Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

4 September 2014*

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Articles 2, 5 and 7 — Right to compensation in the event of a long delay to a flight — Length of delay — Concept of 'arrival time')

In Case C-452/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesgericht Salzburg (Austria), made by decision of 31 July 2013, received at the Court on 12 August 2013, in the proceedings

Germanwings GmbH

v

Ronny Henning,

THE COURT (Ninth Chamber),

composed of M. Safjan, President of the Chamber, J. Malenovský (Rapporteur) and A. Prechal, Judges,

Advocate General: Y. Bot,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 7 May 2014,

after considering the observations submitted on behalf of:

— Mr Henning, by A. Skribe, Rechtsanwalt,

— the German Government, by T. Henze and J. Kemper, acting as Agents,

— the European Commission, by W. Mölls and N. Yerrell, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the interpretation of the concept of 'arrival time' within the meaning of Articles 2, 5 and 7 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 (OJ 2004 L 46, p. 1).

2 The request has been made in proceedings between Germanwings GmbH ('Germanwings'), an air carrier, and Mr Henning concerning that carrier's refusal to compensate Mr Henning for the alleged delay with which his flight arrived at Cologne/Bonn airport (Germany).

Legal context

3 Article 2 of Regulation No 261/2004, headed 'Definitions', states:

'For the purposes of this Regulation:

…

(h) "final destination" means the destination on the ticket presented at the check-in counter or, in the case of directly connecting flights, the destination of the last flight; alternative connecting flights available shall not be taken into account if the original planned arrival time is respected'.

4 Article 5 of Regulation No 261/2004, headed 'Cancellation', provides:

'1. In case of cancellation of a flight, the passengers concerned shall:

…

(c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:

…

(iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

…

3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

…'

5 Article 6 of Regulation No 261/2004, headed 'Delay', states:

'1. When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure:

(a) for two hours or more in the case of flights of 1 500 kilometres or less; or

(b) for three hours or more in the case of all intra-Community flights of more than 1 500 kilometres and of all other flights between 1 500 and 3 500 kilometres; or

(c) for four hours or more in the case of all flights not falling under (a) or (b),

passengers shall be offered by the operating air carrier:

(i) the assistance specified in Article 9(1)(a) and 9(2); and

(ii) when the reasonably expected time of departure is at least the day after the time of departure previously announced, the assistance specified in Article 9(1)(b) and 9(1)(c); and

(iii) when the delay is at least five hours, the assistance specified in Article 8(1)(a).

2. In any event, the assistance shall be offered within the time limits set out above with respect to each distance bracket.'

6 Article 7 of Regulation No 261/2004, headed 'Right to compensation', provides:

'1. Where reference is made to this Article, passengers shall receive compensation amounting to:

(a) EUR 250 for all flights of 1 500 kilometres or less;

…

2. When passengers are offered re-routing to their final destination on an alternative flight pursuant to Article 8, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked

(a) by two hours, in respect of all flights of 1 500 kilometres or less …

…

the operating air carrier may reduce the compensation provided for in paragraph 1 by 50%.

…

4. The distances given in paragraphs 1 and 2 shall be measured by the great circle route method.'

The dispute in the main proceedings and the question referred for a preliminary ruling

7 Mr Henning purchased an aeroplane ticket from Germanwings in order to go from Salzburg (Austria) to Cologne/Bonn. That ticket specified a take-off from Salzburg airport at 13.30 on 11 May 2012 and an arrival at Cologne/Bonn airport at 14.40 on the same day. The flight distance between those two airports is, according to the great circle route method, less than 1 500 kilometres.

8 On 11 May 2012, Mr Henning's aircraft was delayed in taking off from Salzburg airport. On arrival, the aircraft touched down on the tarmac of the runway at Cologne/Bonn airport at 17.38. The aircraft did not, however, reach its parking position until 17.43, that is to say three hours and three minutes after the scheduled arrival time. The doors of the aircraft were opened shortly afterwards.

9 Mr Henning takes the view that the final destination was reached with a delay of more than three hours in relation to the scheduled arrival time. He thus considers that he has the right to compensation of EUR 250 on the basis of Articles 5 to 7 of Regulation No 261/2004. Germanwings submits that, as the actual arrival time was the time at which the plane touched down on the tarmac at Cologne/Bonn airport, the delay in relation to the scheduled arrival time is only two hours and 58 minutes, with the result that no compensation is payable.

10 The first-instance court held that the actual arrival time to be taken into account was the time at which the first door of the aircraft was opened to enable the passengers to leave. Consequently, that court ordered Germanwings to pay compensation of EUR 250 to Mr Henning. That company lodged an appeal against that judgment before the referring court.

11 In those circumstances the Landesgericht Salzburg (Regional Court, Salzburg) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'What time is relevant for the term "time of arrival" used in Articles 2, 5 and 7 of Regulation [No 261/2004]:

(a) the time that the aircraft lands on the runway ("touchdown");

(b) the time that the aircraft reaches its parking position and the parking brakes are engaged or the chocks have been applied ("in-block time");

(c) the time that the aircraft door is opened;

(d) a time defined by the parties in the context of party autonomy?'

Consideration of the question referred

12 By its question the referring court asks, in essence, whether Articles 2, 5 and 7 of Regulation No 261/2004 are to be interpreted as meaning that the concept of 'arrival time', which is used to determine the length of the delay to which passengers on a flight have been subject, refers to (a) the time at which the aircraft touches down on the runway of the destination airport; (b) the time at which the aircraft reaches its parking position and the parking brakes are engaged or the chocks have been applied; (c) the time at which the aircraft door is opened or (d) a time defined by the parties by common accord.

13 It must be pointed out at the outset that that regulation envisages two different types of flight delay.

14 First, in some cases, such as the flight delay described in Article 6 of Regulation No 261/2004, that regulation refers to a flight's being delayed beyond its scheduled departure time.

15 Secondly, in other cases, such as those referred to in Articles 5 and 7 of that regulation, the regulation refers to the situation where arrival has been delayed. It is apparent from those articles that, in order to establish the length of such a delay, it is necessary to compare the scheduled arrival time of the aircraft with the time at which it actually arrived at its destination.

16 Regulation No 261/2004 does not define the actual arrival time. That being the case, the need for a uniform application of EU law and the principle of equal treatment require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent interpretation throughout the European Union (see, to that effect, *Ekro*, 327/82, EU:C:1984:11, paragraph 11).

17 It follows that that concept of 'actual arrival time' must be interpreted in such a way as to apply uniformly throughout the European Union.

18 In those circumstances, one of the possibilities envisaged by the referring court, namely that according to which that concept is defined by the parties concerned on a contractual basis, must, in the absence of any indication to that effect in Regulation No 261/2004, be rejected at the outset.

19 It must also be noted that the Court has held that when their flights are subject to long delay, that is delay equal to or in excess of three hours, passengers of such flights are entitled to compensation on the basis of Article 7 of Regulation No 261/2004, like those passengers whose original flights have been cancelled and whom an air carrier is not able to offer re-routing in accordance with the conditions laid down in Article 5(1)(c)(iii) of that regulation, given that they also suffer an irreversible loss of time (see, to that effect, *Folkerts*, C-11/11, EU:C:2013:106, paragraph 32 and the case-law cited).

20 During a flight, passengers remain confined in an enclosed space, under the instructions and control of the air carrier, in which, for technical and safety reasons, their possibilities of communicating with the outside world are considerably restricted. In such circumstances, passengers are unable to carry on, without interruption, their personal, domestic, social or business activities. It is only once the flight has ended that they are able to resume their normal activities.

21 Although such inconveniences must be regarded as unavoidable as long as a flight does not exceed the scheduled duration, the same is not true if there is a delay, since the time by which, in the circumstances described in the preceding paragraph, the scheduled duration of the flight has been exceeded, represents 'lost time' in the light of the fact that the passengers concerned cannot use it to achieve the objectives which led them to go at the desired time to the destinations of their choice.

22 It follows that the concept of 'actual arrival time' must be understood, in the context of Regulation No 261/2004, as corresponding to the time at which the situation described in paragraph 20 of the present judgment comes to an end.

23 In that regard, it must be stated that, in principle, the situation of passengers on a flight does not change substantially when their aircraft touches down on the runway at the destination airport, when that aircraft reaches its parking position and the parking brakes are engaged or when the chocks are applied, as the passengers continue to be subject, in the enclosed space in which they are sitting, to various constraints.

24 It is only when the passengers are permitted to leave the aircraft and the order is given to that effect to open the doors of the aircraft that the passengers may in principle resume their normal activities without being subject to those constraints.

25 It is apparent from the foregoing considerations that Articles 2, 5 and 7 of Regulation No 261/2004 must be interpreted as meaning that the concept of 'arrival time', which is used to determine the length of the delay to which passengers on a flight have been subject, corresponds to the time at which at least one of the doors of the aircraft is opened, the assumption being that, at that moment, the passengers are permitted to leave the aircraft.

26 That finding is not invalidated by the fact that a number of European Regulations and also certain International Air Transport Association (IATA) documents refer to the concept of 'actual arrival time' as the time at which an aircraft reaches its parking position. Those regulations and documents pursue objectives relating to air navigation rules and, in particular, to the allocation of slots, which are different from those of Regulation No 261/2004. Consequently, the definitions that they give cannot be regarded as relevant for the interpretation of corresponding terms in the context of Regulation

No 261/2004, which is aimed exclusively at conferring minimum rights on passengers who are subject to various inconveniences because they are denied boarding against their will or have their flights cancelled or delayed.

27 In the light of all of the foregoing considerations, the answer to the referring court's question is that Articles 2, 5 and 7 of Regulation No 261/2004 must be interpreted as meaning that the concept of 'arrival time', which is used to determine the length of the delay to which passengers on a flight have been subject, refers to the time at which at least one of the doors of the aircraft is opened, the assumption being that, at that moment, the passengers are permitted to leave the aircraft.

Costs

28 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Ninth Chamber) hereby rules:

Articles 2, 5 and 7 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, must be interpreted as meaning that the concept of 'arrival time', which is used to determine the length of the delay to which passengers on a flight have been subject, refers to the time at which at least one of the doors of the aircraft is opened, the assumption being that, at that moment, the passengers are permitted to leave the aircraft.

[Signatures]