



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 64/11

Luxembourg, 28 June 2011

Advocate General's Opinion in Case C-83/10
Sousa Rodriguez and others v Air France

In the opinion of Advocate General Sharpston, passengers may claim reimbursement of reasonable expenditure incurred where an airline fails to provide care and assistance in the event of a cancelled flight

That compensation may not be offset by the compensation to be paid when a flight is cancelled.

Under the Air Passenger Compensation Regulation¹, passengers of a flight that is cancelled should be able either to obtain reimbursement of their tickets or to obtain re-routing. The airline should also provide adequate care (e.g. accommodation, meals, and telephone calls) while awaiting a later flight. Where the flight is cancelled with little or no notice and where there are no extraordinary circumstances, the passengers are also entitled to compensation, the amount varying depending on the distance of the planned flight. The Regulation also states that it applies without prejudice to a passenger's right to further compensation and that any compensation granted under the Regulation may be deducted from such compensation.

The Pato Rodríguez family, the López Sousa family, and Mr. Rodrigo Manuel Puga Lueiro were all booked on an Air France flight from Paris to Vigo on 25 September 2008. The flight took off as planned, but returned to Charles de Gaulle airport a short time later due to a technical problem with the aircraft. All were rebooked onto alternative flights the following day; however, only Mr. Puga Lueiro was offered assistance by the airline in the intervening time. The Pato Rodríguez family were rerouted to Oporto and had to take a taxi from there to their home city of Vigo.

All the passengers have taken legal action to claim the €250 compensation each for the cancellation of the flight. In addition the Pato Rodriguez family are seeking €170 to cover the cost of the taxi fare and €650 per person by way of non-material damages. The López Sousa family are also claiming €650 each for non-material damages plus the cost of meals in the airport and an extra day in boarding kennels for their dog. Mr Puga Lueiro is seeking €300 non-material damages.

The national court has referred questions to the Court of Justice as to whether the events in question could be considered a "cancellation" and whether the "further compensation" that a passenger may claim concerns the types of compensation covered by the Regulation (such as care costs) or whether it can extend to other damage, such as non-material damage.

In her opinion, Advocate General Eleanor Sharpston finds that a flight is "cancelled" within the meaning of the Regulation if, even after departing as planned, it does not arrive at its scheduled destination but returns to the airport of departure. A flight is intended to carry passengers and their baggage from A to B. When it departs from A as planned but then returns to A and proceeds no further, the flight cannot be said to have operated. Nothing of the essence of the operation has been achieved, as the carrier has carried no-one, and nothing, anywhere.

On the question of compensation, the Advocate General finds that the reference to "further compensation" cannot be limited to the compensation of the type provided by the Regulation: the Regulation does not set any limitation on the type of damage for which a passenger may make a

¹ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11th 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).

claim. That question must be determined in light of national law, and may, therefore, include non-material damage.

Miss Sharpston further considers that a passenger may seek compensation for expenditure incurred where the airline has failed to provide care and assistance. Whilst such compensation is not explicitly provided for in the Regulation, it is clear that the obligation to provide care and assistance would be nugatory if it could not be enforced. In addition the obligation to provide care and assistance is in no way contingent on a request by the passenger at the time, and such a request is not necessary in order to seek compensation.

Finally, the Advocate General finds that the reimbursement of such expenses should not be considered as “further compensation” from which other compensation granted under the Regulation may be deducted. The duty to pay compensation for a cancelled flight and the duty to provide care and assistance are concurrent and cumulative – the airline may not escape liability by offsetting one against the other.

NOTE: The Advocate General’s Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 European Union law or the validity of a European Union 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 a similar issue is raised.

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355