

Case C-414/19

Request for a preliminary ruling

Date lodged:

28 May 2019

Referring court:

Amtsgericht Erding (Germany)

Date of the decision to refer:

22 May 2019

Applicants:

E.M.

M.S.

Defendant:

Eurowings GmbH

Amtsgericht Erding

[...]

In the case of

1) **E.M.**
- Applicant -

2) **M.S.**
- Applicant -

[...]

v

Eurowings GmbH [...]

- Defendant -

[...]

concerning a claim [for compensation]

the Amtsgericht Erding (Local Court of Erding, Germany) [...] issued, on 22 May 2019, on the basis of the hearing held on 3 May 2019, the following

Order

I. The proceedings are stayed.

II. The following question concerning an interpretation of EU law is referred to the Court of Justice of the European Union for a preliminary ruling, pursuant to Article 267 TFEU:

In the case of an air route consisting of several segments, are flights that carry connecting passengers and have not been affected by a disruption to the connecting flight also to be taken into account **[Or. 2]** when determining the distance pursuant to Article 7(1) of Regulation (EC) No 261/2004?

Grounds:

I.

1. The applicants had a confirmed joint booking for a flight connection operated by the defendant on 28 May 2018. It consisted of two segments. The first flight, EW171, from Cancun (CUN) to Cologne-Bonn (CGN) was scheduled to arrive at Cologne-Bonn at 5:35 p.m. The connecting flight, EW 86, was scheduled to take off from Cologne-Bonn at 6:50 p.m. and arrive at Munich (MUC) at 8:00 p.m.
2. The applicants arrived at Cologne-Bonn on schedule on flight EW 171. Flight EW 86 was cancelled, however.
3. The distance between Cancun and Munich is 8 912.13 km. The distance between Cologne-Bonn and Munich is 455.99 km.
4. The defendant paid compensation in the amount of EUR 250.00 to each applicant pursuant to Articles 5 and 7 of Regulation (EC) No 261/2004. The applicants are seeking a further EUR 350.00 each, however.

II.

5. The defendant determined the compensation on the basis of the segment affected by the cancellation, from Cologne-Bonn to Munich. The applicants take the view

that the flight not affected by the cancellation, from Cancun to Cologne-Bonn, should be taken into account.

6. The decisive question for the referring court is therefore from which starting location the distance should be determined pursuant to Article 7 of Regulation (EC) No 261/2004.
7. Pursuant to Article 7(1), in determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time. Connecting flights are therefore included in the distance if the connecting flights themselves have not been cancelled, for instance if they could not be reached owing to the cancellation of the flight carrying connecting passengers. The regulation does not contain a comparable provision regarding the first point of departure and flights carrying connecting passengers. **[Or. 3]**
8. The issue has not yet been clarified by the Court of Justice.
9. In its judgment in Case C-559/16, the Eighth Chamber of the Court of Justice held that the concept of 'distance', relates in the case of air routes with connecting flights, only to the distance between the first point of departure and the final destination, regardless of the distance actually flown. That case was based on a different starting point from that in the present case, however. In the decision taken in that case, it was actually the first of two flights that was delayed. The disruption therefore affected both segments. According to the question referred, the Court therefore had to decide whether the direct distance between the point of departure of the first flight and the point of arrival is decisive. However, no clarification was provided as to which point of departure is to be taken as the basis. The reasons given for the decision were largely based on the principle of equal treatment and the inconvenience typically suffered.
10. In its judgment in Case C-537/17, the Eight Chamber ruled that a transport operation must be regarded as a 'flight' within the meaning of Article (3)(1)(a) of the regulation, even if a stopover with a change of aircraft is made. At the same time, the reasons given in the decision indicate that such a transport operation can also consist of several flights. Neither the decision nor the request for a preliminary ruling from the Landgericht Berlin (Regional Court of Berlin) address the amount of compensation. The Regional Court of Berlin expressly requested an interpretation of Article (3)(1) of the regulation, which relates to the scope of the latter.
11. Judgments of the Court of Justice according to which stopovers or a connection to another flight are disregarded therefore exist in a different context. It is emphasised in both judgments that the loss of time and the associated inconvenience constitute the reason for the entitlement to compensation. This is in line with settled case-law of the Court of Justice (see, for example, [...] [judgment of 23 October 2012, *Nelson and Others*, C-581/10 and C-629/10,

EU:C:2012:657]). This must be assessed separately if the facts and circumstances of the case are significantly different. A request for a preliminary ruling from the Amtsgericht Düsseldorf (Local Court of Düsseldorf), Case C-368/17, which related to the present question amongst other things, was removed from the register, as was a request from the Landgericht Hamburg (Regional Court of Hamburg) (Case C-557/18).

III.

12. The national courts answer the question of law differently.
13. [description of the national case-law] [...] **[Or. 4]** [...]
14. It is common ground that the final destination of the passenger is taken as the basis. This is expressly provided for in Article 7(1) of the regulation. The question of which point of departure is to be taken as the basis is not regulated in Article 7, however. In the aforementioned decisions, the national courts generally proceed on the basis of the inconvenience suffered and the principles of equal treatment, in line with settled case-law of the Court of Justice.

IV.

15. For the referring court, reasons of equal treatment and appropriate compensation for the inconvenience militate against adding the distance of flights operated without disruption to the distance of the disrupted flight.
16. The inconvenience of a cancelled flight essentially resides in the fact that re-routing must be organised and the passenger suffers a loss of time and a deviation from his travel plan. Such inconvenience is typically greater when a longer route is cancelled. For shorter, intra-European routes, there are generally more connections available — including those on other means of transport. Re-routing can be effected with less effort in such cases, and the remaining ‘leeway’ ([...][judgment of 23 October 2012, *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraph 35]) is greater. This accords with the fact that the requirements imposed on re-routing for **[Or. 5]** reducing the entitlement pursuant to Article 7(2) are more stringent if the distance is shorter. This difference is more relevant in the case of cancelled flights than it is in the case of delays. Since cancellation — in addition to denial of boarding — is the original case of application of the regulation, however, it would appear appropriate to base the interpretation on the case of cancellation first of all.
17. Since the regulation is a general system providing for flat-rate compensation, an interpretation that ensures equal treatment beyond this individual case is required. It is appropriate, in line with Article 7 of the regulation, to focus on the effects at the final destination in this respect [OMISSIS]. This means that passengers of a cancelled flight who suffer the same inconvenience up to the same final

destination due to the same disruption are provided with an equal amount of compensation. For the referring court, it would not appear appropriate to grant more compensation to the applicants due to the cancellation of flight EW 86 than other passengers on that flight travelling to the same destination. However, the difference between passengers who have booked a direct flight and passengers who have booked an indirect flight can be justified on the basis of the different inconvenience that is typically suffered.

18. Moreover, in comparison with passengers who are unable to make the second segment as planned owing solely to a disruption on the first segment, a disruption to the entire route can then also be attributed to a single company in the frequently occurring cases where transport is provided by various companies. Accordingly, Article 7 provides that the determination of the distance extends to flights to final destinations that cannot be reached as scheduled due to cancellation. In the present case, the disruption is not imputable to the first flight segment and the leeway is not restricted to the first flight segment. The non-inclusion of the on-schedule flight carrying connecting passengers is in line with the balance between the interests of air passengers and those of undertakings that is sought in the regulation ([OMISSIS] [judgment of 23 October 2012, *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraphs 39, 76 et seq.]).

[...]

[...] **[Or. 6]**

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