



Press and Information

Court of Justice of the European Union

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Judgment in Case C-163/18  
HQ and Others v Aegean Airlines

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**Passengers who have the right to hold their tour organiser liable for reimbursement of the cost of their air tickets cannot also claim reimbursement of the cost of those tickets from the air carrier**

*Such a cumulative right to reimbursement would lead to an unjustified overcompensation of passengers to the detriment of the air carrier*

On 19 March 2015, three persons booked return flights between Eelde (Netherlands) and Corfu (Greece) through Hellas Travel, a travel agency established in the Netherlands. Those flights formed part of a ‘package tour’, the price of which was paid to Hellas Travel.

The flights were to be operated by Aegean Airlines, a company established in Greece, which had entered into a contract to that effect with G.S. Charter Aviation Services, a company established in Cyprus: Aegean Airlines made available to G.S. Aviation Services a certain number of seats, in return for payment of a charter price. G.S. Charter subsequently resold those seats to third parties, including to Hellas Travel.

However, a few days before the agreed departure date, Hellas Travel informed the three travellers that their trip had been cancelled. Aegean Airlines had in fact decided, since it was no longer possible to obtain the price previously agreed with Hellas Travel, to no longer operate flights to and from Corfu. Hellas was declared insolvent on 3 August 2016 and did not reimburse to the three travellers the cost of their air tickets.

The three passengers brought proceedings before the Rechtbank Noord-Nederland (District Court, Noord-Nederland, the Netherlands), which ordered Aegean Airlines to pay them compensation for the cancellation of their flight, in accordance with Regulation No 261/2004 on passenger rights.<sup>1</sup>

By contrast, that court did not give a ruling on their application seeking reimbursement of the cost of the air tickets. That is the issue which the national court referred to the Court of Justice. It seeks to ascertain whether a passenger who, under the directive on package travel,<sup>2</sup> has the right to hold his tour organiser liable for reimbursement of the cost of his air ticket, can also claim reimbursement of the cost of that ticket from the air carrier, on the basis of the regulation on passenger rights.

In today’s judgment, the Court points out that the mere existence of a right to reimbursement, arising under the directive on package travel, is sufficient to rule out the possibility for a passenger, whose flight forms part of a package tour, to be able to claim reimbursement of the cost of his ticket, pursuant to the regulation on passenger rights, from the operating air carrier.

The Court considers that while the EU legislature did not intend to exclude entirely from the scope of the regulation passengers whose flight forms part of a package tour, it did, however, seek to

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<sup>1</sup> 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)

<sup>2</sup> Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59).

maintain in their regard the effects of the adequate protection scheme which had previously been put in place by the directive on package travel.

It follows that the right to reimbursement of the cost of the ticket, pursuant to the regulation and the directive, are not cumulative. If they were, the passengers concerned would receive unjustified overcompensation, which would be to the detriment of the operating air carrier, which, in that case, would risk having to assume part of the liability of the tour organiser towards its clients.

That conclusion remains unchanged also where the tour organiser is financially incapable of reimbursing the cost of the ticket and has not taken any measures to guarantee that reimbursement. In that context, the Court points out that the directive provides, inter alia, that tour organisers must provide sufficient evidence of security for the refund of money paid over in the event of insolvency. Moreover, the Court sets out its case-law pursuant to which national legislation properly transposes the obligations under the directive only if it achieves the result of providing passengers with an effective guarantee of the refund of all money paid over in the event of the travel organiser's insolvency. Failing that, the traveller concerned is entitled, in any event, to bring an action for damages against the Member State concerned for the loss incurred by him as a result of an infringement of EU law.

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**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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