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(*Note: All names are fictional and so are the facts of the case.*)

Legal Framework:

International Law

Article 17(1) of the Montreal Convention[1] provides:

'The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.'

EU Law

Recitals 5 to 7 of Regulation (EC) No 889/2002[2] amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents are worded as follows:

'(5) The Community has signed the Montreal Convention indicating its intention to become a party to the agreement by ratifying it.

(6) It is necessary to amend Council Regulation (EC) No 2027/97[3] of 9 October 1997 on air carrier liability in the event of accidents in order to align it with the provisions of the Montreal Convention, thereby creating a uniform system of liability for international air transport.

(7) This Regulation and the Montreal Convention reinforce the protection of passengers and their dependants and cannot be interpreted so as to weaken their protection in relation to the present legislation on the date of adoption of this Regulation.'

According to Article 1 of Regulation No 2027/97, as amended by Regulation No 889/2002 ('Regulation No 2027/97'), 'this Regulation implements the relevant provisions of the Montreal Convention in respect of the carriage of passengers and their baggage by air and lays down certain supplementary provisions. ….'

National Law of Lumburk

Article 20 of the Code of Civil Procedure of Lumburk ('CCP') states that the action for damages must be filed within a time limit of 18 months from the moment when the event giving rise to the damage occurred or from the moment when the injured party became aware of the harm (whichever takes place first).

Article 25 of the Code of Civil Procedure of *Lumburk* ("CCP") states:

'The appeal court may not vary the following decisions of the first-instance courts:

[1] Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001 (OJ 2001 L 194, p. 38) ('the Montreal Convention'), which entered into force, so far as the European Union is concerned, on 28 June 2004.
[2] Regulation of the European Parliament and of the Council of 13 May 2002 (OJ 2002 L 140, p. 2).
[3] Council Regulation of 9 October 1997 (OJ 1997 L 285, p. 1).

(…)

(j) decisions concerning the damages in transport.'

Article 35 of the CCP submits the admissibility of the judicial action for damages to a prior mandatory mediation. The judicial action becomes admissible only if mediation fails.

Article 52 of the CCP states: In appeal procedures, each party must be represented by a lawyer. Only a lawyer admitted to a national bar may represent the applicant. When that condition is not satisfied, the action may be declared inadmissible.

Article 2 of the Mediation Law of Lumburk provides that the mediator should use his best efforts to conclude the process of mediation in each case in the time limit of 12 months.

Facts

In 2015, Ms. T, the appellant, travelled on board an aircraft. The journey between Priga (Priga Republic) and Lumburk (Lumburk; Lumburk and Priga Republic being EU Member States) was operated by QuickandSafeAirlines. During the flight, Ms. T was served a cup of hot coffee which, while it was placed upon the tray table in front of her tipped over onto her right thigh. That was perhaps due to a defect in the folding tray table or perhaps due to vibration of the aircraft. The spilled coffee caused Ms. T second-degree scalding.

Due to that accident, Ms T had to be hospitalized during several days and missed an important business meeting and the anniversary party organized for her son. She filed a claim on the basis of Article 17(1) of the Montreal Convention seeking that the carrier be ordered to pay compensation for the harm caused to her, estimated at EUR 100 000.

Although Ms. T is herself a successful lawyer and a partner in a law firm established in Lumburk, she chose to be represented by Mr. Coca, who works as employed lawyer in the very same law firm. Mr. Coca has been repeatedly recognized as one of the leading experts in damages actions.

Ms. T filed the action without fulfilling the obligation to resort to mediation first. She explains in her claim that she considers that that step delays the delivery of justice.

Ms T's action was dismissed by an order of the court of the first instance. That court did not consider the merits of the claim because it concluded that the failure to respect the prior use of the mediation rendered the action inadmissible.

Ms T appealed the order. The appeal court annulled the first-instance decision and remitted the case to the first-instance court for a new decision. In the statement of reasons, the appeal court explained that the requirement of prior use of mediation hampered the effective delivery of justice. That, in its view, resulted from Article 47 of the Charter.

The first-instance court adopted a new decision in which it once again dismissed Ms. T's action as inadmissible due to the failure to respect the prior mediation obligation.

Ms. T filed again a new appeal. The appeal court, before which that appeal is now pending, considers that due to the limits that Article 25(j) of the CCP imposes on its powers, it can only annul again the first instance decision and remit the case to a new decision. However, it notes that it is unlikely that its new decision will be respected. The appeal court notes that there is no provision in the national law that would provide it with the necessary means to ensure that its final decision will be respected by the first-instance court. It wonders whether it could rely on EU law to derive the power to replace the first-instance decision.

Moreover, the appeal court considers that Ms T's representation does not satisfy the requisite standards under national law. More specifically, it is of the view that under the national interpretation of Article 52 of the CCP, Mr. Coca does not qualify as a lawyer within the meaning of that provision. That is because he cannot be considered as sufficiently independent. His independence from the represented party (Ms T) is prevented by his status as employee of the law firm co-owned by Ms. T. That being said, the appeal court harbors doubts about the compatibility of such a rule with the requirement of effective judicial remedy.

In those circumstances, the appeal court decided to suspend the proceedings and refer to the Court the following preliminary questions:

1. Are Article 47 of the Charter, Article 6 ECHR and principle of effectiveness to be interpreted as meaning that the national courts have the power to vary a first-instance decision of the competent court and to decide the merits of the case when the clear assessment contained in a judicial decision annulling a previous first-instance decision has been disregarded by the first-instance court?
2. Does Article 47 of the Charter prevent a rule of national law such as the one contained in Article 35 of the CCP which makes the admissibility of appeals in proceedings concerning damages arising under the Montreal Convention conditional on an attempt to settle the dispute out of court?
3. Does Article 47 of the Charter prevent a rule of national law such as the one contained in Article 52 of the CCP which makes the legal representation mandatory and which makes the admissibility of an appeal, in an action for damages arising under the Montreal Convention, conditional upon the legal representative's independence?