



Court of Justice of the European Union

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Judgment in Joined Cases C-274/16, C-447/16 and C-448/16
flightright GmbH v Air Nostrum, Líneas Aéreas del Mediterráneo SA

Roland Becker v Hainan Airlines Co. Ltd

Mohamed Barkan, Souad Asbai, Assia Barkan, Zakaria Barkan, Nousaiba

Barkan v Air Nostrum, Líneas Aéreas del Mediterráneo SA

Press and Information

An airline which operated only the first leg of a connecting flight in one Member State can be sued before the courts of the final destination in another Member State for compensation for delays

That is the case where the different flights were part of a single booking for the entire journey and the long delay of the arrival at the final destination is due to an irregularity which took place on the first of those flights

Air passengers booked with Air Berlin and Iberia connecting flights from Spain to Germany (namely, for the journey Ibiza – Palma de Majorca – Düsseldorf with Air Berlin and for the journey Melilla – Madrid – Frankfurt am Main with Iberia), those bookings covering the entirety of the respective flights. The first domestic flights in Spain were operated on behalf of Air Berlin and Iberia by the Spanish airline Air Nostrum. In both cases, those flights were delayed (45 and 20 minutes) which resulted in the passengers missing their second flight to Germany. The passengers finally reached their final destination with a delay of more than 3 hours (namely a delay of approximately 4 hours for the flight booked with Air Berlin and a delay of 13 hours for the flight booked with Iberia).

As a result of those long delays, the air passengers concerned (or the German undertaking flightright on their behalf) brought actions before the German courts seeking compensation from Air Nostrum under the EU Regulation on the rights of air passengers.¹

The Amtsgericht Düsseldorf (District Court, Düsseldorf, Germany) and the Bundesgerichtshof (Federal Court of Justice, Germany) have doubts as to whether the German courts have international jurisdiction to rule on actions brought by air passengers against an airline which (i) has its seat in another Member State, (ii) operated, in the context of connecting flights with a final destination in Germany, only the first domestic flights in that other Member State and (iii) is not their contracting partner. Those two courts asked the Court of Justice to clarify whether it is necessary to apply, in such a case, the provisions of the Brussels I Regulation² according to which a defendant domiciled in another Member State may be sued, in matters relating to a contract, in the courts of the place of performance of the obligation on which the action is based. That regulation states that in the case of the provision of services, that place is where, under the contract, the services were provided or should have been provided, unless otherwise agreed.

By today's judgment, the Court holds that the final destination in Germany can be considered to be the place of performance of the services to be provided not only with respect to the second flight,

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). Depending on the distance, compensation is calculated at EUR 250, 400 or 600.

² Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) and Select: 1 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1). The latter regulation repealed Regulation No 44/2001. It is applicable only to legal actions brought from 10 January 2015. In the context of the present cases, the relevant provisions of those two regulations are identical or almost identical.

but also with respect to the first domestic flight in Spain. It follows that the German courts have, in principle, jurisdiction to rule on actions for compensation brought against a foreign airline such as Air Nostrum.

Firstly, the concept of ‘matters relating to a contract’ for the purposes of the Brussels I Regulation covers a claim brought by air passengers for compensation for the long delay of a connecting flight, under the regulation on the rights of air passengers, against an operating air carrier with which they do not have contractual relations.

In that regard, the Court notes in particular that, according to the regulation on the rights of air passengers, where an operating air carrier which has not concluded a contract with the passenger fulfils obligations under that regulation, it is to be regarded as doing so on behalf of the person which concluded the contract with the passenger concerned. Therefore, that carrier (in this case, Air Nostrum) must be regarded as fulfilling the freely consented obligations vis-à-vis the contracting partner of the passengers concerned (in this case, Air Berlin and Iberia). Those obligations arise under the contract for carriage by air.

Secondly, the Court considers that, in the case of a connecting flight, the ‘place of performance’ of that flight, for the purposes of those provisions, is the place of arrival of the second leg, where the carriage on both flights was operated by two different air carriers and the action for compensation for the long delay of that connecting flight is based on an irregularity which took place on the first of those flights, operated by the air carrier with which the passengers concerned do not have contractual relations.

The Court notes in that regard that the contracts at issue, consisting of a single booking for the entire journey, establish the obligation, for an air carrier, to carry a passenger from a point A to a point C. Such a carriage operation constitutes a service of which one³ of the principal places of provision is at point C. According to the Court, it is sufficiently foreseeable for an airline which, like Air Nostrum, operates only the first flight from point A to point B that the passengers can take action against it before the courts of point C.

In another case, an air passenger brought an action before the German courts seeking compensation from a Chinese airline, Hainan Airlines, as a result of denied boarding on the second leg of a connecting flight (namely the journey Berlin – Brussels – Beijing). In that regard, the Court notes that, if the defendant (in this case, Hainan Airlines) is not domiciled in a Member State, the international jurisdiction is, in each Member State, governed by the law of that Member State and not by the Brussels I Regulation.

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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³ The Court points out in that context that the air passenger may also bring an action before the court in whose territorial jurisdiction the place of departure of the flight is located (judgment of 9 July 2009, [C-204/08](#) Rehder see also Press Release No [62/09](#)).