

**Case C-810/19**

**Request for a preliminary ruling**

**Date lodged:**

4 November 2019

**Referring court:**

Landgericht Frankfurt am Main (Germany)

**Date of the decision to refer:**

22 August 2019

**Applicant and appellant:**

Flightright GmbH

**Defendant and respondent:**

Qatar Airways

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[...]

**Order**

In the case of

Flightright GmbH, [...] Potsdam,

applicant and appellant

[...] against

Qatar Airways [...],

[...],

defendant and respondent

[...] the 24th Civil Chamber of the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main, Germany)

[...] has ordered: **[Or. 2]**

I. The following questions on the interpretation 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 (the Air Passenger Rights Regulation), are referred to the Court of Justice of the European Union for a preliminary ruling pursuant to Article 267 TFEU:

1. Is there a ‘directly connecting flight’ within the meaning of Article 2(h) of Regulation (EC) No 261/2004 also where, in the case of flights comprising a single booking, which provide for a stopover at a connecting airport outside the territory of the European Union, a longer stay at the stopover location is planned and the onward flight booked is not the next possible available flight?

2. In the event that the first question is answered in the negative:

Must Article 3(1)(a) of Regulation (EC) No 261/2004 be interpreted as meaning that that regulation also applies to passenger transport by a flight which is not operated from an airport located in the territory of a Member State but forms part of single booking which also includes a flight from an airport located in the territory of a Member State, even if that former flight is not a directly connecting flight?

II. The appeal proceedings are stayed.

### **Grounds:**

#### **I.**

The applicant makes its claim on the basis of the rights assigned to it by four passengers (‘the passengers’).

The passengers booked flights with the defendant from Frankfurt am Main to Doha (flight QR 070) on 18 July 2018, scheduled to depart at 10.55, local time, [Or. 3] and having a scheduled arrival time of 17.55, local time, as well as from Doha to Windhoek on 20 July 2018 (flight QR 1373), with a scheduled time of departure of 2.00, local time, and scheduled arrival time of 10.40.

For the duration of the stopover in Doha from 18 July 2018 at 17.55 until 20 July 2018 at 2.00 (32 hours and five minutes in total) the passengers booked a hotel in Doha.

A flight from Doha to Windhoek with the defendant would also have been possible on 19 July 2018 with a departure at 2.00.

On 18 July 2018 the passengers checked in on the flight from Frankfurt am Main to Doha. The passengers were to collect their luggage in Doha and check it in for the onward flight to Windhoek.

It is currently unclear whether the passengers had already obtained boarding cards for the onward flight from Doha to Windhoek. As far as the passengers recall, they had checked in online before departure from Frankfurt am Main for the entire flight to Namibia. According to the applicant, no boarding card had at that time been issued in Frankfurt am Main for the onward flight to Windhoek, but only for the flight to Doha.

The flight from Frankfurt am Main to Doha was on time and without delay. In Doha, the passengers collected their luggage and checked it in again for the onward flight to Windhoek. The flight from Doha to Windhoek experienced a delay of five hours and 52 minutes. Instead of arriving at 10.40, the passengers did not arrive in Windhoek until 16.32.

The passengers assigned to the applicant their claims for compensation against the defendant. The applicant seeks to recover from the defendant a payment of EUR 600 for each passenger (EUR 2 400 in total) due to the delay in arrival in Windhoek by more than three hours.

The Amtsgericht (District Court) dismissed the claim for payment of EUR 2 400. By way of grounds, it stated that the court before which the action had been brought lacked jurisdiction [Or. 4] because the delay concerned a flight which was scheduled to fly from Doha to Windhoek and the defendant was not an airline belonging to the European [Union]. The fact that the first flight took off from Frankfurt am Main was, it held, irrelevant. It was to be assumed that they were two separate flights, because there was a period of 'approximately 56 hours' between the two flights and therefore it could not be assumed that there had been a stopover. The flight from Doha to Windhoek, it ruled, did not constitute a directly connecting flight.

The applicant lodged an appeal against the dismissal of its action on which the referring court, the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main), in its capacity as appellate court, is called upon to deliver a decision.

## II.

The success of the appeal depends crucially on whether the flight from Doha to Windhoek is to be regarded as a directly connecting flight within the meaning of Article [2](h) of Regulation (EC) No 261/2004 ('the Regulation') in relation to the flight from Frankfurt am Main to Doha.

If the flight from Doha to Windhoek were to be regarded as a directly connecting flight in relation to the flight from Frankfurt am Main to Doha, the applicant would then be entitled, under the rights assigned to it by the passengers, to a

payment of compensation in the amount claimed. In that case the ‘final destination’ would be the destination of the last flight, that is to say, Windhoek, and not Doha as the destination of the first flight.

As the Court of Justice ruled in Case C-402/07 (judgment of 19 November 2009, [...] *Sturgeon v Condor*) following a referral from the Bundesgerichtshof (Federal Court of Justice) and the Court of Justice, Grand Chamber, confirmed by its judgment of 23 October 2012 (C-581/10 – *Nelson v Lufthansa*), not only passengers whose flights have been cancelled but also passengers whose flights have been delayed have the right to claim the compensation provided for by Article 7 of the Regulation, in the case where they suffer, as a result of the delay, a loss of time equal to or in excess of three hours because they reach their final destination three **[Or. 5]** hours or more after the arrival time originally scheduled by the air carrier.

That would be the case in this instance, as the passengers reached the final destination of their flights only with a delay of five hours and 52 minutes.

As the Court of Justice has also held in Case C-537/17 (judgment of 31 May 2018, [...] [*Wegener v Royal Air Maroc*]), Article 3(1)(a) of the Regulation is to be interpreted as meaning that that regulation applies to passenger transport effected under a single booking and comprising, between its departure from an airport situated in the territory of a Member State and its arrival at an airport situated in the territory of a third State, a scheduled stopover outside the European Union, with a change of aircraft.

Those conditions have also been met in the present case. That is so because the flights from Frankfurt am Main to Doha and from Doha to Windhoek were booked with the defendant together and were also confirmed as a single booking by the defendant in the ‘e-ticket-receipt’ [...]. The passengers’ itinerary comprised a journey to Namibia with a stopover in Doha, during which the passengers intended to wait for friends who were arriving later and to visit the city.

According to the ruling of the Court of Justice of 31 May 2018 ([...] C-537/17 [...] [*Wegener v Royal Air Maroc*]), the fact that the onward flight was to be effected aboard a different aircraft to that of the first flight is irrelevant.

As the Court of Justice further ruled in *CS and Others v České aerolinie a.s.* (judgment of 11 July 2019, [...] C-502/18), the fact that, in the case of connecting flights, where there are two flights that are the subject of a single reservation, the delay from which the obligation to pay compensation arises occurred only on the second leg of the flight, does not preclude the carrier which operated the first leg of the flight from being obliged to pay compensation, where the reservation is the subject of a single reservation. According to that decision, the fact that the first and second legs of the flight were operated by different **[Or. 6]** carriers is irrelevant because the carrier which operates the first leg of the flight is also under an obligation to pay compensation.

The application of that decision of the Court of Justice leads to an obligation on the defendant to pay compensation, even if it is not [an EU] carrier and the place of departure and place of arrival of the second leg of the flight are not situated in the territory of the European [Union], because the defendant is in any event a carrier obliged to pay compensation on account of the fact that the place of departure of the first leg was Frankfurt am Main (see Article 3(1)(a) of the Regulation).

However, a particular feature of the present case is the fact that, between the first and second legs, there was a period of approximately 32 hours at the stopover location and the onward flight was not the first possible flight from the stopover location to the place of final destination. Rather, it would have been possible to board the onward flight already 24 hours earlier, because the defendant also offered a flight from Doha to Windhoek with a departure time of 2.00 on 19 July 2018 which the passengers did not take because they intended to wait for friends and visit the city and had for that reason also booked accommodation for one night in Doha. The directly connecting flight which the passengers could also have taken was the flight on 19 July 2018, not the flight on 20 July 2018.

The question therefore arises as to whether, in such a case, there is still a ‘directly connecting flight’ within the meaning of Article 2(h) of the Regulation.

Whether or not the duration of the stay at the stopover location and the possibility of an earlier connecting flight are determining criteria cannot be inferred from the published decisions of the Court of Justice. Neither the judgment of 31 May 2018 [in Case C-537/17] nor the judgment of 11 July 2019 in *Folkerts* ([...] C-11/11) mentions the duration of the period spent at the stopover location. However, [Or. 7] the *Folkerts* case, however, was based on the fact that, owing to a delay of the feeder flight of approximately two and a half hours, the connecting flight could not be caught, a fact which points to the conclusion that the planned duration of the stay at the stopover location did not exceed that period of time. In this respect, the Bundesgerichtshof (Federal Court of Justice), in its questions referred for a preliminary ruling, where they concern composite flights with multiple legs, uses the wording: ‘Passenger transport on two flights without a significant stopover at the connecting airport’ [...].

However, the referring court takes the view that it is not sufficiently clear from the judgments of the Court of Justice whether a prerequisite for a claim for compensation, in the case where a delay occurs only on the second leg of the journey, in addition to the requirement of a composite booking and a scheduled stopover, is that there must be a direct temporal link between the arrival at the stopover location and the departure.

Whether this must be the case ultimately depends on the definition of the term ‘directly connecting flight’ in Article 2(h) of the Regulation. In this respect, in the view of the present Chamber, the definition of the term indicates that there must be a direct link between the first and second legs of the journey. Indeed, Article

2(h) of the Regulation states that not merely the connection of two flights suffices to define the final destination but requires that the connecting flights must be ‘direct’. This appears to suggest that the onward flight has to be the first possibility, after arrival at the stopover location, of departing to the final destination. If passengers choose a later flight because they intend to use the stopover for other purposes than boarding the connecting flight (for example, in order to wait for friends or for sightseeing), a direct connection no longer exists and there is no longer a ‘directly’ connecting flight. **[Or. 8]** That would then lead to the assumption that there were two separate flights and that the final destination within the meaning of Article 2(h) of the Regulation was Doha. In that case, the second flight from Doha to Windhoek would not be a flight coming within the scope of application of the Regulation, in accordance with Article 3(1)(a) of the Regulation, since the flight did not depart from the territory of a Member State.

However, it also cannot be ruled out that the question as to whether the Regulation is applicable in accordance with Article 3(1)(a) of the Regulation does not at all depend on whether the second flight in a series of flights comprising a single booking is to be regarded as a ‘directly connecting flight’ because the single booking of composite flights might in itself suffice to render the Regulation applicable. That is the issue which the second question referred seeks to resolve.

Since the case concerns the interpretation of a term in the Regulation and the judgments delivered to date do not define clearly the requirement of a direct connection or the scope of application of the Regulation, it is necessary to refer the matter to the Court of Justice in accordance with Article 267 TFEU.

[...]