



**Aviation Law**

**November 2018**

**Dear Clients,**

We are pleased to provide you with important recent Aviation Law updates.

**1) Publication of a special report of the European Court of Auditors on Passenger Rights in the European Union**

On November 8, 2018, the European Court of Auditors published a special report on the EU regulations concerning passenger rights (EC261/2004). The report reviewed the scope of the regulations, their efficiency and their contribution to the protection of passenger rights. The audit team reviewed 10 European countries and carried out a statistical survey and an open survey through which they assessed the awareness of the subject of passenger rights.

The audit team concluded that many passengers are not sufficiently aware of their rights and the ways to exercise them. The auditors also noted that the practices generally carried out in the EU may make it harder for passengers to exercise their rights in comparison to other countries. In addition, the auditors noted that the lack of specificity for the definitions of: the air carrier's duty to inform; the duty to provide assistance services; and the entitlement to receive an alternative flight – result in differing interpretations for these matters between the air carriers. The audit team concluded that both the existing restrictions on the courts and the national enforcement bodies ("NEBs") and the lack of enforcement authority of the European Commission increase the difficulty to enforce passenger rights and create a heavy burden on the courts, on the air carriers and especially on the passengers.

Before we expand on the audit team's recommendations, we note that the European Court of Auditors is an independent external auditor for the European Union which **has no judicial powers**. Its recommendations are meant to assist the European Commission both in the Commission's capacity as the EU's executive authority and in the Commission's legislative capacity.

**First**, the audit team recommends improving the coherence of the regulations by assessing them in relation to international practices. **Second**, the report recommends

clarifying the rights through the application of minimum standards when travel is disrupted, with an emphasis on the provision of an alternative flight, including the use of flights of other air carriers. **The third recommendation** which arises from the report concerns improving the awareness of passenger rights through a campaign with the cooperation of the enforcement bodies and the airlines which would include: the creation of a detailed guide for the passengers on the enforcement of rights and increasing the NEBs transparency with regard to the frequency of disruptions, the reasons for them and the routes which are affected by them. **The audit also recommends** empowering the NEBs and the European Commission through an expansion of their authority by granting them monitoring, enforcement and sanctioning powers.

#### **The Audit Team's Most Significant Recommendation -**

The audit team recommends that the European Commission, in making its proposals to amend the existing regulations should consider: setting minimum and detailed standards for assistance and care duties; obliging the carriers to publish a note to passengers within 48 hours of the occurrence of the travel disruption of its causes and whether it was due to extraordinary circumstances; to establish that the **obligation of the carriers to pay compensation is a proactive duty, which does not require a specific request from the passenger**; and the introduction of a mechanism to maintain the purchasing value of compensation rates.

The European Commission in its reply to the audit accepted the audit team's recommendations almost entirely while emphasizing that the recommendations relating to legislative initiatives correspond with its approach to the amendments to the regulations and it is expected that the recommendations will be reflected in the Commission's future proposed amendments.

#### **2) Possibility to award compensation for distress under the Montreal Convention in the framework of claims for loss or delayed arrival of baggage**

Recently a motion for leave to appeal was filed with the District Court (Tel Aviv) regarding compensation which was awarded to a passenger for distress caused as a result of his luggage being delayed and/or lost, pursuant to the provisions of the Montreal Convention

In the matter, Small Claims (Tel Aviv) 14290-03 **Liora Fleisher Peled v. Iberia Airlines**, compensation was awarded for distress caused due to the delayed arrival of the plaintiffs' luggage. Iberia filed a motion for leave to appeal to the District Court on the

decision to compensate the plaintiffs for distress.

The Court determined that indeed the motion for leave to appeal involves an important legal question which requires an in depth review, therefore a hearing was set to be heard before a panel of three judges which was scheduled for the beginning of November. At the hearing Iberia argued that the Air Transport Law 5740-1980 and the Montreal Convention restrict compensation up to the statutorily defined limit and that indirect damages are not compensable under these laws. Iberia further argued that in light of previous decisions of the District Court going back as far as 1995 (Motion for Leave to Appeal 11372/95 **Airports Authority v. Ala Amara** (unpublished decision November 30, 1995)) compensation cannot be awarded for damages for other heads of damage, including not for distress, which are neither included in the Air Transport Law nor in the Warsaw Convention (the antecedent law to the Montreal Convention). On the other hand, the Respondents in the appeal argue that it is within the Court's jurisdiction to award damages for distress in light of the interpretation of the Hebrew term "compensable damages" which is contained in the Air Transport Law, and the Respondents further added that various Israeli courts have recognized compensation for distress and have stated that their purpose is to restore the position of the plaintiff to the position he or she would have been in had the damage not been inflicted.

At the hearing, the Court established that the issue that must be adjudicated is the legal question in relation to the damages for distress caused by the delayed arrival or the loss of luggage which raises questions regarding the scope of non-recoverable damages under Article 29 of the Montreal Convention. The District Court also requested the Attorney General's position on this matter as it could have widespread consequences. The AG's position must be submitted by January 15, 2019.

In accordance with the Israeli law, additional airlines which are not party to the proceeding are permitted to request to be joined as parties and to raise legal arguments. Our firm is currently evaluating the participation of different airlines and if you have an interest in the above matter you are welcome to contact us.

**Sincerely,**  
**Fischer Behar Chen Well Orion & Co**

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