provided by an operating air carrier which had not entered into contracts with the passengers concerned, since they had bought their airline tickets from other airlines before bringing an action against the carrier that operated the segment of the connecting flight that included that delay at issue, see ECJ, judgment of 7 March 2018, joined cases C?274/16, C?447/16 and C?448/16 – *flightright and Others*.

The judgment is available, currently only in French, German and other languages, but not [yet] in English here.