



In the event of cancellation of a flight, passengers may claim, under certain conditions, compensation for non-material damage in addition to that awarded for material damage suffered

Further, a passenger may claim compensation for cancellation of a flight where his aeroplane took off but, for whatever reason, was subsequently forced to return to the airport of departure and that passenger was transferred to another flight

The regulation on the compensation of air passengers¹ lays down **standardised measures** that airline companies must put into effect in respect of their passengers in the event of denied boarding, cancellation or long delay of a flight. The regulation states, however, that it applies without prejudice to passengers' rights to further compensation. Thus, compensation awarded pursuant to the regulation may be deducted from possible further compensation which passengers may claim.

Among the standardised measures prescribed by the regulation in the event of cancellation of a flight, passengers may have their ticket reimbursed or be re-routed. Moreover, during the wait for a later flight, the airline company must offer them adequate care (for example, accommodation, meals and the chance to make telephone calls). Finally, where the flight is cancelled without notice or with very short notice and there are no extraordinary circumstances, passengers also have the right to a flat-rate compensation, the amount of which varies depending on the distance of the scheduled flight.

In parallel, the **Montreal Convention**² sets out the conditions in which passengers may bring actions for damages, **by way of compensation on an individual basis**, against carriers as a result of the cancellation of a flight. In particular, the Convention limits the liability of the carrier in the event of cancellation to the amount of 4 150 special drawing rights per passenger³.

The Pato Rodríguez family, the López Sousa family and Mr Rodrigo Manuel Puga Luiero were booked on an Air France flight from Paris (France) to Vigo (Spain) on 25 September 2008. The flight took off at the scheduled time but returned to Charles de Gaulle airport a short time later due to a technical problem with the aircraft. Those seven passengers were re-booked onto other flights the following day but only Mr Puga Luiero was offered assistance by the airline company in the meantime. The Pato Rodríguez family were re-routed to Porto (Portugal) and, from there, had to take a taxi to Vigo, where they lived.

¹ 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 (OJ 2004 L 46, p. 1).

² Convention for the unification of certain rules for international carriage by air, adopted in Montreal on 28 May 1999, signed by the European Community on 9 December 1999 and approved on behalf of the European Community by Council Decision 2001/539/EC of 5 April 2001 (OJ 2001 L 194, p. 39). That Convention is implemented by Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air (OJ 1997 L 285, p. 1), as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 (OJ 2002 L 140, p. 2).

³ The special drawing rights in the Montreal Convention are considered to relate to the special drawing right as defined by the International Monetary Fund (IMF). Thus, those amounts must be converted into the national currency. At 15 September 2011, 4 150 SDR corresponded to approximately €4 750.

The seven passengers in question brought a legal action for €250 each in respect of the cancellation of the flight. Furthermore, the Pato Rodríguez family claims €170 to cover the cost of the transfer by taxi and €650 per person as compensation for non-material damage. The López Sousa family also claim €650 per person as compensation for non-material damage and the reimbursement of the cost of meals taken in the airport and an extra day for their dog in kennels. Mr Pugo Luiero claims €300 in compensation for non-material damage suffered.

In that context, the Juzgado de lo Mercantil No 1 de Pontevedra (Commercial Court No 1 of Pontevedra, Spain), to which the matter was referred, asked the Court of Justice to clarify whether this case can be considered as a flight ‘cancellation’. In addition, the Spanish court seeks to ascertain whether the ‘further compensation’ that passengers can claim covers all types of damage – including non-material damage – and whether that compensation also refers to costs incurred by passengers due to the failure of the air carrier to fulfil its obligations to assist and take care.

In the judgment handed down today, the Court explains, firstly, its interpretation of the concept of ‘cancellation’ as meaning that it does not refer exclusively to the situation in which the aeroplane in question fails to take off at all. That concept also covers the case in which an aeroplane took off but, for whatever reason, was subsequently forced to return to the airport of departure where its passengers were transferred to other flights.

On that point, the Court holds that the fact that take-off occurred but that the aeroplane then returned to the airport of departure without having reached the destination in the itinerary means that the flight, as initially scheduled, cannot be considered as having been operated.

Moreover, the Court states that **in order to examine whether there has been a ‘cancellation’, it is necessary to examine the individual situation of each passenger transported**, that is to say to examine whether, in relation to the passenger in question, the original planning of the flight had been abandoned. In so doing, in order to find that a flight has been cancelled, it is not at all necessary that all the passengers that had booked a place on the originally scheduled flight were transported on another flight.

Thus, since the seven passengers in this case were transferred to other flights, scheduled for the day after the expected departure date, to reach their final destination (Vigo), the Court concludes that ‘their’ originally scheduled flight must be classified as ‘cancelled’.

Secondly, the Court explains that the concept of ‘further compensation’ allows a national court to compensate non-material damage arising from breach of a contract of carriage by air under the conditions provided for by the Montreal Convention or national law.

The Court holds that ‘further compensation’ is intended to supplement the application of the standardised and immediate measures provided for by the Regulation. Therefore, that ‘further compensation’ allows passengers to be compensated for the entirety of the material and non-material damage they suffered due to the failure of the air carrier to fulfil its contractual obligations under the conditions and within the limits provided for by the Montreal Convention or by national law.

Thirdly, the Court adds that **where a carrier fails to fulfil its obligations to assist** (reimbursement of ticket or re-routing to the final destination, taking into account the cost of transfer between the airport of arrival and the originally scheduled airport) **and to take care of costs that fall to it pursuant to the regulation** (meal, accommodation and communication costs) **air passengers are entitled to claim a right to compensation. Nevertheless**, insofar as that compensation arises directly from the regulation, it **cannot be considered as falling within ‘further’ compensation.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the

dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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