Anonymised version

Case C-190/19

Request for a preliminary ruling

Date lodged:

27 February 2019

Referring court:

Amtsgericht Hamburg (Germany)

Date of the decision to refer:

8 February 2019

Applicants:

MG

NH

Defendant:

Germanwings GmbH

Amtsgericht (Local Court), Hamburg

[...]

Order

In the case of

1) **MG**, [...] Lübeck

– applicant –

2) **NH**, [...] Lübeck

– applicant –

[...]

v

Germanwings GmbH, [...] Cologne

– defendant –

[...]

the Amtsgericht Hamburg orders on 8 February 2019:

1 The proceedings are stayed.

2 The following question on the interpretation of EU law is referred to the Court of Justice of the European Union pursuant to Article 267 TFEU:

> Can a right to compensation under Article 7 of Regulation (EC) No 261/2004 also exist when a passenger does not catch a directly connecting flight due to a relatively minor delay in arrival, with the result that there is a delay in arrival at the final destination of three hours or more, but the two flights were operated by different air carriers and the booking confirmation was issued by a travel agency who combined the flights for its customer? **[Or. 2]**

Grounds

The applicants are claiming compensation from the defendant on account of a flight journey.

The applicants booked a flight for 11 October 2014, composed of two parts. The applicants had arranged first to fly from Hamburg to Stockholm on Flight 4U 7214, departing at 06.45 (all times are local times) and arriving at 08.10. The booking confirmation for that flight contained the statement 'Operated by EUROWINGS'. The component '4U' of the flight number is the defendant's IATA code. The applicants were due to take the connecting Deutsche Lufthansa AG flight LH 9108, departing at 09.05, to Newark, where they were due to arrive at 12.05. Flight 4U 7214 landed in Stockholm with a delay of 20 minutes, at 08.30.

On the basis of the evidence, the court takes the view that the applicants were unable to take the connecting flight on account of the delay to Flight 4U 7214. The court further considers — as also stated in the applicants' submission — that they were re-routed, with a stopover in Munich, from Stockholm to Newark, where they landed 6 hours and 30 minutes later than originally planned.

In the court's view, the defendant must be regarded as the operating air carrier, within the meaning of Article 2(b) of Regulation (EC) No 261/2004, in respect of Flight 4U 7214. However, the court considers, on the basis of the evidence, that

Flight 4U 7214 was performed with an aeroplane and crew of the airline Eurowings. The applicants have not succeeding in providing proof of the fact that an aeroplane and a crew belonging to the defendant were used. Nonetheless, the court now is of the opinion that the defendant must be regarded as the operating air carrier, within the meaning of Article 2(b) of Regulation (EC) No 261/2004, irrespective of whose aeroplane and crew were used. Indeed, the court is of the view that, in accordance with [...] [national case-law], the air carrier under whose IATA code the flight was performed, not the air carrier whose aeroplane and crew were leased, is to be regarded as the operating air carrier also in the case of a wet-lease. [...] [Amendment] of the German case-law [...]. The Court now considers that the air carrier to whom the aeroplane and crew belong but under whose IATA code the flight was not booked can be regarded as the operating air carrier solely in the event of code sharing. However, the defendant has not claimed that the situation in the present case involves code sharing. [...] **[Or. 3]** [Reasons why the defendant should have made a claim in that connection]

Moreover, the referring court takes the view that no extraordinary circumstances, within the meaning of Article 5(3) of Regulation (EC) No 261/2004, were responsible for the delay to Flight 4U 7214. The information obtained from Eurocontrol did not support the defendant's arguments relating to a delayed clearance for take-off.

Subsequently, the outcome of the present dispute turns on whether Regulation (EC) No 261/2004 should be interpreted as meaning that the defendants are responsible for the delay at the final destination, although the missed connecting flight was carried out by a different airline, both segments of the flight were booked for the applicants through a travel agency and the flight carried out by the defendant was subject to only a relatively short delay.

The present situation is similar to the situation in the dispute that came before the Court of Justice of the European Union in Case C-186/17 [*flightright*], in which the Advocate General indicated that the airline should be held liable and in which the request for a preliminary ruling was then however subsequently withdrawn. The present situation is also similar to the situation in the request for a preliminary ruling from the Bundesgerichtshof (Federal Court of Justice) of 19 July 2016 [...] [*Markmann and Others*, C-479/16, removed from the Court Register by order of the Court of 11 October 2016].

[...]

[...] [Signatures]