



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

7 September 2017*

(Reference for a preliminary ruling — Transport — Regulation (EC) No 261/2004 — Article 7(1) — Common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights — Flight consisting of several legs — Concept of ‘distance’ to be taken into account)

In Case C-559/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Amtsgericht Hamburg (Hamburg Local Court, Germany), made by decision of 4 October 2016, received at the Court on 4 November 2016, in the proceedings

Birgit Bossen,

Anja Bossen,

Gudula Gräßmann

v

Brussels Airlines SA/NV

THE COURT (Eighth Chamber),

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

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- B. Bossen, A. Bossen and G. Gräßmann, by F. Puschkarski, Rechtsanwältin,
- Brussels Airlines SA/NV, by D. Smielick, Rechtsanwalt,
- the French Government, by D. Colas, E. de Moustier and M.-L. Kitamura, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by P. Garofoli, avvocato dello Stato,

* Language of the case: German.

– 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

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 7(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, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).
- 2 The request has been made in the course of proceedings between Birgit Bossen, Anja Bossen and Gudula Gräßmann and Brussels Airlines SA/NV concerning the amount of compensation payable to them in respect of the long delay on a flight of that airline.

Legal context

- 3 Article 2(h) of Regulation No 261/2004, entitled ‘Definitions’, provides:

‘For the purposes of this Regulation, the following definitions shall apply:

...

(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 Under Article 5(1)(c) of that regulation:

‘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:
 - (i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or
 - (ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or
 - (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.’

5 Article 6 of that regulation is worded as follows:

Delay

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 the regulation provides:

Right to compensation

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;
- (b) EUR 400 for all intra-Community flights of more than 1 500 kilometres, and for all other flights between 1 500 and 3 500 kilometres;
- (c) EUR 600 for all flights not falling under (a) or (b).'

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time. ...

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 The applicants booked a trip with Brussels Airlines from Rome (Italy) to Hamburg (Germany), with a connecting flight from Brussels (Belgium). The flight from Rome to Brussels was scheduled to depart at 10.25 and to land at 12.40, while the flight from Brussels to Hamburg was scheduled to depart at 13.35 and to land at 14.45.

- 8 The flight from Rome to Brussels was delayed. The flight did not reach Brussels until 13.22, and the applicants were therefore unable to catch their connecting flight in time.
- 9 The applicants were transported to Hamburg on the next flight, which arrived at 18.35, that is, with a delay of 3 hours and 50 minutes after the originally planned arrival time.
- 10 On the basis of the ‘great circle’ method, the direct distance between Rome and Hamburg is 1 326 km. The distance between Rome and Brussels is 1 173 km and the distance between Brussels and Hamburg is 483 km, so that the total distance of those two flights together is 1 656 km.
- 11 The applicants brought an action before the Amtsgericht Hamburg (Hamburg Local Court, Germany) claiming compensation in the amount of EUR 400 each on the basis of Article 7(1) of Regulation No 261/2004.
- 12 The referring court states that it is common ground between the parties that the applicants are entitled to compensation because of the long delay, and Brussels Airlines has already paid them EUR 250 each in that regard.
- 13 The applicants now seek a further EUR 150 each since the calculation of the distance should, they claim, include the two flight segments, which is therefore more than 1 500 km, and not the ‘great circle’ distance between Rome and Hamburg.
- 14 In those circumstances, the Amtsgericht Hamburg (Local Court, Hamburg) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is the second sentence of Article 7(1) of Regulation (EC) No 261/2004 to be interpreted as meaning that the concept of ‘distance’ relates only to the direct distance calculated between the first point of departure and the last destination on the basis of the ‘great circle’ method, regardless of the distance actually flown?’

Consideration of the question referred

- 15 By its question, the referring court asks, in essence, whether Article 7(1) of Regulation No 261/2004 must be interpreted as meaning that the concept of ‘distance’ relates, in the case of air routes with connecting flights, only to the distance calculated between the first point of departure and the final destination on the basis of the ‘great circle’ method, regardless of the distance actually flown.
- 16 As a preliminary point, it must be noted that it is common ground that the applicants in the main proceedings suffered, upon arrival at their final destination, a delay entitling them to compensation. The determination of the amount of such compensation under the conditions laid down in Article 7(1) of Regulation No 261/2004 is therefore the only issue in this case.
- 17 It should be recalled at the outset that Article 7(1) of Regulation No 261/2004 states, *inter alia*, that where reference is made to that article in the regulation, passengers are to receive compensation varying from EUR 250 to EUR 600 depending on the distance covered by the flights concerned, taking account of the last destination of the passenger concerned and it being understood that that distance must be calculated in accordance with Article 7(4) of the regulation, using the ‘great circle’ method.
- 18 It should be pointed out in that regard that, although Article 5 of Regulation No 261/2004, relating to cancellation, refers to Article 7 of that regulation, that is not the case, however, in respect of Article 6 of that regulation, concerning delay.

- 19 However, the Court of Justice has pointed out that all European Union acts must be interpreted in accordance with primary law as a whole, including the principle of equal treatment, which requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see, to that effect, judgment of 23 October 2012, *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraph 33).
- 20 The Court found that passengers whose flights are delayed by three hours or more and passengers whose flights are cancelled and re-routed under conditions which do not comply with the limits laid down in Article 5(1)(c)(iii) of Regulation No 261/2004 must be regarded as being in comparable situations, in so far as they all suffer similar inconvenience, which is the basis of their compensation (see, to that effect, judgment of 23 October 2012, *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraph 34).
- 21 It follows that Regulation No 261/2004 must be interpreted as meaning that passengers of flights delayed for three hours or more must receive the same compensation as passengers whose flights are cancelled, who are re-routed under conditions which do not comply with the limits laid down in Article 5(1)(c)(iii) of Regulation No 261/2004 (judgment of 23 October 2012, *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraph 38).
- 22 That case-law must be understood as requiring that the two categories of passengers referred to in the preceding paragraph should be treated equally, not only as regards entitlement to compensation but also as regards the amount of such compensation.
- 23 It is, therefore, in the light of that requirement that Article 7(1) and Article 5(1)(c)(iii) of Regulation No 261/2004 must be interpreted.
- 24 As is clear from their wording, those provisions provide for a right to compensation for passengers without distinction as to whether they reach their final destination by means of a direct flight or an air journey with connecting flights.
- 25 The same applies to the calculation of the amount of such compensation.
- 26 The choice and extent of the various measures adopted in Regulation No 261/2004 by the legislature of the European Union vary according to the significance of the damage suffered by the passengers (see, to that effect, judgment of 10 January 2006, *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraph 85). The different scales of the amount of compensation payable to passengers must, therefore, be regarded as reflecting the differences in the extent of the inconvenience suffered by the passengers concerned in the situations described in Article 7(1)(a) to (c) of Regulation No 261/2004.
- 27 In that regard, the Court has already stated that the justification for compensation for passengers falling under Article 5(1)(c)(iii) of that regulation is that, as a result of the flight cancellation at the very last moment, they are in practice denied the opportunity to reorganise their travel arrangements freely. Consequently, if, for one reason or another, they are absolutely required to reach their final destination at a particular time, they cannot avoid the loss of time inherent in the new situation, having no leeway in that regard (judgment of 23 October 2012, *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraph 35).
- 28 In view of the nature of the inconvenience thus suffered, the fact that certain passengers, falling within the scope of Article 5(1)(c)(iii) of Regulation No 261/2004, do not reach their final destination by means of a direct flight but rather by a journey with connecting flights, resulting in an actual increase in the distance travelled in the latter case, does not in itself exacerbate the extent of such inconvenience compared with that suffered by direct flight passengers.

- 29 Therefore, when determining the amount of compensation, account should be taken of the distance between the first point of departure and the final destination, excluding any connecting flights.
- 30 Furthermore, as the requirement set out in paragraph 21 of the present judgment implies, the same method of calculation should be adopted for passengers on flights delayed by three hours or more.
- 31 In particular, the Court stated that the basis of their compensation was the inconvenience of having suffered a loss of time of three hours or more in relation to the original planning of that transport, as established, including in the case of connecting flights, upon arrival at their final destination (see to that effect, judgment of 26 February 2013, *Folkerts*, C-11/11, EU:C:2013:106, paragraph 35).
- 32 In view of the nature of the inconvenience thus suffered, any differences in the distance actually travelled do not in themselves influence the extent of such an inconvenience.
- 33 It follows from all the above considerations that Article 7(1) of Regulation (EC) No 261/2004 must be interpreted as meaning that the concept of ‘distance’, in the case of air routes with connecting flights, relates only to the distance calculated between the point of departure and the final destination on the basis of the ‘great circle’ method, regardless of the distance actually flown.

Costs

- 34 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 (Eighth Chamber) hereby rules:

Article 7(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, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that the concept of ‘distance’ relates, in the case of air routes with connecting flights, only to the distance calculated between the first point of departure and the final destination on the basis of the ‘great circle’ method, regardless of the distance actually flown.

[Signatures]