

Case C-270/20**Request for a preliminary ruling****Date lodged:**

18 June 2020

Referring court:

Landesgericht Korneuburg (Austria)

Date of the decision to refer:

16 June 2020

Appellants:

AG, a minor, represented for legal purposes

MG, a minor, represented for legal purposes

HG, a minor, represented for legal purposes

Respondent:

Austrian Airlines AG

REPUBLIC OF AUSTRIA

Landesgericht Korneuburg [...]

The Landesgericht Korneuburg (Regional Court, Korneuburg, Austria), in its capacity as the appellate court, [...], in the case brought by the appellants [1] **AG**, a minor, [2] **MG**, a minor and [3] **HG**, a minor, all represented for legal purposes by M***** A***** E***** and A***** G*****, [...] against the respondent **Austrian Airlines AG**, 1300 Wien-Flughafen, [...] in respect of **EUR 600** [...], by reason of the appellants' appeal against the judgment of the Bezirksgericht Schwechat (District Court, Schwechat) of 17 October 2019 (dated 2 December 2019) [...] has made, in closed session, the following

ORDER

[I] The following [**question** is] referred to the Court of Justice of the European Union for a **preliminary ruling** pursuant to Article 267 TFEU:

[1] Is Article 7(2)(b) of 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 (the Air Passenger Regulation; ‘the Regulation’) to be interpreted as meaning **that the [Or. 2] air carrier may reduce the entitlement to compensation under Article 7(1)(b) of the Regulation also in the case where, as a result of the cancellation of the flight booked, the passengers are offered an alternative flight the scheduled time of departure and the scheduled time of arrival of which are each 11:55 hours earlier than the flight times of the cancelled flight?**

[II] The proceedings are stayed pending receipt of the preliminary ruling of the Court of Justice of the European Union [...].

Grounds:

The appellants (or those representing them for legal purposes) booked the respondent’s flight OS 865 from Vienna (VIE) to Cairo (CAI) scheduled for 24 June 2017. The scheduled departure time was 22:15, the scheduled arrival time 01:45 on the following day. The flight was cancelled on 24 June 2017; the respondent rebooked the appellants with their consent (or with that of those representing them for legal purposes) on a flight connection VIE – CAI with the scheduled departure time of 10:20 on 24 June 2017 and the scheduled arrival time of 13:50 on 24 June 2017. According to the great circle method, the distance VIE – CAI is more than 1 500 km but less than 3 500 km. The respondent made an out-of-court payment of EUR 200 to each of the appellants.

On the basis of Article 5(1)(c), in conjunction with Article 7(1)(b), of the Regulation, the **appellants** request an award of (a further) EUR 200 each and claim to be entitled to the full compensation payable under Article 7(1)(b) of the Regulation. Although they did not arrive late at CAI, they arrived considerably earlier than planned, which, they submit, affected them adversely to the same extent as if they had arrived with a significant delay. They submit that they accepted the rebooking in question only because they would have **[Or. 3]** lost two days of their vacation if they had accepted the alternative rebooking offered.

The **respondent** disputes the claim, requests that the appeal be dismissed and submits that the conditions exist for the reduction of entitlement under Article 7(2) of the Regulation.

By the **judgment** under appeal, the Bezirksgericht Schwechat, ruling at first instance, dismissed the form of order sought. On the basis of the undisputed facts of the case, as set out at the beginning, it came to the conclusion in law that, according to the clear wording of Article 7(2) of the Regulation, that provision is also applicable to cases where the passenger reached his or her final destination on an earlier flight [than the cancelled one]. The appellants suffered no loss of time

due to delay; indeed, they even had more time available at their holiday destination. Since the appellants were free to take either the earlier flight or any other flight, or even not to travel at all and to demand a refund of the ticket price, a teleological reduction of Article 7(2) of the Regulation was not appropriate.

The appellants **appealed** against that judgment to the referring court, requesting that the judgment under appeal be amended so as to allow the application. The appellants argue that the purpose of Article 7(2) of the Regulation is clearly to 'reward' air carriers which, in the event of cancellation, ensure that alternative carriage is provided as rapidly as possible. This close temporal connection, which allows for that 'reward', does not, however, exist in the case of alternative carriage brought forward by approximately twelve hours.

The respondent essentially argues against this in its **response to the appeal** by submitting that the conclusion reached by the court of first instance cannot be criticised. [Or. 4]

It is for the referring court, **as the appellate court**, to rule on the appellants' claims at second and final instance. It must limit itself to examining questions of law, on the basis of provisions laid down in national procedural law [...].

Concerning the question referred:

In the present case, it is necessary to examine whether the exception in Article 7(2) of the Regulation must be reduced teleologically to the effect that this rule does not apply not only if – in the specific case of point (b) relevant here – the arrival time of the alternative flight is more than three hours after the scheduled arrival of the cancelled flight, but also if the flight times of the alternative flight are, at least to a similar degree, earlier than those of the cancelled flight. In the view of the referring court, a teleological reduction, which the appellants are in effect seeking, is appropriate where the temporal limits imposed by Article 7(2) of the Regulation are infringed to the same (or at least a comparable) extent in the opposite direction.

First of all, account must be taken of the fact that the Regulation regulates compensation claims on a lump-sum basis and without reference to what disadvantage the passenger actually suffered as a result of cancellation or delayed arrival at the final destination. It is therefore irrelevant whether the flight to be specifically assessed is an outward or return flight from the applicant's place of residence, nor can the purpose of the flight be decisive. However, on the basis of such a lump-sum and standardised approach, account must be taken of the fact that a departure from the place of departure at a significantly earlier time (in comparison with the booked flight which has been cancelled) may involve disadvantages for the passenger which are as serious as those resulting from a delayed arrival at the final destination, as defined in Article 7(2) of the Regulation. For example, [Or. 5] if the de facto bringing forward relates to the departure from the place of holiday or the place of the passenger's foreign

professional activity, that passenger may incur the same disadvantages as in the case of a delayed arrival, which the legislature appears to have had in mind when it created the possibility of reduction under Article 7(2) of the Regulation. However, even in the event of an early arrival, it must be assumed that the passenger's scheduling - even if it does not relate to the journey itself - may be adversely affected to an appreciable extent, for example because the consequences of an early journey may give rise to significant difficulties.

Since this question has not yet been clarified in the case-law of the Court of Justice – in so far as the referring court is aware – and since there are no known decisions of national courts in which that question required clarification, the court is obliged to refer the matter to the Court of Justice.

[...]

Landesgericht Korneuburg, [...]

Korneuburg, 16 June 2020

[...]

WORKING DOCUMENT