



## **Passengers whose flights are delayed may be entitled to compensation**

*When they reach their final destination three hours or more after the scheduled arrival time, they (like passengers whose flights are cancelled) may seek flat-rate compensation from the airline, unless the delay is caused by extraordinary circumstances*

In a judgment delivered today, the Court of Justice clarifies the rights which passengers whose flights are delayed have against airlines by virtue of the Community regulation on compensation and assistance to air passengers<sup>1</sup>.

That regulation provides that, in the event of cancellation of a flight, passengers are entitled to flat-rate compensation of between EUR 250 and EUR 600. In contrast, the regulation does not expressly provide that passengers whose flights are delayed also have such a right.

In today's judgment, the Court answers a number of questions which the Bundesgerichtshof (Germany) and the Handelsgericht Wien (Austria) have referred to it. Those national courts must decide cases in which two sets of passengers have claimed – from Condor and Air France respectively – the compensation provided for by the regulation in the case of flight cancellation, on the ground that, with those airlines, they reached their airports of destination 25 and 22 hours after the scheduled arrival time.

First of all, the Court states that a flight cannot be regarded as cancelled merely on the ground of the duration of a delay, even if it is long. A flight which is delayed, irrespective of the length of the delay, cannot be regarded as cancelled when, apart from the departure time, all other aspects of the flight as they were originally planned, including in particular the itinerary, remain unchanged. If, however, the airline, after the scheduled departure time, arranges for the passengers to be transported on a different flight (that is, a flight which was planned independently of the flight for which the passengers had made their bookings), the flight may, as a rule, be regarded as cancelled. For the purposes of that classification, none of the following factors is conclusive: the details on the airport departures board or information given by staff, the fact that the passengers' luggage is returned to them or that they are issued with new boarding cards or the fact that the composition of the group of passengers has changed.

Next, with regard to the right to compensation, provided for by the regulation for passengers whose flight has been cancelled, the Court holds that passengers who are affected by a delay sustain similar damage, consisting in a loss of time, and thus are in a comparable situation. Passengers on a flight which is cancelled at short notice have a right to compensation even when they are re-routed by the airline on another flight, if they lose three hours or more in relation to the duration originally planned. There is no justification for treating passengers whose flight is delayed any differently when they reach their final destination three hours or more after the scheduled arrival time.

Finally, the Court observes that such a delay does not give rise to a right to compensation if the airline can prove that the delay was caused by extraordinary circumstances which are beyond its

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<sup>1</sup> Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

actual control and which could not have been avoided even if all reasonable measures had been taken. The Court recalls, on that point, that a technical problem in an aircraft cannot be regarded as an 'extraordinary circumstance', unless that problem stems from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of Community law or the validity of a Community act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which the same issue is raised..

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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