

PRACTICAL ASPECTS OF CROSS-BORDER ASSIGNMENT OF CLAIMS IN CASES CONCERNING COMPENSATION FOR DELAYED OR CANCELLED FLIGHTS

MAŁGORZATA SEKUŁA-LELENO*

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ABSTRACT

The article aims to answer the question of whether consumer protection regulations apply to the cross-border assignment of claims for compensation for delayed flights. As indicated, in accordance with recital 18 of Regulation No 1215/2012, in matters relating to insurance, consumer contracts and employment law, the weaker party should be protected by rules of jurisdiction that are more favourable to their interests than the general rules. The analysis carried out in this study, supported by numerous judicial decisions, confirmed the possibility of consumers assigning claims. However, in cases concerning claims against an air carrier under Regulation No 261/2004, the special jurisdiction rule provided for in Article 7(1)(b) second indent of Regulation No 1215/2012 applies.

Keywords: national jurisdiction, assignment of claims, consumer protection

INTRODUCTION

The analysis presented in this article concerns practical aspects of cross-border assignments of claims, including, in particular, the jurisdiction of courts in cases involving compensation for delayed or cancelled flights, where the purchaser of a compensation claim brings the action. Contract-based disputes are the most common type of cases concerning international air transport. To date,

* LLD, Assistant Professor at the Department of Law and Civil Procedure of Lazarski University in Warsaw (Poland), member of the Supreme Court Research and Analyses Office, e-mail: malgorzata.sekula@lazarski.pl, ORCID: 0000-0001-5015-9018



the issue of assignment of claims has not raised any significant concerns in the context of the general principles of national jurisdiction.

First of all, it should be pointed out that national jurisdiction in civil matters of an EU nature which concern a procedural claim relating to a contract is regulated in Article 7(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.¹ In accordance with this provision, a person domiciled in a Member State may be sued in another Member State in matters relating to a contract before the courts for the place of performance of the obligation in question (*forum executionis contractus*). Therefore, the concept of a contract determines the scope of application of this act of EU law in contract-related matters. It should also be noted that the rule laid down in Article 7(1) of Regulation No 1215/2012 serves a dual purpose. It determines both whether a court of a given Member State has international jurisdiction and which of the courts of that Member State has territorial jurisdiction to hear the case.² In this respect, the provisions of Regulation No 1215/2012 form an autonomous basis for determining the court's jurisdiction in relation to national procedural provisions.³ Regulation No 1215/2012 also applies to contracts for carriage by air in situations where a passenger claims compensation for a flight delay or denied boarding. However, in the case of such claims, the key issue is not so much the scope of the jurisdictional rule as its connecting factor. This raises questions about the impact of the assignment of a consumer claim on the ability of the assignee, i.e. the consumer, to rely on the grounds of jurisdiction provided for in Articles 17–19 of Regulation No 1215/2012. The basic connecting factor for determining general national jurisdiction is the defendant's domicile or registered office (*actor sequitur forum rei*).⁴ The jurisdiction of the courts of the Member State in which the defendant has its registered office or domicile, as a general rule, is reflected in Article 4 of Regulation No 1215/2012. This principle also requires 'that the special rules on jurisdiction be interpreted in such a way as to enable a normally well-informed defendant reasonably

¹ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1, as amended), the so-called Brussels I bis Regulation, hereinafter referred to as 'Regulation No 1215/2012' or the 'Brussels I bis Regulation'. Since 10 January 2015, the Brussels I bis Regulation has replaced Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, hereinafter referred to as 'Regulation No 44/2001' or the 'Brussels I Regulation'.

² J. Płaziuk, 'Jurysdykcja krajowa dla rozpoznania roszczeń ze stosunków umownych (art. 7 rozporządzenia nr 1215/2012)', *Europejski Przegląd Sądowy*, 2020, No. 4, pp. 22–35.

³ K. Weitz, 'Autonomiczna wykładnia europejskiego prawa procesowego cywilnego – wprowadzenie i wyrok ETS z 10.03.1992 r. w sprawie C-214/89 Powell Duffryn plc przeciwko Wolfgang Petereit', *Europejski Przegląd Sądowy*, 2008, No. 7, p. 56; judgment of the Court of Justice of 23 April 2009, C-533/07, *Falco Privatstiftung and Thomas Rabitsch v Giseli Weller-Lindhorst*, EU:C:2009:257, paras 23–25.

⁴ B. Trocha, 'Czy potrzebna jest reforma łącznika miejsca zamieszkania w europejskim prawie procesowym cywilnym?', *Polski Proces Cywilny*, 2012, No. 4, p. 624.

to foresee before which courts, other than those of the State in which he is domiciled, he may be sued'.⁵

The main aim of this paper is to answer the question of whether cross-border assignments of claims are compatible with EU law, and what conditions must be met for an assignment to be considered valid both in the country of the assignee of the claim and in the country of the debtor. Do consumer protection regulations apply to cross-border assignments of claims concerning compensation for delayed flights? According to recital 18 of Regulation No 1215/2012, in matters relating to insurance, consumer and employment contracts, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules.⁶

GENERAL ISSUES

The issue of an air carrier's liability for damages is primarily regulated by the Convention for the Unification of Certain Rules for International Carriage by Air, signed in Montreal on 28 May 1999.⁷ The provisions of the Montreal Convention, since its approval by Council Decision of 5 April 2001 and its entry into force with respect to the EU on 28 June 2004, have been an integral part of the Community legal order.

The main aim of the Convention is to ensure the protection of consumer interests in international air transport and the need for fair compensation for damage suffered. The fundamental provision in this respect, Article 19 of the Montreal Convention, provides for a carrier's liability for damage occasioned by delay in carriage by air. In turn, Article 22(1) of the Montreal Convention defines the limits of the carrier's liability for flight delay, while Article 35 establishes the limitation period for claims.⁸

Under EU law, Regulation (EC) No 261/2004 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 flights⁹ is of particular importance. This Regulation introduces a system of standardised, lump-sum and immediate remedies, which allows for faster intervention than the one provided for by the

⁵ Judgment of the Court of Justice of 13 July 2006, C-103/05, *Reisch Montage AG v Kiesel Baumaschinen Handels GmbH*, ECR 2006 I-6827, ECLI:EU:C:2006:471. Judgments in the cases: *GIE Groupe Concorde and Others*, paragraph 24; *Besix*, para. 26; and *Opus*, para. 40.

⁶ Regulation (EU) No 1215/2012.

⁷ Convention for the Unification of Certain Rules for International Carriage by Air signed in Montreal on 28 May 1999; hereinafter referred to as the 'Montreal Convention'.

⁸ P. Kasprzyk, A. Konert, 'Przedawnienie roszczeń odszkodowawczych za overbooking, odwołanie i opóźnienie lotu', *Państwo i Prawo*, 2017, No. 6, pp. 55–72. See also: A. Gołąb, 'Między konwencją montrealską a rozporządzeniem Bruksela Ia – aspekty jurysdykcyjne odpowiedzialności przewoźnika za opóźnienie lotu', *Europejski Przegląd Sądowy*, 2022, No. 6, pp. 17–23.

⁹ 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 (OJ L 46, 17.2.2004, p. 1, as amended).

Montreal Convention.¹⁰ It should be emphasised that claims based on Article 7 of Regulation No 261/2004 are autonomous in nature under the Polish legal order.

However, not only the Montreal Convention but also Regulation No 261/2004 applies to contracts for carriage by air. This Regulation applies to all situations where a passenger claims compensation for the improper performance of an obligation under a contract for carriage by air consisting in a flight delay or denied boarding. Although the issue of an air carrier's liability primarily has its source in the Montreal Convention,¹¹ which also contains provisions relating to court jurisdiction, the application of its provisions is excluded to the extent that the matter is regulated differently by Regulation No 261/2004. At the same time, Regulation No 261/2004 does not contain provisions concerning the determination of court jurisdiction under international law, which, in turn, allows Article 7 of Regulation No 1215/2012 to apply in such situations.

Thus, in the Polish legal system, Regulation No 1215/2012 provides, the legal basis for determining the territorial jurisdiction of a court where passengers pursue claims for compensation for delayed or cancelled flights or denied boarding. The primary connecting factor in establishing jurisdiction is the defendant's domicile in a Member State. Therefore, the general jurisdiction applicable in every cross-border case is the possibility of bringing proceedings at the defendant's domicile or at the place of the air carrier's registered office. It should be pointed out that the above-mentioned Brussels I bis Regulation also allows proceedings to be brought at the place where the air transport service is performed or at the place of business of an air carrier's branch or other establishment.

Therefore, Regulation No 1215/2012 establishes domicile as the connecting factor determining court jurisdiction in general. For entities other than natural persons, domicile is replaced by the place where they have their statutory seat, central administration or principal place of business. However, if the subject of the proceedings is a contract or a claim arising from a contract, proceedings may be brought in a Member State other than that in which the defendant is domiciled or established, before the court of the place where the obligation was performed or should have been performed. In the case of the provision of services, the place of performance of the obligation is the place in the Member State where, under the contract, the services were provided or should have been provided.

Thus, the general rule governing court jurisdiction in European civil procedural law is that the court of the Member State in which the defendant is domiciled has jurisdiction (Article 2(1) of the Brussels I Regulation and Article 4(1) of the Brussels I bis Regulation – general jurisdiction). In accordance with Article 4 of Regulation No 1215/2012, a court has general national jurisdiction if the defendant is domiciled in the Member State of the court.¹² However, for certain categories of disputes, EU law provides that the courts of other Member States may also have additional jurisdiction, provided that they have a sufficiently close connection with

¹⁰ A. Konert, M. Sekuła-Leleno, 'Charakter prawny roszczenia o odszkodowanie wynikającego z rozporządzenia (WE) 261/2004', *Państwo i Prawo*, 2017, No. 3, p. 84.

¹¹ The Montreal Convention.

¹² B. Trocha, 'Czy potrzebna jest...', *op. cit.*, p. 624.

the case. These are cases of so-called special jurisdiction, based on connecting factors other than the defendant's domicile. One of the basic cases of special jurisdiction is jurisdiction in matters relating to contracts, currently regulated in Article 7(1) of the Brussels I bis Regulation.

In summary, the provisions of Regulation No 1215/2012,¹³ which do not provide for separate regulation for this type of case, apply to jurisdiction in cases concerning lump-sum compensation in the event of a delayed or cancelled flight. Therefore, the starting point will be the determination of national jurisdiction based on the defendant's place of residence, in accordance with Article 4(1) of that Regulation. On the other hand, Article 7 of the Regulation introduces the rule of special jurisdiction, which is optional in nature. In accordance with this provision, a person domiciled in a Member State may be sued in another Member State in matters relating to contracts before the courts for the place of performance of the obligation in question (point 1(a)), and, in the case of the provision of services, before the courts for the place in a Member State where, under the contract, the services were provided or should have been provided (point 1(b)). The wording of the provision clearly indicates that the legislature chose the place of performance of the obligation, the so-called *forum solutionis*, as the connecting factor determining jurisdiction in cases concerning contracts. Therefore, where grounds for special jurisdiction exist, the possibility of bringing an action under general jurisdiction, i.e. at the defendant's place of residence or registered office, is not excluded. Special national jurisdiction refers to a situation in which a defendant, although domiciled in the territory of one Member State, may be sued before a court of another Member State under a rule which establishes a connecting factor between the case and the territory of a Member State other than the defendant's domicile.¹⁴

RULING OF THE POLISH SUPREME COURT

The direct catalyst for these considerations was the Supreme Court's ruling of 22 January 2025, case no. III CZP 28/24, in which the Supreme Court was to answer legal questions referred by the Regional Court in Kraków. However, due to their flawed construction, the Supreme Court refused to do so. In this regard, the Supreme Court emphasised that legal questions 'are not intended to involve the Supreme Court in disputes arising in legal literature and case law, but to dispel serious doubts that the referring court has in a specific case'. Furthermore, it pointed out that, in a case concerning the resolution of a conflict between a statute and EU law, requiring an interpretation of that law, the Court of Justice of the European Union has exclusive jurisdiction. As explained in the Supreme Court's case law, in the event of a conflict between a statute and EU law, the resolution of which

¹³ Regulation (EU) No 1215/2012.

¹⁴ K. Weitz, *Jurysdykcja krajowa w postępowaniu cywilnym*, Warszawa, 2005, p. 170; T. Ereciński, in: Ereciński T., Ciszewski J., *Międzynarodowe postępowanie cywilne*, Warszawa, 2000, pp. 73–74.

requires the interpretation of that law, the Court of Justice of the European Union has exclusive jurisdiction. Therefore, the assumption of that competence by the Supreme Court, as the Court rightly emphasised in the reasoning for its position,

'would not only constitute a violation of EU law but would also undermine the consistency of the interpretation of that law, guaranteed by preliminary ruling proceedings, and consequently undermine the uniformity of its application by the national courts of all Member States'.¹⁵

The Supreme Court's position was eagerly awaited because it had not previously ruled on the jurisdiction of Polish courts in cases concerning compensation for a delayed or cancelled flight.

In the facts of the case, the District Court in Kraków, by its decision of 3 November 2023, dismissed the motion of Deutsche Lufthansa AG in Cologne to reject the statement of claim filed by Airhelp Germany GmbH in Berlin. The District Court indicated that the motion to reject the statement of claim did not merit consideration, as the court hearing the case had jurisdiction to hear it. In this case, the plaintiff claimed EUR 500 from the defendant as compensation for the passengers' arrival at their destination with a delay of more than three hours. The defendant lodged an appeal against the above ruling, challenging it in its entirety and alleging an infringement of Article 1099 § 1 of the Code of Civil Procedure (CCP) by issuing a decision refusing to reject the statement of claim and finding that Polish courts had national jurisdiction, whereas the present case concerned a payment dispute between two companies incorporated under German commercial law, both of which were entrepreneurs, which, in the circumstances of the case, required the statement of claim to be rejected due to the lack of national jurisdiction of Polish courts; Article 7(1) of Regulation (EU) No 1215/2012, by erroneously assuming that the place most closely connected with the contract was the place of departure or arrival of the aircraft, and not the place where the undertaking has its registered office, whereas the parties were not bound by a contract of carriage and the plaintiff sought only the payment of compensation from the defendant, a claim which it had previously acquired, allegedly, from passengers bound by a contract of carriage with the defendant; and Article 4(1) in conjunction with Article 63(1)(a) of the Brussels I bis Regulation, by failing to apply those provisions and failing to recognise the lack of national jurisdiction of Polish courts, whereas there is no special basis for bringing an action against the defendant in a country other than that of its registered office in Germany.

When considering the appeals, the Court *ad quem* had doubts, expressed in the questions of law submitted to the Supreme Court, pointing to the need to interpret a provision of EU law, namely Article 7(1)(b) second indent of Regulation No 1215/2012, but, it should be emphasised, without referring to provisions of Polish law.

Taking into account the questions raised by the District Court, two issues should be considered:

¹⁵ See the order of the Supreme Court of 28 April 2010, III CZP 3/10, OSNC, 2010, No. 11, item 155.

Firstly, it is crucial to determine whether cases concerning a claim acquired under an assignment agreement concluded with a consumer by an entity established outside Poland, which asserts its claim against another entity also established in another EU country, are subject to Polish jurisdiction. Secondly, whether an entity established in an EU country other than Poland, on the basis of an assignment of claims made under Article 509 of the Civil Code with an original creditor who is a consumer, assumes the original creditor's rights concerning the choice of the competent court under Regulation No 1215/2012.

Before attempting to answer the above questions, it is worth analysing the most representative case law in this area.

REVIEW OF CJEU CASE LAW

Particular attention should be paid to the judgment of the Court of Justice of 3 February 2022, *C-20/21, JW and Others v LOT Polish Airlines*.¹⁶ In that judgment, referring to its previous case law, the Court of Justice emphasised that an action for compensation in respect of a flight delay, cancellation or denied boarding falls within the scope of the concept of 'matters relating to a contract' within the meaning of Article 7(1)(a) of Regulation No 1215/2012. The Court of Justice emphasised that, in the case of the provision of services in several Member States, 'the place of performance' should be understood as the place that demonstrates the closest connection between the contract and the court having jurisdiction, and such closest connection is generally demonstrated by the place of the main provision of services. The designation of that place should be derived from the contract.

According to the CJEU, in the case of a direct flight, as well as in the case of a connecting flight consisting of several flights covered by a single booking and operated by different air carriers, the place of departure and the place of arrival represent the places of the main provision of the services forming the subject matter of the contract for carriage by air. Consequently, the court having jurisdiction within the meaning of Article 7(1)(b) of Regulation No 1215/2012 to hear an action for damages based on that contract and Regulation No 261/2004 is, at the passenger's choice, the court within whose jurisdiction the place of departure is located or the court within whose jurisdiction the place of arrival of the aircraft is located, those places having been agreed in the contract.¹⁷

Another judgment of the Court of Justice that is important for the subject matter under discussion is that in case *C-204/08, Peter Rehder v Air Baltic Corporation*.¹⁸ The CJEU emphasised that, in the case of the provision of services in several Member States, the 'place of performance' should be understood as the place that demonstrates

¹⁶ Judgment of the CJEU of 3 February 2022, *C-20/21, JW and Others v LOT Polish Airlines*, ECLI:EU:C:2022:71.

¹⁷ P. Rejnowicz-Janowska, 'LOT wygrywa przed TSUE sprawę o właściwość sądu. Omówienie wyroku TS z dnia 3 lutego 2022 r., *C-20/21 (LOT Polish Airlines)*', LEX/el., 2022.

¹⁸ Judgment of the CJEU of 9 July 2009, *C-204/08, Peter Rehder v Air Baltic Corporation*, ECLI:EU:C:2009:439.

the closest connection between the contract and the court having jurisdiction, and such closest connection is generally demonstrated by the place of the main performance. The designation of that place should be derived from the contract.

According to the CJEU, in the case of a direct flight, as well as in the case of a connecting flight consisting of several flight segments covered by a single booking and operated by different air carriers, the place of departure and the place of arrival represent the places of the main provision of the services forming the subject matter of the contract for carriage by air. Consequently, the court having jurisdiction within the meaning of Article 7(1)(b) of Regulation No 1215/2012 to hear an action for damages based on the above-mentioned contract and on Regulation No 261/2004 is, at the passenger's choice, the court within whose jurisdiction the place of departure is located or the court within whose jurisdiction the place of arrival of the aircraft is located, those places having been agreed in the contract.¹⁹

Of key importance from the perspective of this study, passengers and courts adjudicating in cases concerning passenger rights under Regulation No 261/2004 is the judgment of the Court of Justice of 18 November 2020, C-519/19, *Ryanair DAC v DelayFix*.²⁰ The ruling of the CJEU concerned a dispute between a passenger and the air carrier Ryanair DAC, hereinafter referred to as 'Ryanair', from which the passenger purchased a ticket for a flight from Milan to Warsaw. Due to the cancellation of the flight, the passenger assigned a claim for compensation of EUR 250 to DelayFix, a company helping air passengers recover claims.

In the facts of the case, the company specialising in the recovery of air passengers' claims requested the District Court for the Capital City of Warsaw (Poland) to order the air carrier Ryanair, on the basis of Regulation No 261/2004, to pay compensation of EUR 250 for the cancellation of a flight between Milan (Italy) and Warsaw; the claim against the air carrier was assigned to that company by the passenger.

Ryanair raised a plea alleging that the Polish courts lacked jurisdiction on the grounds that its general terms and conditions of carriage, accepted by that passenger when he purchased his ticket online, conferred jurisdiction on the Irish courts. According to Ryanair, DelayFix, as the assignee of that passenger's claim, is bound by that term.

By an order of 15 February 2019, the District Court for the Capital City of Warsaw rejected that plea of lack of jurisdiction, considering, first, that the jurisdiction clause in the contract of carriage between that passenger and the airline was unfair within the meaning of Directive 93/13 and, secondly, that DelayFix, as the assignee of the passenger's claim following the cancellation of the flight, could not be bound by such a clause.

Ryanair brought an appeal against that order before the referring court. Ryanair contended that DelayFix could not benefit from the jurisdictional protection provided for consumer contracts, as the company was not a consumer.

¹⁹ P. Rejnowicz-Janowska, 'LOT wygrywa...', op. cit.

²⁰ Judgment of the CJEU of 18 November 2020, C-519/19, *Ryanair DAC v DelayFix*, ECLI:EU:C:2020:933.

Due to the doubts harboured by the referring court as to whether a professional party may rely on the favourable regime of consumer protection arising from Directive 93/13 in a situation where a consumer assigns his or her claim to that party, as well as doubts concerning the case law of the Court regarding the application of Regulation No 1215/2012 in respect of the legal regime governing jurisdiction clauses, the referring court decided to stay the proceedings and to refer questions to the CJEU for a preliminary ruling.

By the question referred, the CJEU sought to determine whether Article 25 of Regulation No 1215/2012, as well as Article 2(b), Article 3(1) and (2) and Article 6(1) of Directive 93/13 should be interpreted as meaning that an air carrier seeking to contest the jurisdiction of a court to hear an action for damages brought against it may rely, against a claim recovery agency to which the passenger has assigned his claim, on a jurisdiction clause contained in the contract of carriage between the air carrier and the passenger. The CJEU ruled that, in order to contest the jurisdiction of a court to hear an action for compensation brought against it, an air carrier may not rely, against a claim recovery agency, on a jurisdiction clause included in a contract concluded with a passenger. At the same time, the CJEU noted that an air carrier may rely on the jurisdiction clause only where, under the legislation of the Member State whose courts are designated in that clause, that claim recovery agency has succeeded to all the initial contracting party's rights and obligations, which is for the referring court to determine. The CJEU also emphasised that a clause conferring exclusive jurisdiction on the court having jurisdiction over the place where the air carrier is established, incorporated, without prior individual negotiation, in a contract concluded between a passenger and an air carrier, must be regarded as an unfair term within the meaning of Article 3(1) of Directive 93/13.

The above-mentioned judgment may limit the number of cases in which air carriers seek to avoid liability and the payment of compensation for delayed or cancelled flights when they are sued by entities that purchase from passengers claims held by them against air carriers. The ruling issued in this case may make it easier for courts to rule on the liability of an air carrier for the cancellation or delay of a flight.²¹

It follows from the above-cited rulings of the CJEU that, in cases concerning claims against air carriers arising from Regulation No 261/2004, it is uniformly accepted that the rule of special jurisdiction provided for in Article 7(1)(b) second indent of Regulation No 1215/2012 applies. Therefore, such claims cannot be considered in isolation from the contract of carriage concluded between the parties.

Another judgment of the CJEU that is worth mentioning in this context is that of 29 February 2024, C-11/23, *Eventmedia Soluciones SL v Air Europa Líneas Aéreas SAU*.²² Against the background of the situation considered there, the Court of Justice indicated that:

²¹ In this respect, it is also necessary to take into account judgment of the CJEU of 7 November 2019, C-213/18, *Adriano Guaitoli and Others v easyJet Airline Co. Ltd.*, ECLI:EU:C:2019:927.

²² Judgment of the CJEU of 29 February 2024, C-11/23, *Eventmedia Soluciones SL v Air Europa Líneas Aéreas SAU*, ECLI:EU:C:2024:194.

'In the event of cancellation of a flight, air passengers' right to compensation, referred to in Article 5(1)(c) of Regulation No 261/2004, and the operating air carrier's corresponding obligation to pay the compensation provided for in Article 7(1) thereof arise directly from that regulation. The right and the obligation cannot therefore be regarded as having their basis in any contract that might have been concluded between the air passenger and operating air carrier concerned or, *a fortiori*, in a wrongful failure by that air carrier to perform such a contract.'

However, in the further part of the reasoning, the Court clearly emphasised that the case law of the Court indicates that actions relating to the right to compensation under Regulation No 261/2004 are covered by the concept of 'matters relating to a contract' within the meaning of Article 5(1) of Regulation No 44/2001.²³ It was also pointed out that

'By that case law, relating to jurisdiction in civil and commercial matters, the Court sought to ensure uniform application of the concept of "matters relating to a contract" within the meaning of that provision, holding that, in order for a contract of carriage to be covered by that concept, it is irrelevant that that contract was concluded by the air passenger not directly with the operating air carrier concerned but with another service provider such as a travel agency.'²⁴

The above review of EU case law should be supplemented with statements of the Polish judiciary in this respect.

ANALYSIS OF POLISH CASE LAW

First of all, it should be pointed out that, in accordance with Article 1099 § 1 CCP, the court considers the lack of national jurisdiction *ex officio* at every stage of the case. If a lack of national jurisdiction is found, the court rejects the statement of claim or application, with the proviso that submission to the jurisdiction of Polish courts may also occur by entering an appearance on the merits of the case, provided that the defendant does not raise an objection based on the lack of national jurisdiction, and, where the parties have concluded an agreement excluding the jurisdiction of Polish courts, provided that the defendant does not raise an objection based on the lack of national jurisdiction (Article 1104 § 2 and Article 1105 § 6 CCP).

In accordance with the wording of Article 1105 § 1 CCP, the parties to a specified legal relationship may agree in writing to submit to the jurisdiction of foreign courts matters concerning property rights that have arisen or may arise from that relationship,

²³ See similar judgments: of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, ECLI:EU:C:2018:160, paras. 63–65; of 26 March 2020, *Primera Air Scandinavia*, C-215/18, ECLI:EU:C:2020:235, para. 49; as well as the order of the Court of Justice of 13 February 2020, C-606/19, ECLI:EU:C:2020:101.

²⁴ ECLI:EU:C:2024:194, para. 35. See also judgment of the CJEU of 7 March 2018, C-274/16, *flightright GmbH v Air Nostrum, Líneas Aéreas del Mediterráneo SA; Roland Becker v Hainan Airlines Co. Ltd; and Mohamed Barkan and Others v Air Nostrum, Líneas Aéreas del Mediterráneo SA*, ECLI:EU:C:2018:160; judgment of the CJEU of 26 March 2020, C-215/18, *Libuše Králová v Primera Air Scandinavia*, ECLI:EU:C:2020:235.

excluding the jurisdiction of Polish courts, provided that such an agreement is effective under the law applicable to it in the foreign country. Article 1105 § 2(3) CCP provides that an agreement excluding the jurisdiction of Polish courts may not concern matters that have arisen or may arise from contracts concluded by a consumer whose domicile or habitual residence is in the Republic of Poland.

Courts consider the lack of national jurisdiction *ex officio* at every stage of the case. If a lack of national jurisdiction is found, the court rejects the statement of claim or application, with the proviso that submission to the jurisdiction of Polish courts may also occur by entering an appearance on the merits of the case, provided that the defendant does not raise an objection based on the lack of national jurisdiction, and, where the parties have concluded an agreement excluding the jurisdiction of Polish courts, provided that the defendant does not raise an objection based on the lack of national jurisdiction.

First, it is necessary to indicate those cases (or the group of cases), in which the jurisdiction of the court is challenged due to the inclusion of a jurisdiction clause in the contract of carriage.

The starting point for considerations regarding national jurisdiction is the finding that the contract of carriage in question was concluded with a consumer, who then, by means of an agreement for the assignment of claims, transferred his claim to the plaintiff company. This circumstance is significant because a consumer, as the weaker party to a legal relationship concluded with an entrepreneur, is entitled to special protection under Article 385¹ et seq. of the Civil Code.

The unfair nature of a contractual provision is linked to the cumulative fulfilment of four conditions, namely the conclusion of a contract with a consumer, the lack of individual negotiation of its content, the shaping of the consumer's rights and obligations in a manner contrary to good practice and grossly infringing his or her interests, and the impossibility of classifying it as a provision formulated unambiguously and relating to the main obligations of the parties.

In such cases, following the case law of the CJEU,²⁵ common courts assume that

'A jurisdiction clause incorporated in a contract of carriage concluded between a passenger and an air carrier may not be invoked by the carrier against a debt collection agency to which the passenger has assigned his or her claim, unless, in accordance with the law of the country whose courts are designated in that clause, that debt collection agency has assumed all the rights and obligations of the original contracting party, which is a matter for the referring court to determine.'

They deem such a clause, which has not been individually agreed between the consumer and the trader and which confers exclusive jurisdiction on the court of the place where the air carrier has its registered office, to be an unfair contract term within the meaning of Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. As further explained by the District Court in Warsaw in its judgment of 16 October 2023, XVI C 561/22, LEX No. 3715246:

²⁵ In particular, the above-mentioned judgment of the CJEU of 18 November 2020, C-519/19, ECLI:EU:C:2020:933.

'Either the debt collection agency does not assume all the rights and obligations of the original contracting party and is therefore not bound by the jurisdiction clause, or the debt collection agency is bound by the jurisdiction clause, but such a clause should be examined from the perspective of EU consumer regulations. The validity of the jurisdiction clause should be examined in the light of the legislation of the country whose courts are indicated in the clause.'²⁶

It is emphasised that such a contractual provision limits the consumer's right to bring a claim by restricting the choice of jurisdiction. This creates a significant imbalance in the parties' rights and obligations, to the detriment of the consumer. A consumer seeking to pursue claims against a carrier is forced to bring an action before a geographically distant court and in a foreign language, whereas a carrier seeking to pursue claims against a passenger may bring an action before the court having jurisdiction over the place of its registered office and in its own language. The pursuit of claims by a consumer against a carrier is more difficult than the pursuit of claims by a carrier against a consumer.²⁷

It is highlighted that a contractual clause excluding national jurisdiction does not bind the consumer unless it has been individually negotiated with them. Such a contractual provision restricts the consumer's right to bring a claim by limiting the choice of the court having jurisdiction to hear the dispute. This creates a significant imbalance in the parties' rights and obligations, to the detriment of the consumer, who, wishing to pursue claims against the carrier, is forced to bring an action before a geographically distant court and in a foreign language, whereas the carrier, wishing to pursue a claim against the consumer, may bring an action before the court having jurisdiction over the place of its registered office and in its own language. In such a situation, the pursuit of claims by the consumer is more difficult than the pursuit of claims by the trader.²⁸

Another group of cases concerns the issue of challenging court jurisdiction by raising a plea alleging that Polish courts lack jurisdiction. However, in this respect, the generally uniform position is also adopted that these cases fall within the jurisdiction of Polish courts. Therefore, it is assumed that a claim for compensation relating to a flight cancellation may be filed, at the choice of the party concerned, before the court within whose jurisdiction the place of departure is located or before the court within whose jurisdiction the place of arrival is located.²⁹ It is also pointed out that

²⁶ Judgment of the District Court in Warsaw of 16 October 2023, XVI C 561/22, LEX No. 3715246.

²⁷ Order of the Regional Court in Kraków of 23 November 2017, XII Gz 749/17, LEX No. 2441687.

²⁸ Judgment of the Regional Court in Warsaw of 14 January 2019, XXVII Ca 1830/18, LEX No. 2687882.

²⁹ Judgment of the District Court in Warsaw of 27 September 2019, I C 2801/19, LEX No. 3029979; judgment of the District Court in Warsaw of 19 June 2019, II C 2290/18, LEX No. 3128036.

'Acceptance of contractual provisions applied by the air carrier, forcing the consumer to pursue claims before foreign courts under foreign law, would in practice undermine the purpose of the regulations introduced.'³⁰

The analysis of the case law of the cited rulings of common courts leads to one further conclusion. It is noteworthy that courts do not always provide the legal basis for the jurisdiction of Polish courts; for the most part, this is Article 7(1) of Regulation No 1215/2012. However, in many judgments, it is difficult to find any basis at all. This applies especially to those judgments in which the court's jurisdiction is challenged due to the inclusion of a jurisdiction clause in the contract of carriage.

Particular attention should be paid to the judgment of the District Court in Warsaw of 18 October 2021, XVI C 1158/21, LEX No. 3572627. When considering the objection based on the lack of national jurisdiction, in the reasoning for its decision, the court referred to Article 18(1) of the Regulation, indicating that a consumer may bring an action against the other party to the contract before the court of the Member State in whose territory that party is domiciled or, regardless of that party's domicile, before the court of the place where the consumer is domiciled.³¹

JURISDICTION IN CASES RELATING TO CONSUMER CONTRACTS

At this point, the above analysis of the case law should be applied to the legal questions submitted to the Supreme Court. The ruling issued deserves closer discussion, if only because the implications of the view expressed in the reasoning reach a broader issue that is extremely important from the perspective of pursuing claims in cross-border cases. This applies in particular to the question regarding the impact of the assignment of a consumer claim on the assignee's ability to rely on the grounds of jurisdiction provided for in Articles 17–19 of Regulation No 1215/2012.

The analysis of the case law presented in this article also indicates the existence of the problem signalled in the second question submitted to the Supreme Court, concerning whether the acquirer of a claim under an assignment agreement concluded pursuant to Article 509 of the Civil Code (CC) with the original creditor, who is a consumer within the meaning of Article 22¹ CC, succeeds to the original creditor's rights regarding the choice of the court having jurisdiction under Article 7(1)(b) second indent of Regulation (EU) No 1215/2012 of the European Parliament and of the Council.

It is emphasised in the literature that the grounds for jurisdiction in matters relating to consumer contracts are almost unique in nature, which is justified by

³⁰ Judgment of the District Court in Gdańsk of 16 December 2021, I C 1113/20, LEX No. 3290361.

³¹ Judgment of the District Court in Warsaw of 18 October 2021, XVI C 1158/21, LEX No. 3572627.

the protection of the consumer as the weaker party to the dispute and, at the same time, requires a precise definition of the scope of application of these provisions.³²

With the above in mind, it should be noted that Article 17(3) of Regulation No 1215/2012 expressly states that it does not apply to contracts of carriage, with the exception of contracts providing, for an inclusive price, for a combination of travel and accommodation. Therefore, it does not apply to contracts of carriage concluded with a consumer.

It should be added that, in the judgment of the Court of Justice of 25 January 2018, C-498/16, *Maximilian Schrems v Facebook Ireland Limited*,³³ the Court also ruled that Article 18(1) of Regulation No 1215/2012 must be interpreted as meaning that it does not apply to proceedings brought by a consumer for the purpose of asserting, before the courts of the place where he is domiciled, not only his own claims but also claims assigned by other consumers domiciled in the same Member State, in other Member States or in third countries.³⁴

In this respect, it should be noted, first and foremost, that the purchaser of a claim does not enter into the procedural position of the transferor in terms of court jurisdiction. As indicated above, Article 17(3) of Regulation No 1215/2012 excludes the application of special jurisdiction in the case of contracts of carriage concluded with consumers. Above all, however, this follows from Article 18(1) and (2) of Regulation No 1215/2012, which not only determines the jurisdiction of the court from the perspective of international law but also determines the territorial jurisdiction of the courts of a given Member State, namely the court of the consumer's domicile. Pursuant to the wording of Article 18(1) of Regulation No 1215/2012, a consumer may bring proceedings against the other party to a contract either before the courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, before the courts for the place where the consumer is domiciled. It further provides, as explained in the judgment of the Court of Justice in case C-774/22, *JX v FTI Touristik GmbH*,³⁵ that

'The rule in favour of the consumer laid down in that provision applies "regardless of the domicile of the other party", whereby consumers are able to rely on that rule against undertakings domiciled not only in other Member States or in third States, but also in the same Member State as that of the consumer's domicile.'

³² A. Gołąb, 'Jurysdykcja krajowa w sprawie o naruszenie prawa konsumentów do ochrony danych osobowych. Glosa do wyroku TS z dnia 25 stycznia 2018 r., C-498/16', *Polski Proces Cywilny*, 2019, No. 3, pp. 388–404.

³³ Judgment of the CJEU of 25 January 2018, C-498/16, *Maximilian Schrems v Facebook Ireland Limited*, ECLI:EU:C:2018:37.

³⁴ In accordance with the established case law of the Court of Justice of the European Union, the assignment of claims by the original creditor has no impact on the jurisdiction of Polish courts based on connecting factors, i.e. Article 7(1)(a) and (b) second indent of Regulation No 1215/2012; cf. judgment of the CJEU of 18 July 2013, C-147/12, *ÖFAB, Östergötlands Fastigheter AB v Frank Koot and Evergreen Investments BV*, ECLI:EU:C:2013:490.

³⁵ Judgment of the CJEU of 29 July 2024, C-774/22, *JX v FTI Touristik GmbH*, ECLI:EU:C:2024:646.

Moreover, as noted, it is apparent from the wording of Article 18(1) that the rules adopted in this provision to determine jurisdiction where an action is brought by a consumer concern, first, 'the courts of the Member State in which that party is domiciled' and, secondly, 'the courts for the place where the consumer is domiciled'.³⁶

Therefore, there is no basis for assuming that the existence of jurisdiction under Article 7 of Regulation No 1215/2012 requires the conclusion of an additional agreement on the assignment of rights in respect of jurisdiction.³⁷ This jurisdiction exists not because of the particular status of a party, namely that of a consumer, but because of the subject matter of the dispute, which is a claim arising from the provision of air transport services, and it corresponds to the objective of proximity and a close connection between the contract and the court before which the case has been brought. In particular, the special jurisdiction rule provided for in Article 18 of Regulation No 1215/2012 is intended to guarantee that the weaker party wishing to sue the stronger party has the opportunity to do so before an easily accessible court of a Member State. Therefore, the contrary position observed in the case law should be regarded as incorrect, according to which:

'The plaintiff, having acquired a claim from the consumer under the assignment agreement concluded, has only substantive standing to demand satisfaction of the claim for compensation due to the assignor of the claim in connection with the flight delay. Due to the conclusion of the assignment agreement, the company did not acquire all the procedural rights to which the consumer is entitled, because the assignment concerned only the claim for compensation under the contract of carriage, and the plaintiff did not rely on the assignment of a claim under a jurisdiction agreement. Therefore, there was no basis for assuming that procedural rights connected with the status of a consumer party had been acquired'.³⁸

However, it should be noted that the issue of court jurisdiction in consumer-related matters will be important for the proper resolution of the case by the court in those cases in which the issue to be assessed is the possibility for the purchaser of a claim from an airline passenger who is a consumer to rely on the unfair nature of the jurisdiction clause incorporated in the contract of carriage.

Thus, there is no doubt that a claim for compensation may be assigned. It is accepted in case law that claims held by passengers of cancelled or delayed flights under Regulation No 261/2004 are not covered by a statutory prohibition on transfer, are not personal in nature and are not solely compensation for non-pecuniary damage, and therefore may be assigned, as held, *inter alia*, by the Regional Court in Warsaw in its judgment of 9 July 2019, XXVII Ca 2583/18, LEX No. 2721282.

The possibility of transferring claims by a consumer was also confirmed by the Supreme Court's resolution of 6 April 2018, III CZP 114/17, which emphasised that the fact that a claim arises from a contract involving a consumer and is related to unfair terms in that contract does not mean that it is non-transferable. It may be

³⁶ *Ibidem*.

³⁷ The Regional Court in its order of 23 May 2024, II Cz 477/24.

³⁸ See order of the Regional Court in Kraków of 8 July 2024, II Cz 26/24, LEX No. 3747600.

transferred by the consumer even to a person having the status of an entrepreneur. The Supreme Court further pointed out that such a claim may arise only for the benefit of the contracting party who is a consumer. However, once it has arisen, from the perspective of the other party, namely the trader who is the consumer's debtor, it is irrelevant whether the debtor pays the amount due to the consumer or to the person to whom the consumer has assigned the claim. The assignment of such a claim by a consumer does not threaten the debtor's interests. By entrusting a professional entity with the collection of a claim stemming from an unfair term, a consumer has a greater chance of enforcing it than if they acted independently against the trader whose unlawful practices they had previously fallen victim to.

It should be borne in mind that the analysis of the effects of a claim assignment under Article 509 CC does not determine whether the jurisdiction rule referred to in the second question of law will apply. As the Supreme Court aptly pointed out, jurisdiction is determined not by the substantive law governing a given legal relationship, but by Regulation No 1215/2012 itself. Therefore, the application of the jurisdiction rule under Article 7(1)(b) second indent of Regulation No 1215/2012 in given proceedings will be determined by whether the case concerns the 'provision of services', and whether it is a case of that type should be determined by interpretation under the provisions of that Regulation. As already indicated, the terms used in Regulation No 1215/2012 should be interpreted autonomously in order to achieve uniformity of its application in all Member States.³⁹

CONCLUSIONS

Cross-border assignments of claims in cases concerning compensation for delayed or cancelled flights are currently an important element of the practice of pursuing passenger claims under Regulation (EC) No 261/2004. In cases concerning compensation for delayed or cancelled flights in which the action is brought by the assignee of the claim, the correct determination of national jurisdiction and the territorial jurisdiction of the court is crucial.

The analysis carried out in this paper, supported by numerous judicial decisions, confirms the possibility of consumers transferring claims. On the other hand, in cases relating to claims against an air carrier based on Regulation No 261/2004, the rule of special jurisdiction provided for in Article 7(1)(b) second indent of Regulation No 1215/2012 applies. The effective pursuit of claims requires a coordinated approach combining EU law, national law and judicial practice.

Cross-border assignments of claims are, as a rule, consistent with EU law and permissible under EU law, but their structure must respect the applicable consumer protection standards in accordance with the EU and national law. EU law not only does not prohibit them but also creates a legal framework enabling them to function in international transactions. From a systemic perspective, they

³⁹ J. Płaziuk, 'Jurysdykcja krajowa...', *op. cit.*, pp. 22–35.

are indeed an element of the functioning of the internal market and an instrument strengthening the effectiveness of pursuing passenger rights in cases concerning compensation for delayed or cancelled flights.

BIBLIOGRAPHY

- Ereciński T., in: Ereciński T., Ciszewski J., *Międzynarodowe postępowanie cywilne*, Warszawa, 2000.
- Gołąb A., 'Jurysdykcja krajowa w sprawie o naruszenie prawa konsumentów do ochrony danych osobowych. Glosa do wyroku TS z dnia 25 stycznia 2018 r., C-498/16', *Polski Proces Cywilny*, 2019, No. 3.
- Gołąb A., 'Między konwencją montrealską a rozporządzeniem Bruksela Ia – aspekty jurysdykcyjne odpowiedzialności przewoźnika za opóźnienie lotu', *Europejski Przegląd Sądowy*, 2022, No. 6.
- Kasprzyk P., Konert A., 'Przedawnienie roszczeń odszkodowawczych za overbooking, odwołanie i opóźnienie lotu', *Państwo i Prawo*, 2017, No. 6.
- Konert A., Sekuła-Leleno M., 'Charakter prawny roszczenia o odszkodowanie wynikającego z rozporządzenia (WE) 261/2004', *Państwo i Prawo*, 2017, No. 3.
- Płaziuk J., 'Jurysdykcja krajowa dla rozpoznania roszczeń ze stosunków umownych (art. 7 rozporządzenia nr 1215/2012)', *Europejski Przegląd Sądowy*, 2020, No. 4.
- Rejnowicz-Janowska P., 'LOT wygrywa przed TSUE sprawę o właściwość sądu. Omówienie wyroku TS z dnia 3 lutego 2022 r., C-20/21 (LOT Polish Airlines)', *LEX/el.*, 2022.
- Trocha B., 'Czy potrzebna jest reforma łącznika miejsca zamieszkania w europejskim prawie procesowym cywilnym?', *Polski Proces Cywilny*, 2012, No. 4.
- Weitz K., 'Autonomiczna wykładnia europejskiego prawa procesowego cywilnego – wprowadzenie i wyrok ETS z 10.03.1992 r. w sprawie C-214/89 Powell Duffryn plc przeciwko Wolfgang Petereit', *Europejski Przegląd Sądowy*, 2008, No. 7.
- Weitz K., *Jurysdykcja krajowa w postępowaniu cywilnym*, Warszawa, 2005.

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