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Where is the "airport of destination" under the Montreal Convention?

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Facts

The plaintiff booked a flight online from Hahn, Germany, to Naples, Italy, and back after four days in Naples. After the first flight, she claimed that her baggage had been damaged. Upon her return, she filed a legal action with the Simmern Local Court (the legal venue at the airport of departure), claiming compensation under the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention).

The Simmern Local Court dismissed the claim as inadmissible.⁽¹⁾ The plaintiff filed an appeal with the Bad Kreuznach Regional Court, which also dismissed the claim, but also allowed a further appeal to the Federal Court of Justice (BGH).⁽²⁾

Decision

The last appeal was successful.⁽³⁾ According to article 33(1) of the Montreal Convention, the court at the airport of departure will have an international jurisdiction. Hahn Airport should be regarded as the place of departure as well as the place of destination, because the flights were booked together in one booking process.

From the BGH's point of view, Naples was only a place of a stopover (see article 1(2) of the Montreal Convention). If a carriage by air consists of several partial flights, it will be considered as a single carriage if it was agreed upon by the parties as a single service. This will also apply even if the different flight legs are performed by several successive air carriers. The final destination of such successive carriage is the place of the contractually agreed last landing.

Furthermore, the BGH relied on the case law of the European Court of Justice, according to which the outward and return flights may constitute a single transport operation within the meaning of article 1(3) of the Montreal Convention.⁽⁴⁾

Comment

The decision of the BGH might be in line with the consumer-friendly case law on the EU Flight Compensation Regulation,⁽⁵⁾ which also leads to a legal venue at the airport of destination by using a legal fiction whereby the airport of departure is considered to be the place of performance (this interpretation is questionable because the passenger would expect more than the services provided at this stage).

However, the BGH's interpretation is not convincing. In this case, there was a relatively short time between the two flights. However, if the traveller had booked an outbound flight and a return flight after a longer stay abroad (eg, a student spending a semester abroad) in a single transaction, such a stay would not be defined as a "stopover".

The term "stopover" could also be interpreted in another way: it could cover cases in which an aircraft lands but the passengers remain on board and do not leave the aircraft at all (eg, for refuelling).

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Endnotes

(1) AG Simmern, judgment of 2 February 2020, Case file No. 34 C 1384/19.

(2) LG Bad Kreuznach, judgment of 23 September 2020, Case file No. 1 S 27/20.

(3) BGH, judgment of 23 November 2021, Case file No. X ZR 85/20.

(4) European Court of Justice, judgment of 10 July 2008, Case file No. C-173/07, *Schenkel/Emirates*. See No. 45:

Moreover, as the referring court rightly points out, successive carriages are regarded under the Montreal Convention as 'one undivided carriage', inter alia if they have been agreed upon in the form of a single contract. In so far as that concept of undivided carriage refers to a succession of several stages chosen by the passenger, it resembles rather the concept of 'journey' as defined in paragraph 41 above.

(5) No. 261/2004.