

Case C-716/23

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

27 November 2023

Referring court:

Vilniaus apygardos teismas (Lithuania)

Date of the decision to refer:

31 October 2023

Appellant and applicant at first instance:

‘Skycop.com’ UAB

Respondent and defendant at first instance:

Ryanair DAC

Subject matter of the main proceedings

The right to compensation for passengers who refused to take a flight that was delayed by at least five hours and therefore did not reach their final destination.

Subject matter and legal basis of the request

Interpretation of Article 6(1)(iii) 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, and repealing Regulation (EEC) No 295/91 (‘Regulation No 261/2004’), read in conjunction with Article 8(1)(a) and Article 7 thereof.

Article 267 of the Treaty on the Functioning of the European Union.

Questions referred for a preliminary ruling

1. Is Article 6(1)(iii) of Regulation No 261/2004 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, read in conjunction with Article 8(1)(a) thereof, to be interpreted as meaning that passengers who refused to take a flight that was delayed by at least five hours and for whom that flight was no longer serving any purpose are entitled to the compensation provided for in Article 7 of that regulation?

2. If the answer to the first question is in the affirmative, what conditions must be met for such a passenger to be entitled to compensation under Article 7 of Regulation No 261/2004, or is such a passenger entitled to compensation irrespective of the reason why the passenger refused to take a flight that was delayed by at least five hours?

Provisions of European Union law and case-law relied on

Regulation No 261/2004, recitals 1 and 2 and Articles 1, 2 and 5 to 9.

Commission Notice – Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council, paragraphs 4.2. and 4.4.6.

Judgment of 26 February 2013, *Folkerts* (C-11/11, EU:C:2013:106); judgment of 4 September 2014, *Germanwings* (C-452/13, EU:C:2014:2141); judgment of 19 November 2009, *Sturgeon and Others* (Joined Cases C-402/07 and C-432/07, EU:C:2009:716); judgment of 23 October 2012, *Nelson and Others* (Joined Cases C-581/10 and C-629/10, EU:C:2012:657).

Succinct presentation of the facts and procedure in the main proceedings

- 1 Passengers A. K., A. Š., A. V., G. S., L. K., M. V., P. K., P. Š., G. Š., A. Š., T. Š., R. R., Z. M., A. B., P. N. and U. M. purchased tickets for the Vilnius-Milan (Bergamo) flight on 30 March 2022 operated by the air carrier Ryanair DAC; the distance covered by that flight (VNO-BGY) is 1 532.76 km.
- 2 The scheduled time of departure from Vilnius was 19.50 and the scheduled time of arrival in Milan (Bergamo) was 21.25. The flight was delayed. The flight in fact departed the following day at 2.53 (that is, 7 hours and 3 minutes later than scheduled) and reached the final destination at 4.40 (that is, 7 hours and

15 minutes later than scheduled). The air carrier did not refer to any extraordinary circumstances.

- 3 Some of the passengers listed in paragraph 1 above (8 persons) took the delayed flight and reached their final destination. The remainder (8 persons) did not reach their final destination: some of the latter passengers, after waiting for a long time and being told that their flight had been delayed and that it was unclear whether it would take place, did not present themselves at the boarding gate, while others, after waiting for a few hours, decided not to take the flight and cancelled their check-in.
- 4 'Skycop.com' UAB entered into assignment agreements with all the passengers listed in paragraph 1 above, whose flight was delayed, by which they assigned to it their right to claim compensation under Regulation No 261/2004.
- 5 During the proceedings before the court of first instance, 'Skycop.com' UAB and Ryanair DAC entered into a settlement agreement concerning compensation for the eight passengers who reached their final destination.
- 6 The court of first instance dismissed the action brought by 'Skycop.com' UAB with regard to compensation for the eight passengers who did not reach their final destination. The reasoning of the court of first instance is that Regulation No 261/2004 does not specifically state that passengers whose flights have been delayed, like passengers whose flights have been cancelled, are entitled to the compensation provided for in Article 7 of that Regulation. The court of first instance noted that, although the right of passengers to compensation in the event of flight delays is recognised in the case-law of the Court of Justice, in particular in its judgment of 19 November 2009 in *Sturgeon and Others*, that compensation is payable on condition that the passengers reached their final destination three or more hours later than scheduled. According to the court of first instance, passengers who, after being informed of a delay of five hours or more, decided to exercise their right to refuse to take the flight and to claim reimbursement of the price of their ticket, are not comparable to passengers who have spent a considerable amount of time waiting for the flight and who, after taking the flight, have reached their final destination.
- 7 'Skycop.com' UAB appealed against the judgment of the court of first instance, requesting that the judgment under appeal be set aside and a new decision be adopted upholding the action; it also requested that the matter be referred to the Court of Justice for a preliminary ruling.

The essential arguments of the parties in the main proceedings

- 8 'Skycop.com' UAB argues that passengers whose flights have been delayed by more than five hours and for whom the flights are no longer serving any purpose are comparable to passengers whose flights have been cancelled and must

therefore be compensated for the time they have spent, even though they did not reach their final destination (decided not to take the flight there).

- 9 Ryanair DAC submits that passengers who abandoned their journey after a flight delay and did not reach their final destination are not entitled to compensation, since no such right is expressly provided for in Regulation No 261/2004 or in the case-law of the Court of Justice.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 10 The need for the referring court to refer the matter to the Court of Justice is based on the fact that the answer to the questions referred for a preliminary ruling will make it possible to determine whether, in accordance with the provisions of Regulation No 261/2004, the passengers concerned, that is, the passengers whose flight was delayed for at least five hours (Article 6(1)(iii)) and who ultimately refused to take that flight (did not reach their final destination), are not only entitled to the reimbursement of the price of their ticket (Article 8(1)(a)), but also entitled to the compensation provided for in Article 7 of that regulation in the same way as those passengers who ultimately took the flight and reached their final destination.
- 11 The referring court notes that the situation at issue in the main proceedings is not expressly dealt with in Regulation No 261/2004, nor has the case-law of the Court of Justice provided any clarification on the matter (reference is made to the judgment in *Sturgeon and Others* (C-402/07 and C-432/07), paragraphs 31, 60 and 61, the judgment in *Nelson and Others* (C-581/10 and C-629/10), paragraphs 34 and 40, the judgment in *Folkerts* (C-11/11), paragraphs 30, 32, 33, 36, 37 and 47, and the judgment in *Germanwings* (C-452/13)).
- 12 The referring court points out that, in the cases on which the Court of Justice ruled in *Sturgeon and Others* (C-402/07 and C-432/07) and in *Nelson and Others* (C-581/10 and C-629/10), although the situation in question also involved a delay of more than five hours in departure, the passengers nonetheless took the flight and reached their final destination. In the light of that circumstance and the fact that the passengers reached their final destination three or more hours later than scheduled, it was concluded that such passengers are entitled to compensation under Article 7 of Regulation No 261/2004 in the same way as passengers whose flight has been cancelled (Article 5(1)(c)(iii) of that regulation). In *Folkerts* (C-11/11) and in *Germanwings* (C-452/13), compensation is also linked to the fact that passengers reached their final destination three or more hours later than scheduled.
- 13 The situation in the main proceedings is different and the question arises as to whether passengers are also entitled to compensation under Article 7 of Regulation No 261/2004 where their delayed flight meets the thresholds set out in Article 6 of Regulation No 261/2004 (in the present case, the delay in departure

was more than five hours), but the passengers abandoned their journey and did not reach their final destination at all.

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