



Legal Update

February 2018

Aviation, Maritime & Tourism Department

This update concerns recent significant case laws that have important consequences in the area of aviation law.

Class Action 32971-04-17 Gilad Yaari v. Wizz Air Hungary Ltd.

Class Action
32971-04-17 Gilad
Yaari v. Wizz Air
Hungary Ltd.

In February 2018 the Israeli Court **accepted our motion to dismiss a claim and a motion to certify it as a class action** (the "**Claim**" or the "**Class Action**") which was filed by Mr. Gilad Yaari (the "**Applicant**") against Wizz Air Hungary Ltd. ("**Wizz Air**"), a Hungarian airline that operates flights to Israel.

The Applicant's Class Action concerned a Wizz Air flight that was delayed for more than eight hours. The Applicant argued that due to the delay, he and the other passengers on the flight were entitled to compensation, without being required to prove damages, in the amount of NIS 2,050 per passenger. The Applicant based his claim for compensation on section 6(a)(3) of the Aviation Services Law (Compensation and Assistance for Flight Cancellation or Change of Conditions), 5772-2012 (the "**Aviation Services Law**"). In addition, the Applicant claimed punitive damages in the amount of NIS 10,250 in accordance with section 11 of the Aviation Services Law; compensation of NIS 1,000 for the loss of one vacation day; and NIS 1,000 compensation for mental anguish.

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On behalf of Wizz Air, our firm filed a motion to dismiss the Class Action in which we argued that the compensation without the requirement to prove damages and the punitive damages under the Aviation Services Law are types of damages that are

not recoverable in the framework of a class action – and this is due to the operation of section 20(e) of the Class Actions Law 5766-2006. Further, Wizz Air argued in the motion to dismiss that the other damages that the Applicant claimed are not recoverable, for among other reasons, due to the rules on the limits of liability in the Air Transport Law 5740-1980 ("**Air Transport Law**") and in the Montreal Convention which provide that compensation that is not restitution cannot be claimed in the context of air transport.

The Court in this case accepted Wizz Air's argument that the elements of the Claim relating to both the compensation without the need to prove damages and the punitive damages pursuant to the Aviation Services Law - for the reason that these types of compensation are not recoverable in the context of a class action. With regard to the other claimed damages, the Court ruled that the case law had not yet settled the matter regarding the interaction between the Aviation Services Law and between the broad provisions on the limits of liability in the Air Transport Law and in the Montreal Convention. Nonetheless, the applicant agreed with Wizz Air's arguments on the dismissal of the Claim and thus the court also ordered the dismissal of these other claimed damages, while also ordering the Applicant to pay Wizz Air's legal costs of the proceeding.

**District court
section – Haarlem
6081894 / CV
EXPL 17-5626;
6081880 / CV
EXPL 17-5625;
6081916 / CV
EXPL 17-5627**

Claims of Israeli citizens against Arkia Israeli Airlines Ltd. in European Courts

Our firm, in cooperation with Adv. Pierre Frühling and his team from the law firm Holman Fenwick Willan ("HFW") represented Arkia Israeli Airlines Ltd. ("Arkia") in claims brought against it in the District Court in Haarlem-Amsterdam.

The claims were filed in the Court in Amsterdam by Israeli citizens concerning Arkia flights from Amsterdam to Tel Aviv which were delayed by more than 3 hours but for less than 8 hours. The Plaintiffs sought to apply Regulation (EC) no. 261/2004 ("Regulation 261")¹ to Arkia, and pursuant to this

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, and repealing Regulation (EEC) No 295/91.

regulation sought to receive monetary compensation as well their legal costs of the claims (it is noted that before the filing of the claims, the Plaintiffs contacted Arkia requesting to receive compensation through European "debit companies" but Arkia rejected the request in a response sent by our firm.

Arkia argued in its statement of defense, among other things, that the claims should be dismissed because the Court in Amsterdam did not have jurisdiction due to the fact that the connection tests demonstrate that the claims should have been brought in Israel. On this point Arkia stated that it was an Israeli airline not registered in the Netherlands, the passengers are Israeli citizens, and the flights involved in the claims were bound for Israel. Arkia also argued that due to the default rules, the provisions of Regulation 261 should not be applied to the alleged events in the claims, but rather the Israeli Aviation Services Law was the applicable law.

In November 2017, the District Court for the Haarlem-Amsterdam section accepted Arkia's position and ordered the dismissal of the three claims due to the fact that the court in the Netherlands does not have jurisdiction to adjudicate claims filed by Israeli passengers against an Israeli company which has no branch office in the Netherlands.

In its decision, the Dutch Court stated that indeed regulation 17(1)(b) 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) establishes that when a flight departs from an EU member country to another EU member country, the plaintiff has the right to select that the matter be adjudicated by a court either in the country that he departed from or in a court in the destination country. However, in this matter, because the destination country that Arkia was flying to was not an EU member state, the abovementioned regulation does not apply, and the question of jurisdiction is determined by the Dutch Code of Civil Procedure.

The Court also stated that under Dutch law, the Court where the defendant is resident obtains jurisdiction over the matter (for a corporation this would be the place where it has a representation

that is a legal entity).

The Court also accepted Arkia's position that the filing of the claims in Amsterdam constitutes "**forum shopping**" by the Plaintiffs. The Court ruled that even though for consumer cases, the court where the consumer (the Plaintiff) is located also obtains jurisdiction, since in this matter, Arkia and the Plaintiffs' place of residence is Israel, the Court in the Netherlands does not have jurisdiction over the matters and therefore, they are dismissed.

We would be happy to answer any questions that you might have.

Sincerely,

**Aviation, Maritime & Tourism Department
Fischer Behar Chen Well Orion & Co.**

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