



## **INGLÉS – PRUEBA ESCRITA**

### **Parte A.- Traducción del español al inglés:**

#### **Ensayos e investigaciones**

##### **Declaración del amigo y socio del piloto fallecido**

Declaró que el piloto estaba familiarizado con la ruta Mutxamel-León ya que la realizaba con frecuencia. Pensaba que probablemente el piloto, con la luz del sol de cara, no vio el buitre y, si lo vio, no tuvo tiempo para desviarse al volar con el piloto automático.

También indicó que el piloto, además de la experiencia que acumulaba como piloto de la aeronave Socata TB20, disponía de licencia de ULM y solía volar un ultraligero TECNAM de plano alto.

##### **Declaración de dos testigos que se encontraban cazando**

Dos personas se encontraban cazando en las inmediaciones del accidente; concretamente, en el coto el Picuerdo, situado en la “Casa de la Sabina”, y Tierra Muerta.

Uno de ellos declaró que sobre las 16:45 h, aproximadamente, escuchó el sonido de una avioneta que pasaba por encima de él y que iría a una altura del suelo de aproximadamente unos 200 o 300 m. A continuación escuchó un impacto bastante fuerte. Observó que la avioneta continuaba su viaje durante unos segundos más e inmediatamente vio que comenzó a entrar en barrena, con el motor en marcha y muy acelerada, tardando en caer al suelo unos 8 s. Tras lo cual, escuchó el impacto de la avioneta contra el suelo.

El otro testigo declaró que, aunque no vio la aeronave, sí oyó el ruido de estar sobrevolando cerca de él. Posteriormente escuchó un impacto bastante fuerte y pasados unos 10 o 12 s oyó otro ruido más fuerte.

##### **Declaración de un testigo que se encontraba esperando una grúa**

Dos personas se encontraban esperando una grúa para su vehículo accidentado en las inmediaciones del accidente; a la altura del kilómetro 43 de la carretera CM-2015, y uno de ellos observó sobre las 16:50 h una avioneta sobrevolando las montañas a una altura que no consideraba excesivamente baja pero sí más de lo que estaba acostumbrado a ver. La aeronave tenía un vuelo constante y no apreciaba nada anormal en ello. Instantes después observó cómo de la avioneta se desprendían



fragmentos que no pudo identificar por la distancia. Acto seguido, la aeronave empezó a hacer subidas y bajadas, desprendiendo un humo negro, hasta que, en uno de esos vaivenes, la avioneta cayó en picado entrando en barrena. Desapareció de su vista y oyó una fuerte explosión.

Declaró que el tiempo que la avioneta tardó en caer al suelo desde que observara el desprendimiento de fragmentos fue de unos 3 o 4 segundos aproximadamente.

El sonido de la explosión fue muy fuerte, no escuchando otro anterior, siendo éste continuado y acompañado, durante unos instantes, por una columna de humo negro que ascendía desde el monte donde había caído la avioneta.

Manifestó que en la zona había bastantes buitres sobrevolando el lugar.

### **Análisis de la actuación del piloto**

Ante la presencia de un buitre, la maniobra evasiva más segura es la de ganar altura; ya que dado que los buitres son aves pesadas y poco ágiles, lo normal es que intenten evitar la colisión con la aeronave realizando un descenso.

No es posible determinar si el piloto divisó el buitre e intentó algún tipo de maniobra evasiva o si la colisión se produjo sin que el piloto advirtiera la presencia del animal. La hora en que se produjo el accidente (16:47 h local) con el Sol incidiendo ligeramente de cara en el piloto y la posibilidad de que llevase conectado el piloto automático pudo contribuir a que el piloto o bien no advirtiera la presencia del animal por no prestar la suficiente atención a la vigilancia exterior o que lo advirtiese sin tiempo suficiente para realizar una maniobra evasiva.

## Parte B.- Traducción del inglés al español:

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

Until the end of 2008, Air Berlin's booking system was organised in such a way that, having selected a journey and a date, the customer would find, as a second step, a table listing the possible flight connections for the chosen date, and showing departure and arrival times and two fares for each flight. A box below that table showed the taxes and charges applicable to the air service selected and the fuel surcharge, while the 'price per person' including all those elements was set within a border. A double asterisk next to the box explained, with reference to the conditions applicable, that a service charge not yet included in the final price might apply. After entering the necessary personal details as a third step, the customer could, in the fourth step, establish the final price of travel, including the service charge.

As a result of the entry into force of Regulation No 1008/2008 on 1 November 2008, Air Berlin modified the second step of its booking system so that the air fare for the selected air service was displayed in the table together with the departure and arrival times and, separately, taxes and charges, the fuel surcharge and the total amount of those separately indicated elements. A box below the table showed the price calculated on the basis of those figures, the service charge and, below that, the final price per person for the selected flight.

The Bundesverband took the view that this presentation of prices did not meet the requirements laid down by the second sentence of Article 23(1) of Regulation No 1008/2008, and brought an action against Air Berlin by which it sought an order requiring Air Berlin to discontinue this practice, and reimbursement of the costs incurred in connection with a warning notice relating to that action. The application of the Bundesverband having been granted by the court of first instance, whose judgment was upheld on appeal, Air Berlin brought an appeal on a point of law before the referring court.

According to the referring court, the outcome of this appeal on a point of law depends on the interpretation of the second sentence of Article 23(1) of Regulation No 1008/2008.

The referring court considers, as does the appeal court, that a service charge such as that levied by Air Berlin constitutes remuneration that is unavoidable and foreseeable at the time of publication, within the meaning of the second sentence of Article 23(1) of Regulation No 1008/2008, and must therefore be included in the final price indicated.

Nevertheless, in the case of computerised booking systems such as that at issue in the main proceedings, the referring court identifies two distinct problems in the interpretation of the second sentence of Article 23(1) of Regulation No 1008/2008, concerning, respectively, the precise point in time at which the final price for air services must be indicated during the booking process, and the way in which that final price is to be shown.

As regards, in the first place, the precise moment in time at which the final price for air services must be indicated during the booking process, the referring court notes that the appeal court held that, taking into account the way in which the air fare was indicated in Air Berlin's booking system, Air Berlin had infringed the second sentence of Article 23(1) of Regulation No 1008/2008. The appeal court considered that that provision, which provides that the final price to be paid is 'at all times' to be indicated, must be understood as meaning that the final price must appear whenever a price is indicated. The appeal court therefore held that that condition is not met if a table merely indicates the prices of the various flights corresponding to the selection criteria entered by the customer, without including the service charge, or indicating such charges separately.

According to the referring court, it is necessary to take account of the consumer protection objective of Article 23(1) of Regulation No 1008/2008, which is apparent from recital 16 to that regulation as well as from the wording of Article 23 and its title, and which is to ensure that there is information and transparency with regard to the prices for air services (judgment in *ebookers.com Deutschland*, C-112/11, EU:C:2012:487, paragraph 13). According to recital 16, that price transparency must enable customers to compare effectively the prices for air services of different air carriers. The referring court states that Article 23 was introduced in order to combat the former practice of air service providers of publishing fares that excluded taxes, charges and fuel surcharges (see page 10 of the Proposal for a Regulation COM(2006) 396 final of the European Parliament and of the Council on common rules for the operation of air transport services in the Community (recast), presented by the European Commission, and points 8.1 and 8.4 of the Opinion of the European Economic and Social Committee of 31 May 2007 on that proposal (OJ 2007 C 175, p. 85)).

The referring court also notes that neither Article 23(1) of Regulation No 1008/2008 nor any other provision of that regulation contains a precise statement as to the point in time at which the final price must be indicated. Nevertheless, the fourth sentence of Article 23(1) of that regulation provides that optional price supplements must be communicated 'at the start of any booking process'. However, the referring court considers that the EU legislature's declared intention of ensuring that prices can be compared effectively suggests that the expression 'at all times' in the second sentence of Article 23(1) of Regulation No 1008/2008 should be interpreted in conjunction with the expression 'at all times' as used in recital 16 to the regulation. From that perspective, the final price referred to in that provision would have to be indicated at an earlier stage than is required in the case of the optional price supplements mentioned in the fourth sentence of Article 23(1) of the regulation. Construed in this way, the obligation to show the final price of air services at an early stage in the booking process could mean that the price must be indicated in the first read-out of the air service corresponding to the customer's requirements as to destinations and dates.