

A fall down the stairs for no ascertainable reason - an accident?

A recent CJEU decision
on the Montreal Convention
(C-589/20 – *Austrian Airlines*)

Michael Wukoschitz





The facts

- ▶ disembarking from the aircraft via uncovered passenger stairs
- ▶ slightly damp, not soiled or slippery
- ▶ plaintiff's husband went ahead with two trolleys
- ▶ almost fell in the lower third of the stairs
- ▶ plaintiff followed with handbag in right hand and child on left arm
- ▶ fell at the same spot and broke her arm on the edge of the stairs
- ▶ reason for fall not ascertainable



„Accident“

- ▶ no definition in MC (as also not in the WC)
- ▶ SCOTUS (Air France v Saks): unexpected or unusual event or happening that is external to the passenger, causing the injury
- ▶ BGH (Germany): any sudden event due to an external cause which kills or injures the passenger
- ▶ OGH (Austria): a sudden event based on an external cause, determined in terms of time and place, as a result of which the passenger is killed or injured



Relevant previous case law

- ▶ *MacDonald v Air Canada* (1st Cir, 1971): plaintiff falls for unknown reason while waiting at baggage claim - no accident because no ascertainable external impact
- ▶ *OGH (Austria)*, 2010: plaintiff falls on stairs while disembarking in high heels and hits head on runway - no accident because no ascertainable external impact



Relevant previous case law

- ▶ *Labbadia v Alitalia* (High Court England/Wales, 2019): plaintiff falls on uncovered passenger stairs while disembarking in snowfall - accident because use of an uncovered staircase despite snowfall unusual external influence
- ▶ *Moore v British Airways* (1st Cir, 2022): passenger stairs neither slippery nor soiled, but last step twice as high as the previous ones, leading to a fall - could constitute an accident, as from the perspective of an average passenger



"Accident" in CJEU case law

- ▶ unforeseen, harmful and involuntary event
- ▶ C-532/18 – *Niki Luftfahrt*: tipped-over coffee mug scalds passenger
- ▶ C-70/20 – *Altenrhein Luftfahrt*: (alleged) spinal disc injury as a result of bumpy landing



AG opinion

- ▶ CJEU's interpretation of the term "accident" differs from that of the SCOTUS due to the lack of a criterion of an event outside the sphere of the passenger
- ▶ omission probably unintentional, because external influence undisputed in the decided cases
- ▶ clear that no claim can be made if the cause of the fall was in the sphere of the passenger
- ▶ MC aims at fair balance of interests
- ▶ 'accident' covers a situation in which a passenger falls on the boarding stairs whilst disembarking,
- ▶ provided that the fall was triggered by some unexpected or unusual factor that is external to the passenger



CJEU judgement C-589/20

- ▶ 'accident' = unforeseen, harmful and involuntary event
- ▶ does not require that damage is due to a hazard typically associated with aviation
- ▶ where, for no ascertainable reason, a passenger falls on a mobile stairway set up for the disembarkation of the passengers and injures himself or herself, that fall constitutes an 'accident'



But ...

- ▶ ... if reason for fall is not ascertainable, it may have intrinsic or extrinsic causes
- ▶ burden of proof for 'accident' on passenger

- ▶ CJEU judgment therefore problematic
- ▶ an "accident" of jurisprudence



Thank you
for your kind
attention

- and
watch your step!

