

Anonymised version

Translation

C-191/19 — 1

Case C-191/19

Request for a preliminary ruling

Date lodged:

27 February 2019

Referring court:

Landgericht Frankfurt am Main (Germany)

Date of the decision to refer:

20 February 2019

Applicant and appellant:

OI

Defendant and respondent:

Air Nostrum Lineas Aereas del Mediterraneo SA

Landgericht Frankfurt am Main

24th Civil Chamber

[...]

Order

In the case of

OI [...]

applicant and appellant

[...]

Air Nostrum Lineas Aereas del Mediterraneo SA, ... Valencia,

defendant and respondent

[...]

At the hearing on 27 November 2018, the 24th Civil Chamber of the Landgericht Frankfurt am Main [...] made the following order:

I. The following questions on the interpretation of Articles 4(3), 5(1)(c)(iii) and 7(1)(b) of Regulation (EC) No 261/2004 of [Or. 2] 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 Rights Regulation) are referred to the Court of Justice of the European Union for a preliminary ruling:

1. Does the change in reservation of a passenger at check-in, who has a confirmed reservation on a specific flight, to a later flight against his will constitute denied boarding within the meaning of Article 4(3) of the Air Passenger Rights Regulation, if the flight on which the passenger had a confirmed reservation is then carried out?

2. If Question 1 is answered in the affirmative: Does Article 5(1)(c)(iii) of the Air Passenger Rights Regulation apply by analogy in the event of denied boarding within the meaning of Article 4(3) of the Air Passenger Rights Regulation?

II. The appeal proceedings are stayed. [Or. 3]

Grounds

The applicant had confirmed reservations with the defendant on flight IB 8505, to be carried out by the defendant, on 3 October 2015 from Jerez (scheduled time of departure 13.35) to Madrid (scheduled time of arrival 14.45) and on the connecting flight AB 5325 on 3 October 2015 from Madrid (scheduled time of departure 20.00) to Frankfurt (scheduled time of arrival: 22.40).

The applicant's reservation was changed from flight IB 8505 to flight IB 8507. Flight IB 8507 departed from Jerez at approximately 17.55 and landed in Madrid at approximately 19.05. The connecting flight AB 5325 departed on schedule at 20.00, with the result that the applicant arrived in Frankfurt without being delayed, but rather ten minutes ahead of schedule.

The applicant, after a partial withdrawal in the amount of EUR 200, claimed compensation of EUR 400 under the Air Passenger Rights Regulation at first instance before the Local Court.

The Local Court dismissed the claim on the ground that the applicant had reached her final destination within the time limit laid down by Article 5(1)(c)(iii) of the Air Passenger Rights Regulation.

The applicant appealed against that decision, further claiming that she should receive a payment of EUR 200. The applicant claims, in essence, that on the basis of the Air Passenger Rights Regulation she is entitled to compensation in the amount of EUR 200, as she was denied boarding. That right, as in the case of cancellation provided for in Article 5(1)(c)(iii) of the Air Passenger Rights Regulation, cannot be restricted.

The decision of the referring court of appeal is contingent on the answer to the questions referred to the Court of Justice of the European Union for a preliminary ruling.

The court of appeal begins by considering that rights to compensation arise only if the present situation is that of denied boarding as a result of the change in reservation. It is not a cancellation — the only other interruption to service covered by the Air Passenger Rights Regulation — because the flight that the applicant was originally due to board (IB 8505) was carried out and the flight schedule was not entirely abandoned. Accordingly rights to compensation [Or. 4] under the direct application of Article 5(1)(c)(iii) of the Air Passenger Rights Regulation are excluded in these circumstances.

This is the subject of the first question referred for a preliminary ruling. The court of appeal assumes that there are good arguments for the change in reservation of a passenger to another flight against her will to come within the scope of Article 4(3) of the Air Passenger Rights Regulation where the original flight is subsequently carried out. Moreover, it is likely that an operating air carrier could circumvent the legal consequences of the Air Passenger Rights Regulation by changing a passenger's reservation to later flight capacities, resulting in a degree of latitude over the passenger's rights being assigned to it, which would run counter to the objectives of the Air Passenger Rights Regulation (the protection of passengers in particular). This also corresponds to the predominant view in the German case-law and doctrine [...].

If the answer to the first question referred for a preliminary ruling is in the affirmative, the question whether Article 5(1)(c)(iii) of the Air Passenger Rights Regulation applies by analogy in the event of denied boarding within the meaning of Article 4(3) of the Air Passenger Rights Regulation is relevant to the decision. As it is, this is subject to factual conditions. This is the subject of the second question referred for a preliminary ruling.

The Bundesgerichtshof (Federal Court of Justice) has expressly left this question open to date [...].

The court of appeal is of the view that there are good arguments for such an analogy, based decisively on the meaning and purpose of the Air Passenger Rights

Regulation together with the right to compensation under Article 7 and the exclusion from liability under Article 5(1)(c) of that regulation.

The right to compensation is intended primarily to reduce, by means of financial compensation, any trouble and inconvenience, as a result of the loss of time and damage suffered, due to a given interruption to service covered by the regulation. In those circumstances, the purpose of Article 5(1)(c) of the Air Passenger Rights Regulation must be interpreted, as intended by the EU legislature, that, in the situations covered by that provision, passengers would not be troubled or inconvenienced in a way [Or. 5] that would require financial compensation to be awarded. Passengers must accept without compensation that, in such situations, they are (immaterially) affected in the same way, because the transport required of the operating air carrier on the strength of the confirmed reservation was not operated as booked. Nor does the fact that, on the basis of the Air Passenger Rights Regulation, (immaterially) affected passengers will not be awarded financial compensation raise any concerns from the point of view of consumer protection in general and passenger protection in particular, since the regulation is intended to protect passengers' minimum rights alone.

The regulatory context created by Articles 5(1)(c) and 7 of the Air Passenger Rights Regulation could be applied to cases of denied boarding. From the point of view of a passenger, it makes no material difference whether or not denied boarding or cancellation is the cause of him not being able to take the flight. In both cases, the passenger is affected because he was not able to board as booked. This is also made clear by the fact that the difference between denied boarding and cancellation hinges on whether the flight in question is still carried out or the flight schedule was entirely abandoned. However, whether a single passenger is denied boarding within the meaning of Article 4(3) of the Air Passenger Rights Regulation, although the flight schedule is otherwise maintained, or whether a single passenger is denied boarding within the meaning of Article 5 of the Air Passenger Rights Regulation, because the flight schedule has been abandoned, the type and degree of trouble and inconvenience caused to the passenger is unchanged.

That view is also borne out by the fact that such trouble and inconvenience is then caused immediately to the passenger when it is explained to him that he will not be able to board as booked. Passengers often learn only at a later stage whether the reason they were not able to board was denied boarding or cancellation. It is therefore not immediately apparent to a passenger when he is affected whether he was unable to board as a result of a flight schedule being abandoned by an air carrier.

The analogy cannot be discarded on the basis of the argument that the award of compensation in the event of denied boarding must have, at least [Or. 6] in some rudimentary form, the character of a penalty, since a claim for compensation is not a claim for punitive damages.

[...]

Frankfurt am Main, 20 February 2019

[...]

WORKING DOCUMENT