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REVERBERATIONS OF THE PLACE OF CONTRACTUAL PERFORMANCE ON DETERMINING THE COURTS' JURISDICTION IN THE FIELD OF AIR TRANSPORTATION

The paper focuses on the reverberations of the concept of 'place of performance of the contractual obligations' on the establishing of court's jurisdiction and the enforcement of judgments in civil and commercial matters, under the provisions of second indent of Article 7, para. (1)(b) of Regulation (EU) No 1215/2012, in the perimeter of air transportation. The first part of the article deals with the preliminary points that should be stated concerning the judicial action which falls within the concept of 'matters relating to main contractual provisions' within the meaning of Article 7(1)(a) of Regulation No 1215/2012, in the hypotheses which cover the claims brought by air passengers for compensation for the long delay of a connecting flight, made under Regulation No 261/2004, against an operating air carrier with which the passenger concerned does not have a contractual nexus. As emphasised in the second part of the paper, particularly in the field of contracts concluded for the provision of services (air transport), as reflected in CJEU recent jurisprudence (Case C-20/21), in the case of flight consisting of a confirmed single booking and performed in several flight segments by two separate air carriers, under the provisions of art. 7 of Regulation (EC) No 261/2004, the common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, the claim for compensation brought against the air carrier operating that first flight segment falls under the territorial competence of the court from the place of arrival of that first flight. Thirdly, the reverberations of the place of contractual performance on determining the courts' jurisdiction become ostensible since the place of arrival for that first flight segment may not be classified as a 'place of contractual performance' within the meaning of the legal provisions.

Keywords: contractual performance, jurisdiction, territorial competence, air transportation, passengers, right of compensation.

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1. INTRODUCTORY REMARKS

1.1. Preliminary aspects concerning the subject of the establishing of court's jurisdiction

The reverberations of the concept of 'place of performance of the contractual obligations' on the establishing of court's jurisdiction and the enforcement of judgments[1] in civil and commercial matters represents a core issue in specialised judicial scholarly work, especially under the provisions of the second indent of Article 7, para. (1)(b) of Regulation (EU) No 1215/2012. The preliminary points that should be stated concerning the judicial action which fall within the concept of 'matters relating to main contractual provisions'[2] within the meaning of Article 7(1)(a) of Regulation No 1215/2012 are contoured by invoking the notion of 'place of contractual performance', mainly in the hypotheses which cover the claims brought by air passengers for compensation for the long delay of a connecting flight, made under Regulation No 261/2004, against an operating air carrier with which the passenger concerned does not have a contractual relationship. As emphasised in the following sections, particularly in the field of contracts concluded for the provision of services (air transport), as reflected in Court of Justice of the European Union (hereinafter: CJEU) recent jurisprudence (Case C-20/21), in the case of a flight consisting of a confirmed single booking and performed in several flight segments by two separate air carriers, under the provisions of Article 7 of Regulation (EC) No 261/2004, the common rules on compensation and assistance to passengers[3] are essential in the event of denied boarding and of cancellation or long delay of flights; it is crucial to observe the procedural rules applicable to the claim for compensation brought against the air carrier operating the first flight segment fall under the territorial competence of the court from the place of arrival of that first flight. Saliently, the importance of the place of contractual performance on determining the courts' jurisdiction become ostensible, since the place of arrival of the first flight segment may not be classified as a 'place of contractual performance' within the meaning of the legal provisions.

By remedies for non-execution of the contract, we are referring to those possibilities available to the creditor[4] confronted with the debtor's refusal to perform or with a delayed

[1] See Țiț, N.-H. & Stanciu, R. 2019. *Legea nr. 310/2018 pentru modificarea și completarea Legii nr. 134/2010 privind Codul de procedură civilă: comentarii, explicații, jurisprudență relevantă*. Bucharest: Hamangiu, pp. 83-87. Țiț, N.-H. 2016. *Executarea silită. Partea generală*. Bucharest: Hamangiu, pp. 28-36.

[2] See Činčurak Erceg, B. & Vasilj, A. 2019. Current Affairs in Passengers Rights Protection in the European Union. In: *EU Law in Context – Adjustment to Membership and Challenges of the Enlargement. EU and Comparative Law Issues and Challenges Series 2*. Available at SSRN: https://ssrn.com/abstract=3841170 (26. 9. 2020). Julien, J. 2019. *Droit de la consommation*. 3rd ed. Paris: L.G.D.J, pp. 89-94; Pellier, J.-D. 2021. *Droit de la consommation*. 3rd ed. Paris: Dalloz, pp. 121-126. Picod, N. & Picod, Y. 2020. *Droit de la consommation.* 5th ed. Paris: Sirey, pp. 78-92. Piedelièvre, S. 2020. *Droit de la consommation*. 3rd ed. Paris: Economica, pp. 116-119.

[3] See Pap, A. 2016. *Transportul aerian și drepturile pasagerilor în legislația Uniunii Europene. Sinteze de jurisprudență*. Bucharest: Universul Juridic, pp. 78-92.

[4] Țiț, N.-H. 2018. *Încuviințarea executării silite.* Bucharest: Universul Juridic, pp. 58-72. Țiț, N.-H. 2020. Încuviințarea executării silite a debitorului consumator-exigențe europene, realități naționale. *Analele Științifice ale Universității Alexandru Ioan Cuza din Iași, seria Științe Juridice*, 66(2), pp. 91-110. Țiț, N.-H. 2022. A Potential Legality Problem of the Enforcement Procedure: The Prorogation of Jurisdiction in theCase of the Bailiff. *AnaleleStiintifice Ale Universitatii Alexandru Ioan Cuza Din Iasi – Stiinte Juridice*, 68(1), pp. 145-163. Țiț, N.-H.,

or improperly conducted contractual performance. Saliently, when referring to the legal means available to the creditor in order to restore the contractual balance, we must bear in mind that the latter, in addition to the legal interest that is at guidance when invoking a certain remedy, must consider the legislative benchmarks or possible limitations that are imposed[5] in expressing the creditor's option. In any case, the creditor must first identify the cause that led to the non-performance of the obligations exactly as they were assumed by the debtor; therefore, it must be checked whether the non-performance was unjustified, or if it was justified by unforeseen events not imputable to the debtor's conduct.

On the other versant of the discussion, it is important to remember that the right to damages is, in principle, cumulative with any other legal remedy, specifying that, when the issue of accidental non-performance arises, this right will not be able to be requested. This emerges from the provisions of Article 1530 of the Romanian Civil Code, which expressly provides for the creditor's right to damages for reparation of the damage caused by the debtor and which is the direct and necessary consequence of the unjustified or, as the case may be, culpable non-performance of the obligation. Particularly, it follows from the mentioned regulation of remedies that the creditor remains able to choose whether to invoke a certain remedy or not, and this choice can only be exercised within the limits of mandatory legal provisions.

Consequently, it follows from the regulation of the creditor's rights that the additional term of contractual performance represents an intrinsic condition for invoking other remedies, since there is a legal obligation incumbent on the creditor to grant, prior to invoking of any other legal remedy (except for the requesting of damages consequential to contractual non-performance), a supplementary term, during which the debtor would be able to deliver the performance of the contractual obligations, unless the debtor is legally placed in a situation in which the creditor can invoke other enforcement remedies, within the limits of mandatory legal provisions. According to the provisions of Article 1516 of the Romanian Civil Code, the creditor's right to obtain the exact performance of the obligation entitles the creditor to obtain by enforcement the performance owed by the debtor, except where such performance has become impossible. Therefore, the remedy of enforced performance can be invoked by the creditor only when there is a prior delay, be it on demand, or by the incidence of unforeseen, extraordinary events.

1.2. The principles of invoking contractual remedies

Several meta-rules that govern the enforcement of contractual performance are fundamental for invoking of the legal remedies that the creditor is entitled to, are, since the principles of invoking remedies are the ones that regulate the application criteria

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2021. Certain Aspects Regarding the Parties' Agreement in Civil Procedure. In: *Challenges of the Knowledge Society*. Bucharest: Nicolae Titulescu University Editorial House, pp. 305-310.

[5] Ginter, C. & Härginen, K. & Linntam, A. 2019. Passengers Are Not Automatically Responsible for Fines Imposed on Airlines Estonian Court Declares a Lufthansa Standard Term Unfair. *European Review of Private Law*, 27(5), pp. 985-993.

corresponding to the legal remedies[6] as mentioned in the first paragraph of the of Article 1516 of the Romanian Civil Code. Therefore, we first identify the principle of the right to a compliant execution, a rule that establishes the creditor's right to obtain adequate performance, namely the right of the creditor to the full, accurate and timely fulfilment of obligations, as enshrined in the first paragraph of Article 1516 of the Romanian Civil Code. If thisright is violated, i.e., if the performance does not correspond quantitatively, qualitatively but also temporally to the contractual provisions, this allows the creditor the possibility to obtain the promised performance in an equivalent manner.

The principle of the right to a compliant execution is also applicable in the domain of air transportation contracts[7]. In that regard, in relation to a direct flight operated between two Member States by the airline with which the passenger concerned has a contractual relationship, the CJEU has held that the place of arrival and the place of departure of the aircraft must be considered, in the same respect, as the place of providing the services which are the subject of an air transportation contract. Nevertheless, when establishing the courts' jurisdiction, under the second indent of Article 7(1)(b) of Regulation No 1215/2012, to deal with claims for compensation founded on the transportation contract and in the light of the provisions of Regulation No 261/2004, it is crucial that, at the applicant's choice, to select the court which has territorial jurisdiction over the place of departure or place of arrival of the aircraft, as those places are agreed in the contractual clauses (according to the CJEU judgment of 9 July 2009, in case *Rehder*, C-204/08[8], paragraphs 43 and 47).

In this regard, it should be noted that the issue of the existence of a 'confirmed reservation' is of legal interest from the perspective of establishing the scope of the provisions of Regulation no. 261/2004. Namely Article 3 of the mentioned regulation substantially regulates its scope by imposing, pursuant to the second paragraph of Article 3(a), that the passenger must possess a confirmed reservation for the cancelled flight in order to qualify for compensation. Regulation no. 261/2004 does not define the syntagm 'confirmed reservation', instead describing the notion of 'flight reservation' in terms of the existence of a proofing document. Tthe notion of 'booking' the flight/seat is defined in Article 2(g) of this Regulation as referring to the fact that 'the passenger is in possession of a ticket or other supporting document indicating that the reservation has been accepted and recorded by the air carrier or tour operator'. From this

[6] Țiț, N.-H. 2015. How Far Have We Reached in European Cooperation in Civil Matters? A View on European Enforcement. *CES Working Papers*. Iași: Alexandru Ioan Cuza University of Iași, Centre for European Studies, Vol. 7(2), pp. 637-647.

[7] Goicovici, J. 2022. *Dreptul relațiilor dintre profesioniști și consumatori*. Bucharest: Hamangiu, pp. 517-546. Goicovici, J. 2021. Consumer's Domicile, as a Criterion for the Selection of the Courts' Territorial Competence. Efficiency of the Derogatory Unusual Terms. *Analele Științifice ale Universității Alexandru Ioan Cuza din Iași Științe Juridice*. 47(2), pp. 71-83. Goicovici, J. 2021. The inapplicability of personal exceptions between joint debtors and creditors under Romanian and French private law. In: Dalvinder, S, Popa Tache, C. E. & Săraru C.-S. (eds.), *Looking for New Paths in Comparative and International Law*. Bucharest: ADJURIS – International Academic Publisher, pp. 85-98. Goicovici, J. 2020. Drepturile pasagerilor: zboruri anulate în circumstanțe excepționale. In: Dimitriu, O. (ed.), 2020. *Probleme și soluții legale privind criza COVID-19*. Bucharest: C. H. Beck, pp. 346-368. Goicovici, J. 2019. Co-Active Performance, Good Faith versus Creditor's Fault in the Matter of the Obligation of Moderating the Damage. *Romanian Review of Private Law*, 2019(3), pp. 183-196.

[8] See the CJEU decision 2009. Decision of July 9, 2009. C-204/08, *Rehder*. Available at https://curia.europa.eu/juris/document/document.jsf?text=&docid=76299&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3919923 (26. 9. 2022).

definition it follows that a reservation can be constituted by 'other supporting document' which certifies that the reservation has been accepted and registered either by the air transport operator or by the tour service operator. Consequently it follows from the quoted text that a reservation accepted and registered by the tour service operator (with which the consumer contracts a package of tourism services including air transport services) has the same legal value as the seat reservation accepted and registered by the air transport operator.

Therefore, it can be concluded that, if the passenger has 'another supporting document' within the meaning of Article 2(g) of Regulation No. 261/2004, issued by the tour service operator, this supporting document is equivalent to a 'reservation' in the sense of the same provision in the cited legal text.

2. PROLEGOMENA FOR IDENTIFYING COURTS' JURISDICTION

As it has been established in the CJEU decision in case C-20/21[9], regarding the adequate interpretation of the provisions of Article 5(1)(a) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which can be applied to the corresponding provisions of Regulation No 1215/2012, as set out in Article 7(1)(a), the Court held that the concept of 'matters relating to a contract' covers a claim brought by air passengers for compensation for the long delay of a connecting flight, made under Regulation No 261/2004[10], against an operating air carrier with which the passenger concerned does not have contractual relations. The conclusions were similar to those extracted from the CJEU judgment of 7 March 2018, in cases C-274/16, C-447/16 and C-448/16[11], *Barkan and others.*

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[9] See the CJEU decision 2022. Decision of February 3, 2022. C-20/21, *LOT Polish Airlines*. Available at https://curia.europa.eu/juris/document/document.jsf?text=&docid=253283&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3872952 (26. 9. 2022). By judgment of April 22, 2020, the court rejected the request as inadmissible on the ground that, having regard to the provisions of Regulation No. 1215/2012, as interpreted by the national court, it did not have jurisdiction to hear the dispute, since neither the place of departure nor the place of arrival of the flight provided for in the contract of carriage concerned was located within its jurisdiction. As resumed in Recitals 10 and 11 of the CJEU decision, the applicants in the main proceedings brought an appeal against that judgment before the referring court (which was the Regional Court, Frankfurt am Main, Germany). According to the applicants, the court of first instance had to base its international jurisdiction on Article 7(1)(b) of Regulation No 1215/2012 and the fact that Warsaw and Malé constitute places of performance of the obligation arising from that contract of carriage does not preclude the existence of other places which could also be classified as places of performance of the contractual obligations.

[10] See Fox, S. J. & Martin-Domingo, L. 2020. EU Air Passengers' Rights Past, Present, And Future: In an Uncertain World (Regulation (EC) 261/2004: Evaluation and Case Study). *Journal of Air Law and Commerce (JALC),* 85(2), 2020, pp. 271-278.

[11] The questions referred in these cases concerned the following aspects: 'Is Article 5(1)(a) of Council Regulation (EC) No 44/2001 1 of December 22, 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to be interpreted as meaning that the concept of 'matters relating to a contract' also covers a claim for compensation made under Article 7 of Regulation (EC) No 261/2004 2 of the European Parliament and of the Council of February 11, 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 which is brought against an operating air carrier which is not a party to the contract with the passenger concerned?' Secondly, insofar as Article 5(1) of Regulation (EC) No 44/2001 is applicable: Where passengers are transported on two flights without any significant stopover at the connecting

Previous CJEU decisions[12] have established that, under Article 7(1)(a) of Regulation No 1215/2012, in matters relating to contractual performance, a debtor established in a Member State may be sued in another Member State in the courts for the place of performance of the obligation in question, since the second indent of Article 7(1)(b) of that regulation states that, unless otherwise agreed, as regards the provision of services, the place of contractual performance is the place in a Member State where, under the contractual stipulations, the services were provided or should have been provided. Nevertheless, it is apparent from the previous CJEU case-law[13] that, where there are several places at which services are provided to the creditor in different Member States, 'the place of performance must, in principle, be understood as the place with the closest connecting factor between the contract and the court having jurisdiction, which, as a general rule, will be at the place of the main provision of services' and that, as a procedural rule, the place of performance must be deduced, as far as possible, mainly from the explicit (and implicit) contractual provisions.

Secondly, regarding the establishment of the existence of a direct flight operated between two Member States by the airline with which the passenger concerned has a contractual relationship, the Court has held that the place of arrival and the place of departure of the aircraft must be considered, in the same respect, as the place of provision of the services which are the subject of an air transport contract. Therefore, as resulting from the mentioned CJEU jurisprudential benchmarks, when establishing the courts' jurisdiction, under the second indent of Article 7(1)(b) of Regulation No 1215/2012, in cases dealing with claims for compensation founded on the air transportation contracts and on Regulation No 261/2004, one must select the national court, either which has territorial jurisdiction over the place of departure or the place of arrival of the aircraft, provided those places had been agreed in the stipulated contractual clauses (according to the CJEU judgment of 9 July 2009, *Rehder*, C-204/08, recitals 43 and 47).

Thirdly, as regards a confirmed single booking for the entire journey and divided into several legs on which air transportation services are performed by two different air carriers, in the previous CJEU jurisprudence it has been held that the 'place of performance', within the meaning of the provisions of EU regulations, can be a bicephalic one, since both the place of departure of the first leg of the journey[14] (i) and the place of arrival of the last leg of the journey (ii) are eligible in order to establish the courts' jurisdiction, regardless

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airports, is the passenger's final destination to be regarded as the place where the services were provided under the second indent of Article 5(1)(b) of Regulation (EC) No 44/2001 even when the claim advanced in the application for compensation under Article 7 of Regulation (EC) No 261/2004 is based on a disruption to the first leg of the journey and the action is brought against the operating air carrier of the first flight, which is not party to the contract of carriage? A synopsis of the Request for a preliminary ruling in cases C-274/16, C-447/16 and C-448/16 , *Barkan and others*, is available at https://curia.europa.eu/juris/document/document.jsf?text=&docid=185510&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4043271 (26. 9. 2022).

[12] See the Request for a preliminary ruling 2018. C-274/16, C-447/16 and C-448/16 , *Barkan and others, cit. supra.*

[13] *Ibid.*

[14] See the CJEU decision 2020. Decision of February 13, 2020. C-606/19, *Flightright GmbH vs. Iberia LAE SA Operadora Unipersonal.* Available at https://curia.europa.eu/juris/document/document.jsf?text=&docid=223641&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4049236 (26. 9. 2022).

of whether the passengers' claim for compensation is brought against the first air carrier operating the leg in question (not involved in a direct contractual relationship to the creditor of the right to compensation) or against the second air carrier with which the passenger concerned has previously established a contractual relationship. As resulting from recitals 31-32 of the CJEU decision in case C-606/19, while observing that the place of contractual performance presents a sufficiently close link with the substantial elements of the dispute and, therefore, ensures the close connection required by the rules of special jurisdiction set out in Article 7(1) of Regulation No 1215/2012 between the contract for carriage by air and the competent court or tribunal, it also 'satisfies the objective of proximity underlying those rules'. It has also been underlined that the mentioned bicephalic or binomial solution (of selecting either the place of departure of the first leg of the journey, or the place of arrival of the last leg of the journey as eligible criteria in order to establish the courts' jurisdiction) also 'fulfils the principle of predictability pursued by those rules in so far as it allows both the applicant and the defendant to identify the court or tribunal for the place of departure of the first leg of the journey, as it is set out in that contract for carriage by air, as the court or tribunal before which actions may be brought'[15].

3. JURISPRUDENTIAL BENCHMARKS ON THE CONSUMER'S RIGHT TO COMPENSATION

From the recitals of the CJEU decisions[16], it can be resumed that, in line with the conclusions of the Court's previously cited decisions, the time of actual landing/disembarkation, which, if it falls within the originally provided schedule (which does not exceed it by three hours, even though by hypothesis, the aircraft took off late, yet it recovered this delay along the journey), will not represent an adequate legal basis for the consumer's request for compensation. On the other side of the debate, the CJEU judgment in *Sturgeon* case[17] remains relevant for marking a point of collision between the view that the prolonged delay of the flight would represent a different situation from the situation of cancelled flights, explicitly held by the Court, in the second point of the decision, that, on the contrary, the two types of situations can be assimilated and that the prolonged

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[15] *Ibid*, Recital 32.

[16] CJEU decision 2022. Decision of April 7, 2022. C-561/20, *United Airlines*. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=257491&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3920981 (26. 9. 2022). CJEU decision 2021. Decision of April 22, 2021. C-826/19, *WZ vs. Austrian Airlines AG*. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=240222&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3920981 (26. 9. 2022). CJEU decision 2021. Decision of March 23, 2021. C-28/20, *Airhelp*. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=239181&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3920981 (26. 9. 2022). CJEU decision 2020. Decision of March 26, 2020. C-215/18, *Primera Air Scandinavia*. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=224725&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3920981 (26. 9. 2022).

[17] CJEU decision 2009. Decision of November 19, 2009. *Sturgeon* C-402/07, *Sturgeon.* C-432/07, *Böck / Lepuschitz*, C-402/07, *Condor Flugdienst GmbH*. C-432/07, *Air France SA*. C-402/07 & C-432/07, Joined Cases. Available at: https://curia.europa.eu/juris/document/document.jsf?text=sturgeon&docid=74448&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=3926956#ctx1 (26. 9. 2022).

delay of a flight (beyond the admissible limit of three hours based on the original landing schedule) generates the same rights for passengers[18] as those recognized for them in the case of a genuine cancellation of the flight, since the discomfort caused to the passengers and the 'disruption' from their legitimate expectations regarding compliance with the original schedule are similar to those in which an actual flight cancellation occurs. From recitals 33-38 of the decision CJEU in *Sturgeon* case, one can extract a suite of legal nuances which are relevant to the determining of the category of 'cancelled flights':

(a) the extended duration or the exorbitant duration of the delay (for example, flight delay durations of more than 20 hours compared to the original schedule) do not *per se* represent situations of 'cancelled flights', since the duration criterion is not being singularly applied, but has te be combined with the other available criteria of determining the exorbitant duration of the delay. Thus, as it was emphasized by the CJEU in the mentioned decisions, according to the provisions of Article 2(l) of Regulation (EC) No. 261/2004, unlike in the case of flight delay, when the flight cancellation is the consequence of the fact that the previously scheduled flight did not take place, it follows that, in this respect, cancelled flights and delayed flights constitute two distinct categories of contractual non-performance. Therefore, it cannot be inferred from the provisions of Regulation (EC) No. 261/2004 that a delayed flight can be qualified as a «cancelled flight» for the reason that the duration of the delay is prolonged, regardless of whether this delay was indeterminably prolonged;

(b) as a starting assertion, it can be resumed that a delayed flight, regardless of the duration of the delay, even if it is prolonged, cannot be considered a cancelled flight if the departure is carried out in accordance with previously provided scheduling;

(c) the providing of an alternative flight remains a decisive element in assessing the existence of a 'cancelled flight' situation, as follows from recital 35 of the CJEU decision in *Sturgeon* case: to the extent that passengers are transported with a flight whose departure time is delayed compared to the originally scheduled departure time, the flight cannot be qualified as 'cancelled', unless the air transport operator ensures the transportation of passengers with an alternative flight, the previous schedule of which differs from that of the flight previously provided;

(d) from recital 36 of the CJEU decision in *Sturgeon* case, it follows that the criterion of abandoning the initial schedule remains decisive in assessing the existence of a 'flight

[18] CJEU decision 2019. Decision of July 11, 2019. C-502/18, *České Aerolinie*. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=216062&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3920981 (26. 9. 2022). CJEU decision 2019. Decision of April 11, 2019. C-464/18, *Ryanair.* Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=212906&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3920981 (26. 9. 2022). CJEU decision 2019. Decision of July 10, 2019. C-163/18, *Aegean Airlines*. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=216037&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3920981 (26. 9. 2022). CJEU decision 2019. Decision of April 4, 2019. C-501/17, *Germanwings*. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=212663&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3919923 (26. 9. 2022). CJEU decision 2018. Decision of September 12, 2018. C-601/17, *Vueling Airlines.* Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=205608&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3919375 (26. 9. 2022). CJEU decision 2018. Decision of April 17, 2018. C-195/17, *Krüsemann vs. TUI Fly GmbH*. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=201149&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3919722 (26. 9. 2022).

cancellation' situation; therefore, in principle, it can be concluded that a flight is cancelled when the previously scheduled and delayed flight is transferred to an alternative flight. In other words, this is the casewhen the original flight schedule is abandoned and the passengers of the latter flight join those of another scheduled flight, regardless of the flight schedule for which the passengers thus transferred had made their reservations;

(e) the informing of a flight cancellation on airport display boards are not *per se* an admissible criterion (much less a determinative or decisive criterion) for delineating the (legal) category of 'cancelled flights' in which case the passengers are entitled to compensation. According to recital 37 of the CJEU decision in *Sturgeon* case, in principle, it cannot be concluded that a flight is delayed or cancelled on the basis of the informative content displayed on the digital board in the airport or that was given by the air transport operator's staff in the sense that a flight has been 'delayed' or 'cancelled'. Similarly, the fact that passengers recover their luggage or obtain new boarding documents is not a decisive element in assessing the existence of the right to compensation. Thus, these circumstances are not related to the objective characteristics of the cancelled flight as such, since they can be attributed to qualification errors or factors that prevail in the flight scheduling in question, or they can be imposed considering the waiting time and the need of accommodation for the passengers concerned;

(f) as noted in recital 38 of the CJUE judgment in *Sturgeon* case, particularly, it is not decisive either that the initial group of passengers, holders of a reservation, is essentially identical in composition to the group of passengers carried subsequently to the flight cancellation. Thus, to the extent that the delay to the originally scheduled departure time is prolonged, the number of passengers forming the first of these groups may decrease as a result of the fact that several passengers have been offered a re-routing on an alternative flight and other passengers have waived for personal reasons to board the delayed flight. Conversely, to the extent that seats have been released on the previously scheduled flight, no other restriction prevents the air carrier from admitting other passengers before the take-off of the plane whose flight was delayed.

4. CONCLUDING REMARKS

The analysis enhances the theoretical understanding and the practical assessment of criteria used to determine the courts' jurisdiction, especially in the field of air transportation, as connected to the concept of the 'place of contractual performance'. Analyzing the CJEU jurisprudence permits the extracting of the conclusion that, in cases in which the creditor of the right to compensation intends to sue the air carrier in charge of the final leg of the journey before a court or tribunal which has territorial jurisdiction over the place of departure of the first leg of the journey, the latter may serve as an eligible criterion for establishing the national courts' jurisdiction. It must be observed that, while the solution remains bicephalic or binomial, the rule of special jurisdiction for matters relating to a contract set out in Article 7(1) of Regulation No 1215/2012 does not require, as a decisive criterion, the existence of a contractual nexus between the debtor of the non-performed obligation and the creditor entitled to compensation. Yet, under the mentioned provisions,

the existence of a legal obligation freely consented to by the debtor in respect of reciprocal contractual performance and on which the claimant's action or the creditor's right to compensation is based, remains decisive, as resulting from the analyzed jurisprudential benchmarks.

Secondly, it resulted that the second indent of Article 7(1)(b) of Regulation No 1215/2012 has been interpreted in previous CJEU jurisprudence as referring to the 'place of contractual performance'; therefore, in respect of a flight consisting of a confirmed single booking for the entire journey and divided into several legs, a dichotomic criterion may be used to confirm the courts' jurisdiction, selecting either the place of departure of the first leg of the journey, or the place of arrival (where transport on those legs of the journey is performed by two separate air carriers) and the claim for compensation brought on the basis of Regulation No 261/2004 arises from the cancellation of the final leg of the journey). The importance of the 'place of contractual performance' in establishing courts' jurisdiction over compensation claims remains crucial, especially when indicating the contractual elements which could justify, concerning the efficacious conduct of judicial proceedings, the existence of a 'sufficiently close link' between the facts of the dispute and its jurisdiction. Congruently, in the absence of such information extracted from the contractual clauses, the 'place of performance' within the meaning of the second indent of Article 7(1)(b) of Regulation No 1215/2012 can therefore be the place of departure of the first leg of the journey as one of the places of the main provision of services that are the subject of the contract of air carriage.

LIST OF REFERENCES

Literature

Činčurak Erceg, B. & Vasilj, A. 2019. Current Affairs in Passengers Rights Protection in the European Union. In: EU *Law in Context – Adjustment to Membership and Challenges of the Enlargement. EU and Comparative Law Issues and Challenges Series 2*. Available: https://ssrn.com/abstract=3841170 (26. 9. 2022). https://doi.org/10.25234/eclic/7108

Fox, S. J. & Martin-Domingo, L. 2020. EU Air Passengers' Rights Past, Present, And Future: In an Uncertain World (Regulation (EC) 261/2004: Evaluation and Case Study). *Journal of Air Law and Commerce (JALC),* 85(2), pp. 271-278.

Ginter, C, Härginen, K. & Linntam, A. 2019. Passengers Are Not Automatically Responsible for Fines Imposed on Airlines Estonian Court Declares a Lufthansa Standard Term Unfair. *European Review of Private Law*, 27(5), pp. 985-993. https://doi.org/10.54648/ERPL2019054

Goicovici, J. 2022. *Dreptul relațiilor dintre profesioniști și consumatori*. Bucharest: Hamangiu.

Goicovici, J. 2021. Consumer's Domicile, as a Criterion for the Selection of the Courts' Territorial Competence. Efficiency of the Derogatory Unusual Terms. *Analele Stiintifice ale Universitatii Alexandru Ioan Cuza din Iasi Stiinte Juridice*. 47(2), pp. 71-83.

Goicovici, J., 2021. The inapplicability of personal exceptions between joint debtors and creditors under Romanian and French private law. In: Dalvinder, S, Popa Tache, C. E.

& Săraru C.-S. (eds.). 2021. *Looking for New Paths in Comparative and International Law.* Bucharest: ADJURIS – International Academic Publisher, pp. 85-98.
Goicovici, J. 2020. Drepturile pasagerilor: zboruri anulate în circumstanțe excepționale. In: Dimitriu, O. (ed.). 2020. *Probleme și soluții legale privind criza COVID-19*. Bucharest: C. H. Beck, pp. 346-368.
Goicovici, J. 2019. Co-Active Performance, Good Faith versus Creditor's Fault in the Matter of the Obligation of Moderating the Damage. *Romanian Review of Private Law*, 2019(3), pp. 183-196.
Julien, J. 2019. *Droit de la consommation*. 3rd ed. Paris: L.G.D.J.
Pap, A. 2016. *Transportul aerian și drepturile pasagerilor în legislația Uniunii Europene. Sinteze de jurisprudență*. Bucharest: Universul Juridic.
Pellier, J.-D. 2021. *Droit de la consommation*. 3rd ed. Paris: Dalloz.
Picod, N. & Picod, Y. 2020. *Droit de la consommation*. 5th ed. Paris: Sirey.
Piedelièvre, S. 2020. *Droit de la consommation*. 3rd ed. Paris: Economica.
Țiț, N.-H. 2022. A Potential Legality Problem of the Enforcement Procedure: The Prorogation of Jurisdiction in the Case of the Bailiff. *Analele Stiintifice Ale Universitatii Alexandru Ioan Cuza Din Iasi – Stiinte Juridice*, 68(1), pp. 145-163. https://doi.org/10.47743/jss-2022-68-1-8
Țiț, N.-H. 2021. Certain Aspects Regarding the Parties' Agreement in Civil Procedure. In: *Challenges of the Knowledge Society*. Bucharest: Nicolae Titulescu University Editorial House, 2021, pp. 305-310.
Țiț, N.-H. 2020. Încuviințarea executării silite a debitorului consumator-exigențe europene, realități naționale. *Analele Științifice ale Universității Alexandru Ioan Cuza din Iași, seria Științe Juridice*, 66(2), pp. 91-110.
Țiț, N.-H. & Stanciu, R. 2019. *Legea nr. 310/2018 pentru modificarea și completarea Legii nr. 134/2010 privind Codul de procedură civilă: comentarii, explicații, jurisprudență relevantă*. Bucharest: Hamangiu.
Țiț, N.-H. 2018. *Încuviințarea executării silite*. Bucharest: Universul Juridic.
Țiț, N.-H. 2016. *Executarea silită. Partea generală.* Bucharest: Hamangiu.
Țiț, N.-H. 2015. How Far Have We Reached in European Cooperation in Civil Matters? A View on European Enforcement. *CES Working Papers*, Iasi: Alexandru Ioan Cuza University of Iasi, Centre for European Studies, 7(2), pp. 637-647.

Legal sources and case law

Council Regulation (EC) No 44/2001 of December 22, 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001R0044 (26. 9. 2022).
Regulation (EC) No 261/2004 of the European Parliament and of the Council of February 11, 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. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1476179175834&uri=CELEX:32004R0261 (26. 9. 2022).

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of December 12, 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, consolidated version. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32012R1215 (26. 9. 2022).

CJEU decision 2022. Decision of February 3, 2022. C-20/21, *LOT Polish Airlines*. Available at https://curia.europa.eu/juris/document/document.jsf?text=&docid=253283&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3872952 (26. 9. 2022).

CJEU decision 2022. Decision of April 7, 2022. C-561/20, *United Airlines*. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=257491&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3920981 (26. 9. 2022).

CJEU decision 2020. Decision of February 13, 2020. C-606/19, *Flightright GmbH vs. Iberia LAE SA Operadora Unipersonal.* Available at https://curia.europa.eu/juris/document/document.jsf?text=&docid=223641&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4049236 (26. 9. 2022).

CJEU decision 2021. Decision of April 22, 2021. C-826/19, *WZ vs. Austrian Airlines AG*. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=240222&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3920981 (26. 9. 2022).

CJEU decision 2021. Decision of March 23, 2021. C-28/20*, Airhel*p. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=239181&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3920981 (26. 9. 2022).

CJEU decision 2020. Decision of March 26, 2020. C-215/18, *Primera Air Scandinavia*. https://curia.europa.eu/juris/document/document.jsf?text=&docid=224725&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3920981 (26. 9. 2022).

CJEU decision 2019. Decision of July 11, 2019. C-502/18, *České Aerolinie*. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=216062&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3920981 (26. 9. 2022).

CJEU decision 2019. Decision of April 11, 2019. C-464/18, *Ryanair*. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=212906&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3920981 (26. 9. 2022).

CJEU decision 2019. Decision of July 10, 2019. C-163/18, *Aegean Airlines*. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=216037&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3920981 (26. 9. 2022).

CJEU decision 2019. Decision of April 4, 2019. C-501/17, *Germanwings.* Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=212663&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3919923 (26. 9. 2022).

CJEU decision 2018. Decision of September 12, 2018. C-601/17, *Vueling Airlines*. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=205608&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3919375 (26. 9. 2022).

CJEU decision 2018. Decision of April 17, 2018. C-195/17, *Krüsemann vs. TUI Fly GmbH*. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=201149&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3919722 (26. 9. 2022).

CJEU decision 2009. Decision of July 9, 2009. C-204/08, *Rehder.* Available at https://curia.europa.eu/juris/document/document.jsf?text=&docid=76299&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3919923 (26. 9. 2022).

CJEU decision 2009. Decision of November 19, 2009. C-402/07, *Sturgeon.* C-432/07, *Böck / Lepuschitz,* C-402/07, *Condor Flugdienst GmbH.* C-432/07, *Air France SA*. C-402/07 & C-432/07, Joined Cases. Available at: https://curia.europa.eu/juris/document/document.jsf?text=sturgeon&docid=74448&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=3926956#ctx1 (26. 9. 2022).

Request for a preliminary ruling 2018. C-274/16, C-447/16 and C-448/16, *Barkan and others,* is available at https://curia.europa.eu/juris/document/document.jsf?text=&docid=185510&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4043271 (26. 9. 2022).