

**AUGUSTO BENEDICTO SANTOS III, REPRESENTED BY HIS FATHER
AND LEGAL GUARDIAN, AUGUSTO BENEDICTO SANTOS,
PETITIONER, VS. NORTHWEST ORIENT AIRLINES AND COURT OF
APPEALS, RESPONDENTS.**

G.R. No. 101538. June 23, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

This case involves the proper interpretation of Article 28(1) of the Warsaw Convention, reading as follows:

Art. 28. (1) An action for damage must be brought at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination.

The petitioner is a minor and a resident of the Philippines. Private respondent Northwest Orient Airlines (NOA) is a foreign corporation with principal office in Minnesota, U.S.A., and licensed to do business and maintain a branch office in the Philippines.

On October 21, 1986, the petitioner purchased from NOA a round-trip ticket in San Francisco, U.S.A., for his flight from San Francisco to Manila via Tokyo and back. The scheduled departure date from Tokyo was December 20, 1986. No date was specified for his return to San Francisco.[1]

On December 19, 1986, the petitioner checked in at the NOA counter in the San Francisco airport for his scheduled departure to Manila. Despite a previous confirmation and re-confirmation, he was informed that he had no reservation for his flight from Tokyo to Manila. He therefore had to be wait-listed.

On March 12, 1987, the petitioner sued NOA for damages in the Regional Trial Court of Makati. On April 13, 1987, NOA moved to dismiss the complaint on the ground of lack of jurisdiction. Citing the above-quoted article, it contended that the complaint could be instituted only in the territory of one of the High Contracting Parties, before:

1. the court of the domicile of the carrier;
2. the court of its principal place of business;
3. the court where it has a place of business through which the contract had been made;
4. the court of the place of destination.

The private respondent contended that the Philippines was not its domicile nor was this its principal place of business. Neither was the petitioner's ticket issued in this country nor was his destination Manila but San Francisco in the United States.

On February 1, 1988, the lower court granted the motion and dismissed the case.[2] The petitioner appealed to the Court of Appeals, which affirmed the decision of the lower court.[3] On June 26, 1991, the petitioner filed a motion for reconsideration, but the same was denied.[4] The petitioner then came to this Court, raising substantially the same issues it submitted in the Court of Appeals.

The assignment of errors may be grouped into two major issues, viz:

- (1) the constitutionality of Article 28(1) of the Warsaw Convention; and
- (2) the jurisdiction of Philippine courts over the case.

The petitioner also invokes Article 24 of the Civil Code on the protection of minors.

I.

THE ISSUE OF CONSTITUTIONALITY

A. The petitioner claims that the lower court erred in not ruling that Article 28(1) of the Warsaw Convention violates the constitutional guarantees of due process and equal protection.

The Republic of the Philippines is a party to the Convention for the Unification of Certain Rules Relating to International Transportation by Air, otherwise known as the Warsaw Convention. It took effect on February 13, 1933. The Convention was concurred in by the Senate, through its Resolution No. 19, on May 16, 1950. The Philippine instrument of accession was signed by President Elpidio Quirino on October 13, 1950, and was deposited with the Polish government on November 9, 1950. The Convention became applicable to the Philippines on February 9, 1951. On September 23, 1955, President Ramon Magsaysay issued Proclamation No. 201, declaring our formal adherence thereto, "to the end that the same and every article and clause thereof may be observed and fulfilled in good faith by the Republic of the Philippines and the citizens thereof." [5]

The Convention is thus a treaty commitment voluntarily assumed by the Philippine government and, as such, has the force and effect of law in this country.

The petitioner contends that Article 28(1) cannot be applied in the present case because it is unconstitutional. He argues that there is no substantial distinction between a person who purchases a ticket in Manila and a person who purchases his ticket in San Francisco. The classification of the places in which actions for damages may be brought is arbitrary and irrational and thus violates the due process and equal protection clauses.

It is well-settled that courts will assume jurisdiction over a constitutional question only if it is shown that the essential requisites of a judicial inquiry into such a question are first satisfied. Thus, there must be an actual case or controversy involving a conflict of legal rights susceptible of judicial determination; the constitutional question must have been opportunely raised by the proper party; and the resolution of the question is unavoidably necessary to the decision of the case itself. [6]

Courts generally avoid having to decide a constitutional question. This attitude is based on the doctrine of separation of powers, which enjoins upon the departments of the government a becoming respect for each other's acts.

The treaty which is the subject matter of this petition was a joint legislative-executive act. The presumption is that it was first carefully studied and determined to be constitutional before it was adopted and given the force of law in this country.

The petitioner's allegations are not convincing enough to overcome this presumption. Apparently, the Convention

considered the four places designated in Article 28 the most convenient forums for the litigation of any claim that may arise between the airline and its passenger, as distinguished from all other places. At any rate, we agree with the respondent court that this case can be decided on other grounds without the necessity of resolving the constitutional issue.

B. The petitioner claims that the lower court erred in not ruling that Art. 28(1) of the Warsaw Convention is inapplicable because of a fundamental change in the circumstances that served as its basis.

The petitioner goes at great lengths to show that the provisions in the Convention were intended to protect airline companies under "the conditions prevailing then and which have long ceased to exist." He argues that in view of the significant developments in the airline industry through the years, the treaty has become irrelevant. Hence, to the extent that it has lost its basis for approval, it has become unconstitutional.

The petitioner is invoking the doctrine of *rebus sic stantibus*. According to Jessup, "this doctrine constitutes an attempt to formulate a legal principle which would justify non-performance of a treaty obligation if the conditions with relation to which the parties contracted have changed so materially and so unexpectedly as to create a situation in which the exaction of performance would be unreasonable." [7] The key element of this doctrine is the vital change in the condition of the contracting parties that they could not have foreseen at the time the treaty was concluded.

The Court notes in this connection the following observation made in *Day v. Trans World Airlines, Inc.*: [8]

The Warsaw drafters wished to create a system of liability rules that would cover all the hazards of air travel x x x The Warsaw delegates knew that, in the years to come, civil aviation would change in ways that they could not foresee. They wished to design a system of air law that would be both durable and flexible enough to keep pace with these changes. xxx The ever-changing needs of the system of civil aviation can be served within the framework they created.

It is true that at the time the Warsaw Convention was drafted, the airline industry was still in its infancy. However, that circumstance alone is not sufficient justification for the rejection of the treaty at this time. The changes recited by the petitioner were, realistically, not entirely unforeseen although they were expected in a general sense only. In fact, the Convention itself, anticipating such developments, contains the following significant provision:

Article 41. Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this convention to call for the assembling of a new international conference in order to consider any improvements which may be made in this convention. To this end, it will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such conference.

But the more important consideration is that the treaty has not been rejected by the Philippine government. The doctrine of *rebus sic stantibus* does not operate automatically to render the treaty inoperative. There is a necessity for a formal act of rejection, usually made by the head of State, with a statement of the reasons why compliance with the treaty is no longer required.

In lieu thereof, the treaty may be denounced even without an expressed justification for this action. Such denunciation is authorized under its Article 39, viz:

Article 39. (1) Any one of the High Contracting Parties may denounce this convention by a notification addressed to the Government of the Republic of Poland, which shall at once inform the Government of each of the High Contracting Parties.

(2) Denunciation shall take effect six months after the notification of denunciation, and shall operate only as

regards the party which shall have proceeded to denunciation.

Obviously, rejection of the treaty, whether on the ground of *rebus sic stantibus* or pursuant to Article 39, is not a function of the courts but of the other branches of government. This is a political act. The conclusion and renunciation of treaties is the prerogative of the political departments and may not be usurped by the judiciary. The courts are concerned only with the interpretation and application of laws and treaties in force and not with their wisdom or efficacy.

C. The petitioner claims that the lower court erred in ruling that the plaintiff must sue in the United States, because this would deny him the right to access to our courts.

The petitioner alleges that the expenses and difficulties he will incur in filing a suit in the United States would constitute a constructive denial of his right to access to our courts for the protection of his right. He would consequently be deprived of this vital guaranty as embodied in the Bill of Rights.

Obviously, the constitutional guaranty of access to courts refers only to courts with appropriate jurisdiction as defined by law. It does not mean that a person can go to any court for redress of his grievances regardless of the nature or value of his claim. If the petitioner is barred from filing his complaint before our courts, it is because they are not vested with the appropriate jurisdiction under the Warsaw Convention, which is part of the law of our land.

II.

THE ISSUE OF JURISDICTION

A. The petitioner claims that the lower court erred in not ruling that Article 28(1) of the Warsaw Convention is a rule merely of venue and was waived by defendant when it did not move to dismiss on the ground of improper venue.

By its own terms, the Convention applies to all international transportation of persons performed by aircraft for hire.

International transportation is defined in paragraph (2) of Article 1 as follows:

(2) For the purposes of this convention, the expression "international transportation" shall mean any transportation in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the transportation or a transshipment, are situated [either] within the territories of two High Contracting Parties x x x.

Whether the transportation is "international" is determined by the contract of the parties, which in the case of passengers is the ticket. When the contract of carriage provides for the transportation of the passenger between certain designated terminals "within the territories of two High Contracting Parties," the provisions of the Convention automatically apply and exclusively govern the rights and liabilities of the airline and its passenger.

Since the flight involved in the case at bar is international, the same being from the United States to the Philippines and back to the United States, it is subject to the provisions of the Warsaw Convention, including Article 28(1), which enumerates the four places where an action for damages may be brought.

Whether Article 28(1) refers to jurisdiction or only to venue is a question over which authorities are sharply divided. While the petitioner cites several cases holding that Article 28(1) refers to venue rather than jurisdiction,[9] there are later cases cited by the private respondent supporting the conclusion that the provision is jurisdictional.[10]

Venue and jurisdiction are entirely distinct matters. Jurisdiction may not be conferred by consent or waiver upon a court which otherwise would have no jurisdiction over the subject-matter of an action; but the venue of an action as fixed by statute may be changed by the consent of the parties and an objection that the plaintiff brought his suit in the wrong county may be waived by the failure of the defendant to make a timely objection. In either case, the court may render a valid judgment. Rules as to jurisdiction can never be left to the consent or agreement of the parties, whether or not a prohibition exists against their alteration.[11]

A number of reasons tends to support the characterization of Article 28(1) as a jurisdiction and not a venue provision. First, the wording of Article 32, which indicates the places where the action for damages "must" be brought, underscores the mandatory nature of Article 28(1). Second, this characterization is consistent with one of the objectives of the Convention, which is to "regulate in a uniform manner the conditions of international transportation by air." Third, the Convention does not contain any provision prescribing rules of jurisdiction other than Article 28(1), which means that the phrase "rules as to jurisdiction" used in Article 32 must refer only to Article 28(1). In fact, the last sentence of Article 32 specifically deals with the exclusive enumeration in Article 28(1) as "jurisdictions," which, as such, cannot be left to the will of the parties regardless of the time when the damage occurred.

This issue was analyzed in the leading case of *Smith v. Canadian Pacific Airways, Ltd.*, [12] where it was held:

x x x Of more, but still incomplete, assistance is the wording of Article 28(2), especially when considered in the light of Article 32. Article 28(2) provides that "questions of procedure shall be governed by the law of the court to which the case is submitted" (Emphasis supplied). Section (2) thus may be read to leave for domestic decision questions regarding the suitability and location of a particular Warsaw Convention case."

In other words, where the matter is governed by the Warsaw Convention, jurisdiction takes on a dual concept. Jurisdiction in the international sense must be established in accordance with Article 28(1) of the Warsaw Convention, following which the jurisdiction of a particular court must be established pursuant to the applicable domestic law. Only after the question of which court has jurisdiction is determined will the issue of venue be taken up. This second question shall be governed by the law of the court to which the case is submitted.

The petitioner submits that since Article 32 states that the parties are precluded "before the damages occurred" from amending the rules of Article 28(1) as to the place where the action may be brought, it would follow that the Warsaw Convention was not intended to preclude them from doing so "after the damages occurred."

Article 32 provides:

Article 32. Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the transportation of goods, arbitration clauses shall be allowed, subject to this convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

His point is that since the requirements of Article 28(1) can be waived "after the damages (shall have) occurred," the article should be regarded as possessing the character of a "venue" and not of a "jurisdiction" provision. Hence, in moving to dismiss on the ground of lack of jurisdiction, the private respondent has waived improper venue as a ground to dismiss.

The foregoing examination of Article 28(1) in relation to Article 32 does not support this conclusion. In any event, we agree that even granting arguendo that Article 28(1) is a venue and not a jurisdictional provision, dismissal of the case was still in order. The respondent court was correct in affirming the ruling of the trial court on this matter, thus:

Santos' claim that NOA waived venue as a ground of its motion to dismiss is not correct. True it is that NOA averred in its MOTION TO DISMISS that the ground thereof is "the Court has no subject matter jurisdiction to entertain the Complaint" which SANTOS considers as equivalent to "lack of jurisdiction over the subject matter..." However, the gist of NOA's argument in its motion is that the Philippines is not the proper place where SANTOS could file the action – meaning that the venue of the action is improperly laid. Even assuming then that the specified ground of the motion is erroneous, the fact is the proper ground of the motion – improper venue – has been discussed therein.

Waiver cannot be lightly inferred. In case of doubt, it must be resolved in favor of non-waiver if there are special circumstances justifying this conclusion, as in the petition at bar. As we observed in *Javier vs. Intermediate Court of Appeals*:^[13]

Legally, of course, the lack of proper venue was deemed waived by the petitioners when they failed to invoke it in their original motion to dismiss. Even so, the motivation of the private respondent should have been taken into account by both the trial judge and the respondent court in arriving at their decisions.

The petitioner also invokes *KLM Royal Dutch Airlines v. RTC*,^[14] a decision of our Court of Appeals, where it was held that Article 28(1) is a venue provision. However, the private respondent avers that this was in effect reversed by the case of *Aranas v. United Airlines*,^[15] where the same court held that Article 28(1) is a jurisdictional provision. Neither of these cases is binding on this Court, of course, nor was either of them appealed to us. Nevertheless, we here express our own preference for the later case of *Aranas* insofar as its pronouncements on jurisdiction conform to the judgment we now make in this petition.

B. The petitioner claims that the lower court erred in not ruling that under Article 28(1) of the Warsaw Convention, this case was properly filed in the Philippines, because Manila was the destination of the plaintiff.

The petitioner contends that the facts of this case are analogous to those in *Aanestad v. Air Canada*.^[16] In that case, Mrs. Silverberg purchased a round-trip ticket from Montreal to Los Angeles and back to Montreal. The date and time of departure were specified but not of the return flight. The plane crashed while en route from Montreal to Los Angeles, killing Mrs. Silverberg. Her administratrix filed an action for damages against Air Canada in the U.S. District Court of California. The defendant moved to dismiss for lack of jurisdiction but the motion was denied thus:

x x x It is evident that the contract entered into between Air Canada and Mrs. Silverberg as evidenced by the ticket booklets and the Flight Coupon No. 1, was a contract for Air Canada to carry Mrs. Silverberg to Los Angeles on a certain flight, a certain time and a certain class, but that the time for her to return remained completely in her power. Coupon No. 2 was only a continuing offer by Air Canada to give her a ticket to return to Montreal between certain dates. x x x

The only conclusion that can be reached then, is that "the place of destination" as used in the Warsaw Convention is considered by both the Canadian C.T.C. and the United States C.A.B. to describe at least two "places of destination," viz., the "place of destination" of a particular flight either an "outward destination" from the "point of origin" or from the "outward point of destination" to any place in Canada.

Thus the place of destination under Art. 28 and Art. 1 of the Warsaw Convention of the flight on which Mrs. Silverberg was killed, was Los Angeles according to the ticket, which was the contract between the parties and the suit is properly filed in this Court which has jurisdiction.

The petitioner avers that the present case falls squarely under the above ruling because the date and time of his return flight to San Francisco were, as in the *Aanestad* case, also left open. Consequently, Manila and not San Francisco should be considered the petitioner's destination.

The private respondent for its part invokes the ruling in *Butz v. British Airways*,^[17] where the United States District Court (Eastern District of Pennsylvania) said:

x x x Although the authorities which addressed this precise issue are not extensive, both the cases and the commentators are almost unanimous in concluding that the "place of destination" referred to in the Warsaw Convention "in a trip consisting of several parts . . . is the ultimate destination that is accorded treaty jurisdiction." x x x

But apart from that distinguishing feature, I cannot agree with the Court's analysis in *Aanestad*; whether the return portion of the ticket is characterized as an option or a contract, the carrier was legally bound to transport the passenger back to the place of origin within the prescribed time and the passenger for her part agreed to pay the fare and, in fact, did pay the fare. Thus there was mutuality of obligation and a binding contract of carriage. The fact that the passenger could forego her rights under the contract does not make it any less a binding contract. Certainly, if the parties did not contemplate the return leg of the journey, the passenger would not have paid for it and the carrier would not have issued a round trip ticket.

We agree with the latter case. The place of destination, within the meaning of the Warsaw Convention, is determined by the terms of the contract of carriage or, specifically in this case, the ticket between the passenger and the carrier. Examination of the petitioner's ticket shows that his ultimate destination is San Francisco. Although the date of the return flight was left open, the contract of carriage between the parties indicates that NOA was bound to transport the petitioner to San Francisco from Manila. Manila should therefore be considered merely an agreed stopping place and not the destination.

The petitioner submits that the *Butz* case could not have overruled the *Aanestad* case because these decisions are from different jurisdictions. But that is neither here nor there. In fact, neither of these cases is controlling on this Court. If we have preferred the *Butz* case, it is because, exercising our own freedom of choice, we have decided that it represents the better, and correct, interpretation of Article 28(1).

Article 1(2) also draws a distinction between a "destination" and an "agreed stopping place." It is the "destination" and not an "agreed stopping place" that controls for purposes of ascertaining jurisdiction under the Convention.

The contract is a single undivided operation, beginning with the place of departure and ending with the ultimate destination. The use of the singular in this expression indicates the understanding of the parties to the Convention that every contract of carriage has one place of departure and one place of destination. An intermediate place where the carriage may be broken is not regarded as a "place of destination."

C. The petitioner claims that the lower court erred in not ruling that under Art. 28 (1) of the Warsaw Convention, this case was properly filed in the Philippines because the defendant has its domicile in the Philippines.

The petitioner argues that the Warsaw Convention was originally written in French and that in interpreting its provisions, American courts have taken the broad view that the French legal meaning must govern.^[18] In French, he says, the "domicile" of the carrier means every place where it has a branch office.

The private respondent notes, however, that in *Compagnie Nationale Air France vs. Giliberto*,^[19] it was held:

The plaintiffs' first contention is that Air France is domiciled in the United States. They say that the domicile of a corporation includes any country where the airline carries on its business on "a regular and substantial basis," and that the United States qualifies under such definition. The meaning of domicile cannot, however, be so extended. The domicile of a corporation is customarily regarded as the place where it is incorporated, and the courts have given the meaning to the term as it is used in article 28(1) of the Convention. (See *Smith v. Canadian Pacific Airways, Ltd.* (2d Cir. 1971), 452 F2d 798, 802; *Nudo v. Societe Anonyme Belge*

d'Exploitation de la Navigation Aerienne Sabena Belgian World Airlines (E.D. pa. 1962), 207 F. Supp. 191; Karfunkel v. Compagnie Nationale Air France (S.D.N.Y. 1977), 427 F. Suppl. 971, 974). Moreover, the structure of article 28(1), viewed as a whole, is also incompatible with the plaintiffs' claim. The article, in stating that places of business are among the bases of the jurisdiction, sets out two places where an action for damages may be brought: the country where the carrier's principal place of business is located, and the country in which it has a place of business through which the particular contract in question was made, that is, where the ticket was bought. Adopting the plaintiffs' theory would at a minimum blur these carefully drawn distinctions by creating a third intermediate category. It would obviously introduce uncertainty into litigation under the article because of the necessity of having to determine, and without standards or criteria, whether the amount of business done by a carrier in a particular country was "regular" and "substantial." The plaintiff's request to adopt this basis of jurisdiction is in effect a request to create a new jurisdictional standard for the Convention.

Furthermore, it was argued in another case[20] that:

xxx In arriving at an interpretation of a treaty whose sole official language is French, are we bound to apply French law? xxx We think this question and the underlying choice of law issue warrant some discussion. xxx We do not think this statement can be regarded as a conclusion that internal French law is to be "applied" in the choice of law sense, to determine the meaning and scope of the Convention's terms. Of course, French legal usage must be considered in arriving at an accurate English translation of the French. But when an accurate English translation is made and agreed upon, as here, the inquiry into meaning does not then revert to a quest for a past or present French law to be "applied" for revelation of the proper scope of the terms. It does not follow from the fact that the treaty is written in French that in interpreting it, we are forever chained to French law, either as it existed when the treaty was written or in its present state of development. There is no suggestion in the treaty that French law was intended to govern the meaning of Warsaw's terms, nor have we found any indication to this effect in its legislative history or from our study of its application and interpretation by other courts. Indeed, analysis of the cases indicates that the courts, in interpreting and applying the Warsaw Convention, have not considered themselves bound to apply French law simply because the Convention is written in French. xxx

We agree with these rulings.

Notably, the domicile of the carrier is only one of the places where the complaint is allowed to be filed under Article 28(1). By specifying the three other places, to wit, the principal place of business of the carrier, its place of business where the contract was made, and the place of destination, the article clearly meant that these three other places were not comprehended in the term "domicile."

D. The petitioner claims that the lower court erred in not ruling that Art. 28(1) of the Warsaw Convention does not apply to actions based on tort.

The petitioner alleges that the gravamen of the complaint is that private respondent acted arbitrarily and in bad faith, discriminated against the petitioner, and committed a willful misconduct because it canceled his confirmed reservation and gave his reserved seat to someone who had no better right to it. In short, the private respondent committed a tort.

Such allegation, he submits, removes the present case from the coverage of the Warsaw Convention. He argues that in at least two American cases,[21] it was held that Article 28(1) of the Warsaw Convention does not apply if the action is based on tort.

This position is negated by *Husserl v. Swiss Air Transport Company*,[22] where the article in question was interpreted thus:

x x x Assuming for the present that plaintiff's claim is "covered" by Article 17, Article 24 clearly excludes any relief not provided for in the Convention as modified by the Montreal Agreement. It does not, however, limit the kind of cause of action on which the relief may be founded; rather it provides that any action based on the injuries specified in Article 17 "however founded," i.e., regardless of the type of action on which relief is founded, can only be brought subject to the conditions and limitations established by the Warsaw System. Presumably, the reason for the use of the phrase "however founded," is two-fold: to accommodate all of the multifarious bases on which a claim might be founded in different countries, whether under code law or common law, whether under contract or tort, etc.; and to include all bases on which a claim seeking relief for an injury might be founded in any one country. In other words, if the injury occurs as described in Article 17, any relief available is subject to the conditions and limitations established by the Warsaw System, regardless of the particular cause of action which forms the basis on which a plaintiff could seek relief. xxx

The private respondent correctly contends that the allegation of willful misconduct resulting in a tort is insufficient to exclude the case from the comprehension of the Warsaw Convention. The petitioner has apparently misconstrued the import of Article 25(1) of the Convention, which reads as follows:

Article 25 (1). The carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability, if the damage is caused by his willful misconduct or by such default on his part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to willful misconduct.

It is understood under this article that the court called upon to determine the applicability of the limitation provision must first be vested with the appropriate jurisdiction. Article 28(1) is the provision in the Convention which defines that jurisdiction. Article 22[23] merely fixes the monetary ceiling for the liability of the carrier in cases covered by the Convention. If the carrier is indeed guilty of willful misconduct, it can avail itself of the limitations set forth in this article. But this can be done only if the action has first been commenced properly under the rules on jurisdiction set forth in Article 28 (1).

III.

THE ISSUE OF PROTECTION TO MINORS

The petitioner calls our attention to Article 24 of the Civil Code, which states:

Art. 24. In all contractual property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.

Application of this article to the present case is misplaced. The above provision assumes that the court is vested with jurisdiction to rule in favor of the disadvantaged minor. As already explained, such jurisdiction is absent in the case at bar.

CONCLUSION

A number of countries have signified their concern over the problem of citizens being denied access to their own courts because of the restrictive provision of Article 28(1) of the Warsaw Convention. Among these is the United States, which has proposed an amendment that would enable the passenger to sue in his own domicile if the carrier does business in that jurisdiction. The reason for this proposal is explained thus:

In the event a US citizen temporarily residing abroad purchases a Rome to New York to Rome ticket on a foreign air carrier which is generally subject to the jurisdiction of the US, Article 28 would prevent that person

from suing the carrier in the US in a "Warsaw Case" even though such a suit could be brought in the absence of the Convention.

The proposal was incorporated in the Guatemala Protocol amending the Warsaw Convention, which was adopted at Guatemala City on March 8, 1971.[24] But it is still ineffective because it has not yet been ratified by the required minimum number of contracting parties. Pending such ratification, the petitioner will still have to file his complaint only in any of the four places designated by Article 28(1) of the Warsaw Convention.

The proposed amendment bolsters the ruling of this Court that a citizen does not necessarily have the right to sue in his own courts simply because the defendant airline has a place of business in his country.

The Court can only sympathize with the petitioner, who must prosecute his claims in the United States rather than in his own country at less inconvenience. But we are unable to grant him the relief he seeks because we are limited by the provisions of the Warsaw Convention which continues to bind us. It may not be amiss to observe at this point that the mere fact that he will have to litigate in the American courts does not necessarily mean he will litigate in vain. The judicial system of that country is known for its sense of fairness and, generally, its strict adherence to the rule of law.

WHEREFORE, the petition is DENIED, with costs against the petitioner. It is so ordered.

Narvasa, C.J., Gutierrez, Jr., Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, Nocon, and Bellosillo, JJ., concur.

[1] Annex "A," Orig. Records, pp. 4-5.

[2] Ibid., pp. 205-207; penned by Judge Pedro N. Laggui.

[3] Rollo, p. 60; penned by Buena, J., with Gonzaga-Reyes and Abad Santos, Jr., JJ., concurring.

[4] Ibid., p. 79.

[5] 51 O.G. 4933-4934.

[6] Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, 175 SCRA 343; Dumlao v. Comelec, 95 SCRA 392.

[7] A Modern Law of Nations (1950), p. 150.

[8] 528 F. 2d 31.

[9] Berner v. United Airlines, Inc., 149 NYS 2d, 335, 343, 1956; Doering v. Scandinavian Airlines System, 329 F Supp 1081, 1082, 1971; Spencer v. Northwest Orient Airlines, 201 F. Supp. 504, 506, 1962.

[10] Smith v. Canadian Pacific Airways Ltd., 452 F. 2d 798 1971; Campagnie Nationale Air France v. Giliberto, 1838 N.E., 2d 977, 1978; MacCarthy v. East African Airways Corp., 13 Av 17, 385, Records, p. 113, 1974; Sabharwal v. Kuwait Airways Corp., 18 Av 8, 380; Records, p. 115, 1984; Duff v. Varig Airlines, Inc., S.A., 22 Avi, Rollo, p. 186, 1989.

[11] Francisco, Rules of Court, Vol. I, 1973, p. 331.

[12] 452 F. 2d 798.

[13] 171 SCRA 605.

[14] CA G.R.-SP No. 09259, January 22, 1987.

[15] CA G.R.-CV No. 19974, April 8, 1991.

[16] 390 F. Supp. 1165, 1975.

[17] 421 F. Suppl. 127.

[18] *Block v. Compagnie*, 386 F. 2d 232.

[19] 838 N.E. 2d 977, 1978.

[20] *Rosman v. TWA*, 1974; 34 NY 2d 385; 358 NYS 2d 97; 314 N.E. 2d 848; 72 A.L.R. 3d 1282.

[21] *Eck v. United Arab, S.A.A.*, 241 F. Supp. 804-807; *Spencer v. Northwest Orient Airlines*, 201 F. Supp. 504-507.

[22] *Rollo*, pp. 189-199; 388 F. Supp. 1238.

[23] Article 22. (1) In the transportation of passengers, the liability of the carrier for each passenger shall be limited to the sum of 125,000 francs. Where in accordance with the law of the court to which the case is submitted, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,00 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) In the transportation of checked baggage and of goods, the liability of the carrier shall be limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value of delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the actual value to the consignor at delivery.

(3) As regards objects of which the passenger takes charge himself, the liability of the carrier shall be limited to 5,000 francs per passenger.

(4) The sums mentioned above shall be deemed to refer to the French franc consisting of 65-1/2 milligrams of gold at the standard of fineness of nine hundred thousandths. These sums may be converted into any national currency in round figures.

[24] *Varkonyi v. S.A. Impresa De Viacao Airea Rio Grandense (Varig)* 1972; 336 NYS 2d 1973.

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