



## Reports of Cases

### JUDGMENT OF THE COURT (Third Chamber)

4 October 2012\*

(Air transport — Regulation (EC) No 261/2004 — Compensation for passengers in the event of denied boarding — Concept of ‘denied boarding’ — Exclusion from characterisation as ‘denied boarding’ — Cancellation of a flight caused by a strike at the airport of departure — Rescheduling of flights after the cancelled flight — Right to compensation of the passengers on those flights)

In Case C-22/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Korkein oikeus (Finland), made by decision of 13 January 2011, received at the Court on 17 January 2011, in the proceedings

**Finnair Oyj**

v

**Timy Lassooy,**

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, J. Malenovský, E. Juhász, T. von Danwitz and D. Šváby (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 1 March 2012,

after considering the observations submitted on behalf of:

- Finnair Oyj, by T. Väätäinen, asianajaja,
- Mr Lassooy, by M. Wilska, kuluttaja-asiamies, and P. Hannula and J. Suurla, lakimiehet,
- the Finnish Government, by H. Leppo, acting as Agent,
- the French Government, by G. de Bergues and M. Perrot, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by G. Aiello, avvocato dello Stato,
- the Austrian Government, by A. Posch, acting as Agent,

\* Language of the case: Finnish.

— the Polish Government, by M. Szpunar, acting as Agent,  
— the European Commission, by I. Koskinen and K. Simonsson, acting as Agents,  
after hearing the Opinion of the Advocate General at the sitting on 19 April 2012,  
gives the following

### Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Articles 2(j), 4 and 5 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, on the one hand, the airline Finnair Oyj ('Finnair') and, on the other, Mr Lassooy, following Finnair's refusal to compensate Mr Lassooy for not allowing him to board a flight from Barcelona (Spain) to Helsinki (Finland) on 30 July 2006.

### Legal framework

#### *Regulation (EEC) No 295/91*

- 3 Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied-boarding compensation system in scheduled air transport (OJ 1991 L 36, p. 5), which was in force until 16 February 2005, provided at Article 1:

'This Regulation establishes common minimum rules applicable where passengers are denied access to an overbooked scheduled flight for which they have a valid ticket and a confirmed reservation departing from an airport located in the territory of a Member State to which the [EC] Treaty applies, irrespective of the State where the air carrier is established, the nationality of the passenger and the point of destination.'

#### *Regulation No 261/2004*

- 4 Recitals 1, 3, 4, 9, 10, 14 and 15 in the preamble to Regulation No 261/2004 state:

'(1) 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.

...

(3) While [Regulation No 295/91] created basic protection for passengers, the number of passengers denied boarding against their will remains too high, as does that affected by cancellations without prior warning and that affected by long delays.

(4) The Community should therefore raise the standards of protection set by that Regulation both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market.

...

- (9) The number of passengers denied boarding against their will should be reduced by requiring air carriers to call for volunteers to surrender their reservations, in exchange for benefits, instead of denying passengers boarding, and by fully compensating those finally denied boarding.
- (10) Passengers denied boarding against their will should be able either to cancel their flights, with reimbursement of their tickets, or to continue them under satisfactory conditions, and should be adequately cared for while awaiting a later flight.

...

- (14) As under the Montreal Convention, obligations on operating air carriers should be limited or excluded in cases where an event has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.
- (15) Extraordinary circumstances should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all reasonable measures had been taken by the air carrier concerned to avoid the delays or cancellations.'

5 Article 2 of Regulation No 261/2004, entitled 'Definitions', provides:

'For the purposes of this Regulation:

...

- (j) "denied boarding" means a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Article 3(2), except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation;

...'

6 Article 3 of that regulation, entitled 'Scope', provides in paragraph 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

...'

7 Article 4 of Regulation No 261/2004, entitled ‘Denied boarding’, reads as follows:

‘1. When an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. Volunteers shall be assisted in accordance with Article 8, such assistance being additional to the benefits mentioned in this paragraph.

2. If an insufficient number of volunteers comes forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will.

3. If boarding is denied to passengers against their will, the operating air carrier shall immediately compensate them in accordance with Article 7 and assist them in accordance with Articles 8 and 9.’

8 Article 5 of Regulation No 261/2004, entitled ‘Cancellation’, provides in paragraph 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.’

9 Article 7 of Regulation No 261/2004, entitled ‘Right to compensation’, provides in paragraph 1:

‘Where reference is made to this Article, passengers shall receive compensation amounting to:

...

(b) EUR 400 for all intra-Community flights of more than 1 500 kilometres, and for all other flights between 1500 and 3500 kilometres;

...’

10 Articles 8 and 9 of that regulation, read in conjunction with Article 4 thereof, provide a right to reimbursement or re-routing and a right to care for passengers who are denied boarding.

11 Article 13 of Regulation No 261/2004, entitled ‘Right of redress’, provides:

‘In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier’s right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract. Similarly, no provision of this Regulation may be interpreted as restricting the right of a tour operator or a third party, other than a passenger, with whom an operating air carrier has a contract, to seek reimbursement or compensation from the operating air carrier in accordance with applicable relevant laws.’

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

12 Following a strike by staff at Barcelona Airport on 28 July 2006, the scheduled 11.40 flight from Barcelona to Helsinki operated by Finnair had to be cancelled. In order that the passengers on that flight should not have too long a waiting time, Finnair decided to reschedule subsequent flights.

- 13 Accordingly, those passengers from the flight in question were taken to Helsinki on the 11.40 flight the following day, 29 July 2006, and also on a specially arranged flight departing later that day at 21.40. The consequence of that rescheduling was that some of the passengers who had bought their tickets for the 11.40 flight on 29 July 2006 had to wait until 30 July 2006 to go to Helsinki on the scheduled 11.40 flight and on a 21.40 flight specially arranged for the occasion. Similarly, some passengers, like Mr Lassooy, who had bought their tickets for the 11.40 flight on 30 July 2006 and who had duly presented themselves for boarding, went to Helsinki on the special 21.40 flight later that day.
- 14 Taking the view that Finnair had for no valid reason denied him boarding, within the meaning of Article 4 of Regulation No 261/2004, Mr Lassooy brought an action before the Helsingin käräjäoikeus (Helsinki District Court) for an order against Finnair to pay him the compensation provided for in Article 7(1)(b) of that regulation. By decision of 19 December 2008, the Helsingin käräjäoikeus dismissed Mr Lassooy's application for compensation on the ground that the regulation only concerned compensation where boarding is denied as a result of overbooking for economic reasons. That court held that Article 4 of Regulation No 261/2004 did not apply in this case, since the airline company had rescheduled its flights as a result of a strike at Barcelona airport and that strike amounted to an extraordinary circumstance in respect of which Finnair had taken all the measures that could be required of it.
- 15 By a judgment of 31 August 2009, the Helsingin hovioikeus (Helsinki Court of Appeal) set aside the judgment of the Helsingin käräjäoikeus and ordered Finnair to pay Mr Lassooy the sum of EUR 400. To that effect, the Helsingin hovioikeus held that Regulation No 261/2004 applies not only to overbooking but also in some instances to operational reasons for denying boarding, and thus prevents an air carrier from being exempted, for reasons connected with a strike, from its obligation to pay compensation.
- 16 In the context of Finnair's appeal to the Korkein oikeus (Supreme Court), that court relates its doubts concerning the scope of the obligation to compensate passengers who have been 'denied boarding', as referred to in Article 4 of Regulation No 261/2004, the grounds that may justify 'denied boarding' within the meaning of Article 2(j) of that regulation, and whether an air carrier may rely on the extraordinary circumstances referred to in Article 5(3) of that same regulation, with respect to flights after the flight which was cancelled because of those circumstances.
- 17 In that context, the Korkein oikeus decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
1. Is Regulation No 261/2004 and in particular Article 4 thereof to be interpreted as meaning that its application is limited only to cases where boarding is denied because of overbooking by [an] air carrier for economic reasons, or is [that] regulation applicable also to situations in which boarding is denied for other reasons, such as operational reasons?
  2. Is Article 2(j) of [Regulation No 261/2004] to be interpreted as meaning that the reasonable grounds laid down therein are limited only to factors relating to passengers, or may a denial of boarding be reasonable on other grounds? If the regulation is to be interpreted as meaning that a denial of boarding may be reasonable on grounds other than those relating to passengers, is it to be interpreted as meaning that such a denial may also be reasonable on the grounds of the rescheduling of flights as a result of the extraordinary circumstances mentioned in recitals 14 and 15?
  3. Is [Regulation No 261/2004] to be interpreted as meaning that an air carrier may be exempted from liability under Article 5(3) in extraordinary circumstances not only with respect to a flight which it cancelled, but also with respect to passengers on later flights, on the ground that by its actions it attempts to spread the negative effects of the extraordinary circumstances it encounters in its operations, such as a strike, among a wider class of passengers than the cancelled flight's

passengers by rescheduling its later flights so that no passenger's journey was unreasonably delayed? In other words, may an air carrier rely on extraordinary circumstances also with respect to a passenger on a later flight whose journey was not directly affected by that factor? Does it make a significant difference whether the passenger's situation and right to compensation are assessed in accordance with Article 4 of the regulation, which concerns denied boarding, or with Article 5, which relates to flight cancellation?

## Consideration of the questions referred

### *The first question*

- 18 By its first question the referring court asks, in essence, whether the concept of 'denied boarding', within the meaning of Articles 2(j) and 4 of Regulation No 261/2004, must be interpreted as relating exclusively to cases where boarding is denied because of overbooking or whether it applies also to cases where boarding is denied on other grounds, such as operational reasons.
- 19 It should be noted that the wording of Article 2(j) of Regulation No 261/2004, which defines the concept of 'denied boarding', does not link that concept to an air carrier's 'overbooking' the flight concerned for economic reasons.
- 20 As regards the context of that provision and the objectives pursued by the legislation of which it is part, it is apparent not only from recitals 3, 4, 9 and 10 of Regulation No 261/2004, but also from the *travaux préparatoires* for that regulation — and in particular from the Proposal for a regulation of the European Parliament and of the Council establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights, presented by the Commission of the European Communities on 21 December 2001 (COM(2001) 784 final) — that the European Union ('EU') legislature sought, by the adoption of that regulation, to reduce the number of passengers denied boarding against their will, which was too high at that time. This would be achieved by filling the gaps in Regulation No 295/91 which confined itself to establishing, in accordance with Article 1 thereof, common minimum rules applicable where passengers are denied access to an overbooked scheduled flight.
- 21 It is in that context that by means of Article 2(j) of Regulation No 261/2004 the EU legislature removed from the definition of 'denied boarding' any reference to the ground on which an air carrier refuses to carry a passenger.
- 22 In so doing, the EU legislature expanded the scope of the definition of 'denied boarding' beyond merely situations where boarding is denied on account of overbooking referred to previously in Article 1 of Regulation No 295/91, and construed 'denied boarding' broadly as covering all circumstances in which an air carrier might refuse to carry a passenger.
- 23 That interpretation is supported by the finding that limiting the scope of 'denied boarding' exclusively to cases of overbooking would have the practical effect of substantially reducing the protection afforded to passengers under Regulation No 261/2004 and would therefore be contrary to the aim of that regulation - referred to in recital 1 in the preamble thereto - of ensuring a high level of protection for passengers. Consequently, a broad interpretation of the rights granted to passengers is justified (see, to that effect, Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 69, and C-549/07 *Wallentin-Hermann* [2008] ECR I-11061, paragraph 18).
- 24 As the Advocate General observed in point 37 of his Opinion, to accept that only situations of overbooking are covered by the concept of 'denied boarding' would have the effect of denying all protection to passengers who, like the applicant in the main proceedings, find themselves in a

situation for which, as in the case of overbooking for economic reasons, they are not responsible, by precluding them from relying on Article 4 of Regulation No 261/2004; paragraph 3 of that Article refers to the provisions of that regulation relating to rights to compensation, reimbursement or re-routing and to care, as laid down in Articles 7 to 9 of that regulation.

- 25 Consequently, an air carrier's refusal to allow the boarding of a passenger who has presented himself for boarding in accordance with the conditions laid down in Article 3(2) of Regulation No 261/2004, on the basis that the flights arranged by that carrier have been rescheduled, must be characterised as 'denied boarding' within the meaning of Article 2(j) of that regulation.
- 26 In the light of the foregoing, the answer to the first question is that the concept of 'denied boarding', within the meaning of Articles 2(j) and 4 of Regulation No 261/2004, must be interpreted as relating not only to cases where boarding is denied because of overbooking but also to those where boarding is denied on other grounds, such as operational reasons.

*The second and third questions*

- 27 By its second and third questions, which should be examined together, the referring court asks, in essence, whether the occurrence of 'extraordinary circumstances' resulting in an air carrier rescheduling flights after those circumstances occurred can give grounds for denying boarding to a passenger on one of those later flights and for exempting that carrier from its obligation, under Article 4(3) of Regulation No 261/2004, to compensate a passenger to whom it denies boarding on such a flight.
- 28 In the first place, the referring court seeks to establish whether characterisation as 'denied boarding', within the meaning of Article 2(j) of Regulation No 261/2004, may be precluded solely on grounds relating to passengers as such, or whether grounds unrelated to them and, in particular, relating to an air carrier's rescheduling of its flights as a result of 'extraordinary circumstances' which affected it, may also preclude such characterisation.
- 29 In that connection, it should be noted that the wording of Article 2(j) of Regulation No 261/2004 precludes characterisation as 'denied boarding' on two sets of grounds. The first relates to the failure of the passenger presenting himself for boarding to comply with the conditions laid down in Article 3(2) of that regulation. The second concerns cases where there are reasonable grounds to deny boarding 'such as reasons of health, safety or security, or inadequate travel documentation'.
- 30 The first set of grounds does not apply to the case in the main proceedings. As regards the second set of grounds, it must be noted that none of the reasons specifically referred to in Article 2(j) is relevant to the main proceedings. However, in using the expression 'such as', the EU legislature intended to provide a non-exhaustive list of the situations in which there are reasonable grounds for denying boarding.
- 31 None the less, it cannot be inferred from such wording that there are reasonable grounds to deny boarding on the basis of an operational reason such as that in question in the main proceedings.
- 32 The situation in question in the main proceedings is comparable to cases where boarding is denied because of 'initial' overbooking, since the air carrier had reallocated the applicant's seat in order to transport other passengers, and it therefore chose itself between several passengers to be transported.
- 33 Admittedly, that reallocation was done in order to avoid the passengers affected by flights cancelled on account of extraordinary circumstances having excessively long waiting times. However, that ground is not comparable to those specifically mentioned in Article 2(j) of Regulation No 261/2004, since it is in no way attributable to the passenger to whom boarding is denied.

- 34 It cannot be accepted that an air carrier may, relying on the interest of other passengers in being transported within a reasonable time, increase considerably the situations in which it would have reasonable grounds for denying a passenger boarding. That would necessarily have the consequence of depriving such a passenger of all protection, which would be contrary to the objective of Regulation No 261/2004 which seeks to ensure a high level of protection for passengers by means of a broad interpretation of the rights granted to them.
- 35 In the second place, the referring court asks the Court of Justice whether an air carrier may be exempted from its obligation to compensate a passenger for 'denied boarding', laid down in Articles 4(3) and 7 of Regulation No 261/2004, on the ground that boarding is denied due to the rescheduling of that carrier's flights as a result of 'extraordinary circumstances'.
- 36 In that connection, it is to be noted that, unlike Article 5(3) of Regulation No 261/2004, Articles 2(j) and 4 of that regulation do not provide that, in the event of 'denied boarding' owing to 'extraordinary circumstances' which could not have been avoided even if all reasonable measures had been taken, an air carrier is exempted from its obligation to compensate passengers denied boarding against their will (see, by analogy, *IATA and ELFAA*, paragraph 37). It follows that the EU legislature did not intend that compensation may be precluded on grounds relating to the occurrence of 'extraordinary circumstances'.
- 37 In addition, it is apparent from recital 15 in the preamble to Regulation No 261/2004 that 'extraordinary circumstances' may relate only to 'a particular aircraft on a particular day', which cannot apply to a passenger denied boarding because of the rescheduling of flights as a result of extraordinary circumstances affecting an earlier flight. The concept of 'extraordinary circumstances' is intended to limit the obligations of an air carrier — or even exempt it from those obligations — when the event in question could not have been avoided even if all reasonable measures had been taken. As the Advocate General observed in point 53 of his Opinion, if such a carrier is obliged to cancel a scheduled flight on the day of a strike by airport staff and then takes the decision to reschedule its later flights, that carrier cannot in any way be considered to be constrained by that strike to deny boarding to a passenger who has duly presented himself for boarding two days after the flight's cancellation.
- 38 Consequently, having regard to the requirement to interpret strictly the derogations from provisions granting rights to passengers, which follows from the settled case-law of the Court (see, to that effect, *Wallentin-Hermann*, paragraph 17 and the case-law cited), an air carrier cannot be exempted from its obligation to pay compensation in the event of 'denied boarding' on the ground that its flights were rescheduled as a result of 'extraordinary circumstances'.
- 39 Furthermore, it must be reiterated that the discharge of obligations by air carriers pursuant to Regulation No 261/2004 is without prejudice to their rights to seek compensation from any person who has caused the 'denied boarding', including third parties, as Article 13 of the regulation provides. Such compensation accordingly may reduce or even remove the financial burden borne by the air carriers in consequence of those obligations (*IATA and ELFAA*, paragraph 90).
- 40 In the light of the foregoing considerations, the answer to the second and third questions is that Articles 2(j) and 4(3) of Regulation No 261/2004 must be interpreted as meaning that the occurrence of 'extraordinary circumstances' resulting in an air carrier rescheduling flights after those circumstances arose cannot give grounds for denying boarding on those later flights or for exempting that carrier from its obligation, under Article 4(3) of that regulation, to compensate a passenger to whom it denies boarding on such a flight.



## Costs

- <sup>41</sup> 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 (Third Chamber) hereby rules:

- 1. The concept of ‘denied boarding’, within the meaning of Articles 2(j) and 4 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 relating not only to cases where boarding is denied because of overbooking but also to those where boarding is denied on other grounds, such as operational reasons.**
- 2. Articles 2(j) and 4(3) of Regulation No 261/2004 must be interpreted as meaning that the occurrence of ‘extraordinary circumstances’ resulting in an air carrier rescheduling flights after those circumstances arose cannot give grounds for denying boarding on those later flights or for exempting that carrier from its obligation, under Article 4(3) of that regulation, to compensate a passenger to whom it denies boarding on such a flight.**

[Signatures]