Court of Cassation Affirms Montreal 1999's Exclusion of Postal Items From its Scope of Application

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Court of Cassation, Commercial and Economic Circuit

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Appeals Nos. 9458, 9599, and 9761 of Judicial Year 88

On 9 June 2020, the Egyptian Court of Cassation affirmed that the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal 1999) excludes from its scope of application the carriage of postal items and that the carrier’s liability in the case of the carriage of postal items is limited to the relevant postal administration itself pursuant to the rules governing the relationship between them.

FACTS

The dispute originated when a sender dispatched a postal parcel containing educational examination papers to an examining board in England through the domestic express mail service. The parcel was received by the postal service's export department on 7 July 2011, and the chosen air cargo carrier confirmed the following day that the shipment had been scheduled on a flight to its destination. However, the shipment suffered an extensive transit delay and was not delivered to the recipient until 4 January 2012. Alleging severe material and moral losses resulting from this prolonged delay, the sender initiated a lawsuit seeking compensation against both the postal authority and the air carrier, which subsequently prompted the air carrier to file a subsidiary third-party warranty lawsuit against its insurer.

The Court of First Instance declared the carrier's third-party warranty claim inadmissible on procedural grounds and held the postal authority and the air carrier jointly and severally liable to pay the sender damages calculated under the Montreal Convention liability cap of 17 Special Drawing Rights (SDR) per kilogram, alongside additional moral and material compensation. After an appellate court upheld this decision, all three primary parties filed separate appeals before the Court of Cassation.

Before the Court of Cassation, the sender argued in Appeal No. 9458 of JY 88 that the lower courts erred in law by basing the compensation on the Montreal Convention of 1999. He argued that Article 2(3) of the Convention explicitly excludes the carriage of postal items from its scope of application, leaving such matters to be resolved under domestic law.

Conversely, the air carrier argued in Appeal No. 9599 of JY 88 that the Montreal Convention was indeed the correct governing framework and that the lower court had erroneously applied the Egyptian Commercial Code (which the Court of Cassation found to be factually incorrect, as the lower courts had indeed applied the Montreal Convention).

The postal authority, in Appeal No. 9761 of JY 88, argued that its relationship with the sender was governed by international postal conventions, the regulations of the Universal Postal Union (UPU), and domestic Postal Law No. 16 of 1970.

THE COURT OF CASSATION'S DECISION:

The Court noted that the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal 1999) has acquired the status of binding domestic legislation in Egypt following its approval by Egypt’s President pursuant to Presidential Decree No. 276 of 2004 – issued on August 28, 2004, published in the Official Gazette on 23 April 2005, and entered into force on 25 April 2005. By virtue of Montreal 1999, the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air (1929 Warsaw Convention) and its related instruments were updated.

The Court then turned to Article 1(1) of Montreal 1999, which establishes that the Convention applies to “all international carriage of persons, baggage or cargo performed by aircraft for reward” as well as “gratuitous carriage by an air transport undertaking.” The Court further noted that Article 2(1) extends the Convention’s application to carriage performed by the State or legally constituted public bodies.

Turning specifically to the carriage of postal items, the Court observed that Article 2(2) states that in the carriage of postal items, the air carrier is liable only to the relevant postal administration under the rules governing their specific relationship. Meanwhile, Article 2(3) explicitly states that "Except as provided in paragraph 2 of this Article, the provisions of this Convention shall not apply to the carriage of postal items."

The Court held that these provisions exclude postal mail and parcels from the Convention’s scope of application and that the carrier’s liability in the case of the carriage of postal items is limited to the relevant postal administration itself pursuant to the rules governing the

relationship between them. This exclusion, the Court noted, is not a novelty of the 1999 Montreal Convention but rather a continuation of the approach established under the 1929 Warsaw Convention.

In light of that, the Court of Cassation ruled that the impugned judgment erred in law by relying on the Convention's limit of liability (the 17 SDR per kilogram limit) and Article 22(6) of the Convention to calculate the sender's compensation. Instead, the Court declared that the compensation is to be assessed under the general rules of the Civil Code given the contractual liability arising from the contract of carriage.

With regards to the postal authority's contention that its relationship with the sender is governed by international postal conventions, Universal Postal Union (UPU) rules, and the domestic Postal Law No. 16 of 1970. The Court of Cassation rejected this argument as inadmissible. This is because Article 253 of the Code of Civil and Commercial Procedure, in requiring that the appeal memorandum itself contain a statement of the grounds on which the appeal is based, intended by this requirement that the grounds of appeal be identified and clearly defined in a manner that fully discloses their intended meaning, free from ambiguity and vagueness, and that it show the defect which the appellant attributes to the judgment, its location therein, and its effect on the judgment's outcome. Accordingly, every ground relied upon must be precisely stated and must be accompanied, when submitted to the Court of Cassation, by the documents evidencing it — failing which the ground shall be inadmissible.

In that respect, the Court affirmed that that it is not the function of the Court of Cassation to independently seek out, of its own motion, the aspects of legal error, or to extract from the case file matters that would impugn the contested judgment; rather, that burden rests upon the appellant itself, and its proper place is the appeal memorandum itself.

Since the postal authority challenged the contested judgment for violating the law and erring in its application, but framed its challenge in vague and ambiguous terms — failing to specify the international postal conventions and Universal Postal Union rules relied upon, whether Egypt had acceded to and ratified them, or the alleged violation's location in the judgment and its effect thereon — **the Court found that the postal authority had not set out its ground of appeal in a manner fulfilling the legislator's purpose, and accordingly held this ground inadmissible.**

In conclusion, the Court of Cassation partially quashed the appealed judgment with respect to its finding of joint and several liability calculated on the basis of the 17 SDR per kilogram limit, as well as the 100,000 EGP compensation, remanding the matter to the Cairo Court of Appeal for reconsideration. The cross-appeals filed by the air carrier (No. 9559 of JY 88) and the postal authority (No. 9761 of JY 88) were both rejected.

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