

Anonymised version

Translation

C-570/23 – 1

Case C-570/23

Request for a preliminary ruling

Date lodged:

15 September 2023

Referring court:

Amtsgericht Düsseldorf (Germany)

Date of the decision to refer:

7 September 2023

Applicant:

IH

Defendant:

Eurowings GmbH

[...]

Amtsgericht Düsseldorf (Düsseldorf Local Court, Germany)

Order

In the case of
IH v Eurowings GmbH

the proceedings are stayed [...].

The following question is referred to the Court of Justice of the European Union for a preliminary ruling under the second paragraph of Article 267 of the Treaty on the Functioning of the European Union (TFEU), in the version applicable at the time, on the interpretation of EU law, namely Article 5(1) of 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 (‘the Air Passenger Rights Regulation’):

In the event that a single booking was made for more than one flight (in the present case, an outward flight and a return flight), is cancellation of one leg (in the present case, the return flight) equivalent to cancellation of all the flights, with the result that the time limits for exceptions to the obligation to pay compensation under Article 5(1)(c) of the Air Passenger Rights Regulation must be calculated from the ‘scheduled time of departure’ of the first leg (outward flight)?

Grounds:

I.

- 1 The facts forming the background to the question referred are as follows:
- 2 The parties are in dispute concerning compensation for cancellation of a flight.
- 3 On 3 June 2022, the defendant cancelled the flight from Anchialos (Greece) to Düsseldorf (Germany) scheduled to depart at 12:15 local time on 18 June 2022.
- 4 The applicant had a confirmed booking for the defendant’s flights from Düsseldorf (Germany) to Anchialos (Greece) departing at 07:35 local time on 4 June 2022 and back again departing at 12:15 local time on 18 June 2022 [...].
- 5 On the evening of 3 June 2022, the applicant received notification by email that the return flight had been cancelled [...]. Through the defendant’s service hotline, the applicant learned that a partial reimbursement had been made and that the matter was therefore settled. No substitute transport was offered and no assistance was provided to obtain substitute transport.
- 6 No direct routes were available from other airlines for the planned return flight. The applicant organised her return travel herself on the same evening of 3 June 2022, with a flight booked from Anchialos to Munich (Condor) and another from Munich to Düsseldorf (Lufthansa).
- 7 The defendant having acknowledged liability for the costs of the replacement transport in respect of the cancelled flight and having been sentenced in that regard by a partial judgment by consent of 3 November 2022, only the compensation of EUR 400.00 sought by the applicant remains to be decided.
- 8 The applicant considers that the return flight cannot be regarded as a separate operation. She had specifically not wanted to book only an outward flight or only a return flight. The two flights, she submits, form part of a single booking and are consequently the subject of a single contract. She argues that it was not reasonable to expect her to embark on the journey without the option of a timely return flight.

- 9 The defendant contends that the applicant was informed of the cancellation in good time within the meaning of the Air Passenger Rights Regulation.

II.

- 10 The court considers the question referred for a preliminary ruling to be relevant. If the scheduled time of departure under Article 5(1)(c) of the Air Passenger Rights Regulation is based on the return flight scheduled for 18 June 2022, the defendant owes no compensation because the applicant will have been informed of the cancellation in good time on 3 June 2022, within the time limit specified in Article 5(1)(c)(i) of the Air Passenger Rights Regulation. By contrast, for cancellation of a single flight scheduled to depart on 4 June 2022, the cancellation on 3 June 2022 will not have been in good time and compensation will have to be paid.
- 11 As far as can be seen, that question of law has not yet been decided.
- 12 Although the Court of Justice ruled in its judgment in *Schenkel v Emirates* (10 July 2008, C-173/07 [...]; also: CJEU judgment of 13 October 2011, C-83/10 [...]) *Sousa Rodriguez v Air France* and CJEU (Third Chamber) judgment of 22 June 2016, C-255/15 [...] *Mennens v Emirates*) that the concept of ‘flight’ within the meaning of the Regulation is to be interpreted as not applicable to a case of an outward and return journey agreed upon as a single operation (that is to say as a round trip covered by Article 1 of the Montreal Convention) [...] [literature], the present case depends not on the interpretation of the concept of ‘flight’ in Article 3(1)(a) of the Air Passenger Rights Regulation but rather on the interpretation of the concept of ‘scheduled time of departure’ in Article 5(1)(c) of the Air Passenger Rights Regulation.
- 13 The cancellation of a return flight has the potential to undermine the passenger’s entire flight plan, given that it is not possible for the passenger or reasonable to expect the passenger to embark on a flight if the overall plan has to be changed shortly before the start of the journey. The adverse effects for the passenger correspond to those caused by a flight cancelled at short notice or a significantly delayed flight.

III.

- 14 [...]
[...]
[...] [stay of proceedings; signatures]