

BRIEFLY NOTED

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JUDICIAL AND SIMILAR PROCEEDINGS

1. Case C-510/21, DB v. Austrian Airlines AG (Court of Justice of the European Union – July 6, 2023)

<<https://curia.europa.eu/juris/document/document.jsf?text=&docid=275242&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=1555518>>

On July 6, 2023, the CJEU issued this judgment concerning the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention), to which the EU is a party.

The facts of the case are as follows. On December 18, 2016, DB was traveling on Austrian Airlines from Tel-Aviv to Vienna when a hot pot of coffee fell of the trolley and scalded DB requiring the administration of first aid on board. On May 31, 2019, he brought an action before the Commercial Court in Vienna against the airline for damages of EUR 10,196, as well as a declaration of liability for all future damage that may arise as a result of the insufficient provision of first aid. He argued that the three-year period under national law governed because the first aid does not qualify as “accident” within the meaning of the Montreal Convention. The case was dismissed, and that judgment was confirmed on appeal by the Higher Regional Court which held that the injuries he sustained were the result of an accident as defined in the Convention. DB appealed to the Supreme Court on the issue of whether the administration of first aid qualified as an accident under the Convention. The Supreme Court referred two questions to the CJEU: (1) Is first aid administered on board an aircraft following an accident within the meaning of the Convention and which leads to further bodily injury to the passenger to be considered together with the triggering accident as a single accident? (2) If not, does the Convention preclude a claim for damages in such a case where that claim is brought within the limitation period under national law?

Article 17 of the Montreal Convention imposes liability on air carriers “for damage sustained in case of death or bodily injury of a passenger” where “the accident which caused the death or bodily injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.” There is a two-year statute of limitations on claims for damages under Article 35 of the Convention, “reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.” Austrian law permits claims to be asserted within three years.

The Court stated that “[t]he concept of ‘accident’ must be understood as an unforeseen, harmful and involuntary event which does not require that the damage be due to the materialization of a hazard typically associated with aviation or that there be a connection between the accident and the operation or movement of the aircraft (citing Case C-532/18, *Niki Luftfahrt*).” Furthermore, according to the Court, “it is not always possible to attribute the occurrence of a damage to an isolated event where that damages is the result of a series of interdependent events. Thus, where there is a series of intrinsically linked events that take place successively, without interruption, in space and time, that series of events must be regarded as constituting a single ‘accident’ within the meaning of Article 17(1) of the Montreal Convention.” The Court believed this interpretation to be consistent with the Convention and, in particular, the third and fifth recitals which recognize “the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution” and requires that an “‘equitable balance of interests’ be maintained.” The concept of ‘accident’ must be restricted to a series of “‘intrinsically linked events that take place successively, without interruption, in space and time” to enable passengers to be compensated quickly and efficiently and to prevent the imposition of a “‘very heavy compensation burden on air carriers.” Therefore, the Court concluded that the inadequate provision of first aid which aggravated the injuries caused by the initial accident must be regarded as forming part of that accident. Because the first question was answered affirmatively, the Court did not consider the second question.

2. **Held v. Montana (Montana First Judicial District Court – August 14, 2023)**

<<https://dailymontanain.com/wp-content/uploads/2023/08/Findings-of-Fact-Conclusions-of-Law-and-Order.pdf>>

On August 14, 2023, the Montana First Judicial District Court [invalidated](#) a state law based on the right to a clean and healthful environment in the [Montana Constitution](#). As reported by [JURIST](#), *Held v. Montana* addresses the Montana Environmental Policy Act (MEPA) and its prohibition on considering GHG emissions in the context of energy and mining project reviews. According to the Court, the prohibition violates the Montana Constitution because it "categorically limits" what the government can consider in order to safeguard the environment. Moreover, the state failed to produce "evidence of a compelling governmental interest" in the MEPA prohibition. The judgment will, at least temporarily, allow states to once again consider the impact of GHG emissions and climate change when reviewing energy and mining projects. However, the state of Montana has [indicated](#) that it intends to appeal the judgment.

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. **Resolution on Lessons Learnt from the Pandora Papers and other Revelations (European Union Parliament – June 15, 2023)**

<https://www.europarl.europa.eu/doceo/document/TA-9-2023-0249_EN.html>

On June 15, 2023, the Parliament of the European Union (EU) adopted the above resolution on lessons learned from the Pandora Papers. The resolution focuses on the need to regulate the role of intermediaries in facilitating tax crimes, highlighting the current prohibition in EU law on auditors providing advisory services to public interest entities (see Article 5 of Regulation (EU) No 537/2014) and the fact that one of the Big Four major accounting firms has achieved a separation of audit and advisory businesses. It calls on the EU Commission to create a legal framework that provides for robust enforcement against companies that establish and operate schemes to aid tax evasion, aggressive tax planning, and the hiding of wealth and assets. It also admonishes the Council's "lack of willingness" to come to an agreement regarding transparency criterion in the context of ultimate beneficial ownership and criticizes the "lack of democratic accountability" in the context of preparing the EU list of non-cooperative tax jurisdictions. The Resolution also criticizes several aspects of U.S. (in)action on these issues, citing several specific examples of states that "have become hubs and financial corporate secrecy," the failure of the U.S. to join the OECD Common Reporting Standard, and the need for Congress to enact the [bill for Establishing New Authorities for Businesses Laundering and Enabling Risks to Security \(ENABLERS\) Act](#).

2. **2023 Foreign Relations Law (China – June 28, 2023)**

<<https://www.china-briefing.com/news/wp-content/uploads/2023/06/New-China-Foreign-Relations-Law-1.pdf>>

On June 28th, China enacted new legislation in an effort to deter sanctions and "safeguard national sovereignty." Most of the new law consolidates language present in existing laws into a comprehensive international relations framework, most notably a "foreign policy aligned with socialism," [JURIST](#) reports. In the law, China delineates its right to take "countermeasures and restrictive measures" against threats to international law and the "sovereignty, security, and development interests of the People's Republic of China." China also underscored its commitment to the UN and its "related measures" by the United Nations Security Council, restating its commitment to [Chapter VII of the UN Charter](#). The new law entered into force on July 1.