

Case C-597/20**Request for a preliminary ruling****Date lodged:**

12 November 2020

Referring court:

Fővárosi Törvényszék (Hungary)

Date of the decision to refer:

27 October 2020

Applicant:

Polskie Linie Lotnicze ‘LOT’ SA

Defendant:

Budapest Főváros Kormányhivatala

Fővárosi Törvényszék (Budapest High Court)

[...]

Applicant: Polskie Linie Lotnicze LOT Spółka Akcyjna ([...] Warsaw, Poland [...])

[...]

Defendant: Budapest Főváros Kormányhivatala (Budapest Metropolitan Government Office) ([...] Budapest, Hungary [...])

[...]

Subject matter of the proceedings: Administrative-law action [...] concerning consumer protection**DECISION**

The [Fővárosi Törvényszék (Budapest High Court, Hungary)] submits to the Court of Justice of the European Union a request for a preliminary ruling concerning the interpretation of Article 16(1) and (2) of Regulation (EC) No 261/2004 of the European Parliament and of the Council.

The court refers the following question to the Court of Justice of the European Union:

Must Article 16(1) and (2) of Regulation (EC) No 261/2004 of the European Parliament and of the Council be interpreted as meaning that where an individual complaint has been made by a passenger to the national body responsible for the enforcement of that regulation, that body cannot compel the airline in question to pay the compensation due to the passenger under the regulation?

[...] [procedural matters of domestic law]

Grounds

- 1 This administrative court, which is hearing a consumer protection action, asks the Court of Justice of the European Union ('the Court of Justice'), pursuant to Article 267 TFEU, to interpret the provisions of EU law required to reach a decision in the main proceedings.

Subject matter of the proceedings and relevant facts

- 2 Following a delay of more than three hours in the applicant airline's flight from New York to Budapest on 22 September 2019, some foreign passengers [...] applied to the defendant, as the Hungarian consumer protection authority, asking it to compel the applicant to pay the compensation provided for in Article 7 of Regulation (EC) No 261/2004 of the European Parliament and of the Council ('the Regulation') for breach of Article 5(1)(c) of the Regulation.
- 3 By decision [...] of 20 April 2020 in the consumer protection proceedings commenced in respect of the above claim, the defendant ruled that the applicant had infringed Articles 6(1)(c) and 7(1)(c) of the Regulation. It therefore required the applicant to pay compensation of EUR 600 to each of the passengers concerned, and to pay the stipulated amount of compensation to any passengers who submitted a claim in future, provided that the cancellation or delay in the flight operated by the airline or the denial of boarding was not caused by extraordinary circumstances. The grounds given by the defendant for imposing this requirement were that it has jurisdiction to hear claims in respect of passengers' rights by virtue of Article 16(1) and (2) of the Regulation. Pursuant to Article 43/A(2) of the a fogyasztóvédelemről szóló 1997. évi CLV. törvény (Law CLV of 1997 on consumer protection, 'the Law on Consumer Protection'), the consumer protection authority — following consultation, where necessary, with the aviation authority — is responsible for enforcing Regulation [(EU) 2017/2394] as regards infringements of the provisions of [Regulation (EC) No 261/2004 of 11 February 2004] within the European Union. Article 47(1)(c) of the Law on Consumer Protection authorises that authority to compel the undertaking to cease the identified irregularities or shortcomings within a specified period, while Article 47(1)(i) authorises it to impose 'consumer protection fines'.

- 4 In its administrative-law action, the applicant asks the court to annul the aforesaid decision. It argues that the reason for the delay to the flight in question can be considered an extraordinary circumstance, which is a ground for exemption under Article 5(3) of the Regulation, and therefore the passengers' claim for compensation could lawfully be refused.
- 5 The defendant contends that the administrative-law action should be dismissed because there are no grounds for an exemption from the requirement to pay compensation.

Grounds for the request for a preliminary ruling and arguments of the parties

- 6 The court has doubts as to whether the consumer protection authority has the power to compel payment of the compensation provided for in the Regulation.
- 7 According to the *applicant*, the consumer protection authority cannot compel payment of the compensation provided for in the Regulation. In its opinion, that is confirmed by points 35 to 41 of the Advocate General's Opinion in Joined cases C-145/15 and C-146/15, *Ruijsenaars and Others* ('*Ruijsenaars and Others*'). The Advocate General notes, in those points, that the legal relationship between an air carrier and a passenger is governed by civil law, and therefore claims brought by passengers in exercise of the rights arising from that relationship are a matter for the civil courts, since they concern contractual obligations. The Hungarian practice, in which the national enforcement body compels the airline to pay compensation, deprives the civil courts of their jurisdiction. In several cases, other travellers have brought proceedings against the applicant in the civil courts in Hungary for payment of compensation. The passengers therefore have the option of enforcing their right to compensation through the courts as a civil claim.
- 8 According to *the defendant*, the consumer protection authority has the power to compel payment of the compensation provided for in the Regulation. In its view, this is confirmed by paragraph 36 of the judgment of the Court of Justice in *Ruijsenaars and Others* and point 30 of the Advocate General's Opinion in that case, and also by section 7.1 of the Commission Notice of 15 June 2016 (Interpretative Guidelines on the Regulation). According to the foregoing, the national enforcement body is not required to take action in respect of compensation in individual complaints if it does not consider it necessary. However, the fact that action is not mandatory does not mean that it is prohibited, or that the body cannot take action and issue a decision on payment of compensation if the relevant requirements are satisfied and action is permitted under Member States' legislation. In this regard, the defendant draws attention to the objective of ensuring a high level of protection for passengers cited in recital 1 of the Regulation, and the duty, mentioned in that recital, to take account of the requirements of consumer protection in general. In its opinion, the rights of air passengers would be deprived of all consumer protection content if the consumer

protection authority could not take action and order payment of compensation in individual cases. It would make no sense to designate a national enforcement body pursuant to Article 16(1) of the Regulation if the function of that body were limited solely to informing passengers of their rights in relation to lodging an individual claim.

Relevant legislation

9 Article 16(1) and (2) of the Regulation:

‘1. Each Member State shall designate a body responsible for the enforcement of this Regulation as regards flights from airports situated on its territory and flights from a third country to such airports. Where appropriate, this body shall take the measures necessary to ensure that the rights of passengers are respected. The Member States shall inform the Commission of the body that has been designated in accordance with this paragraph.

2. Without prejudice to Article 12, each passenger may complain to any body designated under paragraph 1, or to any other competent body designated by a Member State, about an alleged infringement of this Regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory.’

10 Article 43/A(2) of the Law on Consumer Protection:

‘The consumer protection authority — in contact, where necessary, with the aviation authority — shall be responsible for enforcing Regulation (EU) 2017/2394 as regards infringements of [Regulation (EC) No 261/2004] within the European Union.’

Statement of reasons for the request for a preliminary ruling

11 In *Ruijssenaars and Others*, the Court of Justice stated that the consumer protection authority *is not required* to compel airlines to pay compensation. However, in his Opinion in that case, the Advocate General had taken the view that the consumer protection authority does not have the power to compel payment of compensation because this is a matter for the civil courts.

12 Having regard to the above, the reference for a preliminary ruling is necessary in order to determine whether, in *Ruijssenaars and Others*, the Court of Justice replied that that authority ‘is not required’ to compel payment of compensation because (a) this was the point specifically raised in the question put by the Netherlands referring court or (b) it wished to distance itself from the opinion expressed by the Advocate General.

- 13 This is relevant because the Netherlands situation which gave rise to the judgment of the Court of Justice in *Ruijsseenaars and Others* is not the same as the situation in Hungary in that, as can be seen from the grounds in that judgment, in the Netherlands the civil courts hear claims from passengers for compensation, while the consumer protection authority systematically rejects applications for compensation submitted to it. In legal proceedings of this nature brought by a passenger whose claim had been refused, the Netherlands administrative court asked whether the consumer protection authority 'is required' to compel the airline to pay compensation. The Court of Justice replied that it 'is not required' to do so, despite the fact that the Advocate General had recommended in his Opinion that it should reply more broadly that 'it is not authorised' to do so; the latter reply would also be relevant to the situation in Hungary.
- 14 The judgment of the Court of Justice in *Ruijsseenaars and Others* illustrates the interpretative approach taken by the Court of Justice but does not provide a direct response to the situation in Hungary where, although action can also be pursued through the civil courts, the consumer protection authority systematically compels airlines to pay compensation.
- 15 Pursuant to Article 43/A(2) of the Law on Consumer Protection, the consumer protection authority, which is the designated national body responsible for enforcing the Regulation, has general jurisdiction in matters concerning breaches of the Regulation. The Law on Consumer Protection gives that authority power to impose certain legal consequences in the event of breach of a consumer protection provision (for example, to require the ceasing of irregularities or shortcomings that have been identified, to impose fines, and so forth). However, beyond that general designation, Hungarian legislation does not expressly authorise the national enforcement body to take enforcement action to compel payment of compensation in the event of breach of the Regulation.
- 16 In order to reach a decision in the main proceedings, it is necessary to clarify whether, under EU law, the national enforcement body has power to compel payment of compensation since, pursuant to Article 92(1)(a) of the a közigazgatási perrendtartásról szóló 2017. évi I. törvény (Law I of 2017 on the Administrative Courts [...]), a decision taken by an administrative authority without the power to do so must be annulled without an examination of the substance, and the court must examine of its own motion whether there are grounds for annulment.
- 17 Moreover, the fact that in some Member States of the European Union it is possible to ask the national enforcement body to compel airlines to pay compensation while in other Member States the only remedy is through the courts, may give rise to legal uncertainty at a European level, and to conflicts of jurisdiction, parallel proceedings and forum shopping.
- 18 [...]
- 19 [...] [procedural matters of domestic law]

Budapest, 27 October 2020.

[...] [signatures]

WORKING DOCUMENT