



Reports of Cases

ORDER OF THE COURT (Eighth Chamber)

24 October 2019*

(Reference for a preliminary ruling — Rules of Procedure of the Court of Justice — Article 99 — Air transport — Regulation (EC) No 261/2004 — Long delay of a flight — Passengers' right to compensation — Proof of the passenger's presence for check-in — Reservation confirmed by the air carrier)

In Case C-756/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal d'instance d'Aulnay-sous-Bois (District Court, Aulnay-sous-Bois, France), made by decision of 28 November 2018, received at the Court on 3 December 2018, in the proceedings

LC,

MD

v

easyJet Airline Co. Ltd,

THE COURT (Eighth Chamber),

composed of L.S. Rossi, President of the Chamber, J. Malenovský (Rapporteur) and F. Biltgen, Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- MD and LC, by J. Pitcher, avocate,
- the French Government, by A.-L. Desjonquères and I. Cohen, acting as Agents,
- the Portuguese Government, by L. Inez Fernandes, P. Barros da Costa, L. Medeiros and C. Farto, acting as Agents,
- the European Commission, by J. Hottiaux and N. Yerrell, acting as Agents,

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

* Language of the case: French.

makes the following

Order

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(2)(a) 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 reference has been made in proceedings between LC and MD, on the one part, and easyJet Airline Co. Ltd ('easyJet'), on the other part, concerning compensation for long delay of flights.

Legal context

- 3 According to recital 1 of Regulation No 261/2004:

'Action by the Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general.'

- 4 Article 2(g) of the regulation provides:

'For the purposes of this regulation:

...

(g) "reservation" means the fact that the passenger has a ticket, or other proof, which indicates that the reservation has been accepted and registered by the air carrier or tour operator.'

- 5 Article 3 of the regulation states:

'1. This regulation shall apply:

- (a) to passengers departing from an airport located in the territory of a Member State to which the Treaty applies;
- (b) to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier.

2. Paragraph 1 shall apply on the condition that passengers:

- (a) have a confirmed reservation on the flight concerned and, except in the case of cancellation referred to in Article 5, present themselves for check-in,
 - as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent,or, if no time is indicated,
 - not later than 45 minutes before the published departure time; or

(b) have been transferred by an air carrier or tour operator from the flight for which they held a reservation to another flight, irrespective of the reason.

...'

6 According to Article 7(1) of Regulation No 261/2004:

'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.'

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

7 The applicants in the main proceedings made online reservations for a return journey from Paris (France) to Venice (Italy) operated by easyJet, departing on 8 February 2014 and returning on 10 February 2014.

8 According to the applicants in the main proceedings, the return flight arrived in Paris with a delay of 3 hours and 7 minutes.

9 Since they received no compensation for that delay, the applicants brought an action before the referring court, seeking an order requiring easyJet to pay to each of them EUR 250 in respect of the fixed-rate compensation provided for in Article 7 of Regulation No 261/2004.

10 EasyJet, which does not dispute the delay, rejects the claim for compensation on the ground that the applicants in the main proceedings have failed to produce boarding cards as proof that they were present for check-in.

11 In those circumstances, the applicants in the main proceedings take the view that the issue of proof of presence for check-in must be clarified, maintaining, *inter alia*, that possession of a boarding card cannot lead to the presumption that the passenger actually presented himself or herself for check-in or boarded the aircraft, that Article 3 of Regulation No 261/2004 does not give a definition of the concept of 'check-in' and that account must be taken of digital developments applicable to passenger check-in, including paperless ticketing, online check-in, and electronic tickets.

12 By contrast, according to easyJet, the interpretation of Regulation No 261/2004 is not in any doubt and the Cour de Cassation (Court of Cassation, France) has stated that it is for passengers to produce boarding cards as proof of they were present for check-in.

13 The order for reference mentions the case-law of the Cour de Cassation (Court of Cassation) that confirmed the judgments of the referring court whereby the latter dismissed claims for fixed-rate compensation under Regulation No 261/2004 for long delays of flights brought by passengers who had failed to produce the relevant boarding cards, despite providing proof of online reservations and certain confirmations and statements.

- 14 Moreover, it is apparent from the order for reference that, due to the large volume of the disputes before the referring court, most air carriers rely on the failure to produce a boarding card to refuse to pay the compensation provided for in Article 7 of Regulation No 261/2004 for long delay to flights, on the basis of the aforementioned case-law of the Cour de Cassation (Court of Cassation).
- 15 In those circumstances, the tribunal d'instance d'Aulnay-sous-Bois (District Court, Aulnay-sous-Bois, France) decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:
- '(1) Is Article 3(2)(a) of Regulation [No 261/2004], to be interpreted as meaning that, in order to rely on the provisions of the regulation, passengers must prove that they presented themselves for check-in?
- (2) If so, does Article 3(2)(a) of Regulation No 261/2004 preclude a rule of simple presumption that the requirement that a passenger present himself for check-in may be regarded as satisfied if the passenger has a reservation that has been accepted and registered by the operating air carrier within the meaning of Article 2(g)?'

Consideration of the questions referred

- 16 It should be observed as a preliminary point that, according to settled case-law, in the procedure laid down by Article 267 TFEU, providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to determine the case before it. With this in mind, the Court of Justice may have to reformulate the questions referred to it (see, inter alia, judgment of 17 September 2015, *van der Lans*, C-257/14, EU:C:2015:618, paragraph 32 and the case-law cited).
- 17 It is necessary to do so in the context of this reference for a preliminary ruling.
- 18 Indeed, by its questions referred for a preliminary ruling, the referring court admittedly asks the Court to rule generally on whether Article 3(2)(a) of Regulation No 261/2004 must be interpreted as meaning that a passenger, in order to rely on the provisions of the regulation, must prove that he or she was present for check-in and, if so, whether, having regard to Article 2(g) of the regulation, that presence may be presumed if the passenger has a reservation that has been accepted and registered by the operating air carrier.
- 19 However, the referring court's questions arise in a specific context, namely that of the air carrier's refusal to grant compensation under Regulation No 261/2004 following a delay of 3 hours or more established upon termination of the flight on which the parties concerned have a confirmed reservation. The air carrier, as is apparent from paragraph 10 above, does not dispute that there was such a delay but rejects the claim for compensation on the ground that the passengers have failed to prove that they were present for check-in by means of a boarding card.
- 20 The referring court also emphasises the large volume of disputes before it. According to the referring court, most air carriers refuse to grant the compensation provided for in Article 7 of Regulation No 261/2004, for long delay of flights, by relying on the failure to produce a boarding card, the production of which is required under the settled case-law of a supreme court of the Member State concerned.
- 21 By taking account of that context and with a view to providing the referring court with an answer that will be of use and enable it to determine the case before it, the questions referred for a preliminary ruling are to be understood as seeking to establish, in essence, whether Regulation No 261/2004 and, in particular, Article 3(2)(a) thereof, must be interpreted as meaning that passengers on a flight with a

delay of 3 hours or more on arrival who hold a confirmed reservation on that flight can be denied compensation under that regulation solely on the ground that, upon claiming compensation, they failed to prove that they were present for check-in for that flight, in particular by means of a boarding card.

- 22 Under Article 99 of the Rules of Procedure of the Court of Justice, the latter may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order, where, *inter alia*, the answer to the question referred for a preliminary ruling admits of no reasonable doubt.
- 23 Since that is the case here, that provision is to be applied.
- 24 It is apparent from the wording of Article 3(2)(a) of Regulation No 261/2004 that that regulation applies only if, first, passengers have a confirmed reservation on the flight concerned, and, secondly, they present themselves for check-in within the time limits laid down in that provision.
- 25 It follows that since both conditions referred to in that provision are cumulative, the passenger's presence for check-in cannot be presumed by virtue of the fact that that passenger has a confirmed reservation on the flight concerned.
- 26 Moreover, that provision specifies that the requirement for passengers to present themselves for check-in does not cover passengers whose flights have been cancelled.
- 27 The questions referred for a preliminary ruling concern passengers whose flights have been affected by long delays.
- 28 In that respect, as in the case in the main proceedings, in so far as a given air carrier takes on board passengers holding a confirmed reservation on the flight at issue and transports them to their destination, those passengers must be considered to have complied with the requirement to present themselves for check-in prior to the flight. In those circumstances, it is not, therefore, necessary to prove their presence upon bringing a claim for compensation.
- 29 It follows that passengers such as those at issue in the main proceedings, who hold a confirmed reservation on a flight and have taken that flight, must be considered to have properly satisfied the requirement to present themselves for check-in.
- 30 Thus, provided they reach their destination with a delay of 3 hours or more, those passengers are entitled to compensation in respect of that delay under Regulation No 261/2004, without being required to produce, to that end, the boarding card or any other document confirming their presence, within the time limits prescribed, for check-in for the delayed flight.
- 31 That conclusion is also corroborated by the objective, set out in recital 1 of Regulation No 261/2004, of ensuring a high level of protection for passengers.
- 32 Passengers whose flight is affected by a long delay can thus enjoy their entitlement to compensation without being required to prove subsequently, upon claiming compensation, that they were present for check-in for the delayed flight on which they were transported in any event — a requirement which is inadequate in their situation.
- 33 It is otherwise only if the air carrier has evidence that, contrary to their assertions, those passengers were not transported on the delayed flight at issue, which is a matter for the national court to determine.

- 34 In the light of the foregoing, the answer to the questions referred is that Regulation No 261/2004 and, in particular, Article 3(2)(a) thereof, must be interpreted as meaning that passengers on a flight with a delay of 3 hours or more on arrival who have a confirmed reservation on that flight cannot be denied compensation under that regulation solely on the ground that, upon claiming compensation, they failed to prove that they were present for check-in for that flight, in particular by means of a boarding card, unless it can be established that those passengers were not transported on the delayed flight at issue, which is matter for the national court to determine.

Costs

- 35 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 orders:

Regulation (EC) No 261/2004 of the European Parliament and of the Council of du 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 and, in particular, Article 3(2)(a) thereof, must be interpreted as meaning that passengers on a flight with a delay of 3 hours or more on arrival who have a confirmed reservation on that flight cannot be denied compensation under that regulation solely on the ground that, upon claiming compensation, they failed to prove that they were present for check-in for that flight, in particular by means of a boarding card, unless it can be established that those passengers were not transported on the delayed flight at issue, which is matter for the national court to determine.

[Signatures]