

# Anonymised version

Translation

C-880/19 – 1

Case C-880/19

## Request for a preliminary ruling

**Date lodged:**

3 December 2019

**Referring court:**

Amtsgericht Düsseldorf (Germany)

**Date of the decision to refer:**

13 November 2019

**Applicant:**

VZ and Others

**Defendant:**

Eurowings GmbH

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[...]

**Amtsgericht Düsseldorf (Local Court, Düsseldorf, Germany)**

**Order**

In the case of

VZ and Others v Eurowings GmbH

on 13 November 2019

the Amtsgericht Düsseldorf

[...]

made the following order:

**The proceedings are stayed pursuant to Paragraph 148 of the Zivilprozessordnung (Code of Civil Procedure; ZPO) pending the decision of the European Court of Justice in the present case and the following question is referred to the European Court of Justice for a preliminary ruling pursuant to Article 267 TFEU:**

Is Article 5(1)(c)(iii) of Regulation (EC) No 261/2004 to be interpreted as meaning that the re-routing referred to therein which allows the passenger to depart no more than one hour before the scheduled time of departure is to be carried out from the same airport of departure as that of the booked flight or could a departure from another airport also be considered?

In the case where a departure from another airport could also be considered, is it solely decisive whether the departure takes place no more than one hour before the scheduled time of departure, irrespective of how far the passenger travels to the airport or is the difference in timing also to be taken into account in connection with the passenger's journey to the airport? **[Or. 2]**

**Facts and relevance for the decision:**

The applicants claim compensation from the defendant pursuant to Article 7 of Regulation (EC) No 261/2004.

The applicants had confirmed bookings for flights operated by the defendant which should have transported them as follows:

Flight number EW 9654 on 5 June 2018, departure at 11.50 in Düsseldorf, arrival on 5 June 2018 at 15.30 in Thessaloniki.

On 1 June 2018, the applicants were informed of the cancellation of the flight, they were offered re-routing, by which they departed on 5 June 2018 at 12.43 in Cologne and arrived at 16.13 in Thessaloniki.

Therefore, the departure was 53 minutes later than originally scheduled, however, not, as originally booked, from Düsseldorf but from Cologne, arrival was delayed by 43 minutes.

The defendant refers to the provisions of Article 5(1)(c)(iii) of Regulation (EC) No 261/2004, according to which compensation is excluded if, in the event of short notice of cancellation, re-routing is offered which allows passengers 'to depart no more than [one] hour before the scheduled time of departure and to reach their final destination less than [two] hours after the scheduled time of arrival'.

The applicants take the view that the provisions can take effect only if the replacement flight departs from the same airport as that of the flight originally booked.

By judgment of 10 October 2017 [...] the Landgericht Köln (Regional Court, Cologne) ruled that a passenger ‘who is offered an alternative flight up to seven days before the scheduled departure, [...] also [has to] accept a departure time which is up to one hour earlier than the one originally scheduled and who, in view of this difference in timing also [has to], if necessary, rearrange his schedule before the flight departs, whereas this would not be expected of a passenger in case of a mere delay’. In the event of a cancelled flight, the passenger is also in a worse position [dependent on the individual case in question] in so far as she/he not only [has to] wait longer at the original airport of departure (or on the aircraft) but sometimes even the general conditions of the replacement flight (for example the airport of departure) differ from that of the cancelled flight ...

There is no supreme court case-law on that question.

It is also unclear how compliance with the earlier re-scheduling of a maximum of one hour is taken into account in the event that the airport from which the replacement flight departs is different from the airport of departure of the flight originally booked.

WORKING DOCUMENT