



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-826/19  
WZ v Austrian Airlines AG

**According to Advocate General Pikamäe, the mere diversion of a flight to an alternative airport which is near the airport for which the booking was made does not give rise to a right to lump-sum compensation**

*However, the airline is required to take the initiative and offer to bear the costs of transferring the passenger to the airport for which the booking was made or another close-by destination agreed with the passenger concerned*

An Austrian Airlines passenger is seeking lump-sum compensation from the airline of €250 because his flight from Vienna (Austria) to Berlin (Germany), having been delayed beyond the latest time permitted under the night flying restrictions in force at the airport of destination for which the booking was made (Berlin Tegel), was diverted to Berlin Schönefeld airport. Landing at Berlin Schönefeld was 58 minutes later than originally scheduled at Berlin Tegel. Moreover, Berlin Schönefeld is 24 km, i.e. 41 minutes, away from the passenger's home, whereas the distance between Berlin Tegel and his home is 8 km, i.e. 15 minutes. Austrian Airlines did not offer the passenger alternative transport from Berlin Schönefeld to Berlin Tegel.

Austrian Airlines refused to pay the compensation sought by the passenger, contending that the passenger had been delayed by only 58 minutes in reaching his final destination of Berlin and that he was able to return home without difficulty using another of transport from the alternative airport.

The Landesgericht Korneuburg (Regional Court, Korneubourg, Austria), hearing the case, referred a series of questions to the Court of Justice concerning the interpretation of the Regulation on Air Passenger Rights.<sup>1</sup>

In today's Opinion, which relates to some of those questions, **Advocate General Priit Pikamäe suggest that the Court should find that where a flight lands at an airport which is not that for which the booking was made, but is in the same town, city or region, the passenger is not entitled to compensation on the basis that the flight has been cancelled.** The EU legislature did not intend that scenario to constitute cancellation. **A right to compensation would arise only if, as a result of the diversion, the passenger was delayed by three hours or more in reaching the airport for which the booking was made or the other close-by destination agreed with the air carrier.**

**In that context, the airline must take the initiative and offer the passenger to bear the costs of transferring the passenger to the airport for which the booking was made or another close-by destination agreed with the passenger.** The regulation on Air Passenger Rights explicitly provides for that obligation to provide assistance and a passenger who finds himself or herself in an airport which is not that for which the booking was made is in a situation in which he or she requires assistance.

<sup>1</sup> Regulation 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). Under that regulation, a passenger, in the event of cancellation or long delay (three hours or more) of his or her flight, is entitled as a rule to lump-sum compensation of €250, 450 or 600, depending on the distance that the flight would have covered.

According to the Advocate General, a **breach of that obligation to bear the costs of transferring passengers from the airport of arrival to that for which the booking was made (or a close-by destination agreed with the passenger)** does not entitle the passenger to a lump-sum compensation, as in the event of cancellation or delay of flights of three hours or more. However, it **does entitle the passenger to reimbursement of the amounts which, in the light of the specific circumstances of each case, prove necessary, appropriate and reasonable to make up for the breach** by the airline.

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**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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*Unofficial document for media use, not binding on the Court of Justice.*

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

*Press contact: Jacques René Zammit ☎ (+352) 4303 3355*

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