



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-22/11
Finnair Oyj v Timy Lassooy

According to Advocate General Bot, an air carrier must compensate passengers if they have been denied boarding on account of the rescheduling of their flight following a strike at the airport which took place two days beforehand and affected a previous flight

Only denied boarding justified on grounds relating to the personal situation of those passengers may exempt the air carrier from that obligation

Where a passenger is denied boarding, the air carrier must, under EU law¹, provide him with assistance and flat-rate compensation. Denied boarding is defined by European law as a refusal to carry passengers on a flight, although they have duly presented themselves for boarding, except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation.

Following a strike by staff at Barcelona Airport (Spain) on 28 July 2006, the scheduled 11:40 flight from Barcelona to Helsinki operated by the air carrier Finnair had to be cancelled. Consequently, Finnair decided to reschedule its flights so that the passengers for the cancelled flight should not have too long to wait.

Accordingly, those passengers were taken to Helsinki (Finland) on the 11:40 flight the following day, 29 July 2006, and on a specially arranged flight departing at 21:40 hours on that day. The consequence of that rescheduling was that some of the passengers who had bought their tickets for the 11:40 flight on 29 July 2006 had to wait until 30 July 2006 to go to Helsinki on the scheduled 11:40 flight and on a 21:40 flight which was specially arranged for the occasion. Similarly, some passengers, like Mr Lassooy, who had bought their tickets for the 11:40 flight on 30 July 2006 and had duly presented themselves for boarding, went to Helsinki on the special 21:40 flight.

Taking the view that Finnair had denied him boarding, Mr Lassooy brought an action before the Finnish courts seeking an order for that air carrier to pay him the flat-rate compensation of €400 provided for by European legislation in respect of intra-Community flights of more than 1500 kilometres.

The Korkein oikeus (Supreme Court, Finland), before which the case was brought at final instance, has doubts as to the interpretation of the concept of 'denied boarding' and seeks a ruling from the Court of Justice in this regard.

In his Opinion given today, Advocate-General Yves Bot states, first of all, that **the concept of 'denied boarding' must be interpreted broadly and cannot be limited to overbooking**. That finding is apparent not only from the *travaux préparatoires* for the adoption of the relevant European legislation, but also from the objective which it pursues, namely that of ensuring a high level of protection for air passengers.

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).

To accept that only situations of overbooking are covered by the concept of denied boarding would have the effect of depriving passengers in the same situation as Mr Lassooy of all protection. Indeed, the flight for which Mr Lassooy had a reservation left at the time and on the day scheduled. Therefore, if Mr Lassooy were regarded as not having been denied boarding, he could not rely either on the provisions applicable to the cancellation of a flight or on those relating to delay. Accordingly, he would not fall within any of the categories entitling him to the protective measures for air passengers experiencing serious trouble and inconvenience. Consequently, the air carrier would not be required to pay him compensation for the damage caused, or even and above all to provide him with assistance, that is to say to cater for his immediate, on the spot, needs. He would therefore be abandoned to his fate, which would be totally contrary to the objective of the European legislation which is to ensure a high level of protection for air passengers. Moreover, certain air carriers might be tempted to evade their obligations, because it would therefore be easy for those carriers to use a rescheduling of their flights or any reason other than overbooking as an excuse to deny a passenger boarding and avoid paying him compensation or assisting him.

Next, the Advocate General states that **'denied boarding' cannot be justified by grounds relating to the rescheduling of flights as a result of extraordinary circumstances**, such as a strike at an airport. According to the Advocate General, the denial of boarding to passengers **may be justified solely on grounds relating to the personal situation of those passengers**.

Denied boarding is an individual measure taken by the air carrier arbitrarily against a passenger who has nevertheless satisfied all the conditions for boarding. That measure loses its arbitrary character only if the passenger himself commits a fault, for example by presenting invalid identity documents, or if, by his behaviour, he endangers the safety of the flight and/or of the other passengers, for example if he is inebriated or shows signs of violence. In such cases, the decision not to allow the passenger to board is attributable to the passenger himself, who cannot claim any compensation or care. On the other hand, the decision to deny boarding based on reasons which are wholly unrelated to the passenger concerned cannot have the effect of depriving him of all protection.

Moreover, given that the airport strike cannot be attributed to Finnair, that air carrier has the right, if it considers that it does not have to suffer the consequences of that strike, to seek compensation from the persons responsible, in accordance with the national law applicable.

Such an interpretation **is not contrary to the principle of equal treatment**, even though the fate of the passenger denied boarding by the air carrier, as a result of extraordinary circumstances, is more favourable than that of the passenger whose flight has been cancelled or delayed as a result of those circumstances since the former is compensated but the latter is not. The principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified. However, passengers who are the victims of a flight cancellation or delay are not in the same position as passengers to whom the air carrier has denied boarding. Whereas denied boarding affects one or more passengers, in cases of flight cancellation or delay all the passengers are concerned and affected in the same way.

Furthermore, where the flight cancellation or delay is due to extraordinary circumstances, the air carrier is not required to pay the compensation provided for by EU law since it had no control over those events. By contrast, that is not the case where a passenger is denied boarding after the air carrier has decided to reschedule flights owing to extraordinary circumstances. Simply by making that decision, the air carrier makes one or more passengers selected completely arbitrarily suffer trouble and inconvenience. For that reason, because the harm suffered is attributable to the air carrier, compensation remains payable in order to dissuade the carrier from resorting to such a practice and to give preference to calling for volunteers to surrender their reservations.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 Opinion is published on the CURIA website on the day of delivery.

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