

France/Air law - 21 January 2021

## **Passengers vs airlines: the Court of Appeal of Paris rules that French courts do not have jurisdiction to enforce Regulation 261/2004<sup>1</sup> on airlines not domiciled in a Member State**

In a ruling of 3 December 2020<sup>2</sup>, the Court of Appeal of Paris holds that French courts do not have jurisdiction to enforce Regulation 261/2004 for passengers on a flight from Paris-Orly to Tunis that arrived more than three hours late, on the grounds that the airline operating the flight (Tunis Air in the case in point) is not domiciled in a Member State.

This decision has really set the cat amongst the pigeons, as on the basis of this ruling, airlines not based in the European Union can thus claim not to be bound by the rules on compensation of Regulation 261/2004 before the French courts.

The Court of Cassation will undoubtedly be led to rule on this matter in the coming months. Its decision will assuredly be awaited eagerly by the passengers, and with interest by all the airlines, even those based in the EU, who could be surprised at such a difference in treatment.

### ***In its ruling of 3 December 2020 the Court says:***

First of all, the Court points out that Regulation 261/2004 does not include any rules of territorial jurisdiction governing its applicability. That being the case, it rightly infers that one should enforce the rules of jurisdiction laid down by Regulation 44/2001, known as “Brussels I”, recast by Regulation no. 1215/2012 of 12 December 2012, known as “Brussels I recast”, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

1 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

2 Court of Appeal of Paris, Division 4, section 9, RG no. 19/13117 of 3 December 2020, Bouguila vs Tunis Air

And yet article 4 of Brussels Regulation I recast states that persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State. Then follows an analysis of the domicile of Tunis Air in France, which gives the Court the opportunity to reiterate the already recognized fact that domiciliation in a Member State is subject to **the company's head office**, its **central administrative office** or **its main place of business** being located in the said Member State.

In this ruling the Court of Appeal strengthens the conditions with regard to the existence of a main place of business.

Although Tunis Air has a place of business in Paris, six other places of business on French territory, and on its web site states that its Paris office is its “registered office” where numerous management bodies and important departments are based, establishing its capacity for representation and its structural and operational autonomy for management and action, and that the French market is its biggest market, the Court of Appeal considers that these facts do not demonstrate that the Paris office can be defined as “**the** main place of business” of Tunis Air among all its offices throughout the world, nor that its central administrative office is based in Paris.

The Court also points out that “**the existence of a place of business listed in the Trade & Companies Register, with managerial independence and a managing body, is not enough to establish the claimed territorial jurisdiction.**”

No problem! The passengers then believed they could invoke article 7 of Brussels Regulation I recast<sup>3</sup> and the established precedents of the Court of Justice of the EU (9 July 2009 Peter Rehder vs Air Baltic Corporation, C-204/08)<sup>4</sup>, according to which they could refer their case to the court in the jurisdiction where the aircraft's place of departure or place of arrival is situated.

But that did not factor in the Court's fearsome assessment, which stated that “**article 7 only concerns action against a person domiciled in the territory of a Member State. Therefore article 7 does not apply**” in this instance.

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3 Article 7 of Brussels Regulation I recast:  
“A **person domiciled in a Member State** may be sued in another Member State:  
1) a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;  
b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:  
. [...] .  
. in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided”.

4 “With regard to all the foregoing considerations, one should answer the questions posed as follows: article 5, point 1, b), second dash, of regulation no. 44/2001 should be interpreted as meaning: **in the case of air transport of passengers from one Member State to another Member State, performed under a contract with a single airline that is the actual carrier, the court having jurisdiction to deal with a claim for compensation based on the said contract of carriage and on regulation no. 261/2004 is the one, as the claimant chooses, in the jurisdiction where the aircraft's place of departure or place of arrival is situated, as these places are agreed in the said contract**”.

The final argument put forward by the passengers: they asserted in other respects that article 6 of Brussels Regulation I recast stipulated that the national rules of jurisdiction applied, invoking article 14 of the French Civil Code and article 46 of the French Code of Civil Procedure, which respectively grant jurisdiction to the French courts for obligations entered into with a French person by “a foreigner” in France, the courts of the defendants domicile, the courts of the place of delivery of the item in question or the place of performance of the service.

However, the Court states that French law has special rules governing air carriers' liability, which take precedence over the general rules of jurisdiction of the said Civil Code and Code of Civil Procedure. In that respect, articles R. 322-2 and R.321-1 of the Code of Civil Aviation stipulates that action for damages should be brought, as the claimant chooses, before the court of the carrier's domicile (in this instance Tunis), or the main headquarters for its operations (also Tunis), or the place where it has a place of business with which the contract was entered into (Tunis), or before the court of the place of destination (Tunis).

In the end, the passengers whose cases had already been rejected by the courts having jurisdiction over any of the places of business of Tunis Air in France pursuant to article 7 of Brussels Regulation I recast have also had their cases rejected by the court having jurisdiction over the airport of departure, this time under the special rules of the Code of Civil Aviation.

Consequently, this ruling and the rules of compensation of Regulation 261/2004 and articles R. 322-2 and R.321-1 of the Code of Civil Aviation may not apply to airlines not domiciled in the European Union for their flights to foreign destinations, if the tickets were issued by a place of business not situated in France.

The consequences of this ruling for a great many passengers, and the inequality it entails between airlines domiciled in the European Union and the others, will undoubtedly lead to further developments in this case, which could even end up in the Court of Justice of the European Union. To be continued...

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## Contacts

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CHESNEAU FISCHEL AARPI is a business law firm dedicated to operators in the air sector. It advises operators, airlines, charterers, brokers, stopover assistance service providers and safety and security companies on all their legal and social issues.

CHESNEAU FISCHEL AARPI has a team dedicated to the handling of passengers' complaints on the grounds of Regulation 261/2004, which has ten years' experience in the matter. The team handles over 2,500 disputes a year before the French courts.

CHESNEAU FISCHEL AARPI is a member of the European Business Aviation Association.

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