



Press and Information

Court of Justice of the European Union

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Judgment in Case C-22/11
Finnair Oyj v Timy Lassooy

An air carrier must compensate passengers when they have been denied boarding because their flight was rescheduled as a result of a strike at the airport two days beforehand

Compensation for denied boarding applies not only to cases of overbooking, but also to those relating to other grounds, such as operational reasons

The regulation on compensation and assistance to passengers ('the regulation')¹ grants certain rights to air passengers departing from or flying to an airport located in a Member State. It defines 'denied boarding' as the refusal by an air carrier to carry passengers, although they wish to travel and have presented themselves in time for boarding and have a confirmed reservation. However, the regulation provides for cases where there are grounds for a carrier to deny boarding. With the exception of those cases, passengers are entitled to be compensated immediately, be reimbursed their tickets or be re-routed to their final destination and cared for while awaiting a later flight.

Following a strike by staff at Barcelona Airport on 28 July 2006, the scheduled 11.40 flight from Barcelona to Helsinki operated by Finnair had to be cancelled. In order that the passengers on that flight should not have too long a waiting time, Finnair decided to reschedule subsequent flights. Accordingly, those passengers from the flight in question were taken to Helsinki on the 11.40 flight the following day (29 July 2006) and also on a specially arranged flight departing later that day at 21.40. The consequence of that rescheduling was that some of the passengers who had bought their tickets for the 11.40 flight on 29 July 2006 had to wait until 30 July 2006 to go to Helsinki on the scheduled 11.40 flight and on a 21.40 flight specially arranged for the occasion. Similarly, some passengers, like Mr Lassooy, who had bought their tickets for the 11.40 flight on 30 July 2006 and who had duly presented themselves for boarding, went to Helsinki on the special 21.40 flight later that day. None of these passengers received any compensation from Finnair.

Taking the view that Finnair had for no valid reason denied him boarding, Mr Lassooy brought an action before the Finnish courts for an order against that airline to pay him compensation of €400 provided for by the regulation in respect of intra-Community flights of more than 1 500 kilometres.

In that context, the Korkein oikeus (Supreme Court, Finland) – before which the case was brought at final instance – seeks guidance from the Court of Justice regarding the scope of the concept of 'denied boarding' and also as to whether an air carrier may rely on extraordinary circumstances and validly deny passengers boarding on flights after the flight which was cancelled because of such circumstances or exempt itself from its obligation to compensate passengers thus denied boarding.

In its judgment today, the Court holds that **the concept of 'denied boarding' relates not only to cases of overbooking but also to those concerning other grounds, such as operational reasons.**

¹ 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).

That interpretation follows not only from the wording of the regulation, but also from its objective, namely that of ensuring a high level of protection for air passengers. With the aim of reducing the number of passengers denied boarding against their will, which was too high, the EU legislature introduced new legislation in 2004 construing the concept of 'denied boarding' more broadly, covering all circumstances in which an air carrier refuses to carry a passenger. Consequently, limiting the scope of 'denied boarding' exclusively to cases of overbooking would have the practical effect of substantially reducing the protection afforded to passengers, by denying them all protection, even if they find themselves in a situation for which, as in the case of overbooking, they are not responsible. That would be contrary to the aim of the legislature.

In addition, the Court states that **the occurrence of extraordinary circumstances – such as a strike – resulting in an air carrier rescheduling subsequent flights does not give grounds for denying boarding or for exempting that carrier from its obligation to compensate passengers** denied boarding on those later flights.

In that connection, the regulation lays down, first, the cases where there are grounds for denying boarding, in particular for reasons of health, safety or security, or because of inadequate travel documentation. The Court considers that a denial of boarding such as that in question in the present case may not be placed on the same footing as those reasons, since the ground for denying boarding in question is not attributable to the passenger.

On the other hand, that situation is comparable to a denial of boarding due to initial overbooking by the carrier for economic reasons. Thus, Finnair had reallocated Mr Lassooy's seat in order to be able to carry other passengers, itself choosing which passengers to carry.

Although that reallocation was done in order to avoid the passengers affected by the flights cancelled on account of the strike having excessively long waiting times, Finnair could not rely on the interest of other passengers and increase considerably the situations in which it would have reasonable grounds for denying boarding. Such an increase would necessarily have the consequence of depriving passengers on the subsequent flights of all protection, which would be contrary to the objective of the regulation.

Second, it is apparent from the regulation that an air carrier is not required to pay compensation in the event of cancellation of a flight due to 'extraordinary circumstances', that is, those which could not have been avoided even if all reasonable measures had been taken. That is the case of the passengers denied boarding on the day of the strike. However, the EU legislature did not intend that the compensation due to passengers in the event of denied boarding against their will may be precluded on grounds merely linked to the occurrence of 'extraordinary circumstances'. The Court notes that extraordinary circumstances may relate only to a particular aircraft on a particular day, which is not the case when boarding is denied because flights are rescheduled as a result of extraordinary circumstances affecting an earlier flight.

Nonetheless, the Court points out that that conclusion does not prevent air carriers from seeking compensation from any person who has caused the denied boarding, including third parties. Such compensation may reduce or even remove the financial burden borne by the carriers.

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 judgment is published on the CURIA website on the day of delivery.

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