

Case C-661/19**Request for preliminary ruling****Date lodged:**

6 September 2019

Referring court:

Handelsgericht Wien (Commercial Court, Vienna) (Austria)

Date of the decision to refer:

28 August 2019

Applicant:

flightright GmbH

Defendant:

Austrian Airlines AG

REPUBLIC OF AUSTRIA

Handelsgericht Wien (Commercial Court, Vienna, Austria)

The Commercial Court, Vienna, as appeal court [...] in the case brought by the applicant, **flightright GmbH**, [...] D- [...] Potsdam, [...] against the defendant, **Austrian Airlines AG**, [...] Vienna Airport, [...] regarding EUR 300 (plus interest and costs) in relation to the applicant's appeal against the judgment of the Bezirksgerichtes für Handelssachen Wien (District Court for Commercial Matters, Vienna) of 19 December 2018 [...] has made the following

Decision

The following question is referred for a preliminary ruling to the Court of Justice of the European Union pursuant to the third paragraph of Article 267 TFEU:

Should the second sentence of Article 7(1), read in conjunction with Article 7(4), 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, be interpreted as meaning that, in the case where passengers are transported on a flight which consists of two connecting flights, without any significant stopover at the connecting airport, only [Or. 2] the distance of the second leg of the journey is relevant for the amount of the entitlement to compensation, where the claim is brought against the air carrier operating the second leg of the journey upon which an irregularity has occurred, and the transport on the first leg of the journey was operated by a different air carrier?

The proceedings are stayed pending the preliminary ruling by the Court of Justice of the European Union.

Statement of reasons:

I. Subject matter of the case

Both of the affected passengers booked return flights from Innsbruck to Reykjavik, which involved the journey being broken in Frankfurt both ways. The corresponding four flights ((Innsbruck – Frankfurt, Frankfurt – Reykjavik, Reykjavik – Frankfurt, Frankfurt – Innsbruck) were booked under a single ‘Lufthansa booking reference’.

The return journey comprised the following flights:

- **LH 869 from Keflavik to Frankfurt:**
 - scheduled time of departure on 24.6.2017 at 00.30
 - scheduled time of arrival on 24.6.2017 at 6.00

- **LH 1584 (OS 278) from Frankfurt to Innsbruck:**
 - scheduled time of departure on 24.6.2017 at 8.55
 - scheduled time of arrival on 24.6.2017 at 10.00

The first flight LH 869 was operated by Deutsche Lufthansa. The second flight LH 1584 (OS 278) was operated by [Or.3] the defendant. This flight was cancelled by Deutsche Lufthansa.

Both passengers were rebooked onto the following flight.

- **LH 1234 from Frankfurt to Vienna:**
 - scheduled time of departure on 24.6.2017 at 8.50

- scheduled time of arrival on 24.6.2017 at 10.10

Subsequently the passengers were rebooked onto a train from Vienna Airport to Innsbruck. This was the quickest way for the passengers to be transported to their final destination of Innsbruck.

The distance between Keflavik Airport, Reykjavik, Iceland and Innsbruck Airport is, by the great circle route method, 2 777 km, and the distance between Frankfurt Airport and Innsbruck Airport is, by contrast, less than 1 500 km.

The claimant represents passengers in proceedings against airlines and, for this purpose, is assigned passengers' claims. The defendant is an airline.

The claims of both passengers arising from the cancellation of the flight and the rebooking were assigned to the claimant.

Deutsche Lufthansa paid compensation of EUR 250 per passenger to the applicant on 6.3.2018.

II. The parties' submissions

The applicant is seeking EUR 300 remaining compensation under Article 7 of Regulation 261/2004 and submits that it is entitled to compensation of EUR 400 per passenger, since the [Or.4] distance between Reykjavik and Innsbruck exceeds 1 500 km. The applicant claims that the defendant, as an operating air carrier, has capacity to be party to those proceedings. In its view, the case concerns a single booking with a single booking code.

The defendant disputes the merits and the amount of the form of order sought and claims that the action should be dismissed. According to the defendant, further proceedings should be brought against Deutsche Lufthansa as the defendant does not have capacity to be party to those proceedings. The defendant asserts that it cannot be concluded that there was a single booking for the purposes of Regulation 261/2004. It continues that the payment by Deutsche Lufthansa constituted acknowledgement that no claims may be brought against the defendant.

III. The course of the proceedings to date

The first instance court dismissed the claim in its entirety.

As regards the law, it stated that where different airlines are involved as air carriers, in the case of a delay to the second flight, only the distance of the second flight is relevant for determining the compensation.

The claimant was entitled to an amount of only EUR 250 per passenger. This amount has already been paid by Lufthansa.

In its appeal the claimant argues that there was an incorrect assessment of the law, and requests that the contested judgment be varied to uphold the action in its entirety.

The defendant contends that the claimant's appeal should be dismissed.

In its appeal, the appellant challenged the legal view of the first instance court that only the distance of the second leg of the journey was relevant for the amount [Or.5] of the compensation to which the applicant was entitled.

IV. The question referred

The question of how to proceed, where on a flight booked as a single unit, but with a stopover, the first flight admittedly was on time, but due to denied boarding, the passenger reached his destination subject to a delay giving rise to an entitlement to compensation, is disputed. According to the decision of the Amtsgericht Erding (Local Court, Erding, Germany) [...] an entitlement to compensation will only be granted in respect of the second leg of the journey, because the inconvenience in the case of longer distances still to be travelled is greater than in respect of shorter ones.

The Amtsgericht Köln (Local Court, Cologne, Germany) [...] in the case of a single flight booking with the first leg of the journey being operated to time and a cancellation of the second leg, permitted compensation of only EUR 250. This was on the basis that the need to protect passengers arises only after the disruption has occurred and that the Regulation did not envisage the distance calculation having a 'retrospective effect' on already completed and unaffected legs of a journey.

According to Maruhn [...] these arguments cannot be convincing. In particular, in the case of a journey booked as a single unit, there remains no apparent reason why a segmented flight should depart from the principle that the delay at the destination of the journey is decisive for the amount of the compensation to be calculated according to the entire distance of the journey.

There is no jurisprudence of the Court of Justice of the European Union on this question yet. [Or.6]

V. The requirement to make a preliminary reference and stay of proceedings

In the present case, the appeal court is the court of last instance [...]. As regards the interpretation, which is necessary in the present case, of the questions of EU law at issue, it cannot be assumed that the application of EU law is so obvious (*acte-clair* doctrine) as to leave no scope for any reasonable doubt regarding the answer to the question which has been asked.

[...]Commercial Court, Vienna

[...][Signatures]

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