

# Airport of destination no safe haven for claims under Montreal Convention

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**Facts**  
**Decision**  
**Comment**

The Amsterdam Court of Appeal recently denied jurisdiction against an airline and its ground-handling agent in a case concerning a claim for loss of cargo from the agent's premises at Amsterdam Airport Schiphol. The judgment is relevant for claimants seeking to bring a case against air carriers and their ground-handling agents before the court of the place of destination under Article 33 of the Montreal Convention 1999.<sup>(1)</sup>

## Facts

The China-based air carrier contracted for the carriage by air of various consignments under separate air waybills from Chongqing, China to Germany via Amsterdam. The contract provided for carriage by road on the final leg between Amsterdam and Germany. After part of the consignment went missing while in the custody of the ground-handling agent in its warehouse at Amsterdam Airport Schiphol, a claim for compensatory damages was brought before the Dutch courts against the air carrier and its ground-handling agent.

Both the air carrier and the ground-handling agent argued that the Dutch courts should not accept jurisdiction under Article 33.1 of the Montreal Convention, which stipulates as follows:

*An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.*

## Decision

The claimants first argued that the court should accept jurisdiction because, in their view, the air carrier was domiciled in the Netherlands. The claimants relied on Dutch law principles that allow for a broad interpretation of the term 'domicile', which includes branch offices. The court refused to apply Dutch law principles by referring to the necessity of autonomous interpretation of the Montreal Convention. It held that 'domicile' within the meaning of Article 33.1 of the convention does not include a carrier's branch offices. The court further explained that the references in Article 33.1 to the 'principal place of business' and the 'place of business through which the contract has been made' would be meaningless if the court were to allow for the broad interpretation sought by the claimants.

In debating whether it qualified as the court of the place of destination under Article 33.1, the court had to decide whether the destination of the carriage that had been performed by air was Amsterdam or the final destination in Germany as recorded in the air waybill. The court held that the 'place of destination' as referred to in Article 33.1 and elsewhere in the Montreal Convention means the agreed place of delivery of the goods in accordance with the contract of carriage. Hence, the court decided that Amsterdam did not qualify as the place of destination as it was merely a place of transshipment.

The court held that further carriage of the goods by road between Amsterdam Airport Schiphol and the place of delivery had no relevance on the issue of jurisdiction. Because the goods had disappeared during the period of carriage by air, the court decided that Article 33.1 of the Montreal Convention governed jurisdiction on an exclusive basis, including in the event of combined carriage within the meaning of Article 38 of the convention.

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Consequently, the court dismissed the case against both the airline and its ground-handling agent.

### **Comment**

This judgment demonstrates the importance of giving due consideration to jurisdiction issues before initiating legal proceedings in air cargo claims.

In the event that goods are flown into Amsterdam Airport Schiphol and subsequently transported by road to an agreed place of delivery outside the Netherlands, the Dutch courts may not accept jurisdiction for claims against a foreign-based air carrier.

Although the ground-handling agent in the present case had its domicile and principal place of business at Amsterdam Airport Schiphol, the court also denied jurisdiction in relation to the ground-handling agent. In this respect, the court only noted that the ground-handling agent did not qualify as a carrier within the meaning of Article 33.1 of the Montreal Convention.

This is the first published case in the Netherlands in which a court has rejected jurisdiction in relation to a ground-handling agent based on Article 33.1 of the Montreal Convention. It remains unclear whether a foreign court would assume jurisdiction under Article 33.1 for claims brought against ground-handling agents established in the Netherlands. Nevertheless, claimants should be aware that the Dutch courts may not apply the common standards for jurisdiction under EU law for claims in tort against ground-handling agents.

*For further information on this topic please contact [Guido de Vos](mailto:gdevos@akd.nl) at AKD by telephone (+31 88 253 5000) or email ([gdevos@akd.nl](mailto:gdevos@akd.nl)). The AKD website can be accessed at [www.akd.nl](http://www.akd.nl).*

### **Endnotes**

**(1)** Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, 28 May 1999).

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