

Anonymised version

Translation

C-541/19 — 1

Case C-541/19

Request for a preliminary ruling

Date lodged:

16 July 2019

Referring court:

Amtsgericht Hamburg (Germany)

Date of the decision to refer:

22 May 2019

Applicant:

XW

Defendant:

Eurowings GmbH

Order

In the case of

XW [...]

– applicant –

[...]

v

Eurowings GmbH, [...] Düsseldorf

– defendant –

[...]

the Amtsgericht Hamburg (Local Court, Hamburg) [...] hereby orders on 22 May 2019:

The proceedings are stayed.

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:

Is the total flight distance to be used as a basis for calculating the entitlement to compensation under Article 7 of Regulation (EC) No 261/2004 also in the case where the arrival of a passenger at the final destination is delayed by three hours or more solely as a result of a delay/cancellation of the connecting flight, but the feeder flight was on time, the two flights were operated by different air carriers and the flights were booked together?

Grounds:

- 1 [...] [national procedural rules]
- 2 The [...] determination of the dispute depends on the preliminary ruling to be given by the Court of Justice of the European Union in answering the question set out in the operative part.

Description of the subject matter of the proceedings

- 3 The applicant seeks from the defendant residual compensation in the amount of EUR 150.
- 4 The applicant booked a flight from Madrid (MAD) to Zurich (ZRH) for 18 September 2017 (LX 2021) with a directly connecting flight to Hamburg (HAM) for 18 September 2017 (EW 7763, Codeshare LX 4416) in a single booking via the global distribution system (GDS). The connecting flight should have been operated by the defendant, but was cancelled. Re-routing was not offered to the applicant. The defendant paid the applicant EUR 250 in response to the applicant's request for payment.

[...][national procedural law]

- 5 [...]

EU case-law relevant to the question referred for a preliminary ruling

- 6 The Court of Justice of the European Union ruled, by judgment of 7 March 2018 ([...] C-274/16, C-447/16, C-448/16) [...]:

Article 5(1)(a) of Regulation No 44/2001 must be interpreted as meaning that the concept of ‘matters relating to a contract’, for the purposes of that provision, covers a claim brought by air passengers for compensation for the long delay of a connecting flight, made under Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11/02/2004 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, against an operating air carrier with which the passenger concerned does not have contractual relations.

- 7 It also ruled, by judgment of 31 May 2018 — C-537/17 (*Wegener v Royal Air Maroc Sa*):

‘The concept of “final destination” is defined in Article 2(h) of [Regulation No 261/2004], as the destination on the ticket presented at the check-in counter or, in the case of directly connecting flights, the destination of the last flight taken by the passenger concerned ([...] EU:C:2013:106 [...]).’

Legal views taken by the parties

- 8 The applicant claims that the journey constitutes a journey booked as a single unit. It is irrelevant whether the journey was booked with the defendant itself or whether all legs of the flight were operated by the contracting party itself or by a single air carrier. What is relevant is that the journey is based on a single booking transaction from which the contract of carriage stems, and that that journey constitutes a single unit from the passenger’s point of view. The decisive factor is the loss of time suffered on arrival at the final destination. That is irrespective of whether feeder and connecting flights are operated by the same air carrier. The cancelled flight constitutes a directly connecting flight from the passenger’s point of view. It makes no difference to the passenger whether the significant delay in arrival at his final destination is due to a cancellation or delay on the first or the last leg of a single journey.
- 9 The defendant contends that two independent flights which do not bear any connection were booked by the applicant, with the result that only compensation in the amount of EUR 250 was owed on the basis of the Zurich-Hamburg leg of the journey. The booking was not made directly with the air carriers, and the applicant combined the two flights himself via the GDS. Moreover, the preceding flight was not operated by the defendant. The flights are unconnected; they constitute two different, individually planned flights. The cancelled flight does not constitute a connecting flight.

Provisional interpretation of the law made by the referring court

- 10 The referring court takes the view that the journey in question is a single journey. That is illustrated by the short transfer time between the feeder flight and the

connecting flight. Furthermore, the distance between Madrid and Hamburg should be taken as the basis for calculating the level of entitlement. Thus, the second sentence of Article 7(1) of Regulation No 261/2004 already makes it clear that the ‘last destination’ is decisive for flights with multiple stops. The concept of ‘last destination’ coincides in substance with the definition of ‘final destination’ under Article 2(h) and therefore with the wording in Article 7(2) of Regulation No 261/2004. Feeder and connecting flights booked as a single unit are therefore to be combined. In the case of a single booking, it is irrelevant on which leg of the journey the relevant disruption under air passenger law occurred.

State of the proceedings

11 [...]

[Signature][...]

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